

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

[]

SENATOR LATHROP: Jodi, thanks for coming today. This is, just so the record is clear, the LR11 Committee is meeting and today's date is July 20, and we're going to visit today with Acting Director Jodi Fenner. We have a number of things that we were interested in visiting with you about, and I suppose all of them, it seems to me, get back to what progress we're making towards recertification and towards rectifying the problems that were identified by the Department of Justice. And we have had the...I was going to say the benefit...we've received the reports to now from Dr. McGee, which I, in my own personal view, don't really give us the specifics on whether we're in compliance with the agreement that was signed by the state on July 2 of last year. And so if we can...first of all, welcome to the committee and congratulations on your interim appointment. I'm looking forward to working with you. I think we all are, Jodi. We recognize that you're very conscientious and you've worked diligently for those that are developmentally disabled in the state. That's been my experience and you've been straightforward with the committee. But maybe we can start by, it has been frustrating for a committee that's charged with oversight of the developmental disabilities issues facing the state, for us to get reports from Dr. McGee that don't really tell us how we're doing. And this committee, in it's report back on December 15, indicated that the DOJ agreement represented probably, from our point of view at least, the best road map for getting in compliance with the Department of Justice, for sure, but also putting us on the road towards recertification. And as a committee, I don't think we have a sense of whether or not we're doing that, so maybe you could...we'll turn it over to you and you can tell us. There are 140 points in the DOJ agreement; many of them have timetables. Are we meeting those benchmarks? How are we doing relative to the DOJ agreement?

[]

JODI FENNER: Sure. It might be helpful to kind of tell you the process of what we're going through, because we actually share your concerns that we've produced thousands of documents to the independent expert and his team, and it's our

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

experience that those documents have not been compiled in a manner in which we can determine whether we're in compliance. Some things it's really easy to determine whether we're in compliance. We've reduced overtime. We're working to eliminate mandatory overtime. That's something, even as a layperson I can tell you, but there are other things that are much more complicated when we get into psychology, neurology, psychiatry, and that's why we have an independent expert team because they're supposed to be experts in the area. My background is in accounting and as an attorney. I can't give you an opinion as to medical issues, so that's why we rely on the independent expert team. And that's where our huge disappointment comes from, because there are a lot of things that we can measure and have measured and have turned over documentation, that we're not getting back clear direction in a format that we feel we can accurately tell where we are at on a lot of issues. So... []

SENATOR LATHROP: If I came...I'd like to interrupt you at that point because what I'm hearing you say is this: that your division of Health and Human Services is disappointed with the reports of the independent expert, Dr. McGee, because they lack specifics. And as a consequence, you don't know where to go or whether you're headed in the right direction, because as the interim director, your background, as was Wyvill's, was in...you're a lawyer. []

JODI FENNER: Yes. []

SENATOR LATHROP: And in addition, you have some accounting background. Here's my concern with that explanation, Jodi, and that is it strikes me that if...that the role of the independent expert is to see if we're doing what we promised, and that assumes that we have the talent and the skill and the know-how to do those things. And it sounds to me like you're saying, well, we're waiting for John McGee to tell us which way to go. And my view of it is that the state of Nebraska should be doing what it...it should have the people there to do what it needs to do. It should be complying with each of those terms in a timely manner. And McGee's job is to say, yes, they're doing what they're

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

supposed to, and not to give you direction or not to tell you or anyone in your division how to run BSDC or provide services to the developmentally disabled. []

JODI FENNER: And I would agree with you completely, which is what I was getting to next, Senator. []

SENATOR LATHROP: Okay, okay. []

JODI FENNER: The other challenge, I think, is not only should we not rely on John McGee and his team to give us guidance, but we also have to stop relying on consultants. We actually have to take ownership of our own progress. So two weeks ago I compiled a senior management team, both in community-based services and from BSDC. And essentially what we have done is we...because we have to look at the CMS compliance and DOJ compliance altogether. They really do fit together. What we've done is we've taken a Microsoft Project manager tool, and we fit all of the DOJ components into the eight conditions of participation so that we aren't working off two plans, because that isn't really very efficient and there are some things in the CMS tags that aren't covered in the DOJ report. So we want to look at everything altogether. And essentially we believe most of that has been done, but what we're doing now is we're either documenting our compliance pursuant to these tags and the numbers in this Microsoft Project reporting tool, and for the items that are ongoing--which many of the DOJ reports are ongoing...the DOJ requirements are ongoing--then what we are doing is assigning those to an individual on the senior management team, putting either deadlines or reporting requirements so that we can ensure that those are following down the right process. There are a few areas that we're still working on. The expansion of the ITS/OTS program, that's one of them, and we have a few proposals that we're dealing with. I'll be honest with you, that's one area I know that we haven't...we haven't expanded it, primarily because we have to have the appropriate tools in the community before we do that. And I think we finally have those in place and that is something we're working on. But for all of the other items, we should...we meet again Thursday for our

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

final compiling everything into that Microsoft Project tool as a team, and we should have a comprehensive CMS and DOJ compliance plan by the end of next week. The plan then is to take that tool and have it shared with our direct care staff, because there are a lot of things that they do every day that actually come into play in that plan, that senior managers don't necessarily always think about. And I think it's very important that we get their input on that plan and to make sure that, first of all, we're getting credit for everything that we've done and, second of all, to give them an overall picture of why it is we're doing some of the things that we're doing and get their buy-in. Because without their buy-in, we'll never pass, even if we have all the right tools in place and are on the right path. Quite frankly, without buy-in from the frontline staff we're never going to pass inspection, so to speak, and so we really have to start operating as a team. That being said, that's what we're going to do is take it...and it involves both community-based services and the BSDC frontline staff, not just BSDC, because the DOJ agreement really does intertwine both of the areas of the division. So that's where we're going are far as being able to document compliance. We believe most of it is done, if not all. But, quite frankly, I need to see paper. If I don't have...if it's not in writing, as far as CMS is concerned it didn't happen. And so we have to do a better job of putting that in a more organized format and we are working to get that done. []

SENATOR LATHROP: So what you're telling us is that now that we're...and I appreciate that you've only been on the job, like two weeks...? []

JODI FENNER: Sure. []

SENATOR LATHROP: Something like that? []

JODI FENNER: Yes. []

SENATOR LATHROP: And so that sounds very constructive that you are developing a way to track the specific problems that CMS had with BSDC and the specific promises

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

that we made to the Department of Justice. That sounds constructive. It sounds like a good idea to me, and assigning it to people so that it can happen and tracking it better is constructive. We are a year out from the time we signed the agreement, and while McGee's report was very general, it still suggested that there were significant issues that we had not done according to the DOJ agreement. Let me give you an example. []

JODI FENNER: Sure. []

SENATOR LATHROP: When it came to transitioning people to the community, the DOJ agreement had steps in there on how that should happen. And McGee's report, while general, seemed to suggest we weren't doing those...making those transitions or following the road map set out by the DOJ. The DOJ was specific about the use of restraints, and McGee's report suggested that we had realized some improvement the last time he reported to us, but that restraint usage went up. What I'm looking for is, have you at this point in time--and you've been on the job two weeks but you've been there since all of this developed... []

JODI FENNER: Yes, yes. []

SENATOR LATHROP: ...have you looked at the 140 promises that we made to the DOJ agreement, all of which had timetables, and said we've done 30 of them or we've done 100 of them or we've done none of them and we've been aimless and... []

JODI FENNER: Sure. []

SENATOR LATHROP: ...not making progress on the DOJ agreement. []

JODI FENNER: What I did, Senator, in my role as an attorney when I first negotiated the DOJ agreement, is I compiled what you have seen before, is our DOJ matrix, and then I turned that over to the division's management because that was not my role. My

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

role is to tell them what they needed to do, not necessarily to manage the day-to-day operations. So I gave them that list, and I believe they filled it in, so to speak, with ways they thought they were in compliance. And if I recall, you received that in November of '08, and it indicated compliance or movement toward compliance on all of those issues. The problem is, is the management at the time and the direct care staff truly didn't comprehend what each of those meant. Yes, they made changes to the transition process, but still not using best practices. So on the two examples that you just mentioned, that's...the transition process is one of the items in your packet. It's the bottom one. One of the things I did, I think this has been two or three months ago, is I asked Tricia Mason to put together a team to look at the transition process, both the community-based process and some specific additional requirements coming out of...BSDC clients coming out of BSDC. When she agreed to do that, she put together a team of individuals, both from BSDC and community-based services, and then I called John Williams. He's the individual on the independent expert team that is...he's from Michigan and his expertise is transitioning, and that's the comments you see in John McGee's report relating to the transition process, actually come from him. So in consultation with him directly and with the team, we have revised our policies. And right now, what we are doing is we're training on them. Because the problem is, is you can put anything you want on paper but if you don't go actually out to the service coordination and model and train on those, they're not going to be effective. And so we have... []

SENATOR LATHROP: And that's something you're implementing and that implies to me that that hasn't been done to this point in time. []

JODI FENNER: Well, the policies have changed and we've articulated them. And I think what happens when you articulate something, people do it for awhile but they don't do it for very long. It's just human nature. We have service coordinators who have a lot on their plates, and getting them to see past how things have already been done takes more than giving them a new policy and talking to them about it. We have to keep

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

following up on that, or we'll do really well for awhile and then we'll fade off. And one of the things we have to do in community-based services is implement a mechanism for quality improvement and quality control. Because again, we've shared the new policies with both managers and the front line staff who are responsible for transitioning. We believe they are complying with it currently, but we have to have a system in place that ensures that continues and we are assured that this policy does what John Williams would want it to do. That he had his input and his stamp of approval, so to speak. []

SENATOR LATHROP: And is that something that's come along since you've been appointed? []

JODI FENNER: Well, I would say it's something I've been involved with before I was appointed, because when I first got...I mean transitioning has been an issue since the first report. And so I've been involved since that time, essentially speaking with Tricia, not necessarily as her supervisor but as her attorney, saying these are the things that you need to do and working with her, and getting the input with John Williams, this is what we've been able to accomplish. Now I play a little different role but it's still the same need. It's still the same issue. And I also provided you...and I know many of you have had this before, but the organizational structure for community-based services. If you look on the second page, we have over 200 service coordination staff. And while we have a continuing program to train them on...you know, we have an initial training program, we have routine training on various issues, I don't think we have a true quality assurance program in community-based services that allows for us to ensure that we're continually following best practices. Because what's best practice today, which is what we believe is in our plan, may not necessarily be best practices in three to five years, and so we have an obligation to stay on top of that. And that's what Tricia and I are looking at when we look at reorganizing community-based services, and actually DD is the one division in Health and Human Services that hasn't been reorganized since the restructure several years ago, so we are looking at that, and that's just the one issue you mentioned. The other issue that you specifically mentioned was restraints.

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

Technically, we are in compliance on the restraint requirement. We have reduced restraints. What you see is a brief increase in restraint usage, and that is because one of the other issues in the agreement where we have to address probably polypharmacy issues. And any time that you're addressing polypharmacy issues and reducing moving people around, which is one thing we've been doing to reduce the cottage sizes, any time you do that you're going to impact their behaviors. So we went into this process looking at the prescription use issues, knowing that we would have an increase in behaviors, which is the primary cause of restraint usage, so. []

SENATOR LATHROP: I am not an expert in this field. I'm learning a lot about it, though, over the last year. And my understanding is that an increase in restraints, for whatever reason, demonstrates or is a symptom of the lack of active treatment. The more these people are engaged and the more trained and skilled the direct care staff are at diverting them and--I'm not sure what the proper term is--but... []

JODI FENNER: Positive behavioral supports. []

SENATOR LATHROP: ...ratcheting down the anxiety that's going on, the less use of restraints we're going to see. You call it a temporary increase, and I might regard it as just what you described earlier: We started a policy, everybody bought into it, and then we just went back to where we were. []

JODI FENNER: Well, we started a policy at a time period where we had many people on our campus who were overmedicated. Overmedicated people aren't going to be displaying behaviors because... []

SENATOR LATHROP: They're chemically restrained. []

JODI FENNER: ...they're chemically restrained. And chemical restraint isn't something that you're seeing in those measurements, so I would argue that we significantly

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

decreased our overall restraints, if you include chemical restraint, because basically what we've done is we've got a professional staff on board that is tapering our medication issues, as needed. But any time you do that, you're going to have an increase in behaviors. The other thing we've done again is we've moved a lot of people around on campus trying to get a small...we used to have 16 individuals in a cottage and now we have anywhere from 8 to 10. I think we might have one cottage with 12 people in it. But so the struggle we have here is we really don't have numbers on chemical restraints because it's not anything that we measure, because really you shouldn't chemically restrain anyone. What we had is what I would consider bad medicine in play, and so now we have what I believe are appropriate, qualified professional staff who are looking at those medication issues. One of the things we did when we brought the new docs on board, the neurologist and the psychiatrist, when we increased those hours and they were looking at it, we immediately saw the bump in restraint usage. And we said, wait a minute, you're changing...you're not communicating well enough with the direct care staff, because they were basically, as they went through the annual physicals and they were looking at this is what needs to be done as far as tapering or changes in medications. And what we ended up having to do was say, you have to slow down, and so now we have in place where they can only do six clients per week--not that they can only see six clients per week. The focus is we don't want any more than six clients on campus in that tapering process or in the significant behavioral medication change process because we can't have so many people on campus with medication changes that we can't adequately handle the impacts of that. So I don't believe you'll see another increase this next quarter, but that is something that we did because we have doctors who say this is something that we have to do for these clients. And we agree, but really the whole system has to work together, and so we did have to put sort of a, whoa, let's slow down on that. []

SENATOR LATHROP: Okay. I have a couple more thoughts on the DOJ agreement, and then I'll see if anybody...if you have anything else to say about it, and then we'll see if anybody else has questions. But one of the difficulties, because there are 140 things

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

that we promised to do in the DOJ agreement, it's difficult to talk about it, generally, because you can...a person can go and find good things to talk about and you can find problem areas to talk about, and in the end we don't know any more than that, which is really what McGee's report has been telling us. []

