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Developmental Disabilities Special Investigative Committee
December 17, 2015

[LR32]

The Developmental Disabilities Special Investigative Committee met at 1:00 p.m. on Thursday, December 17, 2015, for the purpose of a public hearing. Senators present: Colby Coash, Chairperson; Roy Baker; Kate Bolz; Al Davis; Burke Harr; Robert Hilkemann; and Jerry Johnson. Senators absent: None. Also present from the Health and Human Services Committee: Kathy Campbell, Chairperson; Nicole Fox; Merv Riepe; and Mark Kolterman.

SENATOR COASH: We're going to go ahead and get this hearing started and I want to welcome you to a joint hearing of the LR32 Developmental Disabilities Special Investigate Committee and...it's a joint hearing with that committee and the HHS Committee. We're going to find some room for Senator Hilkemann. We'll find you some room; come on up here. We'd like to welcome you to this joint committee. My name is Senator Colby Coash; I am the Chair of the LR32 Committee. And I have members of both that committee and the HHS Committee that I would like to introduce at this time, and I'm going to start to my far right, a member of the HHS Committee, Senator Riepe. I'll tell you what, I'll let you introduce yourself and let's go around.

SENATOR RIEPE: You want to see if I'll use the same name.

SENATOR COASH: That's right.

SENATOR RIEPE: I am Senator Merv Riepe. I'm from the Millard and Ralston and the Omaha area. Pleased to be here.

SENATOR HARR: And I am Senator Burke Harr, and I am from Legislative District 8, which is midtown Omaha, the true downtown...I don't see Senator Howard. I am not on HHS. I am out here because I had a great staffer that we wanted to use.

SENATOR DAVIS: I'm Senator Al Davis from District 43, which is a 13-county area in north-central and western Nebraska. I'm on the Developmental Disabilities Committee on Beatrice.

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SENATOR BOLZ: I'm State Senator Kate Bolz. I represent District 29 in south-central Lincoln and I'm a member of the Special Investigative Committee on Developmental Disabilities.

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

SENATOR COASH: Senator Coash again, Chair of the committee.

SENATOR FOX: Senator Nicole Fox, District 7, which is south Omaha and downtown Omaha, and I'm on the HHS Committee.

SENATOR HILKEMANN: Senator Robert Hilkemann, I represent District 4, west Omaha.

SENATOR JOHNSON: Senator Jerry Johnson, District 23, Saunders, Butler, and most of Colfax County. And I'm on the Special Investigative Committee.

SENATOR CAMPBELL: I'm Kathy Campbell, District 25, which is east Lincoln, and I Chair the Health and Human Services Committee.

SENATOR KOLTERMAN: Senator Mark Kolterman from District 24, which is Seward, York, and Polk Counties, and I'm on HHS Committee.

SENATOR COASH: All right. Thank you very much for those introductions. And we also have Christina here, and again she's our committee clerk. If you have anything that you'd like to make part of the record for the committee, we would ask you that you give that to Christina. For today's hearing, we are going to start with just one invited testimony, which is from Courtney Miller from the department. And then following that, I'm going to open up this hearing to public testimony. This is the second hearing of this committee, and in a moment I'm going to introduce what I'd like to accomplish with this particular hearing. If you testified last time, you're still welcome to testify again. However, I would ask that you consider that if your testimony is going to be the same as it was at our first hearing, that that testimony was already part of the record and the committee has already taken a look at that. So any public testimony, I would ask just that it

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be something new that you want to share with the committee, because we already have the testimony from the last hearing. So keep that in mind. We also have a couple of pages over here. If you need anything they'll be here to help you out. If you are going to testify, there are some green sheets by the door. If you would please fill that out and give that to Christina so we can make a clear record. When you do come to testify, please speak into the microphone. We'll ask you to state and spell your first and last name for the record. If you're representing a group, anyone other than yourself, please indicate that in your opening. I would ask all of us, including the senators, to silence your cell phones so that we can get a clear record, and thank you for that cooperation. With that, I'm going to do a brief opening and then we will start the testimony.

SENATOR COASH: Thank you, committee members, both Special Investigative and HHS Committee members who are present here today. I really appreciate the nice attendance. This is really great, especially this time of year. For those of you that weren't at the last hearing I just want to briefly summarize what we learned at the last hearing and some of the testimony that was presented. This committee was convened several years ago after some events at BSDC led to the decertification by the federal government. And that was an expensive proposition that happened, and it took several years to get that ship righted and several million dollars to do so, because we--and when I say "we," the state--had taken its eyes off the ball of how services were being delivered there, and that led to decertification. Since then, new leadership has...changing leadership has helped right that ship. The services at BSDC are now recertified. There was a Department of Justice order which has been lifted and so we are kind of...we've kind of reset where BSDC was. Several of you have accompanied me on some tours of BSDC. We'll let the department talk a little bit about who's there, but at the time of the last hearing we had about 116 people who are getting services at BSDC. Since that the census may have shifted a little. I'll let them correct that. But at the time, there was 116 individuals getting services there. And there hadn't been a new person admitted into BSDC since about 2012. And so the trend is going down. There are no...there hadn't been anybody going in there for several years and it doesn't look like there will be more people going in there, because they're getting...people who might need that service are finding services in the community. The budget for BSDC, and this is a clarification I'd like to make from the last hearing, because--and the department, I've asked them to brief the committee on this--the budget for BSDC also includes a program that is in the Hastings community that will be referred to as the Bridges program. Okay? So when we heard testimony

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about the total budget of BSDC it includes that and the Bridges program, which serves a couple dozen people. I'll let the department clarify how many. Not as many as BSDC by any stretch, but that budget does include services to those people. But when you take the budget and you divide it by the amount of people that are being served, it is still a large number per person per year, well over \$400,000 per person per year to provide those services. As I stated the last time, my goal for this committee is to work with the executive branch to make sure that there is a plan as to what BSDC looks like into the future. As you may have heard from the last hearing, because of the declining census and the fixed costs are quite large, it would make sense that the state make...start to plan for what BSDC looks like. Okay? And I'm not here advocating for any particular plan. I think there are people who would advocate for a particular plan. It is my opinion that it is our role to partner in that plan, but this is a department function. BSDC is run by HHS. And I think we're going to hear some testimony today about what has happened...how services are adjusting across the country and what's happening to places like BSDC across the country. So we're going to hear about that. At the last hearing, there were some...we talked a little bit about some leadership gaps within the department, which I'm happy to report is moving in the right direction. The first testifier today is the no longer acting director, but the permanent director of Developmental Disabilities systems, so we now have permanent leadership in place, which is a big--in my mind--a very big key in moving this forward. And the reason I had this additional hearing at this time was because we now have a permanent director and she's going to testify first. And she's going to give us a little bit of information that was not available at our first hearing that I feel is important that this committee consider as we head into next year's session. And I'll let Ms. Miller talk about that. Finally, following her testimony there are several people who have contacted my office and asked that they be able to talk a little bit about their perspective on what BSDC is and the future of services for people with disabilities. And so following Ms. Miller's testimony we're going to open that up. And as I said when I introduced the hearing, I'm hoping to hear new information and maybe some responses to what the department is going to share with us. So with that, unless you have any questions, we'll start with the testimony. [LR32]

SENATOR KOLTERMAN: I just...thank you, Senator Coash. I just have one question. You refer to the Bridges out in Hastings. Is that the facility we looked at when we toured? [LR32]

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SENATOR COASH: It is. [LR32]

SENATOR KOLTERMAN: Okay. [LR32]

SENATOR COASH: Yeah. And Bridges is the name and it's not one... [LR32]

SENATOR KOLTERMAN: It's three buildings. [LR32]

SENATOR COASH: It's three buildings in an area just on the outside of Hastings. That...the people who are getting services there and where they were getting services has changed to what it is now. Those services previously were being delivered on the Hastings Regional Center campus. However, this Legislature appropriated money and worked with the department to build those homes for those people who are living there just a couple of years ago. That's why it looks very new and... [LR32]

SENATOR KOLTERMAN: But that's what's included in the budget that you were talking about. [LR32]

SENATOR COASH: The operating budget that I mentioned in the last hearing includes the budget for serving those folks. [LR32]

SENATOR KOLTERMAN: Thank you. [LR32]

SENATOR COASH: And that was not made clear on the record, so I wanted to make sure we talked about that. [LR32]

SENATOR HILKEMANN: Do we have a breakdown of how much is for the Bridges and how much is... [LR32]

SENATOR COASH: We do, and I'm going to let the department help (inaudible). [LR32]

SENATOR HILKEMANN: Okay, good. [LR32]

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SENATOR COASH: Okay. Come on up, Courtney. So we'd like to welcome the no-longer interim division director, but the permanent director, to the committee. Welcome and congratulations on your permanent appointment. [LR32]

COURTNEY MILLER: (Exhibit 1) Thank you. Good afternoon, Senator Coash and members of the Developmental Disabilities Special Investigative Committee and members of the Health and Human Services Committee. My name is Courtney Miller, C-o-u-r-t-n-e-y M-i-l-l-e-r, director of the Division of Developmental Disabilities with the Nebraska Department of Health and Human Services. Though you have my entire testimony, I intend to speak to the key points. When I first came in as interim director, CEO Courtney Phillips asked me to reach out to all stakeholders, both internal and external, and take an inventory of what is working and areas needing improvement. Since I last appeared before this committee in October, Lori Harder, the deputy director of Community Based Services, and I traveled the state to engage stakeholders in the delivery of developmental disabilities services. We had honest and frank conversations with families, friends, providers, and advocates, critical voices associated with the programs that serve Nebraskans with developmental disabilities. At each of the nine town hall-style forums, interest in the future of community-based services, as well as the transition of BSDC residents to community services, were popular topics. Participants are justifiably interested in the progress of the operation and the future of services. Before I jump into the BSDC updates I would like to add on to Senator Coash's comment with a quick clarification as to the per-resident cost figure discussed in October. The figure of \$450,000 was used as the cost to serve each resident at BSDC. This figure represents the budget allocated to BSDC divided by its census. However, it is not an accurate reflection as to the cost to operate the BSDC facility. For example, this budget also accounts for shared services at Bridges, as well as the medical and behavioral support teams for consultation with community-based individuals. Also, the Medicaid payment methodology for an intermediate care facility, or an ICF, is a per diem, which includes the individual's pharmaceuticals, medical, and dental care. We converted an existing position and are recruiting for a finance administrator to assist with a deep dive for an accounting of those costs that are specific to BSDC and specific to Bridges. This will allow for a clearer cost per individual at BSDC to compare against the cost in a community-based setting. I am pleased to report to you that gains made over the past several years at the Beatrice State Development Center have been sustained and improvements continue. The 116 individuals who reside at BSDC receive high-

