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Transcriber's Office

Executive Board  
February 09, 2009

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[LR11]

The Executive Board of the Legislative Council met at 12:00 on Monday, February 9, 2009, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR11. Senators present: John Wightman, Chairperson, John Nelson, Vice Chairperson; Mark Christensen; Deb Fischer; Mike Flood; Russ Karpisek; Chris Langemeier; Rich Pahls; Tom White; and Lavon Heidemann.

SENATOR WIGHTMAN: (Recorder malfunction)...Board of the Legislative Council. I would like to introduce you to the members of the Executive Board and board staff and then briefly explain the procedure we will be following this afternoon. First, to my right, to my immediate right, is Janice Satra, legal counsel of the board; next to her is Senator John Nelson from Omaha, Vice Chairman of the board; to his right is Senator Russ Karpisek from Wilber; to his right is Senator and Speaker Mike Flood from Norfolk; and to Speaker Flood's right is Senator Mark Christensen from Imperial; and he's not with us yet but to the right of Senator Christensen, if he appears, is Senator Lavon Heidemann from Elk Creek. I'm Senator John Wightman from Lexington. To my left is Senator Chris Langemeier from Schuyler; to his right is Senator Rich Pahls from Omaha; to his right is Senator Deb Fischer from Valentine. I should be saying left. We'll get it right.

SENATOR FISCHER: The other left.

SENATOR WIGHTMAN: Starting with Senator Langemeier, we're going left. To Senator Fischer's left is Senator Tom White from Omaha; and to his right is Jessica Shelburn, committee clerk. We will first hear testimony from the introducer of the resolution, LR11, followed by those in favor of it, and then testimony in opposition, and finally we will hear from those who have neutral testimony. We welcome anyone to testify but ask that you not be repetitive and that you try and keep your testimony to about three minutes. Sign-in sheets are available on the tables as you entered the hearing room. Please fill the form out completely before you come up and hand it to the committee clerk before you begin your testimony. This will help us provide the transcribers an accurate record. When you testify, please state your name and spell it slowly for the record. If you plan to testify, please come up to the front row to allow for a smooth transition between testifiers. There is also a form available for those of you who may wish to support or oppose a bill but who do not want to testify. This form will become part of the official record and can be found on the tables as you enter the room. If you have printed materials, please give them to a page so that they can be distributed to the members of the board. We need 15 copies of any material, so if you do not have enough copies, the page can make some additional copies for you. Finally, I would ask that you turn your cell phone off or put it on vibrate or silent. The first and only resolution we have today is LR11. I'd ask, so that we have some idea as far as time, how many of you plan to testify for the resolution? Four, I count four hands. How many would plan to testify opposed to the resolution? I see none. And how many would plan to testify in a neutral position?

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

Executive Board  
February 09, 2009

---

One. Okay. With that, I'll ask Senator Lathrop to come forward and introduce the bill...or the resolution.

SENATOR LATHROP: Thank you, Chairman Wightman and members of the Executive Committee. My name is Steve Lathrop. I am the state senator from District 12 and I'm here today to introduce LR11 to the Executive Committee. LR11 essentially is the resolution continuing the work and the establishment of the committee that was put together by LR283 in the One Hundredth Legislative Session. LR283 passed the Legislature and it was a response, introduced by Senator Flood, our Speaker, it was a response to a crisis that was emerging at the Beatrice State Developmental Center. During the course of the last legislative session, while we were in session, many of us became aware for the first time that we had significant problems at BSDC. The problems became evident when the Department of Justice came into the state of Nebraska, at the invitation, I believe, of NAS, and conducted an investigation, issued its findings in a lengthy report that included very troublesome detail, and concluded that the state of Nebraska was violating the civil rights of the people who were confined to or patients at BSDC. At about the same time, CMS issued findings. CMS is where the Department of Justice concerns itself with violations of civil rights and whether people's rights, federal and constitutional, are being observed in 24-hour care facilities. CMS is the regulatory arm of the federal government. It is the...CMS establishes the regulations which are the standard of care for people in facilities such as BSDC. They came in and concluded that our history was such, our violations so significant that they decertified BSDC. That was the result of a November 2008 survey or investigation done by CMS. Those two...to have your certification revoked by CMS is an unusual measure. It is a testament to the history CMS had with the state of Nebraska, in contrast to the 1990s when BSDC represented the gold standard. In 2001, we saw the beginnings of problems with a survey that showed we were having trouble and we promised to make some changes and didn't. And between 2001 and 2008 we had several surveys, one of which set a record for violating seven of eight conditions of participation. In the last survey done by CMS in 2008 we continued, notwithstanding the decertification, in our efforts to improve. We still were out of four conditions out of eight conditions of participation. In short, we were having significant problems and that was evident to everyone in the state, everyone in the Legislature, and as a consequence Senator Flood introduced and the Legislature passed LR283. That resolution set up a commission which I have chaired, along with six of my colleagues from different committees and different backgrounds. It's been a great group of people to work with. We held hearings through the course of the summer and the fall. We started by learning about the very fundamentals of providing care to the developmentally disabled: What's the nature of their disabilities? What's the spectrum of people who have developmental disabilities? And what's the care provided by the state? We spent a considerable amount of our effort in evaluating the care at BSDC. The Department of Justice has done a very good job of chronicling, as we did, the care and the deficiencies and the consequences of those deficiencies, and there are some themes that emerge from

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

Executive Board  
February 09, 2009

---

what's going on at BSDC. Every person to conduct a report, every agency to do an evaluation at BSDC has concluded there are personnel issues that go to not only having enough personnel, direct-care staff and professional, but overworking them, not giving them sufficient training, having difficulty with our process of disciplining those folks. Ultimately, the LR283 committee did a report. Hopefully you've all had an opportunity to review it. It is...was unanimous by the committee members. The recommendations, there were several recommendations, including a change in management, which has not happened. There are recommendations specifically set forth on what we need to do to bring the Beatrice State Developmental Center back into compliance with CMS. And in short, and it is somewhat concerning, but in short, the state's strategy is we have been decertified; we have an appeal that probably won't be decided till the summertime. I think every lawyer that's looked at it would agree that we're not going to win that appeal. We just don't have anything to talk about. We were out of conditions of compliance and we had a number of chances to straighten things out and didn't. So the strategy, near as is evident to the LR283 committee, was to work diligently to improve the conditions at Beatrice State Developmental Center and then attempt recertification. And we were told by the folks at CMS that we can't even attempt that recertification process until our appeals have expired, so we are going to experience a period of time with no federal matching funds. That's just going to happen. And how long we continue that period of no matching funds is going to be a function of how long it takes us to put BSDC back in a place where it can be recertified. And I believe we've made recommendations on what we believe should happen and, frankly, it's difficult to tell if anything has happening at BSDC at the present time. The recommendation of the committee was that the state follow the agreement it had entered into with the Department of Justice. The DOJ has a lengthy agreement, it is a thoughtful agreement, it is a step-by-step agreement on what the state needs to do to bring itself into compliance and put itself in a position where it's no longer violating people's civil rights. And as it does that, I think it will find itself in a position to be recertified. That agreement included the appointment, by agreement between the Department of Justice and the state of Nebraska, of a person who is to oversee it, a fellow named Dr. McGee. He was supposed to write us a report back in October. We've heard nothing. We've been contacting his office and saying, when are we going to get the report, when are we going to get the report? That was the person that the DOJ and, frankly, our committee looked to, to see if we were making any progress on the things we promised the Department of Justice and moving towards a place where we can be recertified. Last week, last week the...Dr. Joann Schaefer, who is the medical director for the state, pulled the certification from BSDC to provide care to the medically fragile, is the term they used, and 30...pardon me, 40-some people were moved out of BSDC overnight. Some of those people called that place home for 30 or 40 years, and what's significant about that, in my judgment, is it indicates that the things that we thought should be happening, the improvements that we should have seen aren't taking place. I say that because I think that's one of the reasons this committee needs to be reestablished and why LR11 should pass. So there are a number of issues that are related to that, but we

