

Transcript Prepared By the Clerk of the Legislature  
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Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

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The Developmental Disabilities Special Investigative Committee met on Monday, April 27, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a meeting regarding the Beatrice State Developmental Center. Senators present: Steve Lathrop, Chairperson; Greg Adams; Tim Gay; Arnie Stuthman; Norm Wallman. Senators absent: John Harms, Vice Chairperson; Abbie Cornett.

SENATOR LATHROP: Hi, John. []

JOHN WYVILL: How you doing? []

SENATOR LATHROP: Great. Great. I guess everybody in the room knows one another so we don't have to use...do the usual. And historically we've just kind of made it sort of a question and answer and then, with what's left of our time, we fill in with whatever comments or updates you want to provide us with. And maybe I'll turn it over to my colleagues and see if anybody has any questions before I get to mine. I have just a few. Senator Stuthman, you look like you're poised to ask a question, so... []

SENATOR STUTHMAN: Well, I have a question. Maybe this is not the time to ask the question but I've been thinking about this for quite a long time, and it deals with the fact of, you know, if we're still going to have a BSDC and downsize it to 100 or whatever, what group is that going to be...going to be designated for? And in my opinion, it was...it was...should have been for those medically fragile ones, but we pulled them all out and closed that center down already. So what...if we want to make BSDC, you know, still in existence for a population of 120 or wherever, what group is going to be there? []

JOHN WYVILL: Okay. Senator, that's a very good question and I appreciate the opportunity to answer that. I think outlined in the Governor's plan the range of 90 to 120. We have Ted Kastner's group is performing the assessments to do evaluations and we

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

anticipate, based on those evaluations, those individuals that will be at the facility would be the high behavioral needs or those that have those kinds of complexities, and that's what we anticipate will be there. []

SENATOR STUTHMAN: So is this going to be really the overrun of the Norfolk group in order to downsize that one? Or is it going to be the main emphasis on behavioral things and not physical disabilities? []

JOHN WYVILL: I think, Senator, I don't know enough about the particularities about Norfolk so I can't speak with any certainty to that. []

SENATOR STUTHMAN: Uh-huh, yeah, and I respect you for that. []

JOHN WYVILL: I think we're doing two things, is the first work, our goal is to intend to expand the intensive treatment services at ICF, which is temporary. Right now we have eight of those and our goal is to expand that up to 20 as of 2025, as the census gets down. And those are those individuals that are in the community that have some episodes and then require a crisis intervention or an intervention and they can come to BSDC and be stabilized. And once they're stabilized, they can go back out in the community. I know this is not responsive to your question but that also dovetails into what we had talked about in the past, which is the crisis intervention team, which we have our outpatient treatment services, which is OTIS, where they go out into the community and provide the support. We are proposing to have additional staff, either by contract or by employees, to help interventions in the community. Goes back to supporting the communities. So that is one segment of that population and under a fully certified facility, our goal is to serve anyone that needs that, as well as those that have the high behavioral or psychopathic (inaudible) medication. That's our goal. We'll also learn more about depopulation once the independent objective assessments are complete. []

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Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR STUTHMAN: So in other words, if there's a community-based service available, they will be out in the community. But for those or the group or they are not capable of being in a community-based setting, then they will possibly be staying there until they get to a situation, get to a treatment level where they can go back to a community-based service. Would that be correct? []

JOHN WYVILL: I think, yes, in an oversimplification, yes. []

SENATOR STUTHMAN: Okay. Okay. Thank you. []

SENATOR LATHROP: John, I'd like to follow up on that because we've talked about the 90 to 120 as the Governor's goal for the census at BSDC ultimately, when we get to the place where the goal is met. And the thing that occurs to me is, and the recommendation of this committee was, that BSDC, at a minimum, its role should be the OTIS and the ITS program. And I certainly agree with you and the Governor, if that's the Governor's idea, to expand the role of the OTIS and the ITS program to be the support for the community. Beyond that, the question about who will reside at BSDC and what that number is going to be, it seems to me the committee initially, when they thought about it, said that that should be the people with the behaviors that would, for safety reasons, either their own or people in the community, be inappropriate placements for the community. And the more I think about this, and I guess I'm looking for a comment about this, the more I think about it, I'm not so sure that we don't have a second class of people that stay at BSDC and maybe over time, of course, they'll...and attrition, they'll leave. But there's going to be those people that have been there 30 or 40 years. And you've approached their guardians, I know you have because those folks have all...those folks tell us that they get approached from time to time. Don't we really have a second population which is the people that have...maybe they're mild or moderate or somewhere in the spectrum, but they've lived there so long that we simply can't expect that they're going to leave? []

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: I think that they...I think that they could. Senator, you're correct in your assessment that there's basically two different populations there and, as part of the process, we still have to explore with them community-based options and then it's a decision, working with the guardian, whether or not they will consider community placed options even if they're there 20, 30, or 40 years. []

