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[AGENCY 25]

SENATOR HARMS: Thank you. LB236 and LB468 is now closed, and we will now open up the hearings for Agency 25. Do we have any proponents for Agency 25? Welcome, Mr. Wyvill. John, welcome. [LB236 LB468]

JOHN WYVILL: (Exhibit 23) Good afternoon, Senator Harms and members of the Appropriations Committee. I'm John Wyvill, W-y-v-i-l-l, director of the Division of Developmental Disabilities for the Department of Health and Human Services. A number of recommendations are made on behalf of the Division of Developmental Disabilities as it relates to the proposed budget. However, before I proceed with an overview of these requests, I would like to highlight the accomplishments as well as the challenges of the division. The division has had a number of accomplishments over the last year. An agreement was reached with the United States Department of Justice regarding Beatrice, and the division continues to collaborate with DOJ to meet the requirements of its agreement. Enhanced oversight is in place due to part of the new community-based services administrator and the recent appointment of an experienced interim CEO at BSDC, while the search continues for a permanent CEO. In addition, new key administrators and medical staff at BSDC have been hired within the last six months bringing expertise, experience, and an enhanced focus on excellence. The division continues its effort to rightsize BSDC to be able to more effectively serve the clients. Progress is being made in appropriately placing clients in community-based services. This effort also involves working with the local community to increase community access and involvement by clients that remain at BSDC. We have refined the quality improvement plan for community-based developmental disabilities services to include 100 percent monitoring by service coordination and the DHHS community-based services unit. This has been accomplished during a time of a 12.9 percent growth of community-based services with no corresponding growth at BSDC, as a result of greater utilization of federal funds. We have implemented the community supports waiver, a fifth Medicaid waiver choice for the self-directed approach to service

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delivery. In addition, proposed integrated regulations, that incorporate regulations for the Division of Developmental Disabilities, Medicaid and Long Term Care, and Public Health into one chapter, have been drafted and distributed to providers and advocacy groups at a meeting held recently for informal public comment. While proud of our accomplishments, the division faces a number of challenges. The negotiated agreement with the Department of Justice involves implementing a number of requirements. Meeting these requirements takes a considerable amount of effort and resources within the system. At BSDC, we continue to face the related challenges of delivering quality services that address the physical and behavioral needs of people served, while recruiting and retaining staff. The facility requires front-line professionals with appropriate education and experience, as well as a number of licensed clinicians and professionals. Operating in an area of the state with a limited labor force, combined with the need for highly skilled professionals, results in continuous challenges at the facility. Reducing the census will allow for the ability to adequately staff the facility within the limited labor force. Given all this at BSDC, we also have the uncertainty of the availability of future federal funding at the facility. While we have experienced growth in community-based services, the capacity of community-based programs needs to continue to increase in order to address needs of individuals transitioning from BSDC. From March '08 to March '09, the number of individuals residing at BSDC has decreased by 39 percent, with census decline from 307 to 187. Our attention is on improving existing services while creating new and additional services in Nebraska communities. The recommendations in the Governor's budget proposal demonstrates the commitment to keep BSDC open for those individuals most appropriately serviced by the facility. In addition, the proposed budget addressed the needed growth in community-based services to serve individuals with developmental disabilities who are most appropriately served by community-based service providers. In my testimony I will touch on several items contained in those recommendations. The budget outlines the request within the various funding categories. In reference to Program 421, BSDC, the appropriation request for FY '10 of \$60,956,025 and FY '11 of \$51,002,400...around \$51 million are necessary to assure services at BSDC are supported. These resources are