JODI FENNER: And even without McGee's report, Senator, the DOJ agreement has two things. It has a requirement and then it has long-term goals. The requirement is we reduce restraints; we've done that. But the goal is elimination of restraints. You know, we don't...we're not in violation if we're not at the goal, but we do have to have a plan for reaching the goal, and that we do have. When we get to overtime, again we have reduced overtime. The long-term goal is the elimination of overtime, but we're certainly not going to reach that goal in the next three to six months, but we have met the letter of the agreement. We still...but part of the agreement is an ongoing effort to the long-term goal. []

SENATOR LATHROP: Here is what I would like to do. Because there are 140 different promises in that agreement, can I get you to go through each one of those and give this committee a written update where we're at? []

JODI FENNER: Absolutely. []

SENATOR LATHROP: And can we agree that it'll have this format, that you will go through each of the 140? That you will indicate, first, what the DOJ deadline is, because you...I want to make sure that we both agree on what the deadline is. So if you can go through each one of the provisions of the agreement, tell us what you believe the deadline is. Tell us if you have accomplished what was required by that. Okay? And when it was accomplished. Okay? []

JODI FENNER: Um-hum. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Now it won't be helpful if the report comes back with 140 provisions and you say we're working on it, okay? What we're trying to do is to get a sense of whether or not we are, as a state, doing the things we promised in the DOJ agreement. And because the committee felt that was the road map to a merging...able to comply with the CMS and with the DOJ, we really need to know that. []

JODI FENNER: Sure. []

SENATOR LATHROP: And we can go down there as a committee and walk around BSDC, but we don't have--maybe Senator Coash does--but we don't have the expertise to look at the DOJ agreement and say, yes, it looks like chemical...we'd have to go through medical records and make it a full-time pursuit, and that's not our role. So we'd like you to do that for us. And I guess my question is, what's a reasonable time frame for that? []

JODI FENNER: Well, we have our...can we give it to you in the format that we're working on it, in the conditions of the participation? They won't be in numerical order, but by... []

SENATOR LATHROP: If you can just pencil in alongside of... []

JODI FENNER: They have the DOJ paragraph numbers in them. []

SENATOR LATHROP: Okay. But we're looking for specifics. Because what we've had enough of is generalizations about, wow, people are really working hard but we certainly have a long ways to go. That doesn't tell us anything about whether or not we're doing what we promised and whether or not anybody is leading the DD employees in this state in the right direction. Okay? So you're putting this program together, the Microsoft compliance program together. This would seem to be an easy thing to incorporate into that exercise. Two weeks, is that too short a time? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: Um, I am trying to think. Well, we have... []

SENATOR LATHROP: Three? []

JODI FENNER: Well, I'm just thinking, because I'm gone the first week in August or a significant part of...the middle of August we should be able to get you...because we're also adding the... []

SENATOR LATHROP: Let's make it August 15, Jodi. []

JODI FENNER: That would be great. []

SENATOR LATHROP: And you can provide this committee with an itemization of each promise, and it will also include where you're going with the CMS tags? []

JODI FENNER: And for the items that are completely finished, what we're doing is we're scanning the documentation and putting them in an electronic form. So what we'll provide you is a DVD that has documentation of all of that attached. []

SENATOR LATHROP: That's fine, except that I don't want the answer to be, you know, paragraph 130, see the 800 pages that are attached and draw your own conclusion. I just...we'd like to know, did we do this, so that we know whether we've got it accomplished. []

JODI FENNER: Sure. []

SENATOR LATHROP: Okay? []

JODI FENNER: Absolutely. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: And supporting documentation would be great. I didn't mean to cut you off... []

JODI FENNER: No, you're fine. []

SENATOR LATHROP: ...if you had anything else to say about the DOJ agreement. []

JODI FENNER: I don't think so. I think that essentially that's what we're trying to do is...because the problem is, everyone thinks that we've met the obligations, but we haven't documented it. And even on some of them, you don't just meet an obligation. Most of the obligations are ongoing and that's something that it's really hard to... []

SENATOR LATHROP: I think that...you know, you say that, and my reaction is, I don't know if...I'd have to look at the DOJ agreement and see how much time they gave us to eliminate overtime, but that wasn't just a soft goal out there that we were going to shoot at. It was: You will eliminate overtime. []

JODI FENNER: No. You will reduce overtime. It doesn't say we have to eliminate overtime. We will move towards reducing. Because there isn't a 24-hour facility in the United States that doesn't have overtime. []

SENATOR LATHROP: I will grant you that. Nor would it be a realistic goal to...but so do you think you're in compliance if you are 100 fewer hours of overtime? []

JODI FENNER: Technically, yes. But the goal...but the thing, what is also included in there is you have to have a continuous plan to continually reduce overtime to the level feasible, and that's where you have to have adequate human resources in place. You have to be not just relying on all call staff and pulled staff, and those are areas where we've made significant compliance. Not only have we reduced overtime, but we're also

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

not using significant on-call staff, so. And those are things, when we go through the matrix, what you'll see is you'll see two things: this is how we think we are currently in compliance with the agreement but these are also the items that are necessary to ensure ongoing compliance. []

SENATOR LATHROP: Okay. To the extent... []

JODI FENNER: And that's why the agreement is four years. []

SENATOR LATHROP: ...to the extent that the DOJ agreement was general and said, reduce overtime rather than eliminate it--eliminate would be zero--so can you, with those type of provisions, tell us what you think that means ultimately for our goal and when we ought to accomplish it? So if we're talking about overtime, do you have an idea now as acting director what that means? Does that mean that we'll have fewer than 500 hours of overtime and by what date will we accomplish that? []

JODI FENNER: As of today, what I think that means is that we will have overtime low enough to ensure we don't have individuals working double shifts; we don't have tired individuals on campus. That was the whole purpose for the elimination of overtime. And I would say...well, we'd have to look, because one of the things that we have been doing is when we schedule overtime, to eliminate the lengthy shifts. We've been splitting overtime in 4-hour...if you have an 8-hour shift that needs to be filled, then we split it. But we don't have people working 60-, 70-hour weeks like was occurring before. So are you saying a definite number? I don't have an idea right now. []

SENATOR LATHROP: Uh-h-h, yeah. And now I'm going to...now I feel like I'm talking lawyer to lawyer... []

JODI FENNER: Yeah. No, that's fine. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: ...and I appreciate that as an attorney we look at the DOJ agreement and it says reduce overtime. And if we reduce it by ten hours a month, we have...we are technically in compliance, to use your term. []

JODI FENNER: Technically. []

SENATOR LATHROP: But that's not the spirit of the agreement or the purpose of the agreement, and that was to bring meaningful reductions in overtime because overtime was identified as the primary culprit. []

JODI FENNER: Yes...well, a primary culprit. []

SENATOR LATHROP: I mean if you look at the DOJ findings, they said at the heart of this is overtime hours. You have...I don't have to explain it to you. That's...we can agree that's pretty much where the DOJ came down. So to talk about it in terms of, well, it's a goal and we're in compliance because any reduction is technically compliant, can we agree that when you give us this summary of how we're doing, you'll put in there what the goal is and when you expect to meet it? I mean, we want some benchmarks, otherwise there's no point in us getting together. []

JODI FENNER: Absolutely. []

SENATOR LATHROP: We have people come in from...you or your predecessor come in and tell us, well, technically we're making technically good progress. And what are the benchmarks? And what's this committee to do if we're...if our responsibility is to measure whether we're making progress, and the benchmarks are so general that even a place in awful shape can still be meeting the benchmarks. So can we do that? []

JODI FENNER: We will certainly have benchmarks in there. The benchmarks aren't in the agreement in many places. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: I appreciate that, but you're...as the acting director, I think we can impose on you to tell us what the measure is going to be or the benchmark and when we should expect to do that. And clearly, if we want to be recertified in two years, those things have to be done within a two-year period, right? []

JODI FENNER: Well, absolutely. And some of those benchmarks, again they don't relate to the...they aren't...even though they're not required by DOJ, they're required by best practices. I mean, even in areas where we've technically met the letter of the agreement, we still have to have a plan to continually improve. Because, guess what? We have a great economy and we're getting lots of applicants in. That could change in six months. And so if we aren't looking to do better than where we are now, we're going to find ourselves in a world of hurt in six months to a year. []

SENATOR LATHROP: You brought up the term "best practices." It would be the standard of care... []

JODI FENNER: Yes. []

SENATOR LATHROP: ...for an ICF/MR? []

JODI FENNER: Um-hum. []

SENATOR LATHROP: Is there a standard of care or a best practice for overtime? []

JODI FENNER: There is not a CMS articulation of that number. There is a CMS articulation in many areas, such as staffing levels and things of that nature, because what I have done in the last several months is go through the CMS survey guide and looked for, you know, what benchmarks can they provide us. And in most areas they don't provide good, hard benchmarks, but in the ones where they have, we're

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

incorporating those. And, in fact, on the staffing issue, I believe we have been exceeding that for quite some time. []

SENATOR LATHROP: You got a pretty good idea of what we're looking for. []

JODI FENNER: I do. I do and it's actually what the management team is already working on. []

SENATOR LATHROP: Okay. And if it turns into something general, we'll be back here, because at some point this committee, if it's to perform a role at all, it has to have a standard for measuring progress and then a report on whether we're doing it or not. And, you know, John McGee isn't going to give us that and we shouldn't have to count on him. We should...as a state, we ought to have the expertise and the information at hand and not have to rely on Dr. McGee to give us that information. []

JODI FENNER: Yes. []

SENATOR LATHROP: Okay. August 15? []

JODI FENNER: Very good. []

SENATOR LATHROP: Senator Coash. []

SENATOR COASH: Thank you, Senator Lathrop. Jodi, last week I went to a meeting with you and--not a meeting, kind of an open forum--with you and Tricia Mason, and Dr. Ramadan was there and a whole room full of parents from BSDC. First of all, I just want to commend you for doing that and I encourage you to continue to meet with those parents and to communicate with them what's going on there because they're going to be a key part in this. And I want you to know that I spoke with many parents since then and before that who said they really appreciate hearing it directly from the top what's

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

going on and the progress. But to that end, there's a question and I think you answered it on Friday but I wanted to ask in front of this committee just because I want it to be clear as well. There was...and the question has to do with the reapplication of the license that Dr. Schaefer pulled and to see what the department stance is on reapplying for that and what the status is of that, because lots of parents have been contacting us, or me, wanting to know. It seems to be unclear, and I think you cleared it up on Friday but I wanted you to clear it up for the committee, where BSDC is on the possibility or the progress of reapplying for that particular license. []

JODI FENNER: Sure. There are three aspects to deal with in looking at...and it...and we haven't lost the license. It's just limited, limited to we can't serve the medically fragile at this time. And the first thing that we did do is we looked at our policies, and we believe those have all been changed, streamlined. They address...well, we know they have because public health has come in and looked at them whenever they did the removal of the immediate jeopardy. So the policy changes have been made. The medical staff, we are providing adequate medical care at this time, so that's the second aspect that has to be looked at. The one issue that we're still working on is sustainability and that's the third aspect. The medical staff we have right now, we have some permanent medical staff but we're still using significant temporary staff, mostly because it's darn near impossible to recruit. We've been actively recruiting for quite some time now. And, you know, all you have to do is read the newspaper...and you're asking a lot for a physician to come to a place like BSDC where every move they make is going to be criticized or in the paper or questioned. There's very little privacy, even in the medical area, at BSDC, and so getting physicians who are willing to come to BSDC on a permanent basis is our biggest struggle, and we cannot get a license restriction until we can show that the changes are sustainable. And so that's what we're really working on right and Dr. Ramadan is working on helping us recruit and retain and those things, much of what is in this report that's in your folder. []

SENATOR COASH: So is it fair to say it's the department's intention to reapply for that

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

portion of the license that was reduced? []

JODI FENNER: Absolutely. If we can do that before we reach full CMS recertification, we'll do that and that's our hope. But at a minimum when you ask for CMS recertification, they will not give you a partial facility certification. You either get an ICF license or you don't, so. []

SENATOR COASH: So the third component to reapplying for that portion of the license that was reduced was the sustainability of the medical staff, which... []

JODI FENNER: Yes. []

SENATOR COASH: ...and Dr. Ramadan talked about that on Friday. []

JODI FENNER: He did. []

SENATOR COASH: So that's the third component. And once you feel like that component has been satisfied, you'll fill out the paperwork to send to Dr. Schaefer to say, we as BSDC would like to reapply for the license to serve medically fragile people? []

JODI FENNER: Yes. Technically we'll be filing a motion to remove the license restriction, but basically that's what it... []

SENATOR COASH: Okay, remove the restriction. Okay. I have another question, if anybody has... []

SENATOR LATHROP: Keep going. []

SENATOR COASH: I was looking at your transition guidelines from the ICF/MR to the

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

community-based programs, and you touched on this briefly. I want to know your opinion as to how the transition is going from...for those folks, to the community, and what kind of barriers you've come across. []

JODI FENNER: I actually think it is going a lot better. Some of the barriers that we struggle with are not barriers that we face at BSDC but they're community-based barriers, and I did sort of mention this at the meeting you were at last week as well. Just a few weeks ago we were in the community and noticed that there was an issue with an IPP plan for one of our clients, and it's something that has probably been done that way forever in the community but it's really not acceptable best practices. And in some ways our community-based services is going to be greatly improved long-term by the DOJ agreement, because not only will we implement these best practices for individuals leaving BSDC but also for those that have been in the community for a long time. And so what we did is we've talked to the provider and met with them and said we are going to basically bring some of our expert staff out to visit with you and change this issue. And I really don't want to talk about the specifics because it is a privacy issue for these individuals. But we're going to have to do more of that so that is a huge barrier, is providers are just as behind the ball as BSDC is, quite frankly, and as a provider, you can appreciate that. Been doing the best they can, but they need some support and assistance too. And part of that will come in the realm of the overall education money that you allotted us this year, that \$500,000. But some of that's going to have to come on working with providers on a case-by-case basis. And we're going to be providing some of that expertise from our BSDC enhanced staffing that we have. That's one. Second is...I don't really know what you want to label it, but I sort of think of it as sort of a passive/aggressive behavior and I...I know how hard it was and still is for many of our BSDC staff and parents to understand things have to change. At BSDC, though, we have some control over that. We can make those changes. In the community, though, even with additional resources people don't always want to change the way things have already always been done. For example, one of the issues in the transition is more of a mutual sharing of information, more face-to-face meetings, visits, things of that nature,