SENATOR LATHROP: Absolutely. Absolutely, and I think that's the proper approach and I think that's what the DOJ expected... []

JOHN WYVILL: Uh-huh. []

SENATOR LATHROP: ...expected you to do and the committee would probably say exactly. But the next question is, what happens when they say no? And do we end up with more than 90 to 120 if what we have is a population of the behavioral issues folks and then a population of the people who say, no, this has been home for 30 years, I'm staying? []

JOHN WYVILL: Senator, that's always a possibility. And as we've had these discussions before is...and I think you've articulated best and recently is that we have to make the community-based options so attractive for those individuals that they would want to go there. And obviously the question has to be can we provide them with a choice for them to decide whether or not that's appropriate or not. []

SENATOR LATHROP: So ultimately, while the goal may be 90 to 120, ultimately what we'll have at BSDC are the behavioral folks who are a safety risk and we'll have the people, notwithstanding your best efforts and your efforts to entice them into a community-based program, choose to stay there. Would that be true? []

JOHN WYVILL: That would be correct. And right now we're in a transition as the facility is going down, in terms of the size, and that's how those two populations are being

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Transcriber's Office  
Rough Draft

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April 27, 2009

---

(inaudible). []

SENATOR LATHROP: Okay. I think I'm clear on that. Senator Wallman. []

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, John, hi. In regards to the, you know, the magic number is 120, 140, 90, you know, earlier it was 200. Do we have the facility room for...or personnel to take care of what we have now? What's the residents now, 170 or what's the residents? []

JOHN WYVILL: I think...I think we're still, Senator, recruiting and trying to stabilize our work force in the area of clinical and medical, as well as direct care staff, and we still have a little bit...a ways to go in some of those areas. []

SENATOR WALLMAN: Okay. []

SENATOR LATHROP: A couple other things. Last week or the last time that we got together we talked about the assessments and this is my understanding of what you said and then I think the Governor had or you had some response or some new information on that and I want to clarify that. When we talked about this the last time we got together, the question was whether or not there had been any assessments done on any of the medically fragile, the people that have been moved pursuant to the order of Dr. Schaefer, if there had been an assessment to determine whether any of those people were no longer medically fragile. And my understanding of your...what you told us the last time we got together was that there was an assessment done that resulted in identifying 47 medically fragile. They then went to various hospitals. And while these people are receiving medical treatment and are seen from time to time by a doctor, no one has made a determination of whether or not they're no longer medically fragile. I think that was what you told us last time we got together. []

JOHN WYVILL: That would be correct, Senator. []

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April 27, 2009

---

SENATOR LATHROP: And what you indicated was, in order for us to...in any for any one of those families to have a determination made that their loved one is no longer medically fragile, they'd essentially have to get their own doctor to do that assessment and then come in and have that doctor write a report or make a pitch to HHS that they're no longer medically fragile. That's kind of where we left it last time. []

JOHN WYVILL: I think that's where we left it, Senator. []

SENATOR LATHROP: Okay. Has there been some change in that position? Did I see something that you... []

JOHN WYVILL: I met with the...well, first of all, in response to that specific constituent (inaudible) talk about, I know there's a difference of opinion, I think, with you and I and we may have to simply just agree to disagree, but we think that that was a unique circumstance that was... []

SENATOR LATHROP: The one that was returned to BSDC. []

JOHN WYVILL: Yeah. Yeah. []

SENATOR LATHROP: Okay. []

JOHN WYVILL: And I just didn't want to be (inaudible) said I think we might have to agree to disagree and... []

SENATOR LATHROP: That's fair. []

JOHN WYVILL: ...because we think that even if...well, we'll just leave it at that. The second issue is that I had a meeting with the Governor and the Chief Medical Officer

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Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

and after that discussion the decision was made to do the assessment of the 20 individuals remaining in the hospital. To put those in context, of the 20 that we currently have in the hospital, 3, assuming...the assumption is there's no surprises or anything else like that, 3 are scheduled to be discharged--2 to a community-based placement, 1 to a nursing facility--by May 11. I think two are scheduled to be discharged this week, and then the third I think is discharged May 11. In addition...in addition.... []

SENATOR LATHROP: Okay. Can I interrupt you just for a second, John? []

JOHN WYVILL: Sure. []

SENATOR LATHROP: Because we're using assessment and we have Kastner doing an assessment and I think you're talking about a different assessment... []

JOHN WYVILL: Yeah. And... []

SENATOR LATHROP: ...and that assessment is to determine whether or not any of those 20 are no longer medically fragile. Is that true? []