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

Executive Board  
February 09, 2009

---

need legislative oversight because the lives of the people at BSDC are at stake, the lives of the families who depend upon the state to provide services are at stake, \$29 million dollars a year in federal funding is at stake, and how we treat and how we are seen as treating the most vulnerable people that we are charged with caring for is at stake. I think that LR11 is necessary oversight by the Legislature. And you may ask yourselves, where's the Health Committee on this. I've spoken with Senator Gay, he has signed the resolution and it's not just signing the resolution because everybody else has. Senator Gay sees a place for this Special Investigation Committee in providing appropriate and necessary oversight for this process as we try to take BSDC out of the quagmire it is now in to a place where it can be recertified and we can begin again to provide care, appropriate care, to individuals with developmental disabilities. So with that, I'd be happy to answer any questions. [LR11]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. I might mention that Senator Heidemann has joined us since we opened the hearing. I just have one question, I guess. With regard to your cointroducers, are all of the members of your committee included in the group of cointroducers? [LR11]

SENATOR LATHROP: Yes, sir. [LR11]

SENATOR WIGHTMAN: And Senator Gay was not on the committee, is that right, but he's Chair of the... [LR11]

SENATOR LATHROP: No, he was on the committee. [LR11]

SENATOR WIGHTMAN: He was on the committee. Okay. [LR11]

SENATOR LATHROP: He was on the committee. The recommendations that we ultimately made, one of which, Senator Wightman, was to continue this committee into the next legislative session so that that committee could provide oversight. So we agreed in our recommendations and each of the senators, the seven people who served on that committee, have also signed as cointroducers of the resolution. [LR11]

SENATOR WIGHTMAN: Thank you, Senator Lathrop. Senator Flood. [LR11]

SENATOR FLOOD: Senator Wightman, I forgot to ask this question of Senator Lathrop. Do you want this to continue throughout the duration of the One Hundred First Legislature, First and Second Session or would it be appropriate to terminate this on or about December 31, 2009, and have it reauthorized next year? [LR11]

SENATOR LATHROP: I would...my own...I'll answer that by giving you the information that I have. I have looked at the recommendations of the Liberty consulting group we paid \$1.5 million to; Joe Toy, who has most recently been hired and done a report on

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

Executive Board  
February 09, 2009

---

his assessment of BSDC and nobody thinks it's going to take other than a couple of years to do. So while...it just seems to me that it makes sense that this continue through the course of the One Hundred First, both sessions of the One Hundred First because...legislative session because I think the changes that need to be made are going to take that long easily in order to put them back on track. And if we find ourselves where everything is moving along smoothly and we don't have to do anything, then I guess we can stand at ease at that point. [LR11]

SENATOR FLOOD: Thank you. [LR11]

SENATOR WIGHTMAN: Thank you. Senator Fischer. [LR11]

SENATOR FISCHER: Thank you, Senator Wightman. I'd like to thank you, Senator Lathrop, and the other members of your committee on the work you've done so far with this situation that we find ourselves in. I do have a couple questions on the resolution. I have not dealt with a resolution before in a committee hearing process, so maybe you could clear some things up for me. On page 3, in the first part, this resolution would give your committee the power to issue subpoenas. Did you have that power previously with the committee? [LR11]

SENATOR LATHROP: Yes, we did. [LR11]

SENATOR FISCHER: And I see that the Executive Board would also authorize you to hire outside legal counsel and consultants. From your earlier comments, it sounds like you did that before, too. Is that correct? [LR11]

SENATOR LATHROP: We did. I actually engaged a lawyer in Omaha at Gross Welch named Mike Pirtle. Mr. Pirtle agreed to serve and, as it turned out, one of the staff people for the LR283 committee was Mike...or Matt Boever, rather, from Senator Flood's office, who's a lawyer. I am a lawyer, and so a lot of the legal issues we resolve without ever having to engage Mr. Pirtle. [LR11]

SENATOR FISCHER: There's no dollar amount in this resolution. Do we need to set a dollar amount or is that...is that done through the Appropriations Committee with the budget? Do you know how that would work? [LR11]

SENATOR LATHROP: I think that the last time we did this...that's a good question, the last time we did it, Senator Engel said that there was...he identified some cash fund, and I don't know about...which cash fund it was or even how much money was in it, but he thought there was more than enough in there and, as it turns out, the only thing we spent money on was photocopies, I think. [LR11]

SENATOR FISCHER: Okay. So you would suggest maybe we visit with Senator

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

Executive Board  
February 09, 2009

---

Heidemann and figure out how to work that? [LR11]

SENATOR LATHROP: Right. If it becomes necessary, though, to hire legal counsel, I don't want an authorization that says \$1,000 and I, you know, I leave it. If you're going to put a...limit it to something, put something of some consequence in there just in case and hopefully we'll never have to use it. [LR11]

SENATOR FISCHER: Okay. [LR11]

SENATOR LATHROP: And Senator...on the same subject, Senator Flood asked me about staff and Doug Koebernick, who's here today and has been in my office, has been very engaged in this subject matter and Doug will serve as staff and we can have either Beth Otto, who was our committee clerk, to the extent we have hearings, she could serve as our committee clerk or Chris Chapek in my office could. [LR11]

SENATOR FISCHER: Okay. One last question on page 2 on the last "whereas," just before the "now, therefore, be it resolved," it states that part of the purpose on this is to ensure that "the recommendations herein are implemented in a timely fashion." Does that...does that tie the hands of the full Legislature if you're saying that the recommendations from this task force, from this committee must be implemented? [LR11]

SENATOR LATHROP: I don't think so. [LR11]

SENATOR FISCHER: I mean, I read it and thought that's what it would be. [LR11]

SENATOR LATHROP: And if that's the...if that language makes you uncomfortable, I can share my philosophy with you about the committee. And that is we need to go from where we're at to a place we're providing services to these families and to the people at BSDC and in the communities, because there are problems in the community-based programs. Some of them are the very same problems that are going on at BSDC, and there's turnover in their ranks, there's lack of proper training in some places. And so making sure, whether it's our recommendations or some idea the Governor has, just making sure that something is moving and that we are going from the place we find ourselves in, which is hot water with the federal government and providing a level of service none of us are proud of, to a place where we can be in compliance with the federal law and be providing the kind of care we all insist on in our institutions. [LR11]

SENATOR FISCHER: Okay. Thank you for clarifying that. [LR11]

SENATOR WIGHTMAN: Thank you, Senator Fischer and Senator Heidemann...or Senator Lathrop. Senator Heidemann, I might call upon you just to inform the committee with regard to the appropriation process. [LR11]

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

Executive Board  
February 09, 2009

---

SENATOR HEIDEMANN: If I remember right, and this is just my recollection, that they found money within side of the Legislative Council to fund this. Isn't that... [LR11]

SENATOR WIGHTMAN: I think that's right. [LR11]

SENATOR HEIDEMANN: Okay. [LR11]

SENATOR WIGHTMAN: There was no separate appropriation bill, as you recall? [LR11]

SENATOR HEIDEMANN: Not that I know. [LR11]