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

so that there really is a smooth transition when somebody leaves one placement and goes to another, regardless of whether that's from BSDC to the community or from one community placement to another. But from a provider perspective, that's a lot of extra work, and we have actually done some transition contracts to allow us to reimburse expenses related to the enhanced transition costs. And when we write our new waiver, we're going to have to add some allowances so that that goes into the actual waiver, and that's part of the reimbursement mechanism is those transition activities. With that being said, we had a provider in Omaha. We sent...it was an extended family home. We sent them all the information regarding the client and had these face-to-face meetings. (Inaudible), yes, we understand that; yes, we can accommodate that; yes, we get this. Even did a visit. And not until after the transition did they, all of sudden, tell us, you know, they were expecting another child in the house. They were really...they really were equipped to handle the role that they had committed to, and so it was a transition that did not succeed. And I don't know, at some point in time we'll have to look at how do we handle that. Do we now not allow that person to ever have an extended family home? I mean, we have to look, as a division, how we're going to address those issues. But I would say most of the barriers are those types of things. We just assume the community has had and is utilizing best practices, and that really isn't the case. We're going to have to make a lot of progress there. It's part of it is structurally. We have to think about how we structure our services to the community providers and our oversight to the community providers. Part of it is educational and part of it just generally communication. You know, the communications we had with the providers last week, we're going to have to have those same communication--with the parents--we'll have to have those same types of communications with the providers, and I don't know that that's been happening. []

SENATOR COASH: Okay. So communication with providers is then, and the accompanying oversight and the best practices that the department has a responsibility over for. As a new director, I know your focus is a lot on BSDC and getting us into compliance. And you described earlier, for the committee, an elaborate plan to do that,

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

and then I was part of...the last time you were here you talked about your reorganization plan at BSDC, and then you shared a lot of that with parents last Friday. Do you have a similar game plan to address those issues with providers? Because I'll tell you my--and this is my bias because I work in the provider community--but there's a real problem with the department and the provider community's relationship. And so when you say things like facilitating better communication and better resources and working more closely with the providers, I like the sound of it, but my question is, do you have a plan to carry it out? []

JODI FENNER: We do. []

SENATOR COASH: Okay. []

JODI FENNER: We do. And it isn't...it's a little different than what we'll be doing with the parents and other individuals because we have to do it on a couple of different levels. We have a different variety of providers. And if you just have one forum for communication, what we find is you have the same providers who come each time. They're not necessarily the providers that you need to be communicate...I mean, they are the providers you need to communicate with, but then it's the ones who don't come. As long as they get their check, they don't really care and they're not going to show up. And we're going to have to actually just go to them face-to-face because I don't know what else to do. You can't...we're going to have to do some of that on top of just general provider communication. Technical assistance is something I don't think that we do a very good job of for a variety of reasons. And when we look at issuing new regulations and going into applying for new waivers, that's going to require an enormous amount of communication and education, which is beneficial both to the providers and the department. Because when you start looking at contract changes and things of that nature, if the providers are confused, that just fizzles down to the department level, and then we have delays in billing and then a lot of other chaos, and so we have to make sure that doesn't happen. One of the communication errors that I would say happened

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

recently was on the contracts. My understanding...and this was a little before my time. A few months ago the providers were asked to provide input on a draft contract. They were given some input back on that, but there were many things in the contract that were asked to be changed, we simply cannot change yet. Things like going to a daily rate, some billing issues, and things of that nature. Those are things that have to have CMS approval, and we'll be seeking CMS approval for those, but I don't know that that was communicated very well to the providers, that we appreciate this input and these are the steps we're taking. We'll amend the contract when those approvals are achieved but we can't do that in this contract. I think basically what was done is the contract was mailed out and said, here you go, and then we have a lot of grief that didn't necessarily have to be there I don't think. It doesn't mean we can give the providers everything they want. We have an accountability to you and accountability to citizens, and then we have to follow the statutes. But I think what we can do is a better job of explaining why it is that we do what we do. []

SENATOR COASH: Okay. Again, you're telling me you're working on a better... []

JODI FENNER: You want to know how we're going to do that. Yeah. []

SENATOR COASH: You know, similar to what Senator Lathrop is asking for a plan that's something...and the relationship with the providers doesn't have a...is only partially addressed in the DOJ agreement. But I guess I'm interested in... []

JODI FENNER: Sure. []

SENATOR COASH: I mean, everything you're saying makes sense to me. []

JODI FENNER: The functionality. How are we going to get there. []

SENATOR COASH: And what you're saying about, you know, we need to...some

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

providers, we need to communicate better with, and other... []

JODI FENNER: For the providers as a whole, we'll do much like what we're doing from the parent perspective. We'll set up a monthly meeting. We'll have the teleconferencing ability, because what we find is a lot of people will take time to dial in to a meeting that won't come to Lincoln or Omaha or Grand Island to show up. So we'll have a standard monthly meeting with an agenda. We actually also have some targeted providers that deal with a certain population of clients that we've already started to set up meetings for, because we think that they need...they may not realize it or they may not want to admit it, but we think that they need some resources that we feel we can provide to allow them to provide better services to those populations. Those we're actually doing on independent provider-to-provider meetings. I would anticipate, in addition to the monthly meetings, what we do at the first monthly meeting is ask, how do you want us to communicate with you? Which is much like what we have done with the parents. Because if we just dictate a method of communication without getting input, then we may not be communicating in the most effective way. Unlike the parent groups, I would assume we could do a lot of electronic communication with the providers. I would expect most of our providers, if not all, would have computers and that sort of thing, so we would hope to do...when we do a technical assistance letter or respond, especially with the new regulations coming out, we want to have a system in place to be able to answer those questions but answer them to the entire group. And so I foresee us doing some type of list-serve. The question is, how do we make that work through the state system, because we don't necessarily have that set up in place. I've talked to Mary Gordon on the DD Council, and she's willing to help us look at some ways that we can work together on communication and some of those joint goals. And so maybe she...we were thinking there were some things that maybe they can do that aren't (inaudible), because, you know, our state IT system, we have limitations and we can't just do everything we want to do, so we may have to look at that. But the biggest issue I see on top of monthly and continuous ongoing communication, is having a system in place so that when new regulations or the new waiver comes out, we have a way to quickly

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

respond to providers and to respond to the providers as a whole. And I don't know any way to do that other than electronic, but we'll be asking the providers for their input at our new meeting. Is that specifically... I mean...? []

SENATOR COASH: Yeah. I'll ask again, next time we meet, how that's going, because I want to see how that's progressing. []

JODI FENNER: Absolutely. []

SENATOR LATHROP: Senator Harms. []

SENATOR HARMS: Thank you. Jodi, thank you very much for coming before us to visit with us today. You have used the term "best practices." Who determines best practices? Secondly, how do you implement best practices? And three, how do you prepare your staff to address that issue? So talk a little bit about best practices, where that comes from and how you actually monitor that. []

JODI FENNER: Sure. A lot of what we see as best practices...it depends on the area that you're looking at. If you're looking at habilitation and active treatment and things like that, there are a couple of places you can look. There are a couple of national associations for DD providers. CMS actually will have best practice examples on their Web site. You know, in a general forum you look to national conferences. If you'll look at the DOJ report, it asks us to send our people out to...you know, not just here in Nebraska, but to go see what other people in the country are doing. So just like any business, if you go to their national conferences, if you go to the CMS Web site or go to the national organization's Web sites, or communicate, sometimes they have magazines, they have different...a variety of levels of communications. In the public health arena, in general, not DD, but we have a public health forum, and so you can go look at different types of best practices there. So when you are looking at the DD community those are the areas where I would say you would look to see what best

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

practices are. And oftentimes you can find trainers or resources that you can bring into the state, and we've done a lot of that lately. But the bottom line is that after you do that, you still have to have a continuous commitment to maintaining that knowledge base if new things come out. When you talk about medical best practices, I believe the best place to look at that is, quite frankly, here at our own university. I mean I think if you look at...you know, some of our universities are continuously, especially like UNMC, because of their research program they tend to be very progressive. And so one of the things that Dr. Ramadan is doing is working with UNMC to make sure that...and that's generally how we'll get peer review, is through the university system. []

SENATOR HARMS: With best practices, that means change? []

JODI FENNER: It can. []

SENATOR HARMS: And change is really tough for people to make that change and change over to...to change the, maybe the thought process or maybe change how you handle patients and people and clients. It's not easy. []

JODI FENNER: No. []

SENATOR HARMS: And for a lot of folks, they don't want to get out of that comfort zone and you have to force them out of the comfort zone. And do you have a plan to be able to do that and a plan to be able to monitor these people to encourage them to make the changes? Because that's a tough battle. []

JODI FENNER: And in different areas, yes. Because each...we have a...one of the primary reasons that we had the meeting last month is because we're making very significant changes in the habilitation program. A lot of the changes that have been made at BSDC today are just common sense: you need more doctors, you need more nurses. I mean, nobody really is objecting to that. You need to change the way we do

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

some of our habilitation, just day-to-day stuff. But now we're actually making big structural changes, and they're not hard. You guys are going to get calls complaining about what we're doing. We'll try to do a really good job of updating you and explaining to you that process. I'm not sure, because we had several legislative aides at the last meeting where we talked about the change in the HSTS and our habilitation and our active treatment programs. What I could probably do is e-mail the PowerPoint out to the group so that you would have that. And I apologize I didn't think about doing that before, but that's an example of an area where change is hard. I mean, we've...we're still having meetings and we're still sort of pausing and slowing the process so that we can make sure we have adequate coverage in the home. But we're also moving to the out-of-the-home active treatment and habilitation and vocational programs, but it's not easy and it's not going to make everyone happy. []

SENATOR HARMS: No, it's not. That's why I brought it up, because it really is hard to get people to make that change and to get anybody out of the comfort zone. I don't care whether it's in this side of the profession or it's in education or other places, it's really hard to change the culture. I just was curious about how you're looking at that and how you're planning to make that adjustment, because you've got a battle. []

JODI FENNER: Part of it is, I think, that we've got a really good management team. We have people who have worked in the fields before who have seen what works and doesn't work, and so in a lot of respects we have several really good experts on staff now. I just talked about the habilitation and the active treatment changes. Dr. Ramadan goes through some of the medical changes in his report that I've provided to you in your folder, and some of those are hard. I mean, how we look at seizure protocols and things of that nature, those...it's...those are difficult changes too. We don't think about it but it's like telling our nurses that you haven't been doing things right all along when they've been doing things as well as they know how to do them. The good thing is, is Dr. Ramadan has experience as an educator, and so we've been dealing with it that way. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR HARMS: Let's talk a little bit about FTE costs. []

JODI FENNER: Yes. []

SENATOR HARMS: In regard to Beatrice and bringing down the number of clients and adding, hopefully, the appropriate staff or adding more staff, are we going to be confronted with the issue in the Legislature here in the next four or five years about the FTE costs of running Beatrice and...? You know, to me, by adding the staff, we should have been adding them when we had 300 people or whatever it was, there's a breaking point there in regard to how people view the costs. What are your thoughts about that and what do you think is a legitimate FTE cost, because I think that's critical. That will come up. []

JODI FENNER: It is, in several respects. You have the direct care staffing costs and those issues, and the shift managers, the home managers...for example, now we have a home manager and a \_\_\_\_\_ mcqrp in each home. We have a shift manager for each shift. And then we're providing more coverage than the minimum. I mean, we're definitely exceeding CMS minimums, whereas before we were barely meeting CMS minimums. So you can't expect a person-per-person reduction as we've reduced the census. Those costs have increased, but realistically they were severely underfunded before and so we're accounting for that. I don't necessarily think that, overall, is going to increase the FTEs, you know, when you look at...I think your question, really Senator, is at some point is it going to be too expensive to keep BSDC open? []

SENATOR HARMS: Right. []

JODI FENNER: And, I mean, that's something everybody worries about. There are areas on campus that, I will tell you, have been overstaffed, and we're evaluating those. We have areas in maintenance and food service and things of that nature that we're looking at where we can decrease staff but still maintain the facilities and the care, the

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

independent...or those services for the campus, and so there will be some reductions there. We're, right now, doing a lot of that through attrition. A lot of our food service workers used to be direct care staffing, and so when a position is vacant we don't fill it. We're also encouraging people in those positions to apply for other direct...the other open positions that we do know we'll need. One of the things that we aren't doing is we aren't filling some direct care staff positions because we know, you know, in February when Mosaic opens, if we do that we're going to be looking at a huge layoff and that's going to be terrible for morale. So some of our overtime reduction won't happen right away because we don't want to put ourselves in a position where we're having to do layoffs in six months, because we do anticipate a jump in census when the Mosaic and ENCOR open their facilities, not only because layoffs are bad for morale, but it costs a lot of money to train our staff. We don't want to waste that money. So we're trying to figure out adequate staffing levels, again to reduce but also at the same time not to have those layoff issues. When we talk about our professional staff, one of the things in looking at the community services that we're really recognizing is they don't have those resources. And it isn't that they're not funded. They just don't really exist. I can't remember where the statistic came from but that we don't have a neurologist who serves DD patients west of Kearney. That's a problem. That's a huge problem because people, when you look at the Olmstead and the right to live in the most integrated setting, well, we'd like that to be near your home. And if you can't get medical services near your home, that's a problem. So one of the issues that we've worked on is telemedicine. You know, how can we provide services to people across the state with the new resources that we've built. Because the reality is, even if you have a population of 120, 130 at BSDC, you're still going to need neurology, psychiatry, psychology services, and you want to maintain those at a level where, if you lose a doctor, you're not in crisis mode. We can't keep getting ourselves in a situation where we're in crisis mode. So sometime we have to look at what do we do with this medical unit. I mean, my proposal is, is we do separate it as a professional unit and we rewrite a Medicaid waiver that allows it to bill services to the community through Medicaid so that we're maintaining an area of expertise, but all of their services won't necessarily be dedicated