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quality services and supports from our caring staff. Three residents from BSDC are actively transitioning into community-based programs. We continue to recruit for a CEO for BSDC to provide the leadership and managerial skills needed to ensure that our most vulnerable citizens continue to thrive at BSDC. While working on this critical first step, my team is exploring opportunities for cost efficiencies while ensuring the quality of care of the individuals we serve in a parallel process. In regards to the plan, we have begun looking for innovative ideas other states have implemented for state-operated facilities. We will complete an analysis of Bridges and BSDC to determine our best options for moving forward. We anticipate that this plan, formulated with team and stakeholder input, will be available by this time next year. The committee will be provided with updates on this progress, of course. Direct care staff overtime and vacant positions remain a challenge at BSDC, but active efforts in recruitment and retention have produced positive momentum. Our human resources and ICF administrators meet weekly to discuss overtime hours and coordinate staffing levels. These efforts have, in part, resulted in a year-over-year reduction of 3,343 hours from January of 2014 to October of '14 versus January of 2015 to October of 2015. Progress has accelerated in the last six months' comparable period, April of 2014 to October of 2014 versus April of '15 to October of '15, with a greater than 3 percent reduction in proportional overtime hours, or 3,096 overtime hours. And we will continue these efforts. Because this committee also focuses on the community system supporting Nebraskans with developmental disabilities, I will now focus on our efforts in that area. As promised during the committee hearing on October 22, 2015, we have an inventory and status update of our home and community-based services. This inventory represents a review of our service system and provides a road map to necessary improvements that we are committed to implementing. The federal Medicaid program expects states to engage in a continuous quality improvement cycle that has three elements: discovery, remediation, and improvement. This inventory represents our progress in the discovery aspect of this cycle. Through this process of discovery, the division has been able to identify areas requiring immediate remediation that do not require statutory or regulatory change, nor do they jeopardize our federal Medicaid program. These remedies do improve the quality of access and services for our citizens. Customer service is very important to us. We have been vigorous in putting changes into place. I will detail these changes momentarily. Discovery has also allowed us the opportunity to identify deeper, much-needed systemic improvements. We are working closely with our state and federal partners to effect these improvements as well. All individuals determined eligible for DD services are

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entered into a registry database. To this point we have not reached out to individuals and explored assistance opportunities that may be available from other department programs, such as Medicaid Aged and Disabled Waiver, Medicaid Personal Assistance Services, or the Medicaid PACE program, for example. This will be done in the near future. As of December 7, 2015, a total of 4,002 individuals are listed on the registry; 1,938 have a date of need in the past; 2,064 have a date of need or a date of entitlement that is in the future. The division has immediately enrolled graduates who fit within the scope of the Developmental Disability Services Act statute and the Medicaid DD waivers. We currently do not have approved prioritization in the Medicaid DD waiver application with the Centers for Medicare and Medicaid Services, or CMS. We have begun to explore obtaining CMS waiver approval for federal funding to continue this practice. We have reached out to our partners in the educational system to create an effective collaboration that ensures a smooth transition process for students with developmental disabilities and the best use of state dollars. In previous years, division service coordinators routinely attended IEP meetings, with special attention given to students approaching graduation. This afforded the students and their families the opportunity to learn about the adult service system and begin planning for transition to adult services. This practice was eliminated some time ago. We have already begun to restructure service coordination responsibilities in order to increase their direct contact with people with disabilities and their families, including transitioning youth. This revitalized coordination between DD and the public school system is much needed to support our youth during this critical period of their lives. I'm going to talk a little bit about Bridges. Bridges is licensed as a center for developmentally disabled, or a CDD. It's administered by a Bridges administrator with oversight by the CEO of BSDC. Eight individuals currently reside in the three homes. While this program is a community-based service, it is being operated like an extension of BSDC, which is an intermediate care facility for individuals with developmental disabilities. Restructuring of this relationship is imperative to ensuring our compliance with federal home and community-based regulations by 2019 and continued federal funding. We began work this week to conduct the evaluation of the program. To assure an independent community-based DD provider survey process within DHHS, all DD surveyor positions and functions are moving to the Division of Public Health where all other survey functions within DHHS reside. DD and Department (sic: Division) of Public Health leadership are dedicated to ensuring a seamless transition and have established weekly meetings until the transition is complete. LB905, passed in 2014, created the State Ward Permanency Pilot Project as of July 1, 2014, providing \$1.5

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million in General Funds for development disability services to state wards in order to provide optimal habilitative supports and promote permanency. The pilot was intended to serve state wards who are eligible for DD services, but do not qualify for priority state-only funding as set forth in the Developmental Disabilities Services Act. Due to having no prioritization approval, all children covered in the pilot project who were initially placed in the Medicaid DD children's waiver have been transferred to state-funded services to ensure compliance with the federally approved waiver and statute. They will see no service interruption. The state will be required to pay back approximately \$966,000 to the federal Centers for Medicare and Medicaid Services as well as determine what steps, if any, are needed to fix any compliance issues regarding use of the waiver to supplement a state-funded project. The division has also requested an additional \$450,000 of state General Funds to serve those children for the remainder of the pilot. Again, these individuals will experience no change in service provision, just a change to the appropriate funding. Ultimately, we want to investigate the viability of identifying appropriate priority waiver funds for these children in order to achieve funding permanency once they are no longer state wards. In January of 2014, the Center for Medicaid and Medicare Services announced a requirement for states to review and evaluate current home and community-based service settings, including residential and non-residential settings, and to demonstrate how Nebraska's home and community-based services programs comply with the new federal HCBS rules. The intent of this HCBS regulation is to ensure that individuals receiving home and community-based services are integrated in, and have access to, supports in the community, including opportunities to seek employment, work in competitive integrated settings, engage in community life, and control personal resources. CMS has now reviewed every state's transition plan and to date none have been approved. The state submitted a draft transition plan on March 9, 2015, and CMS requested additional information on September 24, 2015. We are in the process of rewriting the plan, including surveying our residential and day services provider community, and will be seeking public comment from our stakeholders upon completion of a draft. We are scheduled to submit the revised plan no later than May 31, 2016. Upon its approval by CMS, the transition plan will provide assurance that individuals receiving HCBS have the same degree of access as individuals not receiving Medicaid home and community-based services. The transition plan will outline the proposed process that Nebraska will be utilizing to ensure implementation of the new requirements. Two of the division's Medicaid adult waivers are in the renewal process and negotiations are underway with CMS to ensure that the waivers are in

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compliance with all federal regulations and afford optimal services for Nebraskans with developmental disabilities. We have received an extensive series of questions from CMS on these waivers--approximately 220 questions--and we have requested an extension in order to respond to these questions, address the gaps in the waiver applications, and resubmit the waiver applications that meet the terms and conditions of the federal regulations. For example, individuals ordered into a placement through Nebraska's DD Custody Act are not eligible for funding through current waivers, as is current practice. Along with changes to the adult waivers, this will necessitate the division to submit an amendment to the DD children's waiver application to ensure consistency in administration of the waiver programs. The federal mandate is that the state Medicaid agency retain ultimate administration and financial authority and responsibility for the operation of the waiver program by exercising oversight of the performance of waiver functions by other state and local/regional non-state agencies--if appropriate--and contracted entities. Medicaid oversight was not occurring. We're correcting this in actual practice within DHHS and this will be documented in the waiver application. One critical example of the lack of oversight is that the DD Division has closely managed the utilization and corresponding financial performance of its waivers with little to no oversight. I will be working closely with Medicaid leadership to tighten the fiscal management of the waivers and ensure that we maximize our federal program to benefit Nebraskans with developmental disabilities. Due to the delay in CMS's approval of the DD rate methodology that was implemented in July of 2014, but not approved by CMS until July of 2015, the division has a shortfall in the current state fiscal year driven by a \$5.8 million reimbursement to return federal dollars paid out in the prior year. Further, the cost of reimbursing federal funds in fiscal year 2014-15 drove General Fund spending over budget, leaving \$5.5 million of encumbrances unfunded. In summary, the Division of Developmental Disabilities is committed to a transparent, inclusive approach to addressing the challenges presented to you today. Our reform efforts are directed at the basic principles of improving access and service availability while assuring basic safeguards, improving accountability and performance, honoring individualization, and promoting customer choice and self-determination. I look forward to working closely with you, my incredible team members, the people we serve, the families, our providers and advocacy organizations, and our state and federal partners to ensure that Nebraska's citizens with developmental disabilities receive the best possible services that we can provide. Thank you for the opportunity to provide this information. I'm happy to answer any questions that you might have. [LR32]

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SENATOR COASH: All right. Thank you, Director Phillips (sic: Miller). This was nine pages of a lot of information. We really appreciate the effort it took to go through this, and I'm sure the committee members will spend some time with this as we move forward. I want to go back and clarify a few things, because I want to make sure we can kind of boil down some things...boil it down to a couple of things that we may be looking at next year specifically with the budget. I know as interim director and now as permanent director you've been...you mentioned going across the state kind of opening up the books, talking with stakeholders. And the term you've used is kind of an inventory, right, what we have, what we're dealing with. And in part of your testimony you've mentioned your work with CMS, which is the federal government. Right? [LR32]

COURTNEY MILLER: Yes. [LR32]

SENATOR COASH: Okay. So, federal government, because they participate in the cost of services, is interested in how we do that. Right? [LR32]

COURTNEY MILLER: Yes. [LR32]

SENATOR COASH: You've thrown out some dollar figures that I think it's important that we clarify. The first dollar figure was \$966,000 of a payback, is that...I'm looking at kind of the bottom of page 6 there...because of the children's pilot. [LR32]

COURTNEY MILLER: Correct. For the children's pilot...State Ward Permanency Pilot Project we drew down \$966,000 of federal dollars that we must repay. [LR32]

SENATOR COASH: We shouldn't have drawn down. [LR32]

COURTNEY MILLER: Um-hum. [LR32]

SENATOR COASH: Okay, so we drew down more money than we should have, so now we have to pay that back. [LR32]

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COURTNEY MILLER: Correct. [LR32]

SENATOR COASH: Okay. And then starting on the bottom of page 8, this is where we're really talking about the Medicaid oversight. I mean, I guess if I could paraphrase what I heard you say is that there was some lack of oversight that you've discovered and you're now working with Medicaid to shore that up. Would that be a way to say it? [LR32]

COURTNEY MILLER: Yes. [LR32]