SENATOR WIGHTMAN: Thank you. Anyone else? Okay, thank you, Senator Lathrop. [LR11]

SENATOR LATHROP: Okay. [LR11]

SENATOR WIGHTMAN: Next testifier. [LR11]

JOAN O'MEARA: My name is Joan O'Meara, J-o-a-n O-'-M-e-a-r-a. I am president of the BSDC Family and Friends Association, and I thought you would like to know just exactly what has happened in the last few days. I've been at the hospital every single day, at Bryan West, to welcome our kids into the unit. I was called at a quarter to 8:00 and told that Cindy was going to be moved at 10:00 that day. I was also told at one time, from DHS, that she was not on the list. And then, all of a sudden, two that were medically fragile were taken off and she and Mary O'Shea's girl were put on. We are two people that are very outspoken. I can't help but feel that we were tagged but, at any rate, BSDC is a very essential part in the care of mentally retarded. Mentally retarded does not mean one shoe. It's all sizes and all needs. You start with the very low, which is severely profoundly retarded, and you go through many steps to those that live in community homes. Community homes are very, very important. They need to be beefed up, they need to have better help, and they need more money. You can't transfer people from one situation which is bad into another situation which is bad. And right now, these people that are at the hospital are going through a horrendous time. They thought they were on a field trip, frankly, because they were all shuttled, one by one, in an ambulance, not to mention the fact that before they got on the ambulance they had to walk clear across campus to get in it. And these kids have been going on trips as far as Kearney in vans. Why did they need to go in a ambulance? Was to show they're very medically fragile. They're not medically fragile. At any rate, around suppertime, oh, they thought it was great because we were walking up and down the hallways and everything. At suppertime, my daughter turned to me and said, home. That means Beatrice. And she began to get very anxious and you could see it going down the

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

Executive Board  
February 09, 2009

---

hallway. One young man became so overwrought that they had to sedate him to keep him from throwing things and hurting himself. My daughter didn't sleep for 30 hours, until this morning. It's cruel, inhumane that we're doing, and don't think that it's going to stay strictly in Nebraska how we're handling this. It's going to spread. These children have people in various states. I've had calls, I can't tell you how many I've had, I've had from Arkansas, Arizona, California, South Carolina, Virginia, North Dakota, South Dakota, Jersey. These are people who...how could they get here in that short a time? How could they defend their children? They couldn't. And now we're going to be rushed through: Oh, we're going to place them right away. Where? Many of these people need lifts to get on to the toilet, on to the bed, off the bed, into a wheelchair. Community programs can't afford that right now. BSDC is a very essential part. We could clean that place up very easily, I say in less...in about a year. Number one, get a CEO in that office that really knows what they're doing, that can entwine, that has commitment, that has communication skills, and of course is responsible, then open the hospital. When we closed that hospital, we had problems and I mean big time problems. And then the pharmacy, all of a sudden they were going to make the...privatize the pharmacy, so we sat around for a long time waiting for that and we got one bid, and we said okay or Mr. Wyvill said okay, and then another bid came in that was cheaper and he thought, oh, well, we'll get rid of that one, and he took the cheaper one. Well, the cheaper one backed out. And then, when we went...when he went back to the first one, they wouldn't take it. We really have to buckle down and get some people in there that know what they are doing. Right now, it's the staff that is keeping that place going. They have come up to the hospital on their days off. There are also some of them that have been told that they have to come up and do the work here, but that's shorting the people down there. So now we've got overtime again. I mean, this is a catch-can thing. Beatrice really is essential for the care of people and, as human beings, that we are so lucky to be that we are, we have to look after those that can't. [LR11]

SENATOR WIGHTMAN: Thank you, Mrs. O'Meara. You have a daughter there? [LR11]

JOAN O'MEARA: Oh, I'm sorry. [LR11]

SENATOR WIGHTMAN: You have a daughter there, is that right, that is a patient? [LR11]

JOAN O'MEARA: I have a daughter there that's been there about 45 years. To change her is cruel, and older people. And that's another thing. One of the documents, I think it was the DOJ's, that said that people should not be put in nursing homes, guess how many went out into nursing homes? And guess how many have died? That's another thing that people should be looking at. You should find out. They have to be accountable. Find out how many people have died because of these moves. [LR11]

SENATOR WIGHTMAN: So you would be in favor of continuing the committee, I

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

Executive Board  
February 09, 2009

---

assume. [LR11]

JOAN O'MEARA: Oh my, bless them! We call them "The Magnificent Seven." [LR11]

SENATOR WIGHTMAN: (Laugh) Thank you. [LR11]

JOAN O'MEARA: Okay. [LR11]

SENATOR WIGHTMAN: Any other questions? [LR11]

JOAN O'MEARA: Oh, I'm...no? [LR11]

SENATOR WIGHTMAN: No. Okay. [LR11]

JOAN O'MEARA: Okay. [LR11]

SENATOR WIGHTMAN: Thank you for your testimony. [LR11]

JOAN O'MEARA: Thank you. [LR11]

MIKE MARVIN: Good afternoon, Senator Wightman, members of the committee. My name is Mike Marvin, M-a-r-v-i-n. I'm executive director of the Nebraska Association of Public Employees. We're the union representing most of the employees at the Beatrice State Developmental Center. Senator Flood just left; I wanted to thank him for his original resolution. I think it's made a big difference. I think it's opened a lot of eyes and I think that it is very important that this continues, and so I'm here today to urge you to support LR11. With that, I know it's lunchtime and I don't want to talk very long. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Marvin. Anyone with any questions? Senator Karpisek. [LR11]

SENATOR KARPISEK: Thank you, Senator Wightman. Mr. Marvin, we're still seeing problems, of course. It seems like it's snowballing. But, in your opinion, has this committee...have we ducked some problems here and are we moving in the right direction? [LR11]

MIKE MARVIN: I don't know that we've ducked any problems. I definitely believe we're moving in the right direction. It's opening it up to everybody in the state that they know what the problems are. Before, it was a limited amount of people who knew what was going on and you could hide some problems. I don't think those problems can be hidden anymore and I think it brings it out into the public eye where it should be and it brings it to the Legislature, who ultimately has the responsibility for all of our 24-hour care facilities. Personally, I would like to see LR11 expand to all 24-hour facilities because I

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

Executive Board  
February 09, 2009

---

think we have problems at some of the others that are going to show here pretty soon. So I don't know that I really answered your question, Senator Karpisek, but I think it's a good thing. It's opened a lot of people's eyes and the public is seeing what's going on. [LR11]

SENATOR KARPISEK: Thank you, Mr. Marvin. Thank you, Senator Wightman. [LR11]

SENATOR WIGHTMAN: Any other questions? Thank you for being here and testifying. [LR11]

MIKE MARVIN: Thank you. [LR11]