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

to BSDC as the BSDC's needs lessen. []

SENATOR HARMS: At what level are you thinking about Beatrice as far as clients are concerned? I've heard a lot of numbers over the last couple of years. What's the target that you're saying you don't want to go any lower than this? What are you really...what's your intent here? []

JODI FENNER: You know, I believe the Governor has used numbers between 90 and 120, 90 and 130, and I just...I don't personally know what that magical number is. Part of the thing I struggle with is we have a lot of individuals who are in nursing homes, and when we have all these Mosaic spots we're not just moving people from BSDC in those spots; we're actively trying to get guardians of individuals in nursing homes to consider moving them out of a nursing home. And while they may be doing very well there, from a medical perspective nursing homes don't provide all the active treatment. And I think, long term, it's generally recognized that a nursing home is not necessarily a great place for an individual with developmental disabilities, and so we would like to see them moved into a medical service unit or one of the Mosaic or ENCOR-type facilities. So what does that do to the BSDC population? I don't know, because we also have to increase ITS/OTS, so then you're talking, even though we had people coming out, we'll be increasing those temporary beds. Just looking in the last year, we've reduced, oh, over 80 individuals who have moved out into the community. I would anticipate, with the 60-70 new openings we have, that at least 60-70 percent of those will come from BSDC. So I think the Governor's numbers are probably fair, but again that's a 2- to 4-year process. That isn't an overnight-type process. []

SENATOR HARMS: So how does that then all fit in with the waiting list? When you look at Beatrice, there may be people...I mean, I think our waiting list is an embarrassment to Nebraska and I think we've finally, through the legislative process this last year, did budget \$5 million for this present year and then \$10 million next year to stop that bleeding and begin to start giving parents and family members hope that their son or

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

daughter or loved one is going to be placed. Some of those folks may have to go into Beatrice. And so that's why I'm just really curious about where we are or where that's going to go or not going to go, and whether it's... []

JODI FENNER: I see Colby shaking his head. And institutionalization is not considered a best practice for anybody in the new generation. I would say typically what an institution is looked at or foreseen for individuals on the waiting list or coming out of the educational system is for people with severe dual diagnoses, behavioral issues, who can...who have failed repeatedly in the community or something of that nature. I could see individuals like that coming into Beatrice at some point in time but, generally speaking, I...you have to applaud our school systems and institutions or facilities like Munroe-Meyer for what they're doing with our youth. I have...one of my dearest friends had a child with Down's syndrome two years ago, and at two months old they're already doing occupational therapy. And now Anna is...I mean other than a heart condition, a congenital heart condition and some other developmentally delayed mental issues, she holds her head like a normal child, she has all the natural movements. But that's to the thanks of our educational system and how we treat our youth. So I think, long term, we're not...and when you talk about waiting lists, a lot of those are going to be supported services, supported living services, and they're not necessarily institutionalized services that are needed. []

SENATOR HARMS: So let's talk a little bit about the community-based program and the transition. Do you really feel that we are prepared to address this issue of placing people into a community-based program? Do we have the adequate staffing and the places to put people? When you bring them off this list that we've got, you know, that could be...and I don't know what the numbers will be. Maybe...I don't know. But there's an awful large number that we are wanting to get placed, and I have every intent, if the economy improves, to get more money placed in there to get these people off that waiting list and placed where they need to be placed. Do we have the structure and the system to do this, and can we monitor...and is that going to be our next major issue? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: It absolutely will be. The monitoring and oversight, I believe you funded...the Legislature funded some significant additional positions for public health, and I can't...I'm...it's not my division and I can't remember the exact number, but there are some additional oversight resources being added to public health. We, as the DD division, have to look at a quality improvement program, a consistent methodical quality improvement program that our service coordinators help implement in addition to central office staff; not just public health. I mean, there has to be a dual system of looking at quality, so most definitely we have to look at quality assurance in the community-based programs. You keep using the word, Senator, "placement" though, but for a lot of people it isn't a placement issue; it's they're already in the right place but they just need additional resources. When you talk about placement, we have a priority system in Nebraska, how we...are you a priority 1, 2, or 3. And typically when you talk placement needs, somebody who needs to go into an institution or needs a higher urgent level of care, that's a priority 1. And I believe we're actually...those are all being funded at this point in time, all the priority ones. So when you talk about the waiting list, you're talking about people who have lower priorities. So they may need supportive living, they may need day service habilitation, they may need some respite care, things of that nature. The goal is to allow people to live in the most integrated setting, and many of them are in an integrated setting but they don't have all the supports to allow them to stay there or to allow them to move...to be in an independent-type setting. And so most of the new resources you see aren't necessarily going to be for residential care, but... []

SENATOR HARMS: Do you think that moving clients from Beatrice into a nursing home is adequate? I don't know of very many nursing homes... []

JODI FENNER: No, I don't. []

SENATOR HARMS: I mean, I just...I'm just really offended by that. And I'm not being critical of nursing homes but it just isn't the place for a lot of these people to go. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: I would agree with you completely. []

SENATOR HARMS: And how are we going to deal with that issue and get them out of those nursing homes and get them placed appropriately? Because I'm really offended by that. []

JODI FENNER: Yeah. We've actually already started a direct communication effort with all of our individuals in nursing homes. I had our staff compile a list of everybody who had been put in a nursing home since 2007. We've targeted...I worked with Mosaic, Tammy Westfall, and we put together a packet explaining the types of services we could provide them. It won't cost the family...I mean, they're all Medicaid services; won't cost them anything. And we've targeted our...the first mailing has already gone out. We've only received a handful of responses back, so Tammy and I will meet sometime in the next few weeks and think about how we want to tailor the next communication. We are looking at designating a service, a coordinator, to oversee nursing home placements, because we really do want to start personally calling and meeting with those guardians. The concern isn't so much...again, people see they're doing okay now, but if they don't receive the type of habilitation and OT/PT/ST, the therapy services, then when those individuals reach an older age they're not going to function appropriately. They're going to need things like G-tubes and J-tubes and all the medical paraphernalia that I couldn't possibly explain to you today. And it's our goal to put them in a position, physically and mentally, where they don't deteriorate, because they may do well there, for awhile, but they won't long-term. []

SENATOR HARMS: I have two more question... []

JODI FENNER: Sure. []

SENATOR HARMS: ...and then I'll leave you alone, Jodi. Thank you very much. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: No, that's okay. []

SENATOR HARMS: Okay. I want to talk a little bit about assessment--assessment of the clients that are already in Beatrice. And that's been a concern, I think, of a lot of people, I think even the feds, that people were assessed appropriately. Where are you with that whole assessment? And that's my concern that I have is that we have assessed them right, they're on the right drugs if they are on drugs, that they are being treated appropriately. I just don't know. []

JODI FENNER: Well, there's a couple of different types of assessments. You mentioned the drugs. That's the medical assessment, and then you'll see Dr. Ramadan's update there. Those we have to slow down on a little bit because of how I explained earlier. But when you talk about the general assessments, like what Ted Kastner is doing, the objective assessments, he has done all of his assessment. He is completed with his part of the assessment, and most of those reports, I believe, are done. The last few, there's...the assessment process involves his assessment and his review of the records and all the documentation, but then there's an interactive component with the IDT team and with the guardians, and so that process has taken a little bit longer. I believe we should have the rest of those completed within the next, I would say, month. I believe he said late August. And that's the objective assessments that...as I interpret the DOJ contract to mean. []

SENATOR HARMS: One of the previous problems, as I remember reading some of the federal reports in regard to the assessment process, that they assessed the patient, the client, and was never transferred outside of a certain level. So a lot of people were treating the client but there was never a written communication of what the appropriate assessment was or follow-up with the assessment with an (inaudible) that needed to have...if they were taking a new drug to help a little bit, there was never any follow-up of all that whole aspect of...are we getting a handle on that? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: I think so. We've significantly changed our IPP process and how our IDT teams meet. One of the big issues is we had a lot of silos of information on campus and not a lot of integrative information. I would say even as long as six months ago we had nine different areas of records on campus. That included medical records. And so what we've done is we have limited that down to...I probably shouldn't say this because I'm not 100 percent certain, but I think now we have that down to three. And what that does is it ensures a more accurate comprehensive record. And what the long-term goal is, is to go to an electronic recordkeeping system. We already have Avatar, which is a system that many states use for a comprehensive electronic record, both medical and behavioral. And then what happens is, much like we have now, the client has a notebook that they carry around with them, and then at the end of each day or each week the day-to-day information gets put into the system so that at any point in time a home manager, a doctor, a nurse, can print out a report or whatever type of information they need and it's up-to-date, and so we are working on that type of comprehensive record. Because it wasn't so much that evaluations weren't being done, but because they weren't working together in an interdisciplinary team...you know, psychology would be doing one thing related to behaviors and medication; neurology would see the client maybe six months later and they might change a medication; and then psychiatry might see a client six months later. Now what we have is we have an interdisciplinary clinic. Our psychiatrist and neurologist meet the clients together at the same time and that's huge. It's hugely important because there are a lot of medications...and Dr. Ramadan would be happy to come visit with you guys and explain more of this process to you, probably in a much more articulate fashion, but there are many medications that are used for both disciplines. And so... []

SENATOR HARMS: You know, if you could get that part of it straightened up you'll make phenomenal progress, because that's where a lot of the issues broke down. I mean, there just was no management there at all or follow-through. Earlier in your opening comments and discussion with Senator Lathrop, you talk about the team

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

approach and making sure that everybody understands they're on a team. That's pretty critical but that isn't change in the culture; that's a change in a whole administrative structure of that organization. How are you doing that? How are you bringing those people together to understand that if you fail on this side, the team fails. I mean, this is ownership. []

JODI FENNER: It is. []

SENATOR HARMS: So if one goes down, you all go down. You're together on this whole aspect and you have to function. And that's why this whole interdisciplinary approach is critical. []

JODI FENNER: I think you say, how are we doing that? I think we've done that at the management level and we finally go the management team on board with you have to do it at the whole facility level. []

SENATOR HARMS: Can I stop? Do they meet on a regular basis as a team? How often do they do that? []

JODI FENNER: At least three times a week. []

SENATOR HARMS: Boy, that's great. []

JODI FENNER: It was daily and now we've gone to three times a week. And what we're going to start doing...and this is going to probably get me in trouble on the overtime a little bit, but we wanted to start doing some shift meetings, especially while we have so many changes in places because we want to keep our staff informed. But we don't have enough time to...and we don't have enough people to just do it during the work day because we have clients to care for, so one of the things we're going to start doing in August is we're going to do one shift meeting a month, which is really three shift

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

meetings. We do it an hour before or an hour after the shift, and so it's not mandatory, but for the staff who want to come and be more open with this is what we're doing, this is the role that you play. We'll be doing that on a monthly basis. But that will require a little bit of overtime. []

SENATOR HARMS: Jodi, I applaud you, because I think from...at least, from this side of the table, it's the first time I've heard someone who really understands how to put some of this together, and I think you're on target with this. Do you meet...? I mean, with your philosophy and your understanding of it, are you meeting now with that team at all (inaudible)? []

JODI FENNER: I have been meeting with them at least once a week... []

SENATOR HARMS: Are you integrated into that structure? Because it's the only way it's probably going to happen. Iff you're not there, it's not going to go. []

JODI FENNER: Yeah, absolutely. I meet with them at least once a week; depending on the issues, more so. But I think what's even more important is community-based services meets with BSDC too. I mean, we have to have...we have to be one system. We can't continue with the silo effect across the system. You talk about...the one thing I did leave out when we talked about communication, when we get the plan put together with the deadlines and what's going on, one of the things we're going to do--I don't know if you're familiar with the Carstens Center on campus, but there's a big wall there and we're basically going to have it printed. I mean we're going to put it up for everyone to see. I mean, I think we have to be willing to be accountable for what we've promised to do. And so that way, even people who don't come to meetings and who aren't able to do those things or who aren't interested, have an opportunity to visually see that. It will be on our intranet site for people to see, this is where we're at with our different projects, so. Because some of what we're doing is even...it's more so than just...it is ongoing and we have to...it has to be an evolving process. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR HARMS: Are you looking at...because that's been such an issue for you or for the state of Nebraska, are you looking at any kind of an incentive or award system to get people to buy in, to understand that, hey, you know, this is the all-star award that you get for the month or the week; that you've really done something that's outstanding and it's gone beyond this whole thing; you're starting to bring us together. Trying to...have you given that any thought or...? []

JODI FENNER: Well, one of the things that we did, actually in the last few weeks, is we've ordered electronic bulletin boards. It's under \$5,000 total--I can't remember exactly. So when people are walking through campus, we can recognize the accomplishments that's gone on. One of the things is sometimes, I know, is the state, in general, even when our employee of the year awards, when we give them out, oftentimes nobody knows about them. And so trying to find a way to say thanks in a more public way, in a way that people can be recognized, and so that's one of the ways we're doing it. I know each of the different areas on campus are looking at ways. And you guys also gave us the incentive and performance bonuses, that we have that system in place as well. We have a couple of areas where we really have to work on incentives that we don't have in place in some of our nursing and with their therapy staff. Those are areas where I think we have to find a way to continually recognize them and find ways, not just to say thanks...but that really does impact recruitment and retention. []

SENATOR HARMS: It starts to change the culture of the organization because it says to the people, not matter what level they're in, that you care. And that's what this is all about: caring. And carrying that through and supporting them during a more difficult time. So thank you very much for your answers. []