SENATOR COASH: Okay. So the lack of oversight that you've discovered...and I think it's worth repeating for the committee that you're working with Medicaid...I mean, being transparent with them, showing them what you're finding so that you can work with them to correct the problems. Is that...would that be... [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR COASH: I don't want to put words in your mouth, you guys. [LR32]

COURTNEY MILLER: We are working...obviously, I had a relationship with Medicaid coming into the Division of Developmental Disabilities. I come from the Medicaid and Long-Term Care Division, so I'm familiar with the staff and the leadership, and we have a good relationship. [LR32]

SENATOR COASH: And you're opening the books and doing this inventory...and I'm looking at the top of page 9. We've got a several million dollar reimbursement now to the federal government. Can you just expand on that, the \$5.8 (million) and the \$5.5 million that you talked about in your testimony there at the top of page 9? [LR32]

COURTNEY MILLER: So that I understand, you're asking for the clarification on the rate methodology? [LR32]

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SENATOR COASH: Well, I'm just...I want the committee to understand what this means...what you've discovered and what it means. And we've got members of the Appropriations Committee here, too, who are going to be interested in how this is going to affect the budget moving forward and with regard to...your statement here was that due to the delay in the approval that was implemented in July (2014) but not approved until July of '15, the division had a shortfall in fiscal year by \$5.8 (million). Is this money...is this the same as that \$966,000? [LR32]

COURTNEY MILLER: No. No. [LR32]

SENATOR COASH: Okay. Well, I know it's not the same, but is this a draw down that we have to pay back? Can you clarify that? [LR32]

COURTNEY MILLER: Correct. So the rate methodology was implemented before it was approved by CMS, and we drew down the federal dollars more than what we were authorized to draw down. And that money has been repaid. The \$11.3 (million) that results in the \$5.8 (million) and the \$5.5 (million) is the shortfall that we have essentially to make the division's budget whole in this budget cycle. [LR32]

SENATOR COASH: Okay. So next...in this coming year there will be a budget...a deficit request for that money or...? [LR32]

COURTNEY MILLER: We're working with the Finance Division on that now. [LR32]

SENATOR COASH: Okay. Finally, and then I'll turn it over to questions from the committee, I want to make sure...have we been fined or asked...have we been fined by CMS for anything that we've not done or done that we shouldn't have done? [LR32]

COURTNEY MILLER: No. No. [LR32]

SENATOR COASH: Okay. [LR32]

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COURTNEY MILLER: We have self-identified and they...the rate methodology has been resolved...identified and resolved and that money has been returned. The children's pilot project, we have identified it and communicated to CMS, and we will...we have agreed upon the amount to be returned and that will be returned. [LR32]

SENATOR COASH: So we're returning money, but I just want to make sure it's clear in the record, we're returning money but this isn't in the form of we did something wrong and this is a fine, so to speak, from... [LR32]

COURTNEY MILLER: No, there has been no disallowance request as far as the Division of Developmental Disabilities is concerned that I'm aware of. [LR32]

SENATOR COASH: Okay. I was looking for the term. A disallowance means you messed up and you had to pay it back, right? [LR32]

COURTNEY MILLER: Correct. Yes. [LR32]

SENATOR COASH: So we're not dealing...these funds do not represent a disallowance, they represent paying back funds that we shouldn't have drawn down. [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR COASH: Okay. Does the division have risk, as you look at the system now, of having a disallowance? [LR32]

COURTNEY MILLER: There is risk. [LR32]

SENATOR COASH: There is risk? [LR32]

COURTNEY MILLER: There is risk. [LR32]

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SENATOR COASH: Do you have any idea of the magnitude of risk of a disallowance? I mean,...
[LR32]

COURTNEY MILLER: I don't have a magnitude. I mean, we're engaged in conversations with CMS right now, and there's been no discussion. They have submitted their questions and we are working on answering those questions. So at this point, I mean, we're at a minimal risk right now. [LR32]

SENATOR COASH: Okay. I appreciate that. Part of what this committee, as you heard in my opening, is looking at is, is what is the future of BSDC. And in your opening statement you mentioned that you are working...feel like the department may have, about this time next year, a better idea of what BSDC might look like, how it fits, in about a year. Is that accurate? [LR32]

COURTNEY MILLER: It is my intention to have the plan by that time, yes. [LR32]

SENATOR COASH: Your predecessor testified in front of this committee and at least met privately with many of us about a potential plan. Was there anything in the works that you're aware of as far as long-term planning for BSDC prior to your taking the position or do you feel like you're starting fresh with what it is and what it could be? [LR32]

COURTNEY MILLER: My team is starting fresh. [LR32]

SENATOR COASH: Okay. [LR32]

COURTNEY MILLER: I'm not aware of any previous plan and my team hasn't conveyed that to me, so we're not aware. [LR32]

SENATOR COASH: Okay. All right. Well, we're looking forward to partnering with you on that. With that, I'm going to...Senator Baker has a question. [LR32]

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SENATOR BAKER: Thank you, Senator Coash. Ms. Miller, help me understand the \$11.3 million that we returned. I believe you used the phrase, we drew down when we shouldn't have. Does that mean that money could have been used for some other purpose in the state? [LR32]

COURTNEY MILLER: Well, what...I mean...yes. The rate methodology wasn't approved, so we...yes, we expended federal funds that we were not authorized to use. [LR32]

SENATOR BAKER: I understand that. You used the term, you drew down. And I admit I don't know how it works. Is there some type of a block grant or amount that Nebraska is entitled to and we spent this in a way that they didn't approve it, had to pay it back? Is that money that could have been used by HHS in some other way? [LR32]

COURTNEY MILLER: Well, the federal funds must be matched by state funds. So if there was an allocation for the state funds, then the federal funds can be used. But the Medicaid is a grant and we are allotted a specific amount of money from CMS and the Medicaid program. [LR32]

SENATOR BAKER: Okay. So would we still have access to that if we matched it, that money we sent back? [LR32]

COURTNEY MILLER: With state matching funds, yes. [LR32]

SENATOR BAKER: Thank you. [LR32]

SENATOR COASH: Okay. Senator Harr. [LR32]

SENATOR HARR: Thank you. I still...this \$12.3 (million) is a lot of money, so it worries me. How did we spend...how do we prevent ourselves from getting in this hole in the first place? What did we do wrong and how are we going to stop ourselves from doing that in the future? [LR32]

COURTNEY MILLER: That's a great question. I believe that we implement programs once we've received CMS approval. That will assist with that, so that we are in compliance with our

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federal waivers and our Medicaid program. And then I think it's also the oversight and the checks and balances within the DHHS. [LR32]

SENATOR HARR: So what did we do wrong? You're talking about what we can do and I appreciate that, but what did we do wrong? How did we end up with a \$12.3 million hole? [LR32]

COURTNEY MILLER: So the \$12.3 (million) is two separate issues. [LR32]

SENATOR HARR: Right, yeah. [LR32]

COURTNEY MILLER: Okay. So the rate methodology...my understanding is there was a law that was passed that required the state to implement a new rate methodology. [LR32]

SENATOR HARR: This was a federal or a state law? [LR32]

COURTNEY MILLER: State. [LR32]

SENATOR HARR: Okay. [LR32]

COURTNEY MILLER: And we implemented that in July of 2014, and we supplemented that with... [LR32]

SENATOR HARR: And what law was that? [LR32]

COURTNEY MILLER: What state law? [LR32]

SENATOR HARR: Yeah, what state law that caused this change? [LR32]

COURTNEY MILLER: I don't know the exact... [LR32]

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SENATOR COASH: It was the state...it was a bill that said, you're going to implement a methodology at this date. [LR32]

SENATOR HARR: Okay. Okay. [LR32]

COURTNEY MILLER: And the date that we were required to implement was July of 2014; July 1, I believe. And we implemented but we did not yet have federal approval to utilize the federal match dollars until the previous year...I'm sorry, the following year. [LR32]

SENATOR HARR: I see. Okay, okay. And then you on page 1 stated the figure of \$450,000 wasn't accurate. But then you don't go and say what is an accurate number. Do you have an accurate number? [LR32]

COURTNEY MILLER: I do not have a number today. I am recruiting for a finance position for a full-time person to do the deep dive into that. I am not an accountant. [LR32]

SENATOR HARR: Okay. [LR32]

COURTNEY MILLER: And I think that that will benefit us for that accountability and accounting of what the budget is. [LR32]

SENATOR COASH: If I could speak for the committee for a moment, I think this is the request of the committee. At the last hearing we asked what the budget of BSDC was and a big number was given out there, and there was an assumption that that was BSDC only. [LR32]

COURTNEY MILLER: Right. [LR32]

SENATOR COASH: And what you've clarified today is, it's not just BSDC, and as you said and I said in my opening, it's also the Bridges program. And then you added, it's also part of the outreach services that come from BSDC to people who have--in my understanding--transitioned from BSDC and out and also in working with people in the community. Right? [LR32]

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COURTNEY MILLER: Correct. [LR32]

SENATOR COASH: So the request from the committee would be to take that big budget and let us know how much of that budget is kind of BSDC only and the operations there; how much of it is Bridges and the operations there; and how much of it is that community-based support there, so that we know how much of that big piece of pie is going to every one of those three. That's the request. Does that make sense? [LR32]

COURTNEY MILLER: Yes. [LR32]

SENATOR COASH: Okay, very good. Senator Riepe. [LR32]

SENATOR RIEPE: Thank you, Senator Coash. Thank you, Ms. Miller. My question gets to be is, how many audits are you subjected to? I know in the nursing home business there's the quality people that come in and then the fiscal people that come in that relate to reimbursement. Do you have more than two? [LR32]

COURTNEY MILLER: I don't have the number of audits that are performed, but I know there's a number of auditing functions that happen and occur within state agencies and of state agencies. I don't have a list of those, but I can certainly get that to you. [LR32]

SENATOR RIEPE: Do you have federal audits that they come in? [LR32]

COURTNEY MILLER: Yes. Yes. [LR32]

SENATOR RIEPE: Okay. And do they come in announced or unannounced? [LR32]

COURTNEY MILLER: Both. [LR32]

SENATOR RIEPE: Do they? Okay. The other question that I have that's on a little different scope here is, on page 6 it talks about Permanency Pilot Project. It's kind of a new term to me I'm trying to figure out. To me a pilot is usually not permanent. Can you help me on that? [LR32]

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COURTNEY MILLER: Yes. The State Ward Permanency Pilot Project refers to seeking permanency placements and a permanency plan for state ward children... [LR32]

SENATOR RIEPE: Okay. [LR32]

COURTNEY MILLER: ...that are entrusted into the care of the Department of Health and Human Services. And the pilot is providing the funding or a mechanism for them to promote that permanency in placement because they did not...they were not eligible for the prioritization criteria in the Developmental Disabilities Services Act. [LR32]