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needed to ensure the safety and care of the residents at BSDC and sustain strong leadership, cultural training, appropriate and skilled clinical and medical personnel, managers, and direct care staff. Our goal is to have a federally certified facility by June 30, 2011, and to implement the terms and conditions of the DOJ agreement. In addition, due to the uncertainty of litigation, we are requesting that you approve the Governor's request that a contingent liability of \$50 million in state dollars be funded for BSDC over the biennium. This request is necessary should the Health and Human Services administrative law judge uphold the CMS decision to terminate federal funding for BSDC. In reference to 424 aid, DD aid, the request reflects the necessary reciprocal growth in the nature and number of integrated community-based services in Nebraska. This increase will address community-based services that need to be placed as the result of declining census at BSDC and to uphold the terms of the DOJ agreement. The rightsizing of BSDC will have significant impact on this budget. While we have been able to cover the costs of the services thus far, the costs to serve the persons with high needs from the facility will require additional funding going forward. At the end of the 2008-09 fiscal year, there will be 71 people with high needs being served in the community that were not part of the original budget request for Program 424, developmental disability aid. It is projected that an additional 40 individuals will be placed from BSDC into the community in the next fiscal year with a nominal increase in the following year. This is projected to increase the cost of Program 424 of \$10 million in state funds over the biennium, this addition to the amount recommended by the Governor and included in the committee's preliminary recommendations for this program. The loss of federal funds at BSDC was originally presumed to be a \$60 million fund issue. This issue translates to \$50 million at BSDC and an increase of \$10 million in additional community-based services related to placement of BSDC residents into the community. Thank you for the opportunity to discuss the proposed budget for the Division of Developmental Disabilities, and I'll be happy to answer any questions you may have of me at this time, Senator. [AGENCY 25]

SENATOR HARMS: Thank you, Mr. Wyvill. Senator Fulton. [AGENCY 25]

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SENATOR FULTON: Thank you for your testimony. You were touching on it here in the last paragraph. I just want to clarify with some accuracy what that, should we lose our appeal, the amounts that we should plan for to meet our obligations at BSDC. It's \$50 million? [AGENCY 25]

JOHN WYVILL: Correct, Senator. [AGENCY 25]

SENATOR FULTON: Okay. And has that...has that number changed? I remember it was a little bit higher at one time. It was... [AGENCY 25]

JOHN WYVILL: Yes, it has changed. [AGENCY 25]

SENATOR FULTON: ...\$58 million? [AGENCY 25]

JOHN WYVILL: We have refined the number and it's now \$50 million. [AGENCY 25]

SENATOR FULTON: Okay. We're going to...is it...you know, if we keep changing like this, we'll be in better shape. (Laugh) Are we...is that...is that solid or can we plan on that? Is that... [AGENCY 25]

JOHN WYVILL: That's what we're planning on right now, Senator. [AGENCY 25]

SENATOR FULTON: Okay, so \$25 per year. [AGENCY 25]

JOHN WYVILL: It also takes into account the reduction in census over the next two years of the biennium. So... [AGENCY 25]

SENATOR FULTON: Okay. [AGENCY 25]

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JOHN WYVILL: ...the operating budget, as you see from the presentation, gets smaller between the two years. [AGENCY 25]

SENATOR FULTON: Okay. So the census...so \$50 million represents a census of 125 residents or what is that? [AGENCY 25]

JOHN WYVILL: The \$50 million represents the loss in federal funds over a two-year period. [AGENCY 25]

SENATOR FULTON: Okay. And that number assumes a certain number of residents at BSDC, though, correct? [AGENCY 25]

JOHN WYVILL: That assumes...right now we have a census of 187 and it assumes an assumption that the census will be going down over the next two years toward the goal that we have set forth, which is between 120 and 90 residents at the facility. And as that goes down, the operating will go down. [AGENCY 25]

SENATOR FULTON: Okay. Thank you. [AGENCY 25]

SENATOR HARMS: Thank you, Senator Fulton. Senator Mello. [AGENCY 25]

SENATOR MELLO: Director Wyvill, this committee, in the preliminary recommendations, gave a \$7 million deficit appropriation for BSDC as well as a \$9.3 million increase under the Governor's initiative. Can you give us more background on what that additional \$16 million is being spent on? [AGENCY 25]

JOHN WYVILL: Okay. In general terms, the funds will be going for increased personnel costs at the facility, transition activities, as well as the hospital costs incurred as a result of the public order...Public Health order. And I can go into more specificity, if you would like. [AGENCY 25]

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SENATOR MELLO: Could you provide the committee maybe with more details in regards to the BSD action plan then in regards to how this money will be spent? Because that's...a \$16 million increase essentially is what...is \$3 million less than what the state is currently already putting in General Funds to BSDC and I think the committee, and our conversations would kind of emphasize, that we'd like more detail in regards to how that money will be spent or... [AGENCY 25]