BRAD MEURRENS: (Exhibit 1) Good afternoon, Senator Wightman, members of the Executive Board. For the record, my name is Brad Meurrens, B-r-a-d M-e-u-r-r-e-n-s, and I am the public policy specialist and registered lobbyist for Nebraska Advocacy Services, The Center for Disability Rights, Law and Advocacy. We are the designated protection and advocacy system for citizens with disabilities in Nebraska. I'm here today to testify in full support of LR11. The downward spiral of the Beatrice State Developmental Center did not happen overnight nor will its solution. Given the magnitude of the changes that must be made to the institution, along with those changes that will inevitably envelope BSDC, it would be unwise for the Legislature not to maintain guidance and continuing oversight over changes that must be made to BSDC. This is precisely the time when the Special Investigative Committee is needed the most. Without sustained and consistent oversight to hold the department and BSDC management accountable for implementing improvements over time, it is likely that long-term reform efforts will lose momentum and Nebraska will be forced to address these same issues yet again. At least that is what the history of the state's response to BSDC tells us. The Special Investigative Committee is critical to a transparent and open process that gives both senators and the citizenry access to provide and receive information. It is doubtful, for example, that without the Special Investigative Committee senators and the public would have learned that BSDC used close to \$1 million out of the \$1.5 million originally appropriated by the Legislature for recruiting and retaining staff, instead to hire temporary workers. We have two recommendations: First, change the current requirement that the committee issue a report with its findings to every six months and as well as when circumstances warrant. We also suggest extending the purview of the Special Investigative Committee to include an assessment of the role of private, nongovernmental or ICF/MRs in Nebraska's developmental disability service system. That concludes my testimony this afternoon. I'd be happy to answer any questions you may have. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Meurrens. Do we have any questions? [LR11]

SENATOR NELSON: Mr. Chairman. [LR11]

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

Executive Board  
February 09, 2009

---

SENATOR WIGHTMAN: Senator Nelson. [LR11]

SENATOR NELSON: You're recommending...thank you for your testimony, change the current requirement that the committee issue a report with its findings every six months. Is that the current requirement? [LR11]

BRAD MEURRENS: No, I was referring to the last sentence of LR11 which says that the committee will produce a report as circumstances warrant. [LR11]

SENATOR NELSON: I see. [LR11]

BRAD MEURRENS: Our suggestion is to change that language to be every six months and as conditions may warrant. Sorry for the confusion. [LR11]

SENATOR NELSON: All right. Thank you. [LR11]

SENATOR WIGHTMAN: Thank you, Senator Nelson. Any other questions? Thank you for your testimony. Next testifier. [LR11]

MARLA FISCHER-LEMPKE: (Exhibit 2) Good afternoon, Chairman Wightman and members of the Executive Board. My name is Marla Fischer-Lempke, M-a-r-l-a F-i-s-c-h-e-r-hyphen-L-e-m-p-k-e, and I am the executive director with The Arc of Nebraska. We're a support and advocacy organization working with and for people with intellectual and other developmental disabilities. We are a statewide organization with 17 local chapters and approximately 2,500 members across the state of Nebraska, and we are also an affiliated chapter of The Arc of the United States. We are strongly in support of LR11, which will reconstitute the Developmental Disabilities Special Investigative Committee. We appreciate the commitment this demonstrates to Nebraskans with intellectual and developmental disabilities and their families. Although LR11 strives to ensure the implementation of the recommendations as outlined in the report generated under LR283, we suggest that in light of recent developments some of the recommendations be amended and/or reconsidered. The commitment to keep BSDC open should be reconsidered. In light of recent events that required 45 people to be immediately moved from BSDC, reducing the population significantly, it might not be the best use of resources. Instead, we suggest strengthening a couple of programs that currently exist at BSDC. One is the intensive treatment services program, and the outreach treatment services program, both of which support community-based services. It's also important that the ITS, the intensive treatment services program, be offered in closer proximity to community-based programs so that programs that are using those services don't effectually repopulate BSDC or the institution. We expect that in the future if people are going to be moved from BSDC that it be done in a more systematic manner that is not crisis driven. And it's our hope that the people who have been moved

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

Executive Board  
February 09, 2009

---

last week will not simply be placed in nursing homes. We don't want to see people isolated or segregated from people without disabilities. We commend the commitment to comprehensive evaluations of clients, management, administration, and staff development; however, the time line that was issued in the report of April 1 will be impossible to meet at this time. We recommend that the date be extended to ensure proper evaluation. We are encouraged by the recommendation to change the culture at BSDC. This is an absolute necessity. We suggest that a nationally recognized program be implemented, such as Social Role Valorization, and that's just one example. As far as community-based programs are concerned, The Arc of Nebraska strongly believes that people with intellectual and other developmental disabilities have the right to live in the communities of their choosing and be fully included with people who don't have disabilities. As such, we support the committee's recommendations that address the development of sufficient capacity of community-based programs. In developing ways to create sufficient capacity, it's our belief that all persons receiving developmental disability services will be proper candidates to be served in the community. The waiting list, the committee also addressed that, and we are pleased to see that there is legislation regarding community-based services to address the waiting list. We believe that funds appropriated to address the list must be restricted to that purpose and that they should be carried over so that they are not lost as capacity and community-based services is increased. And then finally, similar to NAS, we recommend more periodic reports of the committee, we've suggested quarterly but we're not necessarily stuck to that, and then as circumstances warrant. Are there any questions? [LR11]

SENATOR WIGHTMAN: Thank you, Ms. Fischer-Meurrens (sic). [LR11]

MARLA FISCHER-LEMPKE: Okay. [LR11]

SENATOR WIGHTMAN: Senator Christensen. [LR11]

SENATOR CHRISTENSEN: Thank you, Chairman Wightman. Marla, did I understand your comment under number one that you think maybe the facility should be closed? [LR11]

MARLA FISCHER-LEMPKE: Uh-huh. [LR11]

SENATOR CHRISTENSEN: I guess I'd like you to address...I have a handicapped son and the number one important issue is consistency--... [LR11]

MARLA FISCHER-LEMPKE: Uh-huh. [LR11]

SENATOR CHRISTENSEN: ...the same people, the same location, the same care. And if...and what we heard earlier testifying, these people got moved to the hospital are having problems, and I believe it. [LR11]

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Transcriber's Office

Executive Board  
February 09, 2009

---

MARLA FISCHER-LEMPKE: Uh-huh. [LR11]

SENATOR CHRISTENSEN: To me, that's critical. So to me, that would be a step backward for many people. I guess what I see, if you got troubles running the business, you clean the top down. You put in management, you put in structure that's going to deal with a business. And to me, your suggestion there seems backwards. Would you address that, please? [LR11]

MARLA FISCHER-LEMPKE: Sure. And we are also very much in favor of consistency. I have a sister who has a developmental disability and I...she has recently moved into a community-based program. And that was always an issue for her as well. Just...it's pretty much an issue with any person. We like to have consistency in our lives and we like to have the same people that we know we can rely on. I don't think that closing BSDC is inconsistent with that. I think that the important message is what you said, and that is to make sure that services are in place that will provide that consistency. I guess what we are thinking is that BSDC, as it's operating now, and the idea that people can...who have a developmental disability can only be served in such a setting is not consistent with our core values, which are community-based placement. But I clearly hear your message about consistency and what has happened in the past week definitely upsets that and we are not satisfied with that either. [LR11]

SENATOR CHRISTENSEN: Thank you. [LR11]

SENATOR WIGHTMAN: Thank you, Senator Christensen. Senator Fischer. [LR11]

SENATOR FISCHER: Thank you, Senator Wightman. Thank you for being here. Could you tell me a little bit about The Arc, what The Arc is? I see that you have 17 local chapters. Is this...I guess I'm asking, is this a for-profit group that provides community-based programs? What do you do? [LR11]

MARLA FISCHER-LEMPKE: Well, The Arc of Nebraska is a nonprofit organization and our local chapters, some do provide some services but most of those are nonprofit organizations as well. They all have a nonprofit status at some point, but some of them also have a for-profit subsidiary where they do provide some services. And we have 17 local chapters across the state. Several states have their own Arc organizations and, as I mentioned, we're affiliated with The Arc of the United States, and we've been in existence in Nebraska since 1952. [LR11]