SENATOR RIEPE: So the permanency is not towards the project, it's towards the individual. [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR RIEPE: Okay. Thank you. [LR32]

SENATOR COASH: Thank you, Senator. Any other? [LR32]

SENATOR RIEPE: I'm done. Thank you. [LR32]

SENATOR COASH: Thank you, Senator Riepe. Senator Davis. [LR32]

SENATOR DAVIS: A couple questions. The first one is, you know, when you have term limits, you have to do this over and over and over again, so welcome to that phase. So I'm not totally familiar with the process. [LR32]

COURTNEY MILLER: Okay. [LR32]

SENATOR DAVIS: The \$13 million that we're hearing about in the news in the last couple of days, is that a compilation of this \$11.3 (million) plus the \$966,000 plus \$450,000 elsewhere or is that a separate problem? [LR32]

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COURTNEY MILLER: No. It is referring to these two items that we're speaking of today.
[LR32]

SENATOR DAVIS: To these two items? [LR32]

COURTNEY MILLER: Yes. Good question. Thank you. [LR32]

SENATOR DAVIS: Great. Then you talked about lack of oversight on page 8. Someone mentioned that earlier. It's the last paragraph. Where...why are we in a situation where we have lack of oversight when we have had years and years of complaints and problems with our system? Why is this still a problem for the department? [LR32]

COURTNEY MILLER: I don't believe it is still a problem for the department. I think that we've worked really hard to overcome the silos and creating the partnerships with our sister divisions and working together. And that has been a very clear mission to those of us in the department. And that is the mission of our CEO, Courtney Phillips, and she has very high expectations for that and we share those expectations and that's what we're working towards. [LR32]

SENATOR DAVIS: So how soon do you think you're going to have a plan put together for how you're going to do the oversight? [LR32]

COURTNEY MILLER: That is what we're working with CMS on now. It's part of the two adult waiver approval process, they're up for renewal. And so we've presented the applications to CMS and those are the questions that they have back for us and that we will be amending and reworking those waiver applications to make them meet the requirements and expectations of CMS. And from that I believe that we'll have a stronger program. [LR32]

SENATOR DAVIS: I think that's great. So the 220 questions you're talking about, that's this process? [LR32]

COURTNEY MILLER: Yes. [LR32]

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SENATOR DAVIS: Does that seem like a lot of questions or is that typical? Do you have any idea of what your peers might see in other states? [LR32]

COURTNEY MILLER: I don't think you can refer to anything typical of CMS in our relationship, depending on what the subject is. I think that there has been a change in administration with CMS, and I think they have different expectations. And so the questions have increased over time. And so 220 is a lot, but it's not unreasonable from what we've experienced in the past. This is 220, a set of questions at one time, but generally working through the process with them you can certainly field that many questions from CMS. It just depends on the nature of what you're working on and what questions they have. I think it's important to note that these waivers have not been opened for, I believe, five years. So that's... [LR32]

SENATOR DAVIS: So that's a new experience for everyone. [LR32]

COURTNEY MILLER: Yes, for the new CMS administration folks and the (inaudible) that they've had who we're working with. [LR32]

SENATOR DAVIS: Thank you. [LR32]

SENATOR COASH: Thank you. Senator Johnson. [LR32]

SENATOR JOHNSON: Thank you, Senator Coash. And thank you, Courtney, for coming in and your new position gives a lot of depth to it. [LR32]

COURTNEY MILLER: Thank you. [LR32]

SENATOR JOHNSON: The whole program, to me, the important things, adequate care, proper care, I think what I saw, what I heard from parents and caretakers, I think we've come a long ways on that. [LR32]

COURTNEY MILLER: We have. [LR32]

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SENATOR JOHNSON: I think we still see some issues with...I'm not going to say compliance, but, okay, we expend some money and we don't recoup all of it. I'll come back on that. I want to expand a little bit on what Senator Coash asked for, and I hope we understand, to divide this budget up will help us a lot. [LR32]

COURTNEY MILLER: Yes. [LR32]

SENATOR JOHNSON: What I also want to see, make sure we have, is a pretty detailed report for just BSDC, the fixed costs, all of those types of things, type of labor. You talked about the overtime, and I think that's because of maybe a little bit of a lack of labor available that some people have to have some overtime or work overtime because not all positions can be filled 24/7. Is that... [LR32]

COURTNEY MILLER: Recruiting is a challenge, yes. [LR32]

SENATOR JOHNSON: Yeah. So I mean that...we might have to live with that unless we have more of a work force available to us. Going back to the...I'm sure we're going to focus a lot on the \$11 (million) or \$13 million out there. Is there any way to fill that gap in the time between...I mean, we probably already expended the money to provide the service and then we asked for it from CMS. Is that accurate? The funds we... [LR32]

COURTNEY MILLER: If I'm understanding correctly, so we pay the claims and then we draw down the federal match for those, yes. [LR32]

SENATOR JOHNSON: Okay. So is there...there's no way to get CMS approval before we even create the claim? Is that not even feasible? [LR32]

COURTNEY MILLER: The claims that are being paid now and drawing down the federal funds, we do have CMS approval at this time to pay the claims that are incurred in the program as it stands right now. [LR32]

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SENATOR JOHNSON: So we're bringing that gap together where in the past we weren't? I mean, because now we've got to pay this back because we started in before there was approval. [LR32]

COURTNEY MILLER: For the rate methodology? [LR32]

SENATOR JOHNSON: Yeah. [LR32]

COURTNEY MILLER: The payment back to the federal government is complete. It's... [LR32]

SENATOR JOHNSON: Right. [LR32]

COURTNEY MILLER: Right. [LR32]

SENATOR JOHNSON: Okay, so that's behind us. [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR JOHNSON: We still got money that I mean we've got to reimburse, but I'm just trying to figure out how we can fill that gap. And first of all, I thought, okay, let's...if we get that money, let's put it in an escrow account so if we have to return it, it doesn't get spent out. But you've already spent the money before you draw it down. Is that...am I not tracking this right? [LR32]

COURTNEY MILLER: That's how the program works. Yeah, we pay the claims and then we claim the federal match dollars. [LR32]

SENATOR JOHNSON: Yeah, there's no way to...yeah, so you have to actually perform it before you can even claim it. [LR32]

COURTNEY MILLER: Right. Correct. [LR32]

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SENATOR JOHNSON: Yeah. So I'm trying to figure that risk gap, trying to narrow up on that, but I think it's all I have now. [LR32]

SENATOR COASH: All right. Thank you. Senator Campbell. [LR32]

SENATOR CAMPBELL: Thank you, Senator Coash. Ms. Miller, I want to talk about the pilot a little bit. [LR32]

COURTNEY MILLER: Okay. [LR32]

SENATOR CAMPBELL: We repaid the \$966,000 that we had drawn down and the pilot had not been approved or that they weren't going to pay. Correct? [LR32]

COURTNEY MILLER: I'm sorry, can you repeat that? [LR32]

SENATOR CAMPBELL: The \$966,000 is what we drew down and we didn't have an okay to do that, so we had to repay that amount? [LR32]

COURTNEY MILLER: Correct. We will have to repay that. [LR32]

SENATOR CAMPBELL: Oh, it is...okay. [LR32]

COURTNEY MILLER: That transaction has not been completed yet. [LR32]

SENATOR CAMPBELL: Okay. And yet we need then \$450,000 to cover the pilot till the end of the fiscal year. Would that be accurate? [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR CAMPBELL: Okay. My question is, is the pilot authorized by the Legislature for the next fiscal year or was it a one-year or a two-year? I'm looking at Senator Bolz. [LR32]

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SENATOR BOLZ: I didn't want to be impolite there. The Appropriations Committee pulled it through in the budget that we passed in 2015. We pulled it through, through the next year, so we do have some sustainability, but that assumed the federal matching funds that we thought were to be in place. And my understanding is--and maybe Director Miller has some insight here--is that it's still possible to develop that pilot initiative in compliance with Medicaid, but we need to do our side. We need to put those mechanics in place in order to do that the right way. Is that...am I fairly accurate here? You can clarify if there's more to say. [LR32]

COURTNEY MILLER: Yes. No, we are exploring the opportunity to put prioritization criteria to serve these children and to the waiver...the children's waiver. [LR32]

SENATOR CAMPBELL: So if we can get everything in place that CMS would want, we could proceed with the second year, because that's been appropriated by the Appropriations Committee in the budget. Right? Is that...you think that's feasible? I mean, is that...will they approve that quick enough? [LR32]

COURTNEY MILLER: Approve it by...I'm sorry, what date? [LR32]

SENATOR CAMPBELL: For year two. I'm more concerned about year two. Can we get into compliance with everything so that we can carry through with year two? [LR32]

COURTNEY MILLER: I believe based on our research and what other states' language is in there in their waivers that there is a mechanism for prioritization in there. [LR32]

SENATOR CAMPBELL: Okay. But they would have to approve that. [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR CAMPBELL: So I'm assuming that we wouldn't then...if we couldn't get it approved, then the program would not continue. Or would we do it all on state General Fund? That's probably where the final question comes. [LR32]

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SENATOR COASH: Senator Bolz. [LR32]

SENATOR BOLZ: Thank you. I think that's a legislative decision to be made whether or not the goals of the State Ward Permanency Pilot Project are so important to us that we want to fulfill them with General Funds. The Appropriations Committee I think was motivated by two pieces with that permanency pilot. The first was better serving kids. And I think that the initial statistics show that we are better serving kids, that those kids are not bouncing around from placement to placement, not only creating chaos for them but costing increased dollars due to crisis. But the other motivation, as I heard and understood it in the Appropriations Committee, was that we...because they are state wards, we are covering their needs regardless. We have to respond to who they are and what their challenges are, whether we serve them through the Child Welfare system or the Developmental Disabilities system. So it made sense to try to explore whether or not we could draw down developmental disability dollars to serve these kids that we feel responsibility for. So I won't put that on Director Miller. That is my analysis of the set of circumstances, so we'll either have to continue the pilot and find a way to match...cover with General Funds or find a plan B to better...to serve those kids. And Director Miller and I have had those...I was the introducer of the bill. Director Miller and I have had those conversations about my willingness to step up and help solve problems. [LR32]

SENATOR CAMPBELL: Okay. Thank you. [LR32]

SENATOR COASH: Thank you. Senator Hilkemann and Senator Kolterman. [LR32]

SENATOR HILKEMANN: Okay. Director, thank you so much for arranging a relatively quick visit for Senator Kolterman and I... [LR32]