JOHN WYVILL: Sure. We'd be glad to, Senator. In terms of...in terms of professional, clinical, medical staff and direct care staff, as you've heard and learned from the LR283 committee, we've had challenges with staffing and some of the majority of the money will be going for addressing the staffing needs. Right now a portion of that will be 6 medical professionals, I think 11 nurses, 23 direct...23 supervisors, 40 direct care staff, the interim management team, the independent evaluation assessments, continuation funding I think, for example, of items like independent mortality review committee and those specific items. The money for professional, clinical, and medical staff is going to be an increasing cost because we are working to getting folks on as state employees. In the interim we have used what's called locum tenens, which are doctors that come in or medical professionals that come in at a higher rate, and we also have to pay the transportation, the lodging, airplane to make sure that we have sufficient coverage, and that represents one component. The other component is the transition activities relating to...relating to ensuring that we're meeting the DOJ requirement to appropriately, safely, securely, consistent with best practices from across the country, transition folks in and that we require expertise from outside, as identified by John McGee, as the independent expert. We also are proposing to...we're looking at statewide training for providers as a means of supporting the providers. We have been looking at a variety of options, including something called the College of Direct Support, which on-line distance learning that might be a resource for the providers, and we're having those conversations with them to see what we can do to support them to increase the quality of the work force in the community-based services. We also are using those things to

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address it and I think those are the areas that do it. And then the uncertainty of the medical bills, which we do anticipate will be substantial because we've only gotten a bill paid, \$24,000 roughly, to date, and don't want to speculate what those bills are but we know that the hospitals will not be cheap. [AGENCY 25]

SENATOR MELLO: For the medically fragile patients that were removed... [AGENCY 25]

JOHN WYVILL: That's correct. [AGENCY 25]

SENATOR MELLO: ...last month. [AGENCY 25]

JOHN WYVILL: That's correct, Senator. [AGENCY 25]

SENATOR MELLO: So some of this...would that be the deficit request, is to pay for the medically fragile transfers from BSDC to the hospitals? [AGENCY 25]

JOHN WYVILL: Yes, that's what I propose to using some of that money for, sir. [AGENCY 25]

SENATOR MELLO: Okay. Is any of...is any of this additional money or funds going to be used to follow patients as they move into community-based health...community-based services at all? [AGENCY 25]

JOHN WYVILL: Senator, we have throughout the state of Nebraska we have our service coordinators which are assigned a caseload throughout the state and, pursuant to the Department of Justice agreement, the caseloads for someone who...an individual that has a BSDC client is 25 to 1. So those individuals are assigned the responsibility of following them and they're responsible for monitoring and working with the providers, working with the families, and ensuring services are appropriate, as well as checking up

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on the providers. And they provide that now. Some of the resources that will be offered (inaudible) will be appropriate transitions to make sure of safeguards, because a lot of the individuals, whether they be in the hospital or whether they are at BSDC, might have higher needs than an individually normally, and the individual that requires additional training, additional support to make sure that we have safeguards in place that someone is appropriately placed. Those safeguards are making sure that their medical needs are being met, their behavioral needs are being met, and those kind of items. And it requires a lot of dialogue and there's a template that we have to make sure that we have documentation to make sure that a lot of the issues are being addressed during the transition. Because as we all know from moves, we...a move can be unsettling for anybody, let alone someone with developmental disability. [AGENCY 25]

SENATOR MELLO: Well, Director Wyvill, I appreciate your feedback on where that money was going or where you anticipate that money is going, and I imagine the committee and other members of the Legislature as well will be looking for updates to make sure that we're using those resources the best we can. I guess another question I have kind of maybe evolves around some of the management and the culture at BSDC. I am a new member, freshman senator. I was not on the BSDC task force. I know Senator Harms was and Senator Lathrop, who just graced our presence for the last couple hours, led the task force. How did you come up or the administration come to the decision to not terminate the CEO of BSDC and, instead, transfer them to another position within the Department of HHS, knowing the crisis and the problems that were happening at the BSDC facility? [AGENCY 25]