SENATOR FISCHER: Do you...what services do you provide? Do you...are you advocates for people with disabilities? Do you do hands-on work? You know, what services do you provide? [LR11]

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

Executive Board  
February 09, 2009

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MARLA FISCHER-LEMPKE: Yeah, we are advocates for people with developmental disabilities and their families, and the way those services are provided varies from location to location. Usually, for direct hands-on advocacy, we try to leave that up to local chapters because we want people to have a personal connection with whoever is advocating for them. But we also have provided some of those services from our office as well. [LR11]

SENATOR FISCHER: Okay. Thank you. [LR11]

MARLA FISCHER-LEMPKE: Uh-huh. [LR11]

SENATOR WIGHTMAN: Thank you, Senator Fischer. Now, does Arc actually have facilities that they would...they would fill this void? [LR11]

MARLA FISCHER-LEMPKE: No, we...no. Some of the chapters have some employment-related services that they provide people and then there are various other services, but not the community-based services that I think that you're thinking of in this situation. [LR11]

SENATOR WIGHTMAN: Now, do you see the groups, the community-based groups that you're talking about,... [LR11]

MARLA FISCHER-LEMPKE: Uh-huh. [LR11]

SENATOR WIGHTMAN: ...being able to handle the mental and behavioral disabilities? [LR11]

MARLA FISCHER-LEMPKE: I think that that's possible with sufficient capacity,... [LR11]

SENATOR WIGHTMAN: Or developmental disabilities, I should say. [LR11]

MARLA FISCHER-LEMPKE: ...sufficient funding in order to do that. At this point, I don't think that the providers have everything that they need to provide assurances that they can meet the needs of everyone. Any kind of remedy to this situation definitely would not and it should not be something that happens overnight. The mess didn't happen overnight, as it's been stated, and the solution shouldn't either. It should be a long and thoughtful process that involves a lot of parties, including providers, advocacy organizations, obviously the Legislature. That's why I'm here to encourage the continuation of the committee. But a lot of people need to come together and kind of think outside of the box for the way services have been delivered in the past and what can happen in the future. [LR11]

SENATOR WIGHTMAN: Thank you,... [LR11]

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Transcriber's Office

Executive Board  
February 09, 2009

---

MARLA FISCHER-LEMPKE: Okay. Thank you. [LR11]

SENATOR WIGHTMAN: ...Ms. Fischer-Meurrens (sic). Any other questions? Senator Karpisek. [LR11]

SENATOR KARPISEK: Thank you, Senator Wightman. Thank you for testifying and your work with The Arc. I will say that I am a little bit concerned about the position that Arc has taken. I guess I'd like for you to address the waiting list. And if...I'm going to give you my quick opinion that we have that huge waiting list and we have BSDC being downsized, if there's people that need the facility and we have the facility, I feel we should use the facility for those people. So I guess I'd like to ask you, where are we going to go with these people on the waiting list or are we going to, and how are we going to deal with that? [LR11]

MARLA FISCHER-LEMPKE: Well, we already have an obligation to serve people who are on the waiting list and that list continues to grow. And I believe that there are two legislative bills that have appropriated funds, and I believe you introduced one of those (laugh), that will help to address that need. And, you know, I suppose there's a grant right now called Money Follows the Person, which could be utilized for people who are coming out of Beatrice to fund the community-based services that they will be needing. [LR11]

SENATOR KARPISEK: I guess I would just like to follow up and say that I think that some of these...I have no problem with community-based. I think they're doing a fine job. But I think there's so many people and such a wide variety of people, that BSDC is the place for some of those people to be. And I think rather than closing it, that we need to be better about where we put those people, where we place them, and talk to the families and let them...let them decide, so... [LR11]

MARLA FISCHER-LEMPKE: Well, and I think that's why I had mentioned the two services that BSDC currently provides with the ITS and OTS programs, because I see those as being very supportive of community-based services, particularly where behavioral needs are concerned. [LR11]

SENATOR KARPISEK: Okay, thank you. Thank you, Senator Wightman. [LR11]

MARLA FISCHER-LEMPKE: Thanks. [LR11]

SENATOR WIGHTMAN: Thank you. [LR11]

MARLA FISCHER-LEMPKE: Thanks. [LR11]

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

Executive Board  
February 09, 2009

---

SENATOR WIGHTMAN: Just to clear up the record, I referred to you as Ms. Fischer-Meurrens, and it should be Mrs. Fischer-Lempke. I apologize for that. [LR11]

MARLA FISCHER-LEMPKE: That's fine. Thank you. [LR11]

SENATOR WIGHTMAN: Any other questions? Thank you. How many more testifiers do we have in...are you testifying in favor? [LR11]

LOVEDA MITCHELL: Yes, I'm testifying in favor. [LR11]

SENATOR WIGHTMAN: Okay. Two? Okay. [LR11]

LOVEDA MITCHELL: (Exhibit 3) Senators, my name is Loveda Mitchell, L-o-v-e-d-a M-i-t-c-h-e-l-l. I am the parent of a 30-year-old young man who has a cognitive developmental disability. He receives services through the community-based developmental disability system. For most of his life, I have been involved in developmental disability advocacy on the local, state, and national level. I am here to support LR11. The Unicameral is the only body that has the ability to formulate rules and regulations, enact laws, and appropriate funds. In my opinion, it is the only body that can realistically address the crisis that has been identified at BSDC, as well as address the ever-growing waiting list for developmental disability services. In my opinion, it is the only body that has the ability to prevent these two issues from overwhelming and creating another crisis in the community-based system. The Developmental Disabilities Special Investigative Committee needs to be reappointed to provide the Legislature with the necessary information to prevent this from occurring. The committee is necessary until the crisis at BSDC is resolved in a humane manner with the needs and the safety of the individuals being the primary concern. It is necessary until a means to ensure the quality care statewide for those who have developmental disabilities is ensured and until adequate funding and capacity exists to serve the Nebraskans who have a developmental disability. Only by monitoring these issues, reporting the findings, and making recommendations to the Legislature can the Legislature act in a responsible manner. I would like to thank the members of the 2008 Developmental Disabilities Special Investigative Committee for their in-depth study and their effort to understand the complex DD system. Thank you for an opportunity to express my views. [LR11]

SENATOR WIGHTMAN: Thank you for your testimony, Mrs. Mitchell. Does anyone have any questions? Thank you. Next testifier. [LR11]

JILL McCONNELL: Good afternoon. My name is Jill McConnell, M-c-C-o-n-n-e-l-l. I'm a 33-year staff veteran at BSDC until my retirement in October. I want to thank the committee who gave us at BSDC the feeling that we weren't drowning in a sea of vindictive and assaults from all directions. I think each member must have really studied

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

Executive Board  
February 09, 2009

---

the whole scope of DD services in the state in a very serious manner, and our first thought was, at last, somebody knows that the bottom line is the no-confidence vote or recommendation from the report, if correct, in the Governor and the way that the services are being handled. It is the Governor and DHHS who are directly responsible for the condition, not only at BSDC but in the state in general, for the condition, the present condition, of services. I have always felt in these 33 years of association with services in Nebraska at BSDC that there is need for the whole range, from BSDC through the community, because that's the variety of people who have been born with developmental disabilities. They do not all fit in the community. They are not all comfortable in the community. They don't all function well in the community and never will. There are those for whose...for whom the aspects of their disability are great enough or varied enough that they need a more secure setting where they can blossom, where they can be safe and still have access to community programs and interaction. I think it's very disrespectful to assume that if a person can't make it in the community then they, you know, they just have to; you have to fit in. And I think that is very disrespectful to those persons who do not fit in. The...I guess I can boil it down to the very simple source of the problem and that is the Governor, and that is why I feel so...a little bit more secure for these individuals with the continuation of the Investigative Committee, who really seem to have taken on this body of information that was thrown at them from all directions and make sense out of it, and very good sense, too. Thank you. [LR11]