COURTNEY MILLER: You're welcome. [LR32]

SENATOR HILKEMANN: ...and our group there just before the holiday season. It was a very good eyeopener, and I appreciate that you did that for us. [LR32]

COURTNEY MILLER: It was a pleasure. [LR32]

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SENATOR HILKEMANN: There's such a level of care of the individuals...the 114 individuals that are there. And we have people that have been now placed into community-based type programs. What's...do we have an idea what the range of costs are for people who are placed with...in community-based programs? What's the range of cost per person or do we have any idea of that? And I know everybody is different. I mean we have...but do we have a range of what it costs on the community-based level? [LR32]

COURTNEY MILLER: I know there are national statistics. I don't have those with me, but I can certainly follow up with that and answer that question. [LR32]

SENATOR HILKEMANN: Okay. That would be helpful to me to find that out, because I certainly know that...then there were about...from what I gather there were about 260 people who were moved out of BSDC when the feds pulled the funds. Is that correct? [LR32]

COURTNEY MILLER: I personally don't know that number. I was not with the Division of Developmental Disabilities at that time. I'd have to look into that and get back to you. [LR32]

SENATOR COASH: I think that's a little high. [LR32]

SENATOR HILKEMANN: That's a little high? [LR32]

SENATOR COASH: I think so. [LR32]

SENATOR HILKEMANN: Okay. In general...but there were a number of individuals that were removed at the time. In general, how...and I know, read the article again today in the paper that for some it was a disaster that they were moved out. But in general, how did the people do that were moved out of the program? Do we have any...is there any follow...was there any follow-up on that? [LR32]

COURTNEY MILLER: I'm sorry, follow-up on the individuals that moved out of Beatrice State Development Center into the community? [LR32]

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SENATOR HILKEMANN: On the individuals who left, yes. That's correct. [LR32]

COURTNEY MILLER: Absolutely, yes. Yes, we followed them. [LR32]

SENATOR HILKEMANN: Okay. [LR32]

COURTNEY MILLER: They have service coordinators through the Division of Developmental Disabilities and a team that follows them. [LR32]

SENATOR HILKEMANN: And so for the most part they have gone from being at BSDC into community-based programs and they are continuing to function through that. [LR32]

COURTNEY MILLER: I can't report the status of them at this time. [LR32]

SENATOR HILKEMANN: Okay. [LR32]

COURTNEY MILLER: I'd have to research that information and get back to you on that. [LR32]

SENATOR HILKEMANN: That would be helpful information to me, if you get that...if that's available. [LR32]

COURTNEY MILLER: Okay, certainly. [LR32]

SENATOR COASH: If I could maybe just give you my brief overview of it, of all the individuals who moved during that time, they all went into community-based programs. [LR32]

SENATOR HILKEMANN: Right. [LR32]

SENATOR COASH: Some did very well. Some passed away. [LR32]

SENATOR HILKEMANN: I know they did. [LR32]

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SENATOR COASH: So it was...I mean, that...talk about the range in outcomes, some people had amazing outcomes, some people didn't last very long, and those are all very case specific. And I do know the department kept track of...because, just because they're out of BSDC doesn't mean they're out of services. And the department still continued to provide oversight whether they were within BSDC or in the community, so it wasn't like they moved out of BSDC into the community and the department had nothing to do with them. There was still oversight of the community-based programs. But we'll get that for you. [LR32]

SENATOR HILKEMANN: Okay, thank you. That's it for now. [LR32]

SENATOR COASH: Senator Kolterman. [LR32]

SENATOR KOLTERMAN: Thank you, Senator. I just have a couple of questions, and I'm still struggling to kind of understand how these waivers work. And I hate to focus on the \$1.5 million that we're talking about under I think it was LB905, the bill that was passed back in 2014. It went into effect and that's where the \$966,000 and the \$450,000 was utilized. So my question is, so we pass a law and then you have to implement the law and you're asking the federal government for a waiver to match what we, as a state, puts in. That's correct, isn't it? Is that a correct statement? [LR32]

COURTNEY MILLER: Essentially, yes. We have an established waiver program. This was a special population that...where the children were placed in the waiver program when we did not have the...the waiver application didn't have prioritization language that allowed for those on the wait list...for these children to bypass that wait list. And that's essentially what the prioritization concern was. [LR32]

SENATOR KOLTERMAN: Okay, so thank you for that clarification. [LR32]

COURTNEY MILLER: Sure. [LR32]

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SENATOR KOLTERMAN: So then we start implementing the program. And then the feds come in and they say, no, no, no, no, no, you didn't do this right, so we want our money back. Is that what I'm hearing? [LR32]

COURTNEY MILLER: No. For the State Ward Permanency Pilot Project it was identified...this was actually identified prior to me coming to the Division of Developmental Disabilities, but I'm not sure what actually instigated the review. But I know that we self-identified through our teams, and we reached out to CMS and said, no, no, no, we shouldn't have done this. And so they agreed, and we established that we need to pay back those funds that were drawn down. [LR32]

SENATOR KOLTERMAN: And that's where I'm having difficulty. Why wouldn't...I understand the need to self-identify, but wouldn't they have the ability to say...did they actually deny what we had...they based it on the fact that we hadn't gotten approval. But was there a reason they denied it? [LR32]

COURTNEY MILLER: So the risk of not self-identifying to CMS is that if they were to find it and we did not disclose it... [LR32]

SENATOR KOLTERMAN: We pay a penalty, yeah. [LR32]

COURTNEY MILLER: ...we could have had a larger disallowance and it could have led into them looking at prioritizations on the waiver. And I mentioned the graduate program or the transition students that are also placed on the waiver, and they are not prioritized. But that has been a long-established practice. This is something that we identified quickly and we self-disclosed to them that we had done this and we were out of compliance and we're going to return the federal dollars. [LR32]

SENATOR KOLTERMAN: We can't go back and ask them for it after the fact? [LR32]

COURTNEY MILLER: They will not retro back an approval, no. The rule is that you have to submit your request in advance and you have to have it within the quarter of the effective date. So if you wanted something approved July 1, you would have to submit it within that quarter of

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the federal fiscal year and they will go back as far as that quarter, but no more. But they...it has to be within that quarter, so we are past that ability. [LR32]

SENATOR KOLTERMAN: So let's...could you put into perspective for me, had this all been done properly...the bill was passed in July of...not in July, obviously. It went into force in 2014, correct? [LR32]

COURTNEY MILLER: Uh-huh. [LR32]

SENATOR KOLTERMAN: You didn't have approval to do it, but you implemented it. Correct? [LR32]

COURTNEY MILLER: Well, I... [LR32]

SENATOR KOLTERMAN: I'm not pointing fingers at you, but somebody implemented the process. [LR32]

COURTNEY MILLER: No, no. I appreciate that. What I'm...so the State Ward Permanency Pilot Project, I am not knowledgeable of the conversations of how...what the intention was. When I read the bill it indicates the state General Fund allocation, but my understanding is we did not see the federal fund allocation and so this was considered a state funded program. [LR32]

SENATOR KOLTERMAN: Without matching funds. [LR32]

COURTNEY MILLER: Correct. [LR32]

SENATOR KOLTERMAN: Okay. That's...so... [LR32]

COURTNEY MILLER: That essentially they replaced in the waiver program, in the system, in the computer... [LR32]

SENATOR KOLTERMAN: They just shouldn't have replaced waiver monies. [LR32]

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COURTNEY MILLER: Right. [LR32]

SENATOR KOLTERMAN: That's where the lack of oversight, as I see it, would come in. My next question, because you really don't give a reason why it was denied other than the fact... [LR32]

COURTNEY MILLER: I'm sorry? [LR32]

SENATOR KOLTERMAN: You really don't give a reason why it was denied other than the fact that we self-reported it. [LR32]

COURTNEY MILLER: Why we were denied... [LR32]

SENATOR KOLTERMAN: The \$966,000. [LR32]

COURTNEY MILLER: So you're asking why we were not approved to retain that money? [LR32]

SENATOR KOLTERMAN: Yeah. [LR32]

COURTNEY MILLER: Because it wasn't approved in the waiver. [LR32]

SENATOR KOLTERMAN: Okay. [LR32]

COURTNEY MILLER: So the waiver indicates that you have to have prioritization criteria. We were lacking that, so we did something we didn't have permission to do. [LR32]

SENATOR KOLTERMAN: All right. So it really all comes back to that prioritization. [LR32]

COURTNEY MILLER: Correct. [LR32]

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SENATOR KOLTERMAN: And then also you talked about...I think there were several...you had so many people that are past and so many people that are future waiting to get monies. Would you explain that, because how do we know who's coming, so to speak? [LR32]

COURTNEY MILLER: Sure. So from my understanding from my team--I'm still in the learning process--the registry of unmet need is when an individual with a developmental disability, their family or their guardian identifies a need for them for services from our division. That...they fill out the application and they get placed on the registry with a date and that's essentially the wait list for services. And they may indicate...so a child may be born with Down syndrome and the family may place them on the registry before they have left the hospital from the birth. And they indicate that they believe that their date of need for services will be at high school graduation. So that is a date of need in the future. [LR32]

SENATOR KOLTERMAN: Okay. Thank you. [LR32]

SENATOR COASH: Thank you. One more and then we're going to get to the...did you have another question? Go ahead, Senator Bolz. [LR32]

SENATOR BOLZ: I had a couple of things to say. I think that I am the only person who was serving on the Appropriation Committee when some of these changes were made, so maybe just a couple of points of clarification. The first is that the State Ward Permanency Pilot concept was brought to us by the then DD director and the then Child Welfare director. So this was a partnership initiative that we thought we were all kind of working in good faith together and some of the mechanics didn't get put into place as they should have been. But a related clarification is that I don't want this whole story to be, hey, golly, gosh, we didn't do X, Y, Z right. I mean, certainly we've learned some lessons from this work, but I also think that those mechanics are a little bit more rolling than the average person might recognize. And what I'm trying to say is, for example, with the rate methodology, we had a clear articulation of what the real needs were in the community and how we needed to adjust them. And we made those adjustments in the budget when we were asked to and when we were trying to respond to those needs and the budget allowed for it. And in that scenario we know that it is something that CMS will do to approve new rate methodologies. So there were some timing issues. But I guess I'm

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trying to articulate that a lot of things were done in the best interest of the state, in spite of what didn't quite come together. So enough of my soapbox. My real question, Director Miller, is...I know when some of this first came to our attention you were exploring different issues and different things that had been flagged by yourself and your staff and I appreciate that good work and that due diligence, and I appreciate that you got to the bottom of the rate methodology question. My question is, the management of the waiting list was also something that I think maybe raised some flags for you. And I just wondered if you have any updates about the management of the waiting list, if there's anything that we need to know about how that's working that would help us perform our duties. [LR32]