SENATOR LATHROP: Senator Stuthman has some questions for you. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR STUTHMAN: Thank you, Senator Lathrop. Jodi, thank you for taking on this task. I really appreciate that. One of my main interests, and you probably realize this, is those medically fragile individuals and serving on this HHS for many, many years. And I thought the audience at BSDC should be for those individuals because they're the hardest to put in a community-based service. The thing that I have a real problem with now is the fact that the license was pulled, those were removed, and now in order to reinstate that portion of the license, what you stated, it's almost impossible to hire the medical staff to take care of these individuals. But if you would get the staff, is there a guarantee that we will get the license back and these individuals will come back to BSDC? Or are we at a point where we should scrap that whole idea? []

JODI FENNER: I don't know that we'll be able to obtain sustainability in a timely enough manner...I mean, I don't like to see people lingering at a hospital because that's...if you think a nursing home is bad, a hospital is certainly...and it's not that they're are a bad place. It's they're just not equipped to provide the services that our clients need. I will have to respectfully disagree with you, Senator, on BSDC is really the right place for medically fragile individuals long-term, because the biggest struggle we have in Beatrice, even if we maintain appropriate staff, all we have in the near proximity is an acute care access hospital. They don't have neurologists; they don't have a gastroenterologist. They don't have that. In fact, we've been meeting with them and all of the experts that...I mean, the neurologist, the psychiatrist, those staff that we're having at BSDC, we're looking at cross licensing them or giving them privileges are the hospital, because they said, oh, you know, we need a neurologist too. And they asked us if there were certain areas, if they need a cardiologist. If our clients need those services, they're not there. They have to come to Lincoln or Omaha. And so if you have somebody who has pretty significant cardiology needs or just a lot of different issues like that, we don't have a regional hospital close by, and that's where places like Mosaic and ENCOR, I mean, they're five minutes from UNMC. And if they need a cardiologist, by golly, they could get one this afternoon. We may have to wait three days for one. So I understand that people think...and it's a general misperception that the medically fragile

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

are the hardest to serve. They're actually not. They're probably the easiest to serve because they're the nicest people you could ever meet. Behaviorally, they're not a problem. It's just you have to make sure their medical needs are met, and there are lot of providers who do that very well in a noninstitutional setting but more like a small medical service unit or a CDD or a (inaudible). []

SENATOR STUTHMAN: Then, Jodi, explain to me, you were attempting to hire the medical staff. Is that for BSDC or for where then? []

JODI FENNER: Well, even people who aren't medically fragile with developmental disabilities needs medical care, and what we're trying to do is determine what are our staffing needs. And Dr. Ramadan has provided that to you in his report. So regardless of whether we have people with extreme medical needs on campus, we still have to provide consistent quality medical care, because if we don't then people will develop more severe medical needs or their acuity levels will vary. And so I don't mean to say we don't need medical care at BSDC and I'm sorry if that's what I inferred. What we won't need long-term is right now I have a full-time FTE of a full-time neurologist on staff. Even with 150 people, long-term, after we get everybody's medications to the appropriate levels, you're not going to need that level of services. You don't necessarily need 20-40 hours of psychiatry for even 150 people after everything has been appropriately assessed, because then what you can do is you can do biannual or annual physicals to address those needs. And then if you have flare-ups or issues like that, then that would be the need for the rest of the...those specialists. Things like podiatry. We need...right now we have a severe need for enhanced podiatry coverage at BSDC because it's an area, that even DOJ and CMS haven't really looked at that, we recognize it as we have an extraordinary need here and we're looking to fill that. Long-term, we still need to maintain adequate coverage to serve individuals at BSDC, but to maintain that level of coverage we're going to have to find something else for them to do or we're not going to be able to maintain that professional team. And that's where when I mentioned the medical...you know, the professional unit concept. A lot of

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

states do that. Oregon does it with their Oregon Technical Assistance Corporation. A lot of states do that type of thing where they have a professional unit that serves their facilities but that also serves the community. []

SENATOR STUTHMAN: So, Jodi, we need to have that all in place and get that license reinstated. []

JODI FENNER: That part doesn't have to be in place right away. That's a long-term Medicaid waiver issue. You actually have to write a Medicaid waiver to allow you to do that. Right now, we need all those resources at BSDC, so I can completely validate the need for the staff that we have in that professional unit. What I'm saying is, to maintain that level of professional services long-term, you have to look at the system as a whole. And we can't be shortsighted, we can't just be looking at certification. We have to be looking at five years, ten years down the road, and that's not something that we've done very well. []

SENATOR STUTHMAN: So in other words, if we would get reinstated there's not going to be the patients coming back there, and there was no real intent to have those medically fragile ones to come back. You're trying to find a place... []

JODI FENNER: Well, I think certainly if somebody has an issue in the community that makes BSDC a need for them, then BSDC should be there. So I'm not saying there's no intent. What I'm saying is, personally, if you're asking me, do I think they belong there? I think that we can serve individuals with high medical needs much better in a community setting. That means we have to provide appropriate oversight, and that's an area where I understand the guardians have a significant concern about. But BSDC won't be turning them away, if that's what you're asking. No, absolutely, once we get licensed, if there's somebody with a need and we have an opening, then we would take them. In fact, we've taken two clients in the last month because they were not succeeding in the community, and we're not going to leave them somewhere where they can fail. I mean

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

we want them to succeed. []

SENATOR STUTHMAN: So Jodi, the main emphasis is hiring that medical staff. That's the main emphasis then. []

JODI FENNER: Stabilizing it. Absolutely. []

SENATOR STUTHMAN: Stabilizing that and having that all in place. So okay. []

JODI FENNER: Um-hum. And there are a couple of things, if you look in Dr. Ramadan's report, we're doing a couple of things...we talked about telemedicine. But the other significant thing that he's working with the university on is looking at medical rotations, starting that up with both BSDC and Beatrice Community Hospital, so that...you know, years ago they used to do residency at BSDC, and we're going to start that back up. There is a significant need for research in the area of developmental disabilities and Dr. Ramadan spoke about this issue with the parents. And obviously we would follow all the right protocols and we would make sure that parents were fully informed when it comes to this, but the one way we see that we can maintain quality professional staff with experience in developmental disabilities is to look at being the place where some of this research is done, at BSDC and here in Nebraska in our community, because nobody else is doing it. And if you're looking at how to recruit and retain quality doctors and make a residency a meaningful opportunity for physicians, research is one way to do it. So it's something that we're certainly exploring. []

SENATOR STUTHMAN: Thank you. []

SENATOR LATHROP: Senator Wallman. []

SENATOR WALLMAN: Thank you, Senator Lathrop. Yes, thank you for being here. You know, that's my district, you know. And I talked with Dr. Ramadan; I was impressed. I

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

went to one of their team meetings and I was also...there's some dissension. But I also thought everybody brought things in the open so you could talk about them, and it will be just one way. You know, if will be a team. And so I was impressed with that. But evaluation as far as community-based, do community-based programs plug into your evaluation at BSDC, which residence they would like to have, or...? []

JODI FENNER: How it works in the process, is first a guardian has to consent for us to release information to community-based providers. And then what we do is we do that. We do a state network referral. It doesn't have a name of it, generally, but it says we have a client who has these needs, are you interested in serving them? And then we...it's an open...(recorder malfunction)...providers before a transition is finalized. []

SENATOR WALLMAN: Okay. And I appreciate that residency statement. Because I know it used to be that way and hopefully it could be again. We could plug into the university or UNMC or Creighton. []

JODI FENNER: Well, one example of that, Senator, is...and I not being a doctor, wasn't aware of this, but because we have an aging population of individuals with developmental possibilities, developmental disabilities, we...just as we are going to be subject to things like dementia and Alzheimer's, so are they. And so one of the big issues that we need to look at that's never been looked at and isn't looked at in most institutional settings, is are the symptoms we're looking at, are they standard dementia, which would be treated in a completely different way than a psychiatric condition. And so that's one of the proposals that Dr. Ramadan is looking at, is bringing in a neuropsychologist to make sure that, especially with our aging population, we aren't treating...mistreating a psychiatric...dementia as a psychiatric diagnosis. Because that would mean that we're basically giving them medications that have long-term effects that aren't necessarily doing them any good. That's just one example. []

SENATOR WALLMAN: So a dementia or Alzheimer's, we have those probably in

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

BSDC, too, then? []

JODI FENNER: Absolutely. Absolutely. []

SENATOR LATHROP: Senator Coash. []

SENATOR COASH: Thanks. Following with Senator Harms was talking about, I mean I see the efforts that you're making and shifting that culture and reaching out and communicating with the parents. I saw that and I know that you have kind of an uphill battle with the staff at BSDC, but I see you taking efforts to do that, and have talked with several of the folks who were part of that management team. One of the key components to turning this ship is going to the CEO down there and how that person continues to lead. And so I know Claire Mahon has not given us a permanent commitment, so I would like a...can you give us an update on where we are with a permanent CEO for BSDC? []

JODI FENNER: I can. I've interviewed several candidates. We've narrowed it down to the person we'd like to offer the job to, but I do have one more interview this afternoon and don't want to foreclose that possibility. You know, you don't want to leave any options on the table, because while we think this person is phenomenal, it would...I would be ill-advised to hire somebody when I have another candidate that hasn't been looked at, so. But he's done three full interviews: two very, very lengthy telephone interviews and one two-day interview on campus. And very excited about the potential there. Hopefully in the next we'll be able to make an announcement about the CEO. []

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

SENATOR LATHROP: I have some follow-up questions, and I think they're by way of clarification but I want to start with your testimony about the reapplication process. And honestly, I was surprised to hear you that, because my understanding was that after we

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

had the medical order limiting the medical license at BSDC so that we could not care for the medically fragile, we immediately decided not to appeal that judgment. And I think we were pretty clear that those people weren't coming back to BSDC--not we--the Governor was pretty clear those people weren't coming back to BSDC. Your testimony today is that you are or it is your intent to reapply so that our license is as full as it was before it was narrowed by the medical order. Is that right? []

JODI FENNER: Yes. []

SENATOR LATHROP: And three things have to happen before that. One is that you have to change policies, and you said those have all been changed. []

JODI FENNER: Yes. []

SENATOR LATHROP: What policies did you change? []

JODI FENNER: There were some emergency response policies, seizure protocols. We changed some, not policies, but some of our medical records, you know, compiling it into a more comprehensive medical record. We've done some training on all of those things. But those are the primary two, that is the...the things that were the result of the IJ: the emergency response and the seizure protocols. []

SENATOR LATHROP: The IJ, was that the one of March of '08 or the one in January that followed Olivia Manes' death? []

JODI FENNER: The January '09 one. []

SENATOR LATHROP: Were those...and I didn't see the IJ, didn't put it next to the one in March when the person died because they didn't get CPR, but were they any different? Were those IJs essentially the same thing? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: No, not...I mean they were in the general same areas, but the changes we made were not precisely the same. I'm trying to remember back to... []

SENATOR LATHROP: But as a general statement, they both dealt with the ability of the institution and the staff there to deal with an emergent situation, am I right? []

JODI FENNER: Sort of it. It goes back to what we talked about earlier. You can change a policy...and actually when we changed the policies in '08...and from a legal perspective, I remember when they did it. And public health said, yes, these are it. And they came out...and they always come out and do an assessment, and said, yes, the policies are good; you've shown that they're implemented. But what we do so many times at BSDC is we fix something and then we let it slide. And... []

SENATOR LATHROP: Is that what we did after March of '08, the immediate jeopardy? []

JODI FENNER: Well...I mean, yeah, it doesn't...I mean that's pretty evident when you look at the January order. Because at the time in March that the policies were implemented and staff were trained, it...we were in compliance, at least in accordance with public health, and I trust that Dr. Schaefer and then did a good job in coming out and assessing that. But for some reason, in January, the system still wasn't working, and... []

SENATOR LATHROP: Okay. Then we have a second immediate jeopardy following Olivia Manes' death. []

JODI FENNER: Yes. []

SENATOR LATHROP: You said that the policies have changed. When were those

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

policies, that you've described, changed? []

JODI FENNER: Well, we would have done that...and I'm sorry, I...just as an outsider at the time, I believe that would have been February or March, and I'd have to go back and look. []

SENATOR LATHROP: So approximately a month after Dr. Schaefer's order, we'd already changed the policies? []

JODI FENNER: Well, there were several different takes on it, because one of the simple issues...to me, it sounded real simple, but it's...one of the big significant issues dealt with the 911 telephone system. Do you dial 791? Do you dial 411? And... []

SENATOR LATHROP: Wait a minute, you're not telling us that was the biggest issue after Olivia Manes' death, are you? []

JODI FENNER: The seizure protocols and the ability... []

SENATOR LATHROP: The seizure protocols...so that sounds really simple to me, and you calling it one of the biggest issues is maybe concerning. So... []

JODI FENNER: I will tell you, we had a... []

SENATOR LATHROP: So if a nurse is on the floor and somebody goes into seizure, the problem we were having was whether they dial the operator and then go out or whether they dial an out line... []

JODI FENNER: Yes, I'm telling you that. We had a registered nurse who, although she had been trained and tested... []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: But that seems like a simple fix to me. That doesn't seem like one of the biggest problems. []

JODI FENNER: It's the simple stuff that gets you in the most trouble, Senator. I'm... []

SENATOR LATHROP: Okay. So that was resolved, surely within a month of Olivia Manes'...the IJ that followed Olivia Manes' death, was it not? []

JODI FENNER: It was, but part of it is, it goes back to the team concept. So many times we tell people what to do: change this, this is how you dial 911. Honestly, when public health came, we had policy on the back of their badges. All any...every employee on campus had it on the back of their badges. All they had to do was pull it out and look at it. Yet we had a registered nurse with more than ten years' experience who couldn't recite the 911 policy. So it... []

SENATOR LATHROP: Was the true when Olivia Manes died? Everybody was wearing one of those cards that had the policy on the back of their ID card, in January of '09? []

JODI FENNER: I don't believe that we had...I can't speak to that. I'm sorry, I'd have to go back and look and see when they implemented that. But I do know that when we did the IJ follow-up, we had had to...well, would it have...? I can't speak to that, Senator. I'm sorry. []