SENATOR WIGHTMAN: Thank you, Ms. McConnell. Any questions? Senator Nelson. [LR11]

SENATOR NELSON: Ms. McConnell. [LR11]

JILL McCONNELL: Yes. [LR11]

SENATOR NELSON: Thank you for your testimony. You spent 33 years there with...at Beatrice. Is that correct? [LR11]

JILL McCONNELL: Yes. [LR11]

SENATOR NELSON: And in what capacity? [LR11]

JILL McCONNELL: Speech language pathologist. [LR11]

SENATOR NELSON: I'm sorry? [LR11]

JILL McCONNELL: Speech language pathologist. [LR11]

SENATOR NELSON: Could you elaborate why you think this falls directly in the lap of

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

Executive Board  
February 09, 2009

---

the Governor, why he's at fault? [LR11]

JILL McCONNELL: He...I, probably six or seven years ago, I wrote, I started writing letters while still employed. At that time I wrote to Johanns and there has been no change in the neglect that the Governors, past and present, have shown in their handling of not only services for developmentally delayed, I'm talking also about services for persons who are mentally ill. I think the driving force of their handling of these matters has been money: Well, these institutions, they're really expensive so let's shut them down, let's let the police handle the mentally ill and now let's let the medical hospitals handle these medically fragile, so-called, people, and then we can kind of wash our hands of it; it's not my responsibility anymore. This, to me, is a lot of things. It's immoral certainly, it's inadequate provision of services for which he is responsible, and it certainly has no room in it for compassion or even understanding of what these people need. [LR11]

SENATOR NELSON: Does the Department of Health and Human Services play any part in this? [LR11]

JILL McCONNELL: Absolutely. He hired them. [LR11]

SENATOR NELSON: Well, these are opinions on your part. Is that correct? [LR11]

JILL McCONNELL: Absolute, my opinion only. [LR11]

SENATOR NELSON: How far back does all this go? [LR11]

JILL McCONNELL: I would say it goes back to...I'll tell you when it started. It started when Governor Nelson, at that time, decided he was going to take all the pieces of the state services and put them in a shaker, like dice, throw them out on the table and see how he could shake up the...in the guise of making more sense out of them, making the services more available to people and streamlining. To my view, at that time what he did was he made more levels of management, whether on purpose or just that's how it happened, more levels to hide behind, more levels to confuse people and from that...and more places where nice people could be put into good job slots. And from there, from that reorganization, came a system where no one was accountable: Well, that's not my thing; that's somebody else's thing. And if you ask some parents what it is like to access that system you might find out that it's a nightmare. But the culture...and I'm talking beyond the culture of BSDC, the culture in the executive branch is, don't tell me anything I don't want to hear. And that's why this committee and this report was so essential because they did throw light on the secrecy and the twisted coverup and the neglect that has come about. [LR11]

SENATOR NELSON: One final question: Do you feel that Beatrice should be closed?

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

Executive Board  
February 09, 2009

---

[LR11]

JILL McCONNELL: No. There are people who need it. And when we say Beatrice is in trouble, the Governor is in trouble. DHHS is in trouble. Beatrice didn't just become that way. Beatrice was neglected to the point where it sunk into this embarrassing state. And the criminal...no, the incomprehensible action of the Governor in this late-night whisking people away from their homes, to me, I'm not a lawyer but just to me, it looks like it's...it looks criminal. What was done to people, what was done to families is absolutely...it cannot be defended. [LR11]

SENATOR NELSON Well, I certainly agree that, not that it was hasty, but that perhaps it was done in too short a period of time for the adjustments. But I'm also wondering if maybe that action, whoever decided to make that, perhaps the medical director, was in response to suggestions from an agency that some deaths might have been prevented down there in Beatrice. [LR11]

JILL McCONNELL: You know, I am all for safety first of these people, but what this was, my view, is the Governor doesn't know how to fix things. I mean, he has no notion. I don't know why but he has no notion how to fix it. That can be supported by the fact that nothing has changed. And he said something like, when that article came out in the paper, he said, oh boy, this is great, now we can get rid of maybe 45 or more people out of BSDC right now and I don't have to explain a thing; I can get a medical order to do it, then they're not my responsibility anymore; we'll put them in medical hospitals. Which when they came, doctors said, these people are well cared for, they're not medically fragile. But they had no choice in taking these people. Where are they going to go now? What appropriate place are they going to go to? And I will reiterate, BSDC has become the way it is because of DHHS and it can become...it can reverse itself if there was anyone who...Mrs. O'Meara alluded to the fact that we need a CEO who's a CEO, but then, and I agree, then we need the Governor to be made to keep his hands off him. [LR11]

SENATOR NELSON: All right. Thank you very much. I appreciate your comments. [LR11]

JILL McCONNELL: Okay. [LR11]

SENATOR WIGHTMAN: Thank you, Ms. McConnell. Any other questions? Next testifier. Now is that all the testifiers in favor or...? We have people in favor yet. Are you in favor also? [LR11]

ROBERT CAMPBELL: Yes, sir. [LR11]

SENATOR WIGHTMAN: Okay. [LR11]

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

Executive Board  
February 09, 2009

---

ROBERT CAMPBELL: Senator Wightman, everyone, thanks for letting us appear and bringing a few things to your attention. I am a direct-care staff. [LR11]

SENATOR WIGHTMAN: Would you state your name first and spell it. [LR11]

ROBERT CAMPBELL: I'm sorry. Robert Campbell, C-a-m-p-b-e-l-l. All right. [LR11]

SENATOR WIGHTMAN: Thank you. [LR11]

ROBERT CAMPBELL: I'm unaccustomed to speaking before this many people let alone this many important people, but I've been out at BSDC for 15 years. I work with a variety of clients, from profound all the way to the major behavior clients that we have, including people who were brought in due to arson, you know, molestation, etcetera, etcetera. There are people out there right now that you can't put in community-based programs. It's just not going to work. You're putting the public at risk. You're putting them at risk. Just can't be done. I just have a few things I need to go over before I explode. Number one, all consultants that we've been hearing from have recommended, first and foremost, that the management out there be changed. What happens out there, as a rule, is instead of replacing people with qualified people, they just change positions. Right now, our CEO who we just lost is now the COO. How do things change when you just change titles? It doesn't work. Number two, when these clients that we have that were just moved to the medical facility due to being medically fragile, we turn around and completely destroy their psychological well-being as well. It's completely irresponsible. You can't have someone living with the same clients on the same unit for 20 or 30 years and give them one day's notice to move. Even when someone is evicted, they get 30 days. To say in one day that all of a sudden they're medically fragile, we need to move them, and then, like I say, we turn around and completely ruin them psychologically as well. We have clients up there that are being sedated. We just came from the hospital on the way here. We have clients up there that have sustained injuries. If that happened at BSDC there would be investigations, there would be suspensions, and it would hit the papers the next day. The hospital staff up there are ill-equipped to deal, you know, with the clients that we have up there right now. They're all recommending that they come back to BSDC. The admitting physician, if you can get ahold of his report, said that all of these clients that they've gotten up there are in excellent condition. Their skin tone is excellent. They have no breakdown. They're all in great shape. And they can't even understand why they were sent up there for being medically fragile. Just to touch base on community-based programs, I've worked in community-based programs as well. With community-based you have even less accountability, you have less oversight, and we're having a heck of a time trying to place people from BSDC. Right now our census is 200. It took us a year to place 20 or 30 clients until the other day. When they declared them medically fragile, we had 40 clients go out. I think there's an ulterior motive there. That's just my opinion. But I believe the