JOHN WYVILL: Okay. Here's what I asked the medical doctors to do, and I apologize if I...in advance, if I mix the terminology. First of all, the assessments that Ted Kastner is doing is not a medical assessment. What we have asked the doctors to do is that the individuals that have been in the hospital, we have asked them to do an assessment where they are after three months. They've been in the hospital. It's my understanding that all of them that came in have done...they've done evaluations and work up. And then the goal in directing, we have...I have given them was very simple. It's to do an assessment to see if there's anything changed in the last three months, what is their current condition, that whether or not they've been stabilized, have they been stabilized, and then the condition whether or not there's going to be any potential for relapse. For example, if someone has a swallowing disorder or aspirational pneumonia, what is that

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

risk? And part of that assessment is for them to provide us in writing a, for lack of a better term, a discharge plan or a safety net and say what things, conditions must be met. So once we get that, we can evaluate it. Now I also have for you...I think I've previously supplied this, but I have this for you if you need it, is Dr. Herrington's (phonetic) determination of medical fragility in the Public Health order. And I think... []

SENATOR LATHROP: We'll take copies of that stuff, John. []

JOHN WYVILL: Yeah. []

SENATOR LATHROP: I want to try to clarify, so you're going to have an assessment done and you said you're going to do it of the 20 people that are still in a hospital setting. Who's going to do that, John? []

JOHN WYVILL: Those doctors. []

SENATOR LATHROP: So whoever the attending physician is for any one of those particular patients is going to be asked these five questions. []

JOHN WYVILL: Yeah, basically, yes. []

SENATOR LATHROP: And do we ask the doctor to ultimately make the final conclusion, is this person medically fragile, or are we just going to ask the doctor to talk about each one of the components of medically fragile? []

JOHN WYVILL: We asked them to talk about their complex medical needs and the short answer is to give us an assessment of where they are right now. And then it's my understanding of the process, although I'm not a medical doctor, is that we have to make a determination for the medical director of BSDC, is whether or not that that person still meets the definition of medical fragility, as outlined. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR LATHROP: So we're not going to ask the doctors that are doing the assessment, is this person medically fragile. What we're going to ask them to do is answer...do an assessment in five different areas... []

JOHN WYVILL: Yeah. []

SENATOR LATHROP: ...and then turn that assessment... []

JOHN WYVILL: Over. []

SENATOR LATHROP: ...over to the medical director at BSDC instead of asking... []

JOHN WYVILL: Over to us for review. Over to me for review. []

JODI FENNER: I think what John means is before someone could come back to BSDC, the medical director has to decide whether, based on an independent evaluation, that person was medically fragile. But each of the doctors that we spoke to was given a copy of the medical fragility definition and was specifically told, if you have someone in your care who no longer meets this definition, we'd like for you to report that so that... []

SENATOR LATHROP: Identify them. []

JODI FENNER: Yes. []

SENATOR LATHROP: Okay. So ultimately, we do have doctors other than Dr. Kastner and that it would be the physician who would be each patient's attending physician doing assessments as they would necessarily with respect to the care and continuing treatment of these folks, and they will identify those people who are no longer medically fragile, in their judgment. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JODI FENNER: That is what we asked them to do,... []

SENATOR LATHROP: Okay. []

JODI FENNER: ...and not just at this point in time but at any point in time, if they have somebody in their care who no longer meets that definition, would they tell us. []

SENATOR LATHROP: Okay. That seems to me to be a step in the right direction from where we were the last time we spoke, and I applaud you for taking that step. I do have a concern that we've limited it. We had 45-47 people leave; 2 of them have passed away and you're limiting this assessment or information to only the 20 that remain. And it occurs to me that if we have people in skilled nursing homes, and the DOJ has been very critical of placements in the skilled nursing homes, why we wouldn't ask the doctors who are involved in the care of those folks who have left the hospital setting to do the very same thing. Is there some logic to your reason other than the fact that you've got them out of the hospital? []

JOHN WYVILL: I think I can answer that twofold. In the context of the 20 that we have right now, 3 are on the way out in terms of finding placement, and then 6 have already been committed or are committed to going to ENCOR. So we have 3 from...3 from there, so you go down, you're looking at...if I'm not getting fuzzy on my math, I think that leaves 11 individuals that are currently in hospitals. And of those 11 that we're working with, we're working with Derrick Dufresne, who is a community-based expert, that we're assisting them to approaching those families with concrete options for community... []

SENATOR LATHROP: What was that name, John? []

JOHN WYVILL: Derrick Dufresne. []

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR LATHROP: And who is he with? []

JOHN WYVILL: He is an independent consultant that we brought on specifically at the request of I think CMS money follows the person. []

SENATOR LATHROP: And is this fellow from Nebraska or is he from... []

JOHN WYVILL: St. Louis. []

SENATOR LATHROP: St. Louis? Okay. []

JOHN WYVILL: He's, from all accounts, a nationally recognized expert in finding...dealing with traditionally hard to serve individuals. []

SENATOR LATHROP: And so the math, and I'm not sure of the math is right, if I'm doing it correctly. You had 20 people left. You said six of them are committed to ENCOR? []

JOHN WYVILL: Yeah. []