SENATOR LATHROP: Okay. Well, let me...I don't want to get lost in the.... []

JODI FENNER: But it sounds so simple, and it really is. []

SENATOR LATHROP: I'm going to lose my point in the minutia... []

JODI FENNER: Okay. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: ...and I would like to get back to it, and that is you said you had to change all policies...or change policies, and that those changes were made in January or February? []

JODI FENNER: Well, we changed the policies immediately in January, February, to a very restrictive policy. I would tell you, now that Dr. Ramadan has had a chance to in-service staff, those policies have yet again changed and I would say in the last month--the seizure protocols. Mostly because the initial changes, we had to deal with the immediate needs. If someone had a seizure, we needed to get them to a hospital because we didn't have staff on campus that could assess those. []

SENATOR LATHROP: Well, let me ask it this way. There are certain policies that needed to be changed in order to reapply for the broader medical license. []

JODI FENNER: Yes. []

SENATOR LATHROP: When were those policies changed so that you felt the policies were in place so that you could apply for the broader medical license? Would that have been January or February? []

JODI FENNER: No, those would have been in the last month, primarily because before you change a policy or something as serious as a seizure protocol, you've got to do thorough training, because part of what you're counting on when you change the policies is that all of your staff can recognize and implement that. And it's much more simple than the policy change that was made in February/March. []

SENATOR LATHROP: Okay. And the other, the second thing was having adequate medical staff, and you said you believe that's done. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: We are currently providing adequate medical staff, but they are not permanent staff. []

SENATOR LATHROP: Which is the third one: sustainability. []

JODI FENNER: Sustainability. []

SENATOR LATHROP: When did you get to a level where your medical staff was adequate so that you could reapply for the broader medical license? []

JODI FENNER: You know, I would say we've had medical staff on board but without a leader like Dr. Ramadan or somebody in his place, which has only been in the last few months. I wouldn't have been confident even thinking about it without someone in that leadership position that I could trust. []

SENATOR LATHROP: Okay. So you've had the proper people in place but not the correct leadership. And now you think it is in place. []

JODI FENNER: I believe so. []

SENATOR LATHROP: And again, now we're talking about in the last month. []

JODI FENNER: In the last few months. Yes. []

SENATOR LATHROP: And then the other, the third piece of it was sustainability. And your concern there is that you have temporary medical staff and not permanent medical staff. []

JODI FENNER: Some of our medical staff are temporary, yes. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: How many? []

JODI FENNER: We are filling our nocturnist and our two physicians with...our general physicians with temporary staff. We have one neurologist who is working on a locums basis, but she actually lives and works here locally, so we expect her to be...I mean, even though she's a locums... []

SENATOR LATHROP: So we are three physicians short of being sustainable. []

JODI FENNER: Yes. Yes. []

SENATOR LATHROP: And when do you expect that to happen? []

JODI FENNER: We have...I think we have three recruiting firms working on it and we have published on every medical journal we can find. And it's just a matter of finding somebody who is willing to come here. I can't tell you that. []

SENATOR LATHROP: And after those three positions are filled...now those aren't the deep specialities, like neurology and psychiatry. []

JODI FENNER: No, these are... []

SENATOR LATHROP: So the sustainability is held up by general physicians, is that true? []

JODI FENNER: General physicians, and I would...I think that public health is going to want to see us fill a few more nursing positions before we could show true sustainability. []

SENATOR LATHROP: When do you think that will be done? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: I really can't give you a date. I know Dr. Ramadan, I think, told everyone he expected September or "Octoberish," but again I think he's new. I am hoping he's not being too optimistic based on our recruiting abilities. []

SENATOR LATHROP: So in the next couple of months. Before the end of the year. []

JODI FENNER: We hope so. []

SENATOR LATHROP: Okay. And once you get to a place where you have changed the policy, adequate medical staff, and sustainability, do you intend at that point in time to apply for the broader medical license? []

JODI FENNER: Technically, we intend to ask for the license restriction to be removed, yes. []

SENATOR LATHROP: Right. We are saying the same thing, aren't we? []

JODI FENNER: The same thing but just a technicality. Yes. []

SENATOR LATHROP: And at that point you will then be...you will have the license that will permit you to care for the medically fragile. []

JODI FENNER: Yes. []

SENATOR LATHROP: Do you intend to allow any of the people that were removed, the surviving from the 47 that were removed, to return to BSDC? []

JODI FENNER: You know, I think we have to be very careful with that because of our Department of Justice requirement that we maintain people in the most integrated

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

settings. I think we would be ill-advised to bring back people who are doing very well in their settings, but I think if we have somebody who is struggling in their current placement, I think that we'll have to consider that. []

SENATOR LATHROP: Well, you have people in hospitals and people in nursing homes that represent...how many of the 47 are still alive? Thirty-nine? []

JODI FENNER: I believe so. []

SENATOR LATHROP: And of the 39, how many of them are in nursing homes or still in a hospital setting? []

JODI FENNER: I did not bring those numbers with me today, I'm sorry. []

SENATOR LATHROP: Can you ballpark it? I appreciate that you're "ballparking" it for me, but... []

JODI FENNER: No, I'm not. You know the attorney in me is not going to let me do that. (Laugh) I'm sorry. []

SENATOR LATHROP: Well, then we'll let you find the answer. []

JODI FENNER: Yeah, I do believe I have it. We have three at a nursing facility temporarily; they will automatically go to Mosaic. And then we have six at a permanent nursing facility--oh, no, wait a minute--yeah, six. []

SENATOR LATHROP: Three are temporarily in nursing homes, six are permanently in nursing homes, so we're at nine. And how many of them are still in hospitals? []

JODI FENNER: Oh, I believe we have 12. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: So we have a total of 21 either in nursing homes or still in hospitals. []

JODI FENNER: And I believe two of those will soon be coming back to BSDC, so we should be down to ten. We have one individual who's already been determined to have stabilized. []

SENATOR LATHROP: To be no longer medically fragile. []

JODI FENNER: Uh-huh. And unfortunately since that stabilization, she's had a small procedure that needs to be done, and I believe after that's done and that's stable then she'll come back. And then we have one individual who, pending one additional assessment that Dr. Ramadan wanted to be performed, that he believed that person would be able to come back as well, so I believe we're looking at ten. []

SENATOR LATHROP: Okay, so we're at 21. Maybe down to 19. How many of those 19 will be allowed to come back to BSDC when you have a broader medical license or the restriction imposed by Dr. Schaefer is lifted? []

JODI FENNER: I really can't...I mean I don't know exactly today. []

SENATOR LATHROP: Well, let me put it more bluntly. Do you intend to keep them from coming back to BSDC? []

JODI FENNER: No, my intent is to find the most appropriate setting possible for them as soon as possible. I would be severely disappointed if in three months those people were still at hospitals, because I would be concerned about their health. []

SENATOR LATHROP: As I was listening to you describe what you expect of BSDC

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

when you were answering Senator Stuthman's questions, this is what I was hearing you say and I want to ask you about it: that BSDC will be in a position to care for the medically fragile if their needs require placement at BSDC. And what I'm hearing is if they're an OTS...which one comes back to BSDC? Is it OTS or ITS? []

JODI FENNER: OTS. []

SENATOR LATHROP: OTS. If they're an OTS person and medically fragile, we can...we will be permitted to care for them. But I don't hear you saying that we intend to take back people who are medically fragile but not in the OTS program. Am I right about that? []

JODI FENNER: No, I wouldn't say that. []

SENATOR LATHROP: So BSDC, it's your intention then for those people who are medically fragile and for whom BSDC is an appropriate placement, to allow them to come back. []

JODI FENNER: It is our intention that they would be available...that we would be available to care for individuals with those needs. Are we going to actively recruit people to come back? No. Because that would go directly in opposition to our DOJ agreement, so I'm not going to be doing that. []

SENATOR LATHROP: I appreciate that but we have nine people in nursing homes, and that's way worse than BSDC by DOJ standards, right? []

JODI FENNER: Absolutely. []

SENATOR LATHROP: Okay. The Mosaic, you talked about the Mosaic option, some of these people you're going to try and get them to leave BSDC and take a placement at

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

one of the Mosaic ICF/MRs that are on line. []

JODI FENNER: We already have people who have signed up. There's a waiting list already for... []

SENATOR LATHROP: And I've been...I think that's a great idea, Jodi. I do. How many...but I'm trying to get a fix, because you said we don't want to hire so many people that we're laying people off when folks leave for Mosaic. So I've got a question about that. The number of beds that you're going to create, I know that there was a goal at one point to get to maybe 73 or something. How many beds do we have under construction right now? []

JODI FENNER: We have two homes that started this last week. That would be 12. ENCOR started their MSU over a month ago so that one should be done by mid-September, I believe. []

SENATOR LATHROP: How many beds will be in the ENCOR? []

JODI FENNER: Six. []

SENATOR LATHROP: Six. So here's...I'm just doing some math here, but that's 18 people, right? And you want to take people from the medically fragile group that were displaced from BSDC and put the into the Mosaic and the ENCOR facilities if it's a good fit, right? []

JODI FENNER: If it's a good fit. []

SENATOR LATHROP: These facilities that ENCOR and Mosaic will be prepared to care for medically fragile, yes? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: Yes. []

SENATOR LATHROP: And so when we look at those beds, that equals just about the number of people you won't have returned from the 47. In other words, you have 47; eight of them passed away. You're down to 39. You have 21 of them in a hospital or in a nursing home. You believe two of them will go or be returned to BSDC. Now you're down to 19. And if I heard you or the Governor or somebody prior to today, if I understood them correctly, the priority for the Mosaic and the ENCOR placements is going to be the balance of the people who were removed on the medical order. Is that true? []

JODI FENNER: Absolutely. The medically fragile individuals get first choice. []

SENATOR LATHROP: Okay. So if we move the people from the nursing homes and the balance of the people in hospitals, we've filled the capacity we just created with these two homes and the ENCOR. So here's my question. We really don't need to wait to fill the positions at BSDC because we're not going to have an exodus of people from BSDC when these homes are done because most of the beds will be filled by folks that were the subject of the medical order. []

JODI FENNER: Well, but we still have...Mosaic is actually intending, my understanding is, to have four of their homes finished by February. Even though two of them broke ground last week, my understanding is two more are soon to follow. []

SENATOR LATHROP: How many more beds will that create with those... []

JODI FENNER: That would be 12 more beds, and then there will be...there are other ones very soon thereafter. So we'll be having a fairly...I mean I haven't done all of that math, but the other thing to remember is we have a list of people at BSDC who don't have high medical needs that we're already actively looking for placements for. They

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

have more behavioral needs or other support needs. []

SENATOR LATHROP: And these Mosaic ICF/MR beds will be a suitable placement? []

JODI FENNER: No. No, those will not be suitable for some of these clients because they are clients with high behavioral needs or... []

SENATOR LATHROP: Okay. I'm just trying to...I'm trying to ask questions about what you've testified to. And your testimony was, when we get the Mosaic homes done we're going to have a bunch of people leave and we don't want to have to have layoffs. And I don't think...I mean, I'm just looking at the personnel math here, and I don't think that should be an issue yet. I mean, I can see it as some point, but you're talking years down the line where...and with your attrition, I don't know that you're ever going to find a place where you're going to be... []

JODI FENNER: We're talking probably a...I mean, we are still recruiting but what we don't want to do is be in a position...because we're already at higher staffing levels. I guess I'm...I mean, we don't have an incredible number of open positions. Just we have some on second and some on third shift, and some of those again we're trying to, as we assess the food service positions, we'll be moving some people from other parts of the campus there. []

SENATOR LATHROP: Right. []

JODI FENNER: But we are still recruiting. I don't mean to give you the impression we're not. []

SENATOR LATHROP: Yeah, I'm just...your reason for not fully staffing these was your concern that you're going to have this layoff after people leave to go to Mosaic, and the numbers just aren't there. I mean, if we use the...if we take the 19 people that are in

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

nursing homes and in hospitals, and plug them into the Mosaic and the ENCOR beds, we're going to be some time away before 12 beds open up. And even if those 12 people came from...even if all 12 came from BSDC, I don't see where that would create a layoff such that it should stop you from hiring and fully staffing those positions today. []

JODI FENNER: And we're still recruiting, so I wouldn't say that we've stopped hiring, but I am saying that that's something that we have to be conscious of as we do long-term planning. And if I said we've stopped hiring, I don't... []

SENATOR LATHROP: No, I don't think you said you stopped hiring, but you said we don't want to hire a bunch of people we're going to have to lay off, and that was an explanation for not having more people. []

JODI FENNER: It is because I think the question Senator Harms was asking is, have we looked at our long-term budgets for direct care staff and other staff, and I still believe that is a consideration because we have other people who are looking to be placed we aren't going into these high medical need homes. We still have...I think we have people scheduled to leave this month who are going to places like Hands of Heartland or DSN or CAN. I mean, we have a lot of other providers in this state who our clientele are interested in, our individuals are interested in. []

SENATOR LATHROP: And don't misunderstand my questions either. If you can persuade or give the proper incentive to people and guardians at BSDC to move into a community-based placement, I'm all in favor of it. I'm just trying to understand the answers to some of the questions you've given, Jodi, and that might be a segue into BSDC. The target levels that you were talking about, 90-130, we now have assessments done by Kastner. Have you looked at those? []

JODI FENNER: I have looked at some of those. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Are the numbers summarized such that you can say how many of them will have needs that only BSDC are going to be able to meet? []

JODI FENNER: I will tell you that for every individual at BSDC, there is a mirror image of that individual in the community, so I don't think I can say that about anyone. What I can say is it takes a joint effort, a joint want of the guardian and the IDT team and the community to provide an appropriate community placement for those individuals, and we have guardians who are highly opposed to that. We have those issues. So I guess I'm not willing to say that. []

SENATOR LATHROP: Let me ask it differently then if I can. Is the number 90-130, is that...that seems to be the number that we hear. Is that a number that's based upon what you believe to be, in the final analysis, the number of people that are best suited or refuse to leave BSDC, or is that a number at which BSDC best functions and so we're going to right-size our way by whatever means necessary? []