COURTNEY MILLER: Sure. So in the management of the wait list, so essentially I'm understanding that again a child born with a disability placed on the waiting list, it appears that we do not do frequent outreach to find out where they are at in their stages in their lives and what the department can do for them while they're on the wait list, what other opportunities exist. And, for instance, we discovered an individual that was on the wait list that had moved out of state. And so what I'm looking for with my team is who are the individuals on the wait list? You know, what can we do for them prior to having a crisis situation with services? Perhaps ask them at this date and time if they would like service coordination or any assistance that we could do. And I think that we need an accurate number of what that list represents, and I think that will help us with fiscal planning and a real number of what...who and what they need. [LR32]

SENATOR BOLZ: That's helpful. Maybe to put a finer point on what I'm actually trying to ask here, aside from the discrete prioritization issue in the State Ward Permanency Pilot Project, were there any other concerns about the management of our waiting list that have come to your attention? [LR32]

COURTNEY MILLER: The actual wait list? No, not that I have discovered at this time. [LR32]

SENATOR BOLZ: Great. That's helpful. Thank you. [LR32]

COURTNEY MILLER: Thank you. [LR32]

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SENATOR COASH: Okay. Thank you, Ms. Miller. This is a new relationship that you're building with the Legislature. We appreciate your fresh eyes on all of these things. Obviously, we've learned some expensive lessons, which I'm sure your team is committed to not repeating. But we really appreciate your cooperation with the committee and your transparency on everything that's going on, and look forward to continuing that relationship. Thank you very much. [LR32]

COURTNEY MILLER: I appreciate the opportunity, and my team is committed to the partnership. Thank you. [LR32]

SENATOR COASH: Thank you. Okay, so we're going to start with public testimony. If folks have something that they would like to testify on, that is fine. Again, we did have public testimony before, so if you have something new to add you're welcome to do so. We are going to use the light system just to make sure that everybody gets the opportunity to testify. So green means go; yellow means you have a minute; and at red, we'll ask you to wrap up your conversation. So there's no order here, just come on up and we'll let you go ahead and testify. [LR32]

CAROLE FORSMAN: I've never been to one of these before. I'm not sure what I'm doing, so. [LR32]

SENATOR COASH: Well, you could start by having a seat. [LR32]

CAROLE FORSMAN: Okay. [LR32]

SENATOR COASH: If you could just start with your name and spell it and then... [LR32]

CAROLE FORSMAN: My name is Carole Forsman, C-a-r-o-l-e, Forsman, F-o-r-s-m-a-n, and I appreciate Courtney coming here. I think I'd like...first off, I'd like to say before I say what the complaints are I have, is that this is the first year that I've been able to contact the Developmental Disabilities office and be able to at least be able to complain about a service provider and get some sort of reaction. And that's only since this Courtney Phillips took over. So I'm happy to say

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that. But at the same time, I...reading the article about how much it costs, which I thought was-- like the rest of you--\$450,000 a year. And my nephew is in a private service provider and it's basically just high-priced babysitting services that we're getting for our money. The staff gets paid like \$11.25 an hour; they just got a raise to that. He gets two-to-one staffing, so my estimates are that they're paying \$200,000 to maybe a quarter of a million dollars in taxpayer dollars to take care of one person that is over-restricted and is not even getting the quality care that you're expecting for the amount of taxpayer dollars that you're spending. One example of this is my nephew is a type 1 brittle diabetic. He's supposed to check for ketones when his blood sugar is over 300. Now the service provider he's with would check for ketones, take him to the emergency room. Their policy was if his ketones were over 500, take him to the emergency room and they'd check for ketones. Well, I complained about this to Adult Protective, so long story short, they now have a new rule. If his blood sugars are over 400 they're going to take him to the emergency room to check for ketones. Instead of buying ketone strips for him to check for ketones and going the cheap route, they're going to have him go to the emergency room to check for ketones. This also indicates to me that they're not interested in teaching the client any independent living skills. And you're wasting...what is the quality of life? Also, they take most of his Social Security money for him to live at the group home, so that leaves him basically no funds for entertainment or any kind of expenses. He gets no subsidy for housing, like Section 8. He gets no subsidy, like food stamps for his food. So basically, if he doesn't have any kind of day program that supplements his income for any kind of other living expenses, then you could end up with this group home becoming by de facto a private prison. And I've had staff people fall asleep in the chairs when he has to be supervised all the time. I'm sorry, I didn't know what these lights are; I'm trying to hurry. [LR32]

SENATOR COASH: Well, when it hits red, the seat ejects (laughter). [LR32]

CAROLE FORSMAN: (Inaudible.) I'm sorry. I'm trying... [LR32]

SENATOR COASH: Well, we appreciate your testimony, and especially a testimony about the response from the department, because that is something that this branch expects, which is responsiveness to those. So this committee is also looking at community-based services, so your testimony is very helpful. I appreciate you putting it on the record. [LR32]

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CAROLE FORSMAN: Okay. Well, thank you for inviting me. [LR32]

SENATOR COASH: Thank you. Come on up. Welcome. [LR32]

DENNIS CRAWFORD: (Exhibits 2 and 3) Thank you. Thank you for having me. I'm Dennis Crawford, a resident of Lincoln, Nebraska. I don't know what the rules are here. I operate in court a lot. I've introduced into evidence--or into the record I guess is what we say here--a two-part series from Nebraska Watchdog by Deena Winter that came out early this month on an expose she did on community-based services. And I would humbly request the committee to read both of the articles, because there's some troubling findings in that two-part series that Ms. Winter put together. It was a very well-done piece. My brother has lived at BSDC for 40 years. He's had a very good quality of life there, he's very happy there. And I'm just here to say that community-based services are not a panacea. This is not a one-size-fits-all type of situation. These articles from Nebraska Watchdog show that there's little oversight from the state of community-based programs. The cost of these programs have soared. There's conflicts of interest by some of the owners of some of these companies. The salaries of the executives have grown exponentially. Once again, there's very little oversight. That's basically part one of the series. Part two of the series indicates the cost of community-based programs have increased 75 percent between 2006 and 2015. The abuse and neglect reports have increased by 75 percent from 2012 to 2015. The number of deaths in these community-based programs has doubled in the last ten years. And I would just submit that guardians, such as myself and the other folks here, we need to have choices. Our loved ones should have the opportunity to either go to BSDC or community-based programs, whatever is the best situation most suited to their needs and their lifestyle. I think I forgot to add at the beginning of my testimony I'm here to testify in behalf of the Intellectual Disabilities Advocates of Nebraska. Thank you very much, Senators. I appreciate your service and your time. [LR32]

SENATOR COASH: Thank you, Senator (sic) Crawford. Any questions? Seeing none, appreciate it. [LR32]

DENNIS CRAWFORD: You called me "Senator" Crawford. [LR32]

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SENATOR COASH: Mr. Crawford. I'm used to calling...we have a Senator Crawford. [LR32]

DENNIS CRAWFORD: I know, I know her well. That I take as a great compliment. Thank you, Senator. Senator Sue Crawford is doing a great job. [LR32]

SENATOR COASH: Hold on one second, Mr. Crawford. Senator Hilkemann has a question. [LR32]

SENATOR HILKEMANN: I hear what you're saying about the whole thing, the choice there. My summary of it is, is that the Beatrice facility is just way underutilized. And if we could...if the utilization could come back up, that cost for individual...do you see...where do you see a potential for new people coming in back to BSDC? [LR32]

DENNIS CRAWFORD: I think we should consider that option. It would reduce the per-person cost... [LR32]

SENATOR HILKEMANN: Right. [LR32]

DENNIS CRAWFORD: ...and the staff at BSDC, they're good people, they do a good job. And the Beatrice local economy has been hurting. A lot of industry has been moved out. The Vice Grip plant, for example, was bought out by a private equity fund and jobs were shipped to China. So Gage County could use the jobs, so I think it would be a good idea to move more people in there. [LR32]

SENATOR HILKEMANN: Do you...your organization that you represent, are there individuals that would be better served at BSDC than in the community-based programs that...in other words, how do we get this...we double the number of patients or number of persons at BSDC? [LR32]

DENNIS CRAWFORD: Well, I think we should probably put the word out that there's space available at BSDC and just tout the high quality of care and the high quality of the employees,

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just kind of spread the word, spread the message out to other folks who have loved ones who are intellectually disabled. [LR32]

SENATOR HILKEMANN: Okay. [LR32]

DENNIS CRAWFORD: I hope I answered your question. [LR32]

SENATOR HILKEMANN: Yeah. That was what came through loud and clear to me, the facility is fine, it's just way underutilized. What's the potential? As stewards of the state, where do we...what do we do? There's clearly a need. [LR32]

DENNIS CRAWFORD: Yes. [LR32]

SENATOR COASH: Mr. Crawford, could I ask a question? You referenced IDAN. Can you repeat what that organization is? [LR32]

DENNIS CRAWFORD: Intellectual Disabilities Advocates of Nebraska. The members are guardians and sisters, brothers, parents of residents of BSDC. [LR32]

SENATOR COASH: Okay. I just wanted to get that clear for the record. [LR32]

DENNIS CRAWFORD: Right. Our mission, so to speak, is to preserve BSDC as an option for the intellectually disabled. [LR32]

SENATOR COASH: Okay. Appreciate that clarification. Any other questions for Mr. Crawford? Senator Davis. [LR32]

SENATOR DAVIS: So with that entity are there any members involved with your organization who have family members in the community programs? [LR32]

DENNIS CRAWFORD: I think there are, but I don't know the answer to your question, Senator. I'm sorry. [LR32]

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SENATOR DAVIS: So kind of following up on what Senator Hilkemann said, there's a little bit of an issue...I hate to use the work marketing, but you need to market something in order for it to work, which we haven't done with BSDC because we've been working to put people back in communities. I think Deena's articles bring some concerns to my mind. [LR32]

DENNIS CRAWFORD: Yeah. [LR32]

SENATOR DAVIS: But obviously, it would be helpful to know how people feel about the community services that are existing today. [LR32]

DENNIS CRAWFORD: Yeah, I think that's a good idea. I'm sure some people are getting a good quality of care. I don't doubt that for a minute, but I think there probably needs to be some more oversight to make sure people are being treated humanely. I think that's probably pretty important. And we also have to realize the most disabled are just not very well suited for a community-based program. They need a higher level of care, as they are at Beatrice. [LR32]

SENATOR COASH: Thank you. [LR32]

SENATOR DAVIS: Thank you. [LR32]