SENATOR LATHROP: And they've actually...the guardians have actually said, yeah, we'll make the move to ENCOR. Okay. And then we have three leaving for other than ENCOR placements? []

JOHN WYVILL: Yeah. Yeah, two, community-based; and one, nursing facility. []

SENATOR LATHROP: Okay, and... []

JOHN WYVILL: And we have, Senator, this may help you. We have a couple things going on the same way and this is why it may be confusing to some folks, is we have

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

Ted Kastner doing assessments for appropriate...and he's going to be here later to... []

SENATOR LATHROP: Thursday, right. []

JOHN WYVILL: ...the walk through and answer these questions. But we had asked him to do eight originally that were affected by the public health order and we subsequently asked him to do ten more. And if you're doing the math, that's 18, although we have 17 that are not...that are in the process. One of the things that we are working on, for example, is that we have an individual whose guardian has chosen a nursing home placement for an individual, and we are hoping that Ted Kastner's assessment will give us additional information that we can go back to the guardian and ask that individual to consider a community-based option. Right now, we have five that I believe those five that are in nursing facility permanent placement, there are five in temporary nursing home placements while we find other appropriate places for them. []

SENATOR LATHROP: Well, we have five...okay. My question though, John, originally was I understand you're going to have the attending physicians do an assessment or tell us if somebody is no longer medically fragile. Why do we not extend that request to the attending physicians of the people who have placements other than at the hospital right now? And I'm thinking primarily about the folks who are permanently or temporarily been placed into nursing homes, which is something the DOJ has been very critical of. []

JOHN WYVILL: I think...I think the thought process, first and foremost, Senator, is to address the needs of those in the hospital, is the first and foremost priority. []

SENATOR LATHROP: Okay. I'm going to tell you that I have just enough experience with medical doctors and what they do and how they do their work maybe to be dangerous, but if a doctor is going in, and they must, and they occasionally will do rounds on patients that will be in a nursing home setting, there's a doctor that's in

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

charge, or the attending physician, of people that are put into a nursing home and that doctor is going to go in and do assessments from time to time just to make sure that the meds don't need to be changed, that everything about the care for his or her patient is in order. And it seems to me that this isn't like we have limited resources and that doctor needs to go from here to here to here. He's already going into the nursing home. All we have to ask him to do is tell us what his conclusion is. So I don't know that we're asking anybody to do anything that they couldn't do just after they've completed an assessment of a patient in a routine...on a routine round. []

JOHN WYVILL: Okay. []

JODI FENNER: If I can speak, Senator, I do know that all of the clients who were placed in the nursing homes were evaluated under the PASARR screening tool and that screening tool requires that individuals being placed in the nursing homes have complex medical needs. I can't speak to this because I'm not overly familiar with that standard. I'd have to bring...I'd have to talk to my Medicaid attorney. []

SENATOR LATHROP: What was the standard, Jodi? []

JODI FENNER: It's a federal screening tool called the PASARR tool and... []

SENATOR LATHROP: And is that an acronym? []

JODI FENNER: It is, and I apologize, I don't know what that stands for. []

SENATOR LATHROP: How is it spelled? []

TRICIA MASON: PAS-R (sic), yeah. []

SENATOR LATHROP: Okay. []

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JODI FENNER: But my understanding of that screening tool is it requires those individuals to have complex medical needs to be eligible for that nursing home placement, so... []

SENATOR LATHROP: So you're suggesting that, of the five who were placed there...well, we don't know the circumstances though. They may have chosen a nursing home because they couldn't stand the boredom at the hospital, right? I mean the fact that they're in a nursing home doesn't necessarily mean that there are complex medical needs. It may mean that they are either medically fragile or not medically fragile and they're just entirely bored with the care or unsatisfied with the care that they were receiving in a hospital setting. []

JODI FENNER: Well, but to qualify under the PASARR standard, you would have to have complex medical needs. I guess that's what I'm saying. []

SENATOR LATHROP: So every one of the ten people who have a permanent or a temporary placement in a nursing home have qualified under the PASARR standard for placement? []

JODI FENNER: That is my understanding. []

TRICIA MASON: If I may, Senator, and those that don't know me, I'm Tricia Mason. I'm the administrator for community-based services. The individuals that did ultimately go to a nursing facility, they do have to meet certain standards and levels of care in order to go to a nursing facility, in order for Medicaid to pay for them to be in the nursing facility. And so the assumption would be that if they no longer met that level of care that they would no longer be able to stay at the nursing facility. And so...but I don't know. That would be up to John as to whether or not we could ask those physicians who are attending to them as to whether or not they can do the same type of assessment as the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

hospitals would. []

SENATOR LATHROP: Okay. And let me make sure that I'm clear on the numbers. Of the 47 that went to the hospital or left BSDC under the medical order, of course, we lost 2 so we're at 45 souls that were taken from BSDC as a result of the medical order. How many of them voluntarily, involuntarily, permanently or temporarily have been placed in a skilled nursing facility or a nursing home? []