JODI FENNER: I think it's a combination of the two. I think that one of the things is we have to have a BSDC that has some capacity. Anybody who knows anything about the regional center knows that...I mean, we have a waiting list of people who are court-ordered to be committed there who are on a waiting list, sitting in jails waiting to get in. We can't be a situation where somebody needs to come to BSDC and we don't have an empty bed for them. We have to have...we have to have an entity that has some capacity. We just have to. That's not an option. And when we look at estimating numbers, I think the Governor has been very clear. Those are just best guesses based on people we know who don't ever want to leave BSDC and on the staff that we think we can maintain there. So it's a combination of the two. []

SENATOR LATHROP: Okay. Then we haven't really discussed this issue, I don't think, since we issued our report in December, and I think in our report the committee concluded that BSDC probably, its role is going to be to support the community-based

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

programs and to provide a placement for people whose behaviors were such that community placement was not practical. I've just, myself--I'm not speaking for the committee--it seems to me that we need to have sort of a transition vision of BSDC where it has a role but we also have to account for the people who have been there 40 years and don't want to leave. Would you agree with that? []

JODI FENNER: Absolutely. Absolutely. And when we've done the reorganization of the living units, we've tried to place some of those individuals together that we know are highly opposed to placement, and so that as we do bring more behavioral people onto campus, which is going to happen, that we have adequate supports in place to ensure...I mean, there will have to be some separation of those populations. []

SENATOR LATHROP: And that sort of brings us to what your vision is of the role of BSDC. I mean, if you...it's not just a...I mean, there's the get DOJ happy and there is the recertification which will tell us that we're coming closer to or meeting the standard of care. But what's going to be BSDC's role in providing services to families or people with developmental disabilities, in your judgment? []

JODI FENNER: I think there is going to be a transitional time period at which we serve, basically, those individuals whose guardians just flat refuse or are uncomfortable finding alternative placement. And our job is to grow community resources so that everybody has an option, a valid option of being placed in the most integrated setting in the community. I think during the time period, this transitional time period we're talking about, we have to expand both ITS and OTS. ITS has that capacity where I'm saying we have to have an availability to take people on a moment's notice if they're having a problem in the community that the community can't deal with. We need to be able to provide that support. But we also have to improve our OTS, our outreach treatment services. And that is partially what we do now with OTS, but also when I talk about the professional unit being accessible to the community, that's part of that as well, providing more on-site direct support to community providers. So we have the population who's

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

going to be at BSDC because of guardian choice or whatever. We have the expanded ITS/OTS resources. And then I think right now what we don't have...I mean we have capacity for but I think it's an area that we need to work on because it doesn't just involve provider capacity. It involves community acceptance. It involves a lot of other things that the higher behavioral need needs individuals. Partially because when we talk about all of the professional services that this population needs--the neurology, the psychiatry, the psychology--I don't know how well-equipped professionals all over the state are to deal with that. And we can provide a more cohesive and more comprehensive service there for those individuals. That may mean that because of those services they're ready to go out into the community at some point in time, and that would be our goal again. They have a constitutional right to be in the least restrictive settings, but we need to give them the tools and the supports to make that happen. We need to give the providers the tools and the supports to support them. That's how I see the transitional. And then over time I see... []

SENATOR LATHROP: The role being... []

JODI FENNER: ...the role being more of a forensic and transitional facility. And when I see transitional, I mean that for medical needs too. I mean, you may have a provider who...you know, somebody just all of a sudden starts having seizure issues that they haven't had for a decade. And that happens, it just does. And a provider may not be able to provide that level of services, and so we need to be equipped to handle those needs as well. []

SENATOR LATHROP: So the people, the medically fragile that come back through the ITS program. []

JODI FENNER: Yeah. I would still think that would be more transitional in nature, primarily because the regional versus acute care hospital issue that I described earlier.  
[]

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Okay, and so we're kind of rolling into the vision. And what you're suggesting is that it will be there for the transition, which is the ITS people that have to come back because the community-based provider can't deal with whatever their behavior or medical condition is; that BSDC will have a role for the people whose guardians are unwilling to leave. By the way, you don't intend to force anybody? []

JODI FENNER: I don't. []

SENATOR LATHROP: No legal proceedings? []

JODI FENNER: No. []

SENATOR LATHROP: Okay. So for the people who remain there because they've lived there 30 years or whatever and their guardians refuse to... []

JODI FENNER: More like 60. I mean, yeah. []

SENATOR LATHROP: Well, in some cases it is, and we know that it doesn't work very well to pull them out of there. So...and then are you saying that it will likely remain, in sort of our options, it will likely remain a place for the behavioral folks? []

JODI FENNER: And more, dual diagnosis. []

SENATOR LATHROP: I know you can't close the door on the behavioral folks having a community-based placement,... []

JODI FENNER: It's just much harder to place them. []

SENATOR LATHROP: ...but as a practical matter, having all the resources there. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: And I think you can...Colby, you know that. I mean Senator Coash. It's just...because again, with the behavioral individual it's not just his needs, but it's the community needs as well. I mean, we really have to focus on client safety and community safety. And they're not...they're very much intermingled. We have to be very conscientious of that. []

SENATOR LATHROP: Well, if that's the vision, I think I share that. I mean, it seems like for the first time we really have a statement from Health and Human Services, or you as the acting director, on what the vision is going to be, or at least this committee and your department are on the same page. []

JODI FENNER: Based on everything I currently know now, that's what I would foresee happening. []

SENATOR LATHROP: Okay. That brings up a question that Senator Harms asked, and it's been one that we've talked about before and that is, is there a point at which the population of BSDC gets so low that we say, it's now X number of dollars per resident or X number of dollars per person to run BSDC, we can't afford to do it, and now we take these people that we've just described and move them someplace else? []

JODI FENNER: But the reason they'll be there is for the public health and safety as much as it is for their own health and safety. And so how do you put a dollar sign on that? I think somewhat you have to look at the regional center costs. Yes, they're very high cost per person, but those people can't be served in a community setting at the same rate as somebody at Mosaic or somebody at CAN or Hands of Heartland, because they have different support needs. So to provide the same wraparound services around those individuals is going to cost more per person. It just is. []

SENATOR LATHROP: Okay. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: So I can validate that. Maybe... []

SENATOR LATHROP: Okay. I think we're on the same page. It's...we haven't always gotten straight answers so it's been helpful. []

JODI FENNER: You may not like my answers but I'll give it to you straight. []

SENATOR LATHROP: Well, it's refreshing. I'll take straight answers. Talked a little bit about the waiting list, and Senator Harms asked some questions about that. And as I listened to you, honestly, it sounded like you were saying, yeah, most of these people on the waiting list don't really need residential services, and I think that's not what we heard from the...was it the LR157 committee?...LR156 committee. And that wasn't our conclusion after we studied the waiting list, that there are a lot of people on that list waiting for residential services. I mean, priority ones, we know. They're the emergent...nobody is there to care for them. We've got to do something with them because if we don't they'll be homeless. But there are a lot of people on that waiting list that are waiting for something more than just a support in their own environment. []

JODI FENNER: Well, one of the things that...and maybe I should have said they don't need institutional care instead of residential. Maybe that's the terminology I should have used. But the other thing is, is so much of what we haven't done here in Nebraska is supportive living. Doug and I have talked about this a little bit, about the funding issue. What we fund with DD services, we don't fund somebody's rent. That actually comes from their Social Security check. When you have a provider who provides residential services, they get our money for habilitation services, but then they also...the part that goes to pay the living expenses is the individual's Social Security check or those other resources. And so there's actually two fund sources there. What a lot of other states do with supportive living is the individual can choose where they live and then receive services in the location where they choose to reside. Now those services can change

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

over time. Maybe I don't like my Mosaic group home or day services or my DSN day services. Maybe I want to change day services. An individual can do that and still stay in his or her same location, and that's something we're trying to grow in Nebraska. It's a concept that a lot of other states utilize. And what it does is it gives the individual two choices. First, they get the choice of where they live, and then second they get the choices of the other services. And we'd really like to go more towards that type of model, knowing that a lot of people in services can't do that. Then we still have the standard residential services model, whereas a provider provides both the residential and the day services. But in that situation it is a little more restrictive, because to change day services you may have to change providers. Maybe you like your day services but you don't like the people you live with. And so it does foreclose some of those options. So what I probably should have said is I don't think they need institutional services but there's a lot of residential openings out there. It's a matter of, again, tailoring the opening to fit the needs of the individual. []

SENATOR LATHROP: This...it makes perfect sense to have...to do something that's more of a collaborative sort of win-win situation. I did have a concern when we were listening to Mr. or Dr. Dufresne. Is he a doctor or a mister? []

JODI FENNER: I can't remember. []

SENATOR LATHROP: Mister. Mr. Dufresne. Because it seemed to me like he was talking about a different concept and that involved these folks staying in their family home and then being provided services. Did I...? I mean, it was hard to get a straight...speaking of straight answers, it was hard to get a straight answer out of that guy, in my judgment--and I've tried to get answers out of a lot of people, Jodi. But it seemed to be, as I read between the lines or tried to divine from his answers that he was suggesting an approach that involved staying in their family home and providing the services to them at that point. Is that a fair interpretation of what he was talking about? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: I guess I didn't get that out of the conversation. I think one of the things Derrick has... []

SENATOR LATHROP: Well, maybe what I'm looking for is what's his intent? Regardless of whether he told us or didn't tell us, where's he going? []

JODI FENNER: One of the things he's really been helping us with is writing our regulations and looking at our waiver in a way that we can serve people in a different variety of settings. For decades, in Nebraska, when we look at community services, we've been looking at a cookie-cutter service. You know, for example, Mosaic has this opening; do you want to live there? Well, maybe. You know, it's not that easy. It's not like just going and buying a pair of jeans: Do they fit or don't they fit. Maybe they need to be tailored. And that's how we have to start looking at community placement, is there's a lot of different options, and we haven't historically done that here in Nebraska. And a lot of states don't; a lot of states do. And so really expanding the types of services we can meet for...because some individuals do live in their own...you know, with their families. Some don't. Some live with individuals. Some may want to choose their own home but they may...you know, be... []

SENATOR LATHROP: Will these regulations... []

JODI FENNER: ...depending on the functionality. []

SENATOR LATHROP: As you mentioned, he has been involved in drafting the regulations... []

JODI FENNER: Yes. []

SENATOR LATHROP: ...which I don't think we've seen, right? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: No, not yet. []

SENATOR LATHROP: No, they're not done. But are the regulations...this process of developing regulations to cover provision of services to individuals with developmental disabilities, are those regulations going to steer people to a different type of a placement? []

JODI FENNER: I think what they do is give people choices. []

SENATOR LATHROP: I don't have trouble with choices. Are they...is there going to be something about the regulations that compel them to stay with Mom and Dad forever? []

JODI FENNER: I don't think so. I'm trying to look back. I don't think so. I think what it does is it gives them a choice. []

SENATOR LATHROP: You know what I'm asking. And... []

JODI FENNER: Are we making it...are we putting mechanisms in there to dissuade people from group homes or things of that nature? Absolutely not. []

SENATOR LATHROP: Or to make it more difficult for them to leave a home where their parents still live? Or a brother or a sister? []

JODI FENNER: No. What they do is they provide what I think...you know, I talked about an individual could live in a home of their choosing and then they could receive services in that home. Currently, if they did that...or they could receive different day services and services in the home in a different variety. Currently, if they did that and the reason most people don't do that is we don't have a good system in place for oversight for that type of service, because we don't have a lot of oversight other than just contractual oversight for homes of four or fewer, things of that nature. So what these regulations do, is they

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

put a system of checks and balances in so that that becomes a valid option. When you are talking about people living in the home, I don't think...our regulations... []

SENATOR LATHROP: I've got to tell you where I got that from because here's how that developed. We tried to get questions out of him, and it was...you know, we had to be up on the floor at 1:30 so we couldn't take all afternoon to get straight answers out of him. We got a lot of--I'm just going to say it--we got a lot of fluff and nonanswers. We leave the room, and then a circle of reporters gets around him and he starts talking about something with a little more specificity. And I'm reading in the paper something that sounded like he's going to try to develop regulations or he's coming with Nebraska with a philosophy that involves these people staying with their family of origin as a placement. []

JODI FENNER: No. No, I... []

SENATOR LATHROP: Now that would be a misunderstanding is what you're telling me. []

JODI FENNER: That would be a misunderstanding. []

SENATOR LATHROP: Okay. []

JODI FENNER: And I think I said this to the last...the LA's before. A lot of people that are going to come before you, they're very good at what they do but they're not necessarily very good at testifying. I mean, I'm not always very good at that either, so. []

SENATOR LATHROP: Oh. Well, I've evaluated a lot of people that testify, and that was, I think--I'll just say it--I think it was deliberate nonanswering questions, and it wasn't helpful and it was...and it's concerning to me, I'll just tell you. We have used a lot of consultants, and you've suggested that you're using less of them. I don't know what

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

we've gotten from Mr. Dufresne for what we're paying him. I know we're paying him a good deal. He's supposed to be working on regulations and helping with transitions. And at some point maybe this committee could do a...have a hearing just to find out what we've gotten for our money from these consultants, starting with the very first one that came in here after our decertification. Because we've had a parade of them. We've had a parade of them. And I think we've been searching for answers and willing to listen to people that claim to have them, and I don't know if we're getting our money's worth or if they're providing us with reports or a product that's actually helping us move down the line, or if we are just paying fees and not getting something in return. []

JODI FENNER: And I can understand those concerns because we've paid a lot of money to a lot of consultants. I can tell you, on the regulation issue, even though they're not quite out yet...and part of the reason they're not out yet is they involve three different divisions. They're not just one division's regulations, and...but I am very comfortable that they provide valid options for parents and guardians and individuals seeking services. And that's one of the things that we have to do is provide options, and not just, oh yeah, you can live in your own home and we'll let you have day services. There has to be some oversight, some guarantee there that those are going to be quality services. And so while that may not be a good fit for everyone, it should be a valid option. You shouldn't have to move into a Mosaic group home just so you can have, you know, the vocational and habilitation options. I mean, that seems kind of silly. []