JOHN WYVILL: Well, Senator, the former interim CEO has skills and abilities that can help us with the transition, given the unique knowledge that he has of the clients, the facility, and the staff, and needs for community placements. And I felt, as the director, that we should be able to utilize that, those...his skills in a different role to help serve our clients, and that decision was mine and mine alone. [AGENCY 25]

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SENATOR MELLO: All right. Thank you. [AGENCY 25]

SENATOR HEIDEMANN: Just briefly, I got here a little bit late for your testimony and I apologize for that, but I was reading it over just briefly and in the last part it said that it is projected to increase costs of Program 424 by \$10 million in state funds over the biennium. Is this something that we have to account for or that needs to be put into the budget? Because it says this is in addition to the amount recommended by the Governor. [AGENCY 25]

JOHN WYVILL: Yes, you're talking about the \$10 million in state funds for community aid to account for the additional influx of BSDC residents into community-based services, which is an additional cost and right now I think today we have roughly, I think, over 71 individuals in services that have come from BSDC and we're anticipating over the next two years additional individuals leaving the facility, which requires an additional cost, sir. [AGENCY 25]

SENATOR HEIDEMANN: And this is...this hasn't been accounted for neither in the Governor's budget nor in ours yet. [AGENCY 25]

JOHN WYVILL: That's correct. [AGENCY 25]

SENATOR HEIDEMANN: Thank you. Senator Wightman. [AGENCY 25]

SENATOR WIGHTMAN: Thank you, Director Wyvill. In the next to last paragraph on page 2 you talk about a contingency liability of \$50 million, which I think you said was to assume the expenses we would have if we were defunded by federal funds. Is that correct? [AGENCY 25]

JOHN WYVILL: That's correct. [AGENCY 25]

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SENATOR WIGHTMAN: And as I recall those amounts, it was like \$29 million a year, is that right? It was around \$58 million or \$59 million. [AGENCY 25]

JOHN WYVILL: Yeah, and we're taking into account the reduction of the census at the facility and the reduction in operating expense as we move to a smaller facility, more in line with the 120, the 90 to 120 residents over the course of the biennium. [AGENCY 25]

SENATOR WIGHTMAN: Does the \$10 million then that would go into additional community-based services also play into that figure so that the two total approximately the amount that we had heard earlier? [AGENCY 25]

JOHN WYVILL: Of \$60 million, that's correct. [AGENCY 25]

SENATOR WIGHTMAN: So that the two of them total \$60 million and that's about the amount of the \$29 million each of the two years. Is that correct or...? [AGENCY 25]

JOHN WYVILL: Yeah, if I'm following. We can certainly work with Sandy too. I'll walk through how the money goes through, but basically when you move, we have the flexibility in the budget to move money from BSDC into the community, and at this time, especially in the first year of the biennium with the transition, we may not be able to move some of that money into community-based services. So we have to account for that to make sure that we have those in the community effectively served and provided for. [AGENCY 25]

SENATOR WIGHTMAN: Now also earlier on page 2 you said that your census has already declined from 307 to 187, and then is it from that 187 that you gave us a figure of about 125 or somewhere near that that you thought would continue to be at Beatrice? [AGENCY 25]

JOHN WYVILL: Yeah. Yeah, we continue to work with individuals to reduce the size of

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the facility and find appropriate placement and we do anticipate over the next two years that census will be going down, and that demonstrates in our budget where the size of the budget goes down between the biennium from the first year to the second year.  
[AGENCY 25]

SENATOR WIGHTMAN: So is 125 the figure you gave us that you thought would be the right size or approximately that? [AGENCY 25]

JOHN WYVILL: Uh-huh. [AGENCY 25]

SENATOR WIGHTMAN: Eventually that you thought your census would get down to 125? I thought I heard that figure but... [AGENCY 25]

JOHN WYVILL: Yeah, from 90 to 125 is our goal. [AGENCY 25]

SENATOR WIGHTMAN: Ninety to a hundred and twenty-five. So we really are looking at \$50 million as opposed to \$59 million or \$58 million. [AGENCY 25]