JOHN WYVILL: Five guardians have elected permanent nursing facilities, Senator. []

SENATOR LATHROP: So of the 45, we have 5 who went there. Their guardians elected to that their... []

JOHN WYVILL: Uh-huh, and that... []

SENATOR LATHROP: ...their protected person placed in a... []

JOHN WYVILL: Senator, Senator, that goes...that goes also back to the dilemma that we talk about, too. We talk about guardian choice because, equally so, the guardian choice for the individual to stay at BSDC, in light of an alternative community-based placement, there's still the guardian choice of a nursing facility or the other and... []

SENATOR LATHROP: Well, we don't know...we don't really know if they felt like they had much of a choice in that matter, but you have five that have elected to go to nursing homes. How many others have been placed in a nursing home of the 45? []

JOHN WYVILL: Five are in temporary. []

SENATOR LATHROP: So in...from the 45, we have a total of 10 in nursing homes. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: That have...yeah. []

SENATOR LATHROP: Yes? And you said the population is now down to 20. []

JOHN WYVILL: There's 20, and 3 are scheduled for... []

SENATOR LATHROP: So we've accounted for... []

JOHN WYVILL: ...3 are scheduled for discharge, 6 are lined up for ENCOR, which leaves us, I think, a total of 11 for a variety of different reasons are harder to find a placement option for them. []

SENATOR LATHROP: Okay. And I want to do the math from the...we start out at 45... []

JOHN WYVILL: Yeah. []

SENATOR LATHROP: ...or we end up at 45. We go to 35 with 10 placements into nursing homes, right? []

JOHN WYVILL: Uh-huh. []

SENATOR LATHROP: And we have 20 people right now. Where did the 15 go that you've not...that didn't go to a nursing home and aren't still there? []

JOHN WYVILL: That are...I'm sorry, I... []

SENATOR LATHROP: Am I doing the math right? We go from 45, if we just take the population that survived the move, and we go from 45 to 35 after we account for the folks that have gone to a nursing home. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: Then we have one that returned back to BSDC. []

SENATOR LATHROP: One that went back to BSDC. []

JOHN WYVILL: And then I believe there are 13 in community DD services and 1 temporarily that we're working on making a permanent... []

JODI FENNER: (Inaudible). []

JOHN WYVILL: Yeah. And then we have the 20. []

SENATOR LATHROP: I'm going to try to do the math real quick, John. Ten in nursing homes. []

JOHN WYVILL: I can certainly provide the committee with a breakdown after. []

SENATOR LATHROP: Okay. Okay. Because I don't think that math adds up, if I'm doing it as you're telling me. []

JOHN WYVILL: I had seen the numbers when I came in, but I can give you the numbers. That adds up. []

SENATOR LATHROP: And the six that are going to ENCOR, are those in medical service units? []

JOHN WYVILL: Medical service unit, that's correct, and considered a community-based service. []

SENATOR LATHROP: Okay. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
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Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

TRICIA MASON: And two of the individuals slated to go there are in temporary nursing facilities right at the moment. []

SENATOR LATHROP: Are they among the five? []

TRICIA MASON: They're among the ten. []

SENATOR LATHROP: They're among the ten. []

TRICIA MASON: The ten in nursing facilities. []

SENATOR LATHROP: So we're actually diminishing the number of people in a nursing home. []

TRICIA MASON: Yeah. []

SENATOR LATHROP: Okay. Well, that's positive. []

TRICIA MASON: Because the goal of the five that have been temporarily placed at nursing facility was to move them into community-based services, so two of them will be going to the ENCOR MSU and we're working on community placements for the other three. []

SENATOR LATHROP: Okay. I think I'm going to see if anybody else has...I have more questions but I don't want to take up everybody's time with it. Senator Stuthman. []

SENATOR STUTHMAN: Thank you, Senator Lathrop. When you mentioned you wanted to get the assessments from all these physicians, how many physicians does this involve with those individuals that are, you know, in the hospital settings? Is there going to be a large number? Are you going to get a lot of different opinions and...? []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: Yeah, I think they...I think they get together as a team. It depends on which hospital it is, but I think they have one attending physician and several of them have teams that work together on the individuals, like for example we went to Creighton and there was three doctors at that meeting. []

SENATOR STUTHMAN: Okay. So you feel and you're confident that the assessments will be based on the recommendations or the involvement and... []

JOHN WYVILL: I think it will be very professional by individuals that don't have a dog in the hunt,... []

SENATOR STUTHMAN: Okay. []

JOHN WYVILL: ...so to speak, to use a well-worn cliché. []

SENATOR STUTHMAN: Yeah. Yeah. Thank you. []