SENATOR COASH: And we're going to request for the department--I know they're taking notes--that I think it would be helpful for the committee to understand the level of oversight in both the community and within BSDC because it's internal and it's external and there's lots...lots of eyes have been on this. So we'll get that from the committee and get that out. Thank you, Mr. Crawford. [LR32]

DENNIS CRAWFORD: All right. Thank you, Senators. I appreciate your time. [LR32]

SENATOR COASH: Hi, Kathy. Welcome. [LR32]

KATHY HOELL: Hi. How are you? First of all, I would like to clarify that as a person with a disability I am requesting... [LR32]

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SENATOR COASH: Kathy, could you start with your name for the record? [LR32]

KATHY HOELL: I am requesting a reasonable accommodation under the Americans with Disabilities Act that you don't utilize the lights because of my speech pattern. [LR32]

SENATOR COASH: We'll give you as much time as you need. We'll just let you...would you start with your name? [LR32]

KATHY HOELL: Okay. My name is Kathy Hoell, K-a-t-h-y H-o-e-l-l, and I am here testifying for myself because I am a member of the National Council on Independent Living. Every person with a disability, if they have the proper supports and services, can live independently. The one thing the state of Nebraska has never done is developed an Olmstead Plan, which would have been the result of a Supreme Court decision stating that all people with disabilities need to be living in the least restrictive environment. BSDC is not the least restricted environment. It's basically a prison. Those people have no quality of life. And I have been down there, so I know what I'm talking about. We need to find a way to enhance our waiver to make them more robust so it provides the services people need. For example, none of the developmental disability waivers include any pieces for assistant technology, utilize technology, make it work for you, because if you had those things a lot of different things could happen. We need to enhance the children's services, because we do not serve children well in this state. We force them to become wards of the state. People are giving up their children for no reason at all. We need to really look at the services that we are providing to people with disabilities and actually make them work for the people. And whatever we're paying for BSDC, we can't put more people down there, Senator. As it is, we're forcing children into nursing homes. We have nursing homes that now have pediatric wings. And you can't tell me that a child that is one, two, or three should be in a nursing home with an 80-year-old individual. That is not an appropriate placement for the individual. We need to find ways to make the system work better. There are programs like Medicaid buy-in for people with disabilities, so they could work and help to reduce services. But do you think Nebraska has that? No. We go out of our way to not have things that are going to facilitate the situation to improve. But we'd rather just say no. We don't look at best practices. And thank you. [LR32]

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SENATOR COASH: Thank you, Kathy, for adding your voice to the record. We'll see if we have any questions for you before we let you...I don't see any. We appreciate you testifying, as always. [LR32]

SENATOR HILKEMANN: Thank you. [LR32]

SENATOR COASH: Okay. We'll take the next testifier. Come on up. Welcome. [LR32]

JIM SWOBODA: Thank you. My name is Jim Swoboda, J-i-m S-w-o-b-o-d-a. I appreciate you listening to me. I have an older brother, 62 years old, that was first institutionalized at age 12. He has been all over the state: Omaha, Hastings, Norfolk, Lincoln, actually even pushed out, not even into the community but just let...released in his time. And he's now been at Beatrice for approximately ten years, by far the best place that he has ever been. He's very happy there, has great care there. He has both intellectual disabilities and behavioral disabilities. And I very respectfully have to disagree with Kathy that not everybody can be...is a candidate for independent living. There is no way that my brother could live independently, even with the best supports. Right now he has to have two people, staff members, with him. He has alarms on his bathroom and his bedroom door. And so even if he was moved out into the community, the independent living really wouldn't be independent because he would have to have at least one staff with him full time. One big advantage of BSDC, as I see it, versus some of the other places is...I actually have to go down there tomorrow to look for another building that we're going to be moving him to, because as he ages his needs change. And where he's at right now just isn't working for the best for him. So we're going to be moving him probably to another building. And if he was out into the community in one of the private sectors, that would have to be an application. They would have to review it. It would take time, just not real efficient, I think. And we're just extremely happy with BSDC. It's a wonderful place. Staff is very loving. I tell you, them people are angels down there. And I'm sure they are out in the community, too. You know, you have your good and bad apples, but I appreciate you listening to me. [LR32]

SENATOR COASH: Thank you, Mr. Swoboda. I think what...we've heard that, and many of us have been down there, that the dedication of the staff down there is something that we can be

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proud of. So I appreciate you adding your voice to that and keep your eyes open. We'll see what the department comes up with. [LR32]

JIM SWOBODA: Okay, we'll stay with it. [LR32]

SENATOR COASH: Any questions for Mr. Swoboda? [LR32]

JIM SWOBODA: Oh, by the way, I am associated with Family and Friends, which is kind of a part of that IDAN association. [LR32]

SENATOR COASH: Okay. If you could just indicate that on your sign-in sheet. [LR32]

JIM SWOBODA: Yeah, I did. [LR32]

SENATOR COASH: Okay, very good. Thank you. [LR32]

JIM SWOBODA: Thanks. [LR32]

SENATOR COASH: We'll take the next testifier. Come on up, Michael. Welcome. [LR32]

MICHAEL CHITTENDEN: (Exhibits 4-6) Good afternoon, Senators. My name is Michael Chittenden, M-i-c-h-a-e-l C-h-i-t-t-e-n-d-e-n. I'm the Executive Director for The Arc of Nebraska. In an ability to try to comply with your request, Senator Coash, I will not reiterate all the things that I said at the prior one. I have offered not only my testimony--and I wish I had a better budget to give you more--but I have given you a copy of the State of the States done by the Coleman Institute for the AAIDD, the American Association on Intellectual and Developmental Disability, as well as a copy of "The Case for Inclusion" done by the United Cerebral Palsy group. So points of clarification: Senator Hilkemann, I believe you asked if we had some numbers. And, by the way, both of these entities used the state's own numbers supplied by the state of Nebraska. According to the State of the States, which looks at financial issues, in ICF in the community, a group home in the community that runs by the same ICF standards as the BSDC, costs approximately \$77,000 per person. HCBS, a home and community-based program,

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so a waiver-run group home costs approximately \$50,000 per person. And just family support, helping out a family with some supports through waivers, costs about \$26,000 per person. Of course, those are averages. Some go high, some go low, but those are the averages. And I think no matter how many ways you want to slice up BSDC at Hastings and stuff like that, you're still going to have a pretty high number, regardless, for a relatively few number of people in service. I would go along with my colleague, Kathy Hoell, we do need to have an Olmstead Plan. We need to address the fact that, according to the ADA, the Americans With Disabilities Act's Title II, we are supposed to be...have a plan and be moving people into the community. And everybody can be served in the community with the proper supports. Some of those will be very high, some of those will be low, and that's the way it goes. Last thing, quick numbers to throw out from "The Case for Inclusion." Right now--and these are all based on 2013, both of these, because that's as far back as we can get them--we rank 36th in promoting independence; we rank 20th in tracking health, safety, and quality of life; we rank 50th in keeping families together; we rank 10th in promoting productivity; and we rank 26th in reaching those in need. We don't market well on the community-based side as well as BSDC. Overall, we are ranked 40th. I would guess that if our football team was that bad...oh, we do, we change things when things aren't good. We need to change things, Senators. The money can be redistributed. We're not asking that BSDC close tomorrow. That would be horrible. We've seen the results that happened. We do ask for the systematic and planned closure, making sure that everybody that's currently there gets exactly the supports they should have to be successful in the community. Any questions? [LR32]

SENATOR COASH: Thank you. Michael, since you're here and I would consider you an expert in this, just for the committee's sake do you want to...you mentioned the Olmstead Plan, which came out of the Olmstead court case. [LR32]

MICHAEL CHITTENDEN: The Olmstead decision was basically two ladies in Georgia wanted to get out of the institution and the court, the Supreme Court backed up the Americans with Disabilities Act and said, yes, people need to be served in the least restrictive way possible and that they have that choice. And the states need to comply with that, and they should have a plan...every state should have a plan to get people in the least restrictive setting possible for them. And we don't have one. [LR32]

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SENATOR COASH: Okay, and so that court case is how old? [LR32]

MICHAEL CHITTENDEN: The ADA was passed in 1990. The Olmstead decision was made I believe in 1999. [LR32]

SENATOR COASH: Okay. So this is a relatively new...I mean in the grand scheme of things. [LR32]

MICHAEL CHITTENDEN: Sure. [LR32]

SENATOR COASH: We're less than a generation away. [LR32]

MICHAEL CHITTENDEN: Sure, yeah, yeah. I mean, you know, yeah. We're starting to lose that great generation of families that really fought hard for deinstitutionalization. And, by the way, Nebraska was one of the leaders in that fight back in the '60s, '70s, and early '80s. We've rested on our laurels too long. It's time...there are 13 states now that don't have institutions. We should be one of the next few to at least have a plan towards that. [LR32]

SENATOR COASH: I agree, we should have a plan. Thank you, Michael. Any questions? Senator Hilkemann. [LR32]

SENATOR HILKEMANN: What I'm hearing you say...when I talk about the underutilization at Beatrice,... [LR32]

MICHAEL CHITTENDEN: Yes. [LR32]

SENATOR HILKEMANN: ...are there...they could accommodate more than double what they have there at the present time, spacewise, or more. [LR32]

MICHAEL CHITTENDEN: Probably. I think in their heyday they had thousands of people there, and I believe those buildings are still standing. I don't know what shape they're in, but my guess is not great. [LR32]

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SENATOR HILKEMANN: I don't think that that would be... [LR32]

MICHAEL CHITTENDEN: No, I don't think we should go back to that. [LR32]

SENATOR HILKEMANN: Are there...across the state are there 120 people additionally that would be benefited by being in a facility like BSDC? [LR32]

MICHAEL CHITTENDEN: I don't know everybody individually. There could be, I don't know. Although I would again...Senator, I'll tell you that my history has been in service provision. I have been a service provider here in the state of Nebraska as well as a few other states around the United States. I think personally that everybody can be served in the community, again, with the appropriate supports. Those will look different for each person. Some people are very medically inclined. Yes, they're going to need a lot of attention. Some people are very behaviorally inclined. Those people can also be served in the community. I know. I say that because I've done it. And so, yeah, everybody can be served in the community. It will look different for each person. Not everybody will have a cookie cutter, you know. And those averages I gave you, yes, some people are going to take more, some people are going to take less. In my previous testimony I called for all of the people that I would say should be moved out, that money should follow them initially and then "titrate" it down until we get them to a level where, okay, this is where they need to be. And if it's \$100,000 per year out of that \$300,000, \$400,000 per year that they originally had, fine. That's great. At least we could serve some more people. And, by the way, the registry is not an accurate figure. There's a lot of families out there who have never asked for services that will need services, especially those elderly families who have adult children with developmental disabilities living at home with them. Mom and dad can't do it forever, and eventually, unfortunately, mom and dad die and there needs to be a place. So that registry is off by anywhere from 500 to 1,500 people. We don't know... [LR32]