JOHN WYVILL: Yeah, that's the contingency fund in likelihood or the event that we lose the CMS federal funding. [AGENCY 25]

SENATOR WIGHTMAN: Do you expect that to be a gradual reduction of that census over the two-year period, or will it take place rapidly in the beginning? [AGENCY 25]

JOHN WYVILL: I think, Senator, it's hard to predict but the leadership team will have to continue to evaluate and make adjustments as the census goes down and that is a challenge for the leadership as the census goes down to make those adjustments.  
[AGENCY 25]

SENATOR WIGHTMAN: And one of my concerns is, as we're only dropping from \$60

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million to \$50 million over a period of two years, and I'm assuming this isn't the entire budget, this is just what we're replacing of federal funds. Is that correct? [AGENCY 25]

JOHN WYVILL: Yes, at BSDC, that's correct, sir. [AGENCY 25]

SENATOR WIGHTMAN: So the state funding would stay at approximately the same level or will some of that be shifted to...the previous state funding, will some of that be shifted to community-based providers as well? [AGENCY 25]

JOHN WYVILL: That is a possibility in the second year of the biennium, Senator, yeah. [AGENCY 25]

SENATOR WIGHTMAN: Thank you. [AGENCY 25]

SENATOR HEIDEMANN: Senator Nordquist. [AGENCY 25]

SENATOR NORDQUIST: Okay. Can you run over the...thank you, Director Wyvill, the numbers, the census numbers? We were at 307 in March '08, 187, and you don't have a time line at all for getting to that 120 to 90 number or you looking maybe the second year of the biennium? But I mean do you... [AGENCY 25]

JOHN WYVILL: I think our goal, Senator, our goal is in the next two years is to reduce the census at the facility I think by 40 each year... [AGENCY 25]

SENATOR NORDQUIST: Okay. [AGENCY 25]

JOHN WYVILL: ...and then hopefully within that target range, at the end of the last fiscal year be when we have our goal of June 2011, when we have a fully certified facility that's smaller. And we have several things that will be happening as the facility gets smaller. You have the facility getting smaller, you also have ratcheting up of

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professional, medical staff,... [AGENCY 25]

SENATOR NORDQUIST: Uh-huh. [AGENCY 25]

JOHN WYVILL: ...and then you're also having a change in the composition of the clients at the facility. [AGENCY 25]

SENATOR NORDQUIST: Okay. In our preliminary, pretty similar to the Governor's, committee had about \$60.8 million the first year and \$62.2 in the second year. What population numbers are we looking at? I mean when you submitted yours through the Governor, what number? Were we looking at maintain the current over time or does this budget reflect a ratcheting down or... [AGENCY 25]

JOHN WYVILL: I think, Senator, the budget reflects a...in starting of July 1 would be 185, we're at 185 individuals. And then at the start of the next July would be 140. [AGENCY 25]

SENATOR NORDQUIST: Okay. And then why...are we...the increase then from roughly \$61 million to \$62.5 million into the second year, is that just salaries and benefits and things like that causing the increase? [AGENCY 25]

JOHN WYVILL: That, Senator, that is a real possibility that there will be reductions in salaries and individuals, and it's a little bit premature to speculate... [AGENCY 25]

SENATOR NORDQUIST: Okay. [AGENCY 25]

JOHN WYVILL: ...where those cuts would be, but that goes back to my testimony of we'll be going from a budget, in round numbers, of \$60.9 million down to \$51.2 million. [AGENCY 25]

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SENATOR NORDQUIST: Oh, okay, \$51.2 million. Okay. And then second question on community-based, I asked Senator Lathrop this question, what are your general thoughts on how we're doing and what we need to do for oversight of community-based providers? You know the situation, what was going at Beatrice, we have a lot of oversight there right now, obviously, from the federal government and from us. How do we...how can we make sure at some point that doesn't happen with lack of oversight in the community-based? [AGENCY 25]