JODI FENNER: Maybe to clarify, each hospital doesn't have one attending. My understanding is each of the individuals has their own hospitalist. At some hospitals, the same hospitalist cares for all the clients at that hospital, but John mentioned Creighton. There were three hospitalists, one for each of the clients, that each of those...what a hospitalist does is overview the entire care for that. It's basically the primary care physician for that client. []

SENATOR STUTHMAN: Oh, okay. []

JODI FENNER: So...but they would review all of the...and work with the team that's been treating the client. []

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Transcriber's Office  
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Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR STUTHMAN: Okay. []

SENATOR LATHROP: Senator Wallman. []

SENATOR WALLMAN: Thank you, Senator Lathrop. Yeah, John, regarding, you know, you talked about community-based and money following the client. Wow, does the money follow what our hospital costs are to community-based, that exact amount of dollars per client? You know what it's costing us in the hospital? []

JOHN WYVILL: The hospitals, Senator, are, as we all know, higher than what we would have in community-based services or at BSDC. []

SENATOR WALLMAN: So, I mean, you mentioned the money follows the person, so how are you... []

JOHN WYVILL: There would be... []

SENATOR WALLMAN: ...how do you figure that formula now then? Any different? []

JOHN WYVILL: If I understand the question correctly, right now the BSDC resident individuals in services that have been impacted by the Public Health, we're currently paying for them out of the BSDC budget. When they get accepted into a community-based service program, they become community-based services individuals and then that is governed by the arrangement that we work out with the provider and that's where the costs come from and that's what we talk about in our budget proposal where we needed a increase in cost in community-based services. []

SENATOR WALLMAN: Okay. Thank you. []

SENATOR LATHROP: I do have a couple more questions that I thought about and that

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

is with the 20 people that are currently in the hospital and you've now asked their attending physician to make an assessment about whether they continue to be medically fragile, that request isn't costing the state any more money, is it? []

JOHN WYVILL: That's part of the ordinary daily operations. []

SENATOR LATHROP: And that's kind of my point, which is they're doing assessments of people all the time as they're providing care, and all we're doing is asking them to share their opinion... []

JOHN WYVILL: Uh-huh. []

SENATOR LATHROP: ...about where they're at... []

JOHN WYVILL: Uh-huh. []

SENATOR LATHROP: ...relative to the definition of medically fragile. []

JOHN WYVILL: Uh-huh. []

SENATOR LATHROP: And it's not costing us anything to do that. []

JOHN WYVILL: They're being paid to do...I don't want to split hairs, Senator. They're being... []

SENATOR LATHROP: Maybe, maybe I'll clarify my question. It's part of the care they're providing. We're just asking them to express an opinion. []

JOHN WYVILL: Yeah, put it in writing. []

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR LATHROP: And that brings me back to the point I was trying to make before. If it doesn't cost us anything more, if it's already part of their assessment and their care of the patient, why don't we ask them to do that with respect to the other folks who have been placed somewhere else? []

JODI FENNER: Senator, it's not a free service. They will charge us for the additional time to put that assessment in writing and they will do that. There will be a cost related, yet they are providing daily care and they assess the individual to determine what the day-to-day care is necessary for each client. But what we're asking them to do is to if they find...is to review the definition of medical fragility and to determine whether anybody, as they do...we ask them to do the assessments in the normal course of their business because we didn't want to incur unnecessary costs, that if in the normal course of those assessments they find somebody who is potentially not still medically fragile would they, you know, do a more thorough written assessment so the facility medical director could review that. So, yes, there would be an additional cost. []

SENATOR LATHROP: That is something I have a good deal of familiarity with given my law practice and I ask doctors questions all the time. They write me letters with their opinions and narrative reports responsive to questions, specific questions that I have, and it might be a few hundred dollars to get an opinion letter from a doctor, right? []

JODI FENNER: I don't know what the cost is. []

SENATOR LATHROP: So we're not talking about...we're not talking about thousands of dollars but, rather, would you write us a letter. If you find one of these people, write us a letter and tell us why they're not, or a narrative, and we're talking about a few hundred dollars. And given the disparity in the cost of providing care between a hospital or even a nursing home and what might be other placements, it just seems to me that we ought to be asking the doctors at the nursing homes or the doctors at these other placements, if these people are no longer medically fragile, tell us. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JODI FENNER: And the only...the only comment I have, Senator, is you asked if there was a cost and I was just clarifying that there would be a cost. I don't know what that cost would be. []

SENATOR LATHROP: It may be nominal even. []

JODI FENNER: And the question you're asking is a policy decision which Director Wyvill would have to answer. []

SENATOR LATHROP: Okay. Okay. Anything else? This is the first time I think we've had Ms. Mason here and perhaps we can have her tell us what she does, where she fits in, in the process, so that we can call her down here when we need (laugh) when we need...we know what her expertise is and that sort of thing. []