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

Executive Board  
February 09, 2009

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reason they sent those 40 out was to get our census below 200, which is one of the things that we promised CMS and DOJ that we would do. But by putting them all at risk and their health at risk, just to achieve that number so we have one out of the seven things that we're trying to accomplish, is completely ridiculous and irresponsible. I'm working as fast as I can here. As you look around today you might notice an absence of any management from BSDC here to testify about staying open. Why would that be? I have no idea. Up at the hospital, there were, for the first few days, there were no management up there. You had DT staff, like myself, as a rule coming in and volunteering on their own time to go up there to be with the clients. And we're almost afraid to go up, you know, in official capacity because we're out of our element completely, the clients are out of their element, and you have nurses and everybody up there that, you know, we're putting ourselves at risk. If I were to lose my job, I would be put on the register. I couldn't work in this field again. And that's the kind of pressure we have every day at BSDC. You know, we have people in management that have no clue what they're doing. I worked on a behavior unit. My manager had a business degree. I don't know how that qualifies them to be a manager, but you have to have a degree to be a manager, but let's hope we could keep people in the field, for crying out loud, that are managing behavior units. We have some very dangerous individuals out there. I won't even go into that part of it but, you know, if you guys have a chance, you could look into it a little further and find out exactly what our clientele are like. We do have some very dangerous people out there that would be in the prison system if not for their diagnosis. Another thing that we could look at as far as saving money: we've reduced our census by one-third; I think we could also reduce our management by one-third. It just stands to reason. As far as DT staff, well, we're already, you know, 40 or 50, 60 positions short as it is so we're actually, you know, going to be helped a little bit by these people going out, but not in that we have people up at the hospital and then we're short working the units every day. Let's see, another thing would be John Wyvill talking about and people talking about closing BSDC. For the last year we've been hearing about retention and finding new employees and qualified employees. If people are talking about closing BSDC in June, how in the hell are we going to get people to come in and apply? No one in their right mind is going to come and jump on a sinking ship. It's just not going to happen. Like I say, there's too many contradictions. Just trying to find this hearing today, I've been told three times by three different people in the DHHS system that the meeting was cancelled. Luckily, we happened to be in touch with Ms. O'Meara and she told us, no, it's still on. At the information desk over here they gave us the wrong room number. Across the way at the Centennial Building, we went in there, they said first it's cancelled, then they came up with a different room number, then another room number. It's a quagmire that we're dealing with and something needs to be done. I'm very happy Senator Lathrop took an interest in what's going on, but until we change the management out there, BSDC isn't going to change. Everything we do is pretty much second-guessed. For a 24-hour facility, probably 80 percent of the people work Monday through Friday, 8:00 to 4:30, and after that it's pretty much up to us. You know, there's no managers on each of the units. You have a couple of floating

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

Executive Board  
February 09, 2009

---

managers on second shift, which is what I work. And, you know, everyone is worried about supervision; there's no one there to supervise. Everyone goes home at 4:30. On the weekends, it's a ghost town and it's been that way for as long as I've been out there. I think if we're going to keep all these professionals on the payroll and they all have so much experience, they need to start using it. You know, it's easy to stand back and everyone gives us a bad time about the job that we do, but until they come in and actually show us what they have in mind, you know, it just doesn't work. There's no reason to be paying these people. We could cut our budget in half out there just with... [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Campbell. [LR11]

ROBERT CAMPBELL: All right. I'm sorry. [LR11]

SENATOR WIGHTMAN: ...I don't want to cut you off short, but we are extending beyond. And I'd like to remind everyone that our purpose here is to discuss really whether the Investigative Committee should stay in position. [LR11]

ROBERT CAMPBELL: By all means. [LR11]

SENATOR WIGHTMAN: And we, obviously, here are not going to get into the inner management of BSDC. [LR11]

ROBERT CAMPBELL: Fine. [LR11]

SENATOR WIGHTMAN: That will be the committee's job if they make recommendations. So I would suggest to future testifiers, I think there are a couple yet, that we try to limit your testimony to just the support for the continuation of the Investigative Committee. I think we're going far beyond that in some of the testimony. [LR11]

ROBERT CAMPBELL: All right. I apologize for that, but I also appreciate the opportunity to speak. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Campbell. Any other questions? Senator White. [LR11]

ROBERT CAMPBELL: Yes, sir. [LR11]

SENATOR WHITE: Mr. Campbell, thank you very much. It is my understanding that even though the medically fragile people were moved to the various hospitals, they are still entitled and the state is still required under federal law to provide rehabilitative services, which those hospitals do not have the capacity to do. [LR11]

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

Executive Board  
February 09, 2009

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ROBERT CAMPBELL: That's correct. [LR11]

SENATOR WHITE: How are those services being provided or are we again in violation of federal law? [LR11]

ROBERT CAMPBELL: As far as what I've observed, yes, I think we're in violation. [LR11]

SENATOR WHITE: So even though we drop our census count by, in the middle of the night, moving 45 people out... [LR11]

ROBERT CAMPBELL: Uh-huh. [LR11]

SENATOR WHITE: ...to comply with one request of the federal government, we violated another in doing so. [LR11]

ROBERT CAMPBELL: I believe so. I believe we've put them at risk. [LR11]

SENATOR WHITE: And one of the things that's been an internal puzzlement to me is, over and over again, the Department of Justice, other folks very experienced with a lot of authority behind them, made recommendations, indeed gave direct instructions that then subsequent reports made clear just weren't followed. Can you please explain how for years explicit instructions about constitutional violations, basic human dignity from the Justice Department directly instructing the state of Nebraska were ignored? What happened? How did that happen? [LR11]

ROBERT CAMPBELL: I couldn't tell you. There's a breakdown somewhere along there. A lot of the times we as developmental technicians, the actual hands-on people, don't even get that information. You know, we might get a memo on something, but as far as, you know, coming to us even and saying, how can we do this better, we're never consulted on anything. Even though we spend all of our lives with these clients, day in and day out, things are made two and three levels up. Every time there's a problem, it seems we add a new layer of management, we add five different new positions that people move into, but nothing is addressed. [LR11]

SENATOR WHITE: Thank you. [LR11]

ROBERT CAMPBELL: You know, it's real tough. [LR11]

SENATOR WHITE: Thank you, sir. [LR11]

ROBERT CAMPBELL: Uh-huh. [LR11]

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

Executive Board  
February 09, 2009

---

SENATOR WIGHTMAN: Thank you. Any other questions? Thank you for your testimony, Mr. Campbell. [LR11]

ROBERT CAMPBELL: Thank you. [LR11]

SENATOR WIGHTMAN: Do we have other testifiers in favor or in opposition? You're testifying in favor of continuing? [LR11]