JOHN WYVILL: I believe Public Health and the Governor have a recommendation that includes 12 Public Health surveyors over the next two years, two years of the biennium. I would hope that the Appropriations Committee and the Legislature would approve the Governor's request, as well as approve the Governor's request for I believe it's a 2.5 percent rate increase for the providers to do that, and hopefully approve the...approve the Governor's and agency's recommendation that are being put forth today. That also includes as part of it the statewide training to help support the providers and enable them to do their jobs. [AGENCY 25]

SENATOR NORDQUIST: Okay. Thank you. [AGENCY 25]

SENATOR HEIDEMANN: Senator Mello. [AGENCY 25]

SENATOR MELLO: Director Wyvill, I was thinking through your answer to my last question and maybe you have to kind of walk me through. You mentioned your interim, he's the former interim CEO. How long was he the interim CEO at BSDC? [AGENCY 25]

JOHN WYVILL: Mr. Stegemann was the...we have an interim CEO right now that began... [AGENCY 25]

SENATOR MELLO: Right now, yes. [AGENCY 25]

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JOHN WYVILL: ...that began in February, I think 16th of some time in mid-February.  
[AGENCY 25]

SENATOR MELLO: Uh-huh, yeah, of this year. [AGENCY 25]

JOHN WYVILL: And she's interim CEO and we also have a interim leadership team that's assisting and they have pledged to us that, doing research, that they would stay on board and assist us and then assist in the transition once we find a new CEO.  
[AGENCY 25]

SENATOR MELLO: Okay. I think that your testimony was...maybe I took it as a little misleading, that the former CEO, you made it sound like he was an interim director and that's why you kept him around, to help out the new interim director. But he was...he was CEO of BSDC for... [AGENCY 25]

JOHN WYVILL: Yeah, that's correct, he...and I apologize. There's no intent to mislead.  
[AGENCY 25]

SENATOR MELLO: Okay. [AGENCY 25]

JOHN WYVILL: He was the, I believe, was CEO. He was an interim CEO and then I think we've gone through two application processes. Based on the applicants that we had at the time, he was the best qualified individual. That individual gave up his protected status as a career employee to step up and help when nobody else did and served in that capacity till I made the decision, I think in December, that we need to bring in a different CEO. [AGENCY 25]

SENATOR MELLO: Is...in regards to his transfer to another position in Department of HHS, did he take a salary decrease? [AGENCY 25]

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JOHN WYVILL: He took a salary cut. [AGENCY 25]

SENATOR MELLO: Okay. [AGENCY 25]

JOHN WYVILL: I believe it's a \$12,000 salary cut. [AGENCY 25]

SENATOR MELLO: Okay. And is there any performance measurements at all put on his new position in light of, I guess you could say, the lack of performance in his past position? [AGENCY 25]

JOHN WYVILL: We have not put the performance. We do anticipate doing that shortly. [AGENCY 25]

SENATOR MELLO: Okay. Are you looking to do that with other employees at all within your division or just him? [AGENCY 25]

JOHN WYVILL: With what? I'm sorry. [AGENCY 25]

SENATOR MELLO: Are you looking to do that with other employees within the Division of... [AGENCY 25]

JOHN WYVILL: Yeah, we're required to do that, sir. [AGENCY 25]

SENATOR MELLO: ...Developmental Disabilities, not just him? [AGENCY 25]

JOHN WYVILL: Yeah. Yeah. [AGENCY 25]

SENATOR MELLO: Okay. And I guess I was mistaken, relooking through your preliminary budget which is we gave an additional \$14.5 million in the next biennium

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budget, as well as a \$7 million deficit appropriation. So...and from some of the questions I think Senator Wightman and Senator Nordquist asked, right now you're at 187 residents right now at Beatrice rough... [AGENCY 25]

JOHN WYVILL: That's correct and that also there's some other...that number includes eight individuals that are in our ITS program, which is our intensive treatment services program, in addition to the folks that have been commonly referred to as the Bridges Program out in Hastings, which is I think an additional 12 or 13 clients there, and they are some of the more high-risk individuals, and they are there and that is funded through the Beatrice State Developmental Center. [AGENCY 25]

SENATOR MELLO: Okay. But they're not actually at the facility then? [AGENCY 25]

JOHN WYVILL: No, sir. [AGENCY 25]

SENATOR MELLO: So 207 residents or patients that you're serving. [AGENCY 25]