TRICIA MASON: Absolutely. Thank you, Senator. Well, I am the administrator for community-based services so the other 4,500...approximately 4,500 individuals that the division serves through home and community-based waiver settings is my domain. And so as that fits into the individuals at BSDC, I oversee service coordination, so all the service coordinators that are across the state are in my camp as well, and so when we start working on transitioning someone from BSDC to the community, it's a joint effort between service coordination and the QMRPs and the social workers at BSDC on writing those transition plans and moving people into community-based services. So as soon as the public health order was issued, we had service coordinators assigned to each of the 47 individuals and began working with families and guardians immediately on what kinds of options were available for people. And so as Director Wyvill said, we did have some people who opted for nursing facility placements. We've had a few people who have chosen that as a temporary option as we develop some community-based services for folks, and we've had great success in the 13 individuals, soon to be 14 hopefully, who have chosen community-based services. And everybody

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

is doing quite well and are enjoying their new homes and new activities, so. []

SENATOR LATHROP: How long have you been doing that for the state of Nebraska? []

TRICIA MASON: I have been here since September. []

SENATOR LATHROP: September of '08. []

TRICIA MASON: Of '08. []

SENATOR LATHROP: Okay. And where did you work before that? []

TRICIA MASON: I worked for an organization called TASH in Washington, D.C. I moved here from Washington, D.C. []

SENATOR LATHROP: Okay. []

TRICIA MASON: I worked for Easter Seals. I'm a Wyoming girl. I worked for the developmental disabilities council in Wyoming. []

SENATOR LATHROP: Okay. And in terms of the corporate structure, would you report directly to Director Wyvill? []

TRICIA MASON: I do. []

SENATOR LATHROP: Tell me what you do that's different. Ron Stegemann, the former CEO at BSDC,... []

TRICIA MASON: Uh-huh. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR LATHROP: ...he's now...he has a different job and it sounds a lot like yours. Can you tell us what you do and what Ron does and did you do that before Ron left BSDC? []

TRICIA MASON: Well, I didn't work specifically on transition plans for people. I supervise the individuals who do that. And so Ron is now reporting directly to me, as the transition coordinator, and will be working specifically with the individuals at BSDC in helping service coordination and BSDC. []

SENATOR LATHROP: What's our census at BSDC today? []

TRICIA MASON: I believe it's... []

JOHN WYVILL: 185. []

TRICIA MASON: ...185. []

SENATOR LATHROP: 185? So if we expect that we're going to get to 90 to 120, if that's the goal, then what Mr. Stegemann is doing is trying to get...trying to work with the people... []

TRICIA MASON: Correct. []

SENATOR LATHROP: ...who still are at BSDC and are not the ones that you hope will be there when we get the census down to 90 to 120. []

TRICIA MASON: Correct. Uh-huh. []

SENATOR LATHROP: How many people has he...how long has he been doing that job? []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

TRICIA MASON: He has been there for...since the beginning of March, for a month?  
Yes. []

SENATOR LATHROP: For a month? []

TRICIA MASON: I believe March 9 is when he reported to Lincoln. []

SENATOR LATHROP: Okay. Has he been successful in getting anybody to transition from BSDC to the community since he's been there? []

TRICIA MASON: He has been working closely with Derrick Dufresne and service coordination to work on some transition plans. He has been integral in, since he has the history and the familiarity with not only the individuals who live at BSDC but also the staff and their families and guardians, in helping us discover what sorts of needs and supports people do need. []

SENATOR LATHROP: So I appreciate that's what he's doing, but he hasn't gotten...he hasn't been successful in getting a person to transition from BSDC since he's had the position. []

TRICIA MASON: Specifically, no, not in the last month. []

SENATOR LATHROP: Okay. Okay. I guess the last thing I have is whether or not there's any other incidents to report from BSDC that we ought to know about, or circumstances that you feel like we ought to know about. []

JOHN WYVILL: Well, that's a discussion that we need to have, you know, ongoing that, you know, we submit on a monthly basis the incident reports that we give to you, critical... []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR LATHROP: And I'm not asking you to tell us about any... []

JOHN WYVILL: Okay. []

SENATOR LATHROP: ...particular incident, John, because I can appreciate that that might involve a personnel matter or a criminal matter. []

JOHN WYVILL: Uh-huh. Uh-huh. []

SENATOR LATHROP: But are there any new incidents? []

JOHN WYVILL: Not that... []

SENATOR LATHROP: Nothing? Okay. Does anybody else have any ideas or questions? John, we generally try to give you a little time at the end to share any thoughts or maybe to boast about some progress that you've been making in the last week. []

JOHN WYVILL: Well, we have...we have some information, Senator, that you have requested that we brought to the committee because you have asked for updates every time we come to the committee on the hospitalization and habilitation costs, and we can give you the updated information that we can certainly hand out to you, as well as the information that was asked for you that we're in the process of getting in terms of transportation costs of BSDC employees serving to the Public Health order, and I have that information for you that I can certainly hand out. []