BRIAN LYNN ADAMS: Yeah. I changed. My name is Brian Lynn Adams, B-r-i-a-n L-y-n-n A-d-a-m-s. Now, I've been pretty much all over this country. I've seen a lot of civil rights violated. In the sixties I lived in the South; see pretty much a civil rights violated there. I lived in California for 20...about 28 years. I was there when the Rodney King riots happened, and that day I saw pretty much quite a bit of civil rights violated for many people that day. And I seen civil rights violated through pretty much many places that I been. But what I seen this last week, the civil rights violated to these individuals, this is probably the worst, I would have to say, that I've ever seen. And for me being here they say is probably career suicide. And I'm kind of disgusted with the things that have happened this last week to these individuals and what I've seen. I was asked not to go--I was asked, not told--but I was asked not to go up to the hospitals because I am very vocal in some of the things that I say. And so, therefore, I did not go up to the hospitals because I am somewhat vocal, and so therefore I stayed behind. Some of the things that I was told by other staff, because I am an employee at BSDC, and some of the things that I have been told by other staff and some of the things that I have seen in the paper I was disgusted by the things that have been going on. That's about all I have to say. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Adams. Any questions? Thank you for your testimony. And you're in favor? [LR11]

DAN BLANKENAU: In favor. I'll be brief. [LR11]

SENATOR WIGHTMAN: You're in support. [LR11]

DAN BLANKENAU: Yeah. [LR11]

SENATOR WIGHTMAN: Okay. [LR11]

DAN BLANKENAU: Thank you, Senator, committee. My name is Dan Blankenau, D-a-n B-l-a-n-k-e-n-a-u. My brother James has been at Beatrice for over 45 years. I don't understand what community...what the word means. I haven't met many of these people involved in this yet, but Beatrice is my brother's community and we're desperate to have legislative involvement in his living there. We go there and visit infrequently, but when

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Executive Board  
February 09, 2009

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we do we never call ahead for no other reason than we don't know when we're going to be there, but never once has any of my siblings, my parents, uncle, cousin that goes visit, not once has anybody been anything other than amazingly pleased with James's condition and his care. I timed it yesterday, just out of curiosity. It took me three minutes from when I told them at the front desk I wanted to see James and I got to him, and this was on a Sunday. We walk in there and there he is, excellent, just so well cared for. It's startling. My son and I then take him around the halls and people walk by and say James. Anyway, I don't want to get off the point. I guess I'm just saying that I am in favor of this because we absolutely have to have legislative oversight on this. Thank you. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Blankenau. Any questions? Thank you for your testimony. [LR11]

DAN BLANKENAU: All right. Thank you. [LR11]

SENATOR WIGHTMAN: Now again, are you testifying in support? [LR11]

TINA MANES: I am for. [LR11]

SENATOR WIGHTMAN: Okay. Because I thought people held up their hand that were in opposition. Is there somebody in opposition that is present? I thought I remembered somebody, but thank you. Go ahead. [LR11]

TINA MANES: My name is Tina Manes, M-a-n-e-s. I am the mother of Olivia Manes and this is more on a personal note, but my daughter died at BSDC because of neglect from management. We cannot say nicer things to everybody on the staff that has taken care of our daughter for the last 12 years. They have gone beyond their duties, have been wonderful with her. She was very happy there. She thrived. I mean, they taught her to do things that we never imagined that she would be able to do. She was very happy, well cared for, and we think it is very detrimental to all of the kids out there if BSDC would close. On another note, we are very, very concerned with management. In particular, I have a very big problem with the fact that DHHS has somebody like Wyvill in charge, trying to keep BSDC open when he is, to me, "detrining" the whole situation because he personally does not want to see it open. So in the last few years when the federal, you know, government steps in and is trying to regulate things and things are supposed to be getting fixed, to me, he was the one that was in charge of making sure those things got done and got fixed. Then for the fact that they put a CEO or COO, whatever you want to call Mr. Stegemann, I have known Ron most of my life, I went to school with him in Fairbury, Nebraska, and when he was put in that position my husband and I looked at each other and said that the only reason he is there is to be a yes-man. He has absolutely no credit or qualifications to be in that position and I don't understand how you can have somebody, you know, running a state facility that needs

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Transcriber's Office

Executive Board  
February 09, 2009

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to have all of these management areas intact and doesn't know the first thing about it. Secondly, my daughter died because there was not an emergency response system. They took the hospital out of BSDC and then, come to find out, we had to find all this stuff out on the news. Nobody...(crying) excuse me...there was not anybody from BSDC or DHHS that could give us one little phone call to let us know ahead of time that this was all going to break out. Then the next day we find out that our daughter's name is all over the papers, so now my deal is I want to make sure that her death does not go in vain. We are fighting for all the kids at BSDC. And the biggest problem is the management. It is the people that are in charge are not actually in charge. They're not making sure that things are being done. And when you find out over the news that your daughter has been stripped of her seizure medication, who is...who has the right to do such a thing to anybody? And I can understand the fact, and I am going to commend, you know, them. I don't agree with the fact that they should have taken all these kids up to hospitals and taken them out of their element. I think there would have been a better way of maybe doctors coming down and checking them out down at BSDC. But I do understand the fact that after Olivia's death that, you know, something did need to be done and it needed to be done immediately to make sure that the other kids out there, you know, are safe and to make sure they are on all their medications that they are supposed to be on. So my biggest problem here is that BSDC definitely needs to be stay open. I would be fighting for it if Olivia was still here and I'm definitely fighting for it that she's not. But the problem here is back when they had a death in March of 2008 there was supposed to be an emergency response system intact. Now we know in April that BSDC wrote to whoever the committee was that they did have such a thing in place, but my problem with that is who overseen the fact that it did get put in place, that people got taught what it was? And that is where the big breakdown of the whole problem is. There's not anybody out there that is overseeing that these things are getting done. I mean, you can't just go in there and say this needs to be done and that needs to be done if there's not anybody out there that's going to reinforce it and then go back and double-check that it was taken care of. Then when they decided to close the hospital down then they especially needed an emergency response system. And had somebody gone and checked it all out in March of 2008 and found that it was not in place, things would not have happened to my daughter in January. So I just...I want to voice, you know, our opinion. I know my husband wants to talk a little bit, too, probably for things that I forgot to say. So thank you very much. [LR11]

SENATOR WIGHTMAN: Thank you very much for being here. I know it was difficult testimony, Ms. Manes. [LR11]

DAVE MANES: I'm for the bill. My name is Dave Manes, M-a-n-e-s. And the only comment I have to make kind of to answer your question, Senator White, was the administrative duties of BSDC I guess are regulated by the state and the breakdown that happens out there, as far as administrative duties being delegated, it hasn't been done. Because that's why you guys are losing \$29 million. It's gone because Wyvill and

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Executive Board  
February 09, 2009

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Stegemann are evidently not getting the job done. And yet there should be an oversight committee overseeing those guys, not a committee but just somebody to make sure their job is getting done. And I guess, you know, this has been sensationalized through the press as far as what's happened at BSDC. Why has not somebody been sent down to check why the jobs have not been done to get things back into compliance before it had gotten to this point? So that's all I have to say about the matter and thanks for your time. [LR11]

SENATOR WIGHTMAN: Thank you, Mr. Manes. Any questions? Are there other testifiers in favor? (See also Exhibit 4.) There any testifiers in opposition? Any testifiers in a neutral capacity? If not, we will close the public hearing. Thank you very much for being here, for your interest. [LR11]

SENATOR KARPISEK: Senators... [LR11]

SENATOR WIGHTMAN: What? [LR11]

SENATOR KARPISEK: I would just like to say senator are leaving. We have a 1:30 committee hearing, so I don't want anything to think that they're just running off because they don't care about the issue. [LR11]

SENATOR WIGHTMAN: Yeah, I think all of us have committee hearings at 1:30, so... [LR11]

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Executive Board  
February 09, 2009

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Disposition of Bills:

LR11 - Reported to the Legislature for further consideration with amendments.

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Chairperson

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Committee Clerk