SENATOR HILKEMANN: For the state of Nebraska. [LR32]

MICHAEL CHITTENDEN: For the state of Nebraska. We don't know because they've never asked for services. That's just our best guess. [LR32]

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SENATOR COASH: Okay. Senator Campbell. [LR32]

SENATOR CAMPBELL: I just want to make a quick comment as a reminder to my colleagues that at the last hearing my question to the department was, how many people on the registry or waiting list--whichever you want to call it--are waiting for services at BSDC? And the response was, no one. So many of the people that are there will want to be served in the community. And there are many advocates across the state of Nebraska who spent years and energy trying to ensure that we did not put people in institutions. And you are right, Nebraska was a forerunner at that point, and many of those advocates aren't with us anymore, but that doesn't mean we don't celebrate what they tried to do for people. [LR32]

MICHAEL CHITTENDEN: Absolutely. [LR32]

SENATOR COASH: Senator Bolz. [LR32]

SENATOR BOLZ: Just to continue this conversation, you and I work together professionally. [LR32]

MICHAEL CHITTENDEN: Yes, we do. [LR32]

SENATOR BOLZ: And so I know that you are familiar with some of the federal rules and expectations that are coming down with the federal dollars,... [LR32]

MICHAEL CHITTENDEN: Yes. [LR32]

SENATOR BOLZ: ...which are so important to the sustainability of our system and services for all of our individuals across the state. And so my interpretation of those rules is that they're promoting this community-based approach. And that doesn't take an institution like BSDC off the table, that's not what they're saying. [LR32]

MICHAEL CHITTENDEN: No, it does not. [LR32]

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SENATOR BOLZ: I'm answering the question that I'm trying to ask you, which is, would you like to tell us a little bit more about what you're hearing from the federal trends and expectations? [LR32]

MICHAEL CHITTENDEN: Sure. Sure. Overall, CMS is coming out with new rules that is really forcing states to look at having an Olmstead Plan if they don't, most do. And they want...they're only going to be paying for those things that are home and community-based. They want to get rid of institutionalization, so you can't even have programs that are adjacent to an old institution. And I will warn you, i.e., watch out for the Bridges program in Hastings. It's not in a community and, as a matter of fact, it's closer to an old regional center than it is to the town. So you may have some community-based issues with that as you move forward. But not only are we looking at community-based residential living, but there's also WIOA and sheltered workshops that are being targeted now. And the push there is to have community-integrated competitive employment. And so we need to look at our transition plan with an education department and how we're going to move forward and how we want to pay private providers in the state, because right now the system is set up for sheltered workshops. It's not set up for enhanced, community-based job seeking. So we've got a lot of work ahead of us. If we're going to want to take advantage of those funds that are out there through the federal dollars, we're going to have to make some choices as to what we want to have, how we're going to fund it, and how everybody is going to be served in the state of Nebraska. I don't take lightly...as a matter of fact, since my last discussion, I've had a lot of discussions with the family members. And I get where they're coming from and they're passionate about wanting the best place for their individual. And I understand that they think that they have found it, and I'm okay with that. I understand where they're coming from. But I'm just giving my professional opinion that people can be served in the community. That's where the national trend is going. I know that we don't want to have the DOJ in here or any other federal department in here telling us how to do our business, so it's kind of time to clean up our own shop and take care of our own business and put those plans in place that will move us forward. [LR32]

SENATOR COASH: Yeah, thank you. [LR32]

MICHAEL CHITTENDEN: Sure. [LR32]

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SENATOR COASH: I'll put on the record, because Senator Campbell is reminding us what we did learn is that we have--and Courtney gave us the list--a little over 4,000 people waiting for services. Not one of them has said BSDC is where they'd like to get the services. And so...and would it be a fair thing to say, Michael, from your experience, that if somebody...if one of those 4,000 people said, I want BSDC, but they didn't meet the criteria for being there, that that would not be an option for that person? [LR32]

MICHAEL CHITTENDEN: Right, yeah. We talk a lot about person-centered planning, and that's part of the new CMS regs, we have to do a lot of person-centered planning. One would be, we want to make sure it's an informed choice, but also if that's their choice we would try to back it up as much as we could. But again if it's not right for them, it is our job to try to point that out to them if it's really not a good match. I think all too many times we think of safety for people when we talk about this. We want people to be safe. We want them to be safe out in the community, we want them to be safe at BSDC, because there's incidents of abuse in both places. So that really goes to the concept of dignity of risk. All of us take risks in life. We grow up, we move out, we take risks. There is no guarantee of safety 100 percent of the time regardless of where we may be at. So it's really how are we going to be as safe as possible. [LR32]

SENATOR COASH: Okay. Senator Hilkemann, did you have another question? [LR32]

SENATOR HILKEMANN: Just quick...you said how many states have no facility? [LR32]

MICHAEL CHITTENDEN: Right now I believe there's 13 states who have no institutions, and they've systematically closed. [LR32]

SENATOR HILKEMANN: And it's my understanding that they've just closed the center or they're going to close the center at Glenwood, Iowa? [LR32]

MICHAEL CHITTENDEN: I hate to say this, I'm not up...I'm just trying to keep up with Nebraska, but I'll look into that, Senator. [LR32]

SENATOR HILKEMANN: Okay. [LR32]

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SENATOR COASH: Senator Kolterman. [LR32]

SENATOR KOLTERMAN: Thank you, Senator. My question goes back to a remark you just made, Senator, about the fact that nobody has requested the center in Beatrice, but also when I toured down there I was under the impression that they were not actively open to accepting anybody. So there's probably...having seen the facility and having met the staff and met some of the inhabitants of the community, given the opportunity we probably could...I'm a little bit like Senator Hilkemann, there might be some possibilities that we'd pick up a number of people. [LR32]

SENATOR COASH: I think there's some clarification we can ask for from the department about criteria for admission into BSDC that will clear that up. [LR32]

SENATOR KOLTERMAN: Okay. [LR32]

SENATOR COASH: Thank you, Michael, appreciate your testimony. [LR32]

MICHAEL CHITTENDEN: My pleasure. Thank you, Senator. [LR32]

SENATOR COASH: Excuse me. Hold on, Michael. Senator Johnson. [LR32]

SENATOR JOHNSON: In my area I'm quite acquainted with Region V. [LR32]

MICHAEL CHITTENDEN: Yes. [LR32]

SENATOR JOHNSON: What you're saying, funding for that on the federal level, is that moving away so those types of workshops and things like that are at risk? What's the time table? Not yet, but it's... [LR32]

MICHAEL CHITTENDEN: Not yet, but it could be in the future, yes. There have been at least two states, I believe it's either Washington or Oregon--I always confuse the two, I don't know why--and Rhode Island for sure that have made agreements with the Department of Justice to

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completely shut down their sheltered workshops because they are deemed institutional by nature. They segregate from the community; they're not working side by side with people without disabilities. And you could say the same of some of the residential programs that we have. Certainly BSDC is a campus, it's set aside, people without disabilities aren't living within the same community, within the same neighborhood property. Same thing with Bridges in Hastings. You don't have interaction with, right on...within a close scape of the people with disabilities. [LR32]

SENATOR JOHNSON: Thank you. [LR32]

MICHAEL CHITTENDEN: Yeah, no problem. [LR32]

SENATOR COASH: Thank you, Michael. [LR32]

MICHAEL CHITTENDEN: Thank you very much, Senators. I appreciate your time. [LR32]

SENATOR COASH: Come on up. [LR32]

JOE VALENTI: Hi. My name is Joe Valenti, J-o-e V-a-l-e-n-t-i, out of Omaha, Nebraska. Our son, Donny, who a number of you have met, is at Beatrice. I would suggest to you as senators a couple of items: that Beatrice is not an institution. It's actually five ICFs, as I recall, I think currently, so I think when we refer to it as institution, as Michael would like to do, I would not call it an institution. Also, we talk about least restrictive living. Well, I guess you'd have to live it to know it's least restrictive. Right? Some of us are married, it's very restrictive. But you know, again I would say (laughter)...so anyway, I would just tell you that it is least restrictive for a number of the residents that are there, if not all the residents that are there. So I think to classify and generalize least restrictive being in the community is not always the case. Michael talks about have the care follow them. Well, so far historically, that has not happened for our son, Donny, and for the people in attendance here. That's not occurred in the community. I'd like to see CMS come in and do audits of the community providers. There would be no funds left. Also, I'm sure the headlines in the World-Herald tomorrow are going to read about this \$12.3 (million) or \$13 million or \$14 million. I don't really think Courtney has had a chance to really explain

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that, in my opinion. And I think your questions need to go a little bit deeper. First of all, was it a misappropriation of the funds? And I don't think so. In other words, there were requests to pay bills, right? Then the funds had to come from somewhere. Obviously, there was not matching funds coming from the fed, but having said that, I don't think it was misappropriations of the fund. And I don't want it to come out as the department misappropriated funds or used funds inappropriately. So I guess those are just a couple of items that I just wanted to touch upon. But I do not see Beatrice as an institution at all any longer. And, yes, maybe it was. And I think Michael wants to go back to heyday. The answer is not always in community placement. And I'd also like to say historically, let's look at states that did get rid of, quote unquote, institutions, what's happening to those individuals? And I'd give Courtney a chance to follow any of these individuals. Senator Campbell talked about no waiting list, and I did read that in the prior testimony. And I think again, to Courtney's defense a little bit, it's a new position. The question I'd ask about the 4,000 people or individuals is, I don't think it's been marketed. There are people in crisis, families in crisis in this state; they don't even know about Beatrice. They don't even know about community placement, because they've given up. Senators, they've given up. We were so fortunate to be able to have Dee advocate for Donny. But I'm just telling you, there are a lot of people in crisis out there. I have some in my own office, at CBSHOME and Real Estate in Omaha, Nebraska. They don't know where to turn because the caseworkers are overloaded. It's a huge, huge problem. I would not want to be sitting here just for the pennies you get paid. You deserve a lot more. So anyway, thank you very much. Questions? [LR32]

SENATOR COASH: Thank you for that comment. Any questions for Mr. Valenti? Seeing none, appreciate your testimony. Is there anybody else wanting to testify? It's your last chance. Okay. Well, with that, I will close the hearing and thank my colleagues for attending today. [LR32]