SENATOR LATHROP: And that's not something you feel like you have to do out of the public? I mean there's nothing proprietary about this. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: We are not disclosing...we're not disclosing the proprietary rate. []

SENATOR LATHROP: Okay. Okay, John, go ahead. []

JOHN WYVILL: We're just disclosing the bills paid, and I can certainly make that available for (inaudible). []

SENATOR LATHROP: Maybe since, Jen, can you help, please, if I can enlist you? []

JOHN WYVILL: Okay. I think that's enough copies. And the other thing that I have for you in the time that we have is just some more of information on (inaudible) and then you can decide whether, at your discretion, whether or not we want to pass them out. As basically as a reminder today, this afternoon at 4:00, we are meeting with...Tricia Mason is moderating a meeting for Mosaic to meet with Friends and Family of BSDC that either have been impacted by the Public Health order or at BSDC for consideration of Mosaic as a potential community-based option. And Mosaic is going to be coming in to answer questions so they can... []

SENATOR LATHROP: That's...I'm glad you brought that up. Did we sign our agreement with Mosaic? Is that deal done? []

JOHN WYVILL: Yeah. Yeah. []

SENATOR LATHROP: And are they...where are they at in terms of the process, they being Mosaic? []

JOHN WYVILL: They have to build four by the end of the year, by the end of...from a year within the agreement, four facilities. They're supposed to build six 11-bed facilities, I think, in the term of 30 months across the state of Nebraska, for a grant total of 66 beds that will be expanding. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

SENATOR LATHROP: I think you've used one year and 30 months in talking about when they'll have it. []

JOHN WYVILL: One year for four, for four facilities, have to be operational within one year. []

SENATOR LATHROP: Okay. []

JOHN WYVILL: All of them have to... []

SENATOR LATHROP: And when...from one year from when the deal was... []

JOHN WYVILL: From the date of signing the contract. []

SENATOR LATHROP: And when was that done, John? []

JOHN WYVILL: I think the first week in March, I believe. I have to... []

SENATOR LATHROP: Okay, that's close enough for me. []

JOHN WYVILL: Okay. []

SENATOR LATHROP: And what communities will those facilities be in? []

JOHN WYVILL: They can be, I think, in Grand Island, York, Columbus/Norfolk, Omaha, and I think...am I missing one? []

TRICIA MASON: I think that's it. []

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: I think that's it. []

SENATOR LATHROP: And were those chosen because we have medically fragile people who are from those communities? []

JOHN WYVILL: That was... []

SENATOR LATHROP: That was kind of the original idea, wasn't it? []

JOHN WYVILL: I think...I think Mosaic made those decisions and we arrived at those decisions based on a combination of factors of where the resident...individuals in services claim their residency as well as where Mosaic is doing business. And that would be the (inaudible) for the administrative support for them. []

JODI FENNER: The other requirement from DOJ is that they be near a regional hospital because the complex medical needs require the specialized services that are available in regional hospitals. []

SENATOR LATHROP: I expected there be some limitation on the communities that could accommodate them. Well, that's great if... []

JOHN WYVILL: And then the other, I think, Senator, I'd just bring up to your attention, because I think as a lawyer you probably might have more interest in this than some others, is that we recently executed a memorandum of understanding with Autism Center of Nebraska. We have recently recouped, I think as last account, \$56,000 from them and right now we're recouping \$1,000 a month, and it gives them I think a year to see if they can come up with any additional evidence to dispute the rest of the amount. []

SENATOR LATHROP: That would be the group that the Attorney General sued or was

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

going to sue to recover payments for care that was improper? []

JOHN WYVILL: I think that was the one with Auditor Foley. []

SENATOR LATHROP: Okay, with Foley? []

JOHN WYVILL: And then there might be some other things going on that... []

SENATOR LATHROP: Just as a point of interest maybe, how long was...were they committing their sins over at the Autism Center of Nebraska? []

JOHN WYVILL: I'm sorry, how much? []

SENATOR LATHROP: How long were they...over what period of time did they provide care that became the subject of the... []

JOHN WYVILL: I think from the...I'll have to look, Senator. I don't have that right offhand, but it was a short period relating to the time of the audit. []

SENATOR LATHROP: Okay. I think that's...we're going to give people a chance to run back to their office before we get to the floor, but thanks for coming by. []

JOHN WYVILL: Yeah. []

SENATOR LATHROP: We appreciate the update and the information you've given us. And I don't know if we have another one of these scheduled or if Doug... []

(UNKNOWN): Next Thursday. []

SENATOR LATHROP: Okay, good. []

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Transcriber's Office  
Rough Draft

Developmental Disabilities Special Investigative Committee  
April 27, 2009

---

JOHN WYVILL: We do. []

SENATOR LATHROP: We'll look forward to seeing you then. []

JOHN WYVILL: Okay. Thank you. []

SENATOR LATHROP: Thanks. []