JOHN WYVILL: We have 187 individuals on campus. [AGENCY 25]

SENATOR MELLO: Okay. And then the 20 that you just mentioned at Hastings or other places. [AGENCY 25]

JOHN WYVILL: Yes, there's about 12 or 13 in Hastings, which is the Bridges Program, which is under the administrative arm of BSDC. [AGENCY 25]

SENATOR MELLO: Okay. Okay, so about 200, give or take. [AGENCY 25]

JOHN WYVILL: Yes. [AGENCY 25]

SENATOR MELLO: Okay. And then from your questions you just answered from

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Senator Wightman and Nordquist, that number is going to decrease... [AGENCY 25]

JOHN WYVILL: Yes. [AGENCY 25]

SENATOR MELLO: ...to 125, which is close to a 40 percent decrease in the number of residents that you'll be serving. But yet we've increased your appropriation over 100 percent in General Funds, essentially, over the next biennium? That would lead me to believe that we've been severely underfunding the BSDC facility knowing...I mean astronomically underfunding it. Am I correct in that assumption, knowing that not only are we giving significantly more money and matching almost your previous General Fund appropriation last year 100 percent more and decreasing the number of residents almost by half compared to where BSDC was last year? Am I correct that we've just been underfunding this institution that greatly for that long a period of time? [AGENCY 25]

JOHN WYVILL: Well, I think what we are doing, Senator, is recognizing that we need to enhance the level of services at the facility, including medical, clinical, and that all adds up to money. So for example, the average, just for the ICF/MR I think the average cost is about \$562 per individual and that cost will increase to over \$814 per day for individuals that reflect the needs. And some of those needs are reflected as requirements that we need to adjust in terms of psychiatric care, neurologists, psychologists, medical doctors, nurses, shift supervisors and management, as well as the direct care staff, and those individuals are necessary if we are committed to a fully (inaudible) certified facility in two years, and as well as meeting the Department of Justice requirement that's spelled out for them, and those are (inaudible) those needs. It is not cheap to run an ICF/MR and not cheap to do it right. [AGENCY 25]

SENATOR MELLO: I guess my question then just goes back to maybe the fundamental issue at hand, which is if we're investing this significant of amount of new resources into the Beatrice facility, how did we not find this problem out or these challenges out a long

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time ago? Knowing that now we're in the situation not only are we talking about the \$50 million that we're going to need to spend just to recuperate our federal funding, but an additional \$20 million, almost \$22 million additional revenue or additional General Funds to just make up for the problems that are currently existing at the facility, I mean, how did we not catch this problem sooner? [AGENCY 25]

JOHN WYVILL: I...the...it's a fair question. The challenges is that we've always at the facility for a long period of time had significant challenges in recruiting professional staff and direct care staff for the reasons I've articulated and we have to continue to try extraordinary methods to bring qualified people in. It may require paying top dollar and that, you know, that shows the serious commitment with the Legislature and the Governor and say is that (inaudible) if we're going to do it at BSDC, we need to do it right and get the resources. And that's why we're getting those resources, is to get it right. And you really can't put a price on serving it right. [AGENCY 25]

SENATOR MELLO: I guess the question then, Director Wyvill, you answered my question, which I appreciate. And part of it I should have asked when I mentioned the large decrease in patients served is that none of these additional \$21 million are going to follow any of these, any of the transfers; that what you're saying is not only are we...we need to spend \$21 million additional dollars while we're decreasing the current patients by almost half and none of that money is going to follow these patients into community-based services. [AGENCY 25]

JOHN WYVILL: That's a very real possibility, Senator, yes. That's correct. [AGENCY 25]

SENATOR MELLO: Okay. [AGENCY 25]

SENATOR HEIDEMANN: I have one quick question. At what point do you get in Beatrice, as we kind of continue to move the number of people that we serve there, at what point does Beatrice become inefficient because of the plant size, because of the

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size of the facility? [AGENCY 25]

JOHN WYVILL: Well, I think...I don't know the answer to that question, Senator, but I do know is, given the location of the campus and given what we're doing, our long-term focus and plan is to...for those that have toured the campus, is we have several dormitory-style buildings and we also have cottages and our goal right now is to reduce and get the individuals out of those buildings and get them into the cottages, and then ultimately close some of those bigger buildings, and that will be recognizing savings. That goes down with the reduction of the census and I think we had the capacity there at that time to still support it. The campus is fairly flexible. The Governor and Senator Lathrop's committee are committed to keeping the facility open and I think the campus has a useful...has the facilities on the grounds to effectively run and operate in the 90 to 120 range. That also includes might be closing down a few buildings and things like that. I think that answers your question. [AGENCY 25]

SENATOR HEIDEMANN: Are these buildings separately heated and air conditioned or are they tied together whatsoever that it will be somewhat difficult to do this? [AGENCY 25]

JOHN WYVILL: There is a...there is, I think, a boiler system that runs through the system and, Senator, I'm the wrong person to answer the question. I think there's a boiler system and I think in long range we would have to move away from that plant. [AGENCY 25]

SENATOR HEIDEMANN: Okay. Senator Nordquist. [AGENCY 25]

SENATOR NORDQUIST: Yeah, one more question. Can you tell me what went into your decision not to appeal the decision by the medical director? Was it, you know, a lack of confidence in the medical services for the medically fragile or, I mean, what went into your decision not to appeal his ruling? [AGENCY 25]

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JOHN WYVILL: Well, I read the order, read the results of the investigation and the order required us, regardless, to move the individuals out by February 6, and my decision, decided based on the facts in my review, that it was not appropriate to appeal and we need to be focusing on addressing the issues that resulted in our license being limited. [AGENCY 25]

SENATOR NORDQUIST: Was there...if you would have appealed, would it have...I mean would the...could you have kept the patients there past that date or...? [AGENCY 25]

JOHN WYVILL: I'm not the lawyer, but it's my understanding is that even if we were to appeal, we still would have had to remove, comply with the order on...relating to the individuals and the burden of proof in prevailing would be extremely high because we would be going against the chief medical officer of the state's opinion. [AGENCY 25]

SENATOR NORDQUIST: Okay. [AGENCY 25]

SENATOR HEIDEMANN: We touched base on the Bridges Program before and this has popped in my mind. It's just a wandering question. With Beatrice kind of scaling back a little bit and there will be buildings there, and we see Hastings, I think there's only...the Bridges Program and there's a youth substance program there I believe yet that's there and it's such a huge facility. Is there a possibility...I think they're trying to find some place else for the substance abuse, I think if I remember right, that would just leave the Bridges. Would there be a place in Beatrice if you could somewhat maybe separate them? Because I know they're a little bit higher needs in the Bridges Program. Would there be a place for the Bridges Program in Beatrice? [AGENCY 25]

JOHN WYVILL: Senator, I don't know, only because the requirements in the Bridges Program would not qualify for federal funding because some of the...it's basically a

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locked, secured facility and that might not meet some of the federal requirements if that's on the same grounds as a federally certified facility. One of the things that we obviously have to address is the long-range plan for where the Bridges Program is going to go and... [AGENCY 25]

SENATOR HEIDEMANN: It probably won't be in Hastings? [AGENCY 25]

JOHN WYVILL: At this time, yes, sir. [AGENCY 25]

SENATOR HEIDEMANN: Okay. Are there any other questions? Senator Mello. [AGENCY 25]

SENATOR MELLO: How many vacant positions do you have right now in your division, full-time equivalent vacancies? [AGENCY 25]

JOHN WYVILL: We have 105 vacancies. Currently, our FTEs are 701.7 and of the positions that we have been talking about, that we're talking about, is we're talking about 80 positions that we are actively, aggressively filling. That goes back to the funding that I talked to you about, which does not include the CEO position. So you're looking at 81 of those 105 that we're looking to filling. [AGENCY 25]

SENATOR MELLO: Thank you. [AGENCY 25]

JOHN WYVILL: Yeah. [AGENCY 25]

SENATOR HEIDEMANN: Are there any other questions? Seeing none, thank you, Director Wyvill. [AGENCY 25]

JOHN WYVILL: Yeah, thank you, Senator, members of the committee. [AGENCY 25]