SENATOR LATHROP: And I...again I think that we're on the same page. You said you have another interview this afternoon? []

JODI FENNER: Um-hum. []

SENATOR LATHROP: What time is that? []

JODI FENNER: Two-thirty, I think. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Pardon me? []

JODI FENNER: I think it's at 2:30. []

SENATOR LATHROP: I'm wondering...we're now getting to ten until 12, and we've got a few other things to cover. If you just want to plow through and get done, or...? Do you want to keep going? There's smaller things that...just a few things that I wanted to talk about. We have a reimbursement rate study. You have a request for proposal on that? Can you give us the short... []

JODI FENNER: Yeah. We are still finalizing the request for proposal. Because what we did was, we sent out...there's a DD list-serve for state directors. And so we sent out a request to get copies of...luckily, we're not even the tenth state to do this, and so we've tried to get ideas from other states' RFPs. And so had an initial RFP drafted and we're making quite a few changes based on what other states have sent us. And so we're hoping by the end of the week we'll have that one done. I think we have the privatization RFP completed. I think we're working with the DAS buyer on that. But the rates... []

SENATOR COASH: I'm sorry. You're working with who on that? []

JODI FENNER: DAS. The request for proposals go through the Department of Administrative Services. []

SENATOR LATHROP: Department of Administrative Services. []

SENATOR COASH: Oh. Okay. []

JODI FENNER: I'm sorry. Too many acronyms. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Give us a period of time or a time frame for when you believe we'll have a study completed. []

JODI FENNER: It takes, at a minimum, six to eight weeks for the RFP process to occur. And then I think we have to weigh...and what other states have sent us, they've gotten completed studies back anywhere between three and nine months. I think I'd like to target closer to a report back at four months and then maybe a final something at six, because I don't want to wait nine months. But at the same time, I don't want to rush it so that we've wasted our money and haven't gotten something effective. Based on the information we've received from other states, that seems reasonable. []

SENATOR LATHROP: So you think we're nine months out? []

JODI FENNER: I believe so. []

SENATOR LATHROP: And will that process involve, whoever does the study, visiting with the folks in the community-based programs? []

JODI FENNER: Um-hum. []

SENATOR LATHROP: So that we don't end up with something that's...like the school aid formula, where everybody is screaming. []

JODI FENNER: Sure. It should involve quite a bit of input. []

SENATOR LATHROP: Okay. The waiting list. And Senator Harms mentioned we appropriated \$5 million this year and \$10 million next year. Can you tell us what you've done with that to reduce the waiting list? []

JODI FENNER: I can. Yes. The week after the budget was approved we sent out

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

letters. I mean, I know we didn't have the money yet but it takes...first of all, what we have is we have individuals who have indicated they wanted to be on the waiting list. And so we sent out 302 letters already, saying, do you still agree to...? Do you want to receive services, basically. Sixty people have said no, 145 have said yes. And so what we do at that point in time is then we assess them. Just because they've said I want this type of service, we still have to follow our regulations in our Medicaid waiver that says this is what they're entitled to. []

SENATOR LATHROP: Can I interrupt you? []

JODI FENNER: Sure. []

SENATOR LATHROP: Tell me how you chose those folks? You said you sent out 302?  
[]

JODI FENNER: Um-hum. We just went to the next people on the list. []

SENATOR LATHROP: So there wasn't, well, we're going to start with the residential people or we'll start with the day services people or...? []

JODI FENNER: I don't believe so, because I think... []

SENATOR LATHROP: Just longest on the list? []

JODI FENNER: ...I think that's the way the... []

SENATOR COASH: You have a request for service list. There are people who have been waiting the longest. []

SENATOR LATHROP: Okay. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR COASH: Is that right, Jodi? []

JODI FENNER: Yes. []

SENATOR COASH: A request for service. []

SENATOR LATHROP: Okay. []

JODI FENNER: Yeah. So I believe that's how our current system works, is we just go down the list. []

SENATOR LATHROP: Did you anticipate that 60 people would say, no thanks? []

JODI FENNER: I don't know. []

SENATOR LATHROP: Or did you think you could serve 302 and...? []

JODI FENNER: We absolutely could have served 302 and we intend to start with a new...now we'll target the next section of the waiting list. []

SENATOR LATHROP: Okay. So this was an annual appropriation. You were talking about it. []

JODI FENNER: Um-hum. []

SENATOR LATHROP: Are we going to be in a position to provide the services and spend the \$5 million, reducing the waiting list? []

JODI FENNER: I believe so. The hard part is, it could take, even once we...for the 145

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

who have said they want services, it will take a month or so to determine what services they're eligible for, and then they will work the service coordinator to find the services that they want. They have, I think, up to 90 days to accept services. And so...but what we are doing is we're trying to be proactive against starting right along with the next...we'll basically just have a chain reaction. []

SENATOR LATHROP: And that was going to be my next question. So of the 302, you have 145 people interested in services. []

JODI FENNER: Yes. []

SENATOR LATHROP: You have a rough idea of what they want. It may get whittled down from that as we actually have them assessed and get them the services they need. So have you already written or are you prepared to write another 200 or 300 or whatever it is? []

JODI FENNER: Absolutely, yes. And then we'll just keep that...the intent is, while we'll be a little bit delayed with this year's funding, when it comes to the...because we know now that we're going to have the additional \$5 million, we'll be ahead of the game there. The intent would be they could actually start the services as of July 1 for the new funding. []

SENATOR LATHROP: And two questions. The first one is, are we doing enough to go back to get the next, after the first 302? Now you've got 145 people with interest. []

JODI FENNER: Yes. []

SENATOR LATHROP: Are we going to wait until we've given these people services before we write the next 200... []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: No. []

SENATOR LATHROP: ...or are we going that already? []

JODI FENNER: No, no. We should be starting the next 200 in the next week or so. And I don't know if that's the magic number that they're using. []

SENATOR LATHROP: So in the fiscal year, are we going to provide services for ten months in the first year? Is that realistic? []

JODI FENNER: We hope so. []

SENATOR LATHROP: How many people do you think you'll take off of that waiting list? The waiting list, we use the number, roughly 2,000 people. How many people, by the time you send out a "do you really want the services?" letter? []

JODI FENNER: This is where I'm going to play the "I've only been here two weeks" card, and tell you I can't give you even a remote guess. (Laugh) I'm sorry. I'm just not... []

SENATOR LATHROP: Okay. But out of 300, we only...well, you had 60 said no, half that said yes. What happened to the other ones? []

JODI FENNER: Some we're still waiting on. We're still waiting. []

SENATOR LATHROP: Okay. So we could...if half of those people, if it was just 145 would we spend the whole \$5 million on them? []

JODI FENNER: No, no. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Do you have an idea? I mean, is that a million dollars' worth of services there? []

JODI FENNER: It depends, because they are a mixed priority. It depends on...I mean, because they sign up by date but some could need residential, some could need supportive. And so it's really...I mean, I really honestly... []

SENATOR LATHROP: You don't have an estimate of how much we're going to pare that list down with that money. []

JODI FENNER: I don't have any estimate for you today. []

SENATOR LATHROP: Okay. We talked about the regulations. Do you have an idea when they'll be completed? []

JODI FENNER: We have what we hope is a very good draft. The problem is, is getting the divisions to agree on them. I would hope within the next month. []

SENATOR LATHROP: Who are the divisions? []

JODI FENNER: Well, because they involve both public health, Medicaid, and DD, they're comprehensive. []

SENATOR LATHROP: Okay. And you're running that around the track and... []

JODI FENNER: One of the things we tried to do is we've listened to the providers. They said they don't...you know, we had regulations in three or four different areas and we've tried to compile them all into one area. Long-term, that will be very beneficial, but in the short term it's a little harder to get an agreement on those. []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

SENATOR LATHROP: Okay. And then the last thing I wanted to talk about is these folks that have died, the medically fragile that have been removed from BSDC. We now have eight people in the last four weeks. , []

JODI FENNER: I believe so, yeah. []

SENATOR LATHROP: Can you tell us when these individuals...tell us what happens after they die, Jodi, in terms of what we've done to determine whether we've had a hand in their death. []

JODI FENNER: The mortality review committee will review each and every one of those deaths and report on them to us. []

SENATOR LATHROP: Tell us the composition of that committee. []

JODI FENNER: Oh, Dr. Carl Greiner, who is a physician at UNMC; Dan Sheridan, who...not Johns Hopkins...he's an out-of-stater; and there's a few more. I don't have the... []

SENATOR LATHROP: Are they all medical doctors? []

JODI FENNER: I believe so, yes. []

SENATOR LATHROP: Okay. And they will review the circumstances associated with each person's death and then issue a report? []

JODI FENNER: Yes. []

SENATOR LATHROP: When do you anticipate that? Or what's the...are they working on all four at once or are we doing them...or pardon me, all eight at once? []

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

JODI FENNER: Well, we were a little concerned that it's taking too long to get some of the reports, so last week I met with Kathie Lueke and she's my project manager. And one of the things we agreed...what we're recommending to the group to do and they agreed, is we're having a nurse practitioner go in and at least gather the documents for them and put them in order so that at least when they start reviewing, that's done. So hopefully with these next reviews we'll be able to have that. That will save the group some time. Because one of the problems is they're all people who actually have their own professions and practices, and even though we pay them, they have other priorities and so they have competing priorities. But we need this done, so we're hoping that will speed it up. But some of them we've gotten back in a month, some of them have been six months. And really... []

SENATOR LATHROP: Where is the nurse practitioner coming from? []

JODI FENNER: I knew you were going to ask that. I'm not certain. []

SENATOR LATHROP: Outside of Health and Human Services or from within? []

JODI FENNER: Yes, yes. None of these people are in Health and Human Services. []

SENATOR LATHROP: Okay. So she's...the role of the nurse practitioner--I shouldn't say she--the role of the nurse practitioner will be to organize the records in a way that will allow the doctor to see... []

JODI FENNER: Yeah. And to gather the records. []

SENATOR LATHROP: ...what they need to see and not... []

JODI FENNER: Yeah. Because they actually have to obtain the records from the

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

hospital, if there's a coroner report, all that stuff. We at HHS, we don't get all that documentation. That all just goes to the mortality review committee. []

SENATOR LATHROP: I think that's all the questions I had. I appreciate your patience. Anybody else? Follow up? No? Okay. Well, it looks like I got all my questions answered. Everybody else is... []

JODI FENNER: Are you sure? (Laugh) I did want to point out one thing. On the quarterly reports, someone had asked... []

SENATOR LATHROP: The quarterly reports. Are you talking about McGee's? []

JODI FENNER: No, no. The one that I gave to you guys on July 15. I might have just sent it to you, Senator Lathrop. Someone had asked...because I summarized a big section, 5211 through...I can e-mail it out to everyone after this. []

SENATOR LATHROP: Is this about how we're...what we're doing with the appropriated money? []

JODI FENNER: Uh-huh. Yeah, how we're spending the money. []

SENATOR LATHROP: I would think maybe we should send that out, and let's just have you do it electronically to everybody on the committee. []

JODI FENNER: Okay. I can do that. On the area that is combined, there's like \$2 million and a lot of accounts that I've combined. Someone had asked. I'm not trying to hide anything. Just things like food and med...so that's why I handed...that's why I gave you this, so you could see what the categories were that I combined. I didn't...wasn't trying to hide anything. I was just trying to give you a one-page document to look at there, so. If you have any questions... I'll e-mail that out this afternoon, and if you have any

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

questions I'd be happy to answer those. []

SENATOR LATHROP: Okay. And I did promise you an opportunity to close, so if you did have anything that we haven't covered that you want to share with us. []

JODI FENNER: No, I think we've covered mostly everything. One of the things you asked for was our priorities, and I think we've talked about most of those today: the first being the compliance plan; the second, the medical stabilizations and licensing issues; and then reorganizing community-based services, because so many of our priorities relies on a good system in place to do that; and then just a lot of other miscellaneous things like the waivers and the rate methodology. But really we have to look at our organizational structure, and not just at BSDC but as a division. We asked for the meeting last month, and we're going to continue to do that when we hit big areas of change that we expect to come. We'll try to schedule something so we can share that information with you and we'll try to send out documentation electronically. Because the bottom line is, we're hitting the point where a lot of the changes that we're making are not going to make a lot of people happy. They're just not. They're hard...change is hard. And we have to make some hard decisions that a lot of people...you know, sometimes not everybody is going to agree on what we're doing. But we are running all of our changes past CMS and DOJ. We believe we're working with people who know what they're doing and..but the bottom line is we'll try to keep you better informed, because when you get those phone calls we want you to be equipped to at least know that something is going on, and we'll try to do a better job of that. And I appreciated Doug and your other...and staff members who came a few weeks ago when we were talking about the HSTS organization. Because it is. I mean change is hard and we're going to be doing a lot of it so we'll try to keep you informed. I just ask that if you have a question, call and ask and we'll do our best job to respond. []

SENATOR LATHROP: Very good. Well, we appreciate...we appreciate your answering our questions directly, and you obviously have a good command of what's going on. I

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

Developmental Disabilities Special Investigative Committee  
July 20, 2009

---

mean, that's evident from your answers. And we are all rooting for you. []

JODI FENNER: Well, thank you. That's the one thing here is I don't...I mean, I don't think you've ever had a team that people want to see succeed--other than the Huskers--maybe as much as us. You know, we have the providers, we have the parents, and the professions just all across the state. So I think we'll...I think we have a really good team and we'll get there. []

SENATOR LATHROP: Okay. Thanks, Jodi. []

SENATOR STUTHMAN: Thanks, Jodi. []

JODI FENNER: Oh, and August 9 we're having a music festival at BSDC, so I think you'll have invitations if you don't already. But we have, from 1 p.m. to 7 p.m., lots of local bands coming. It will be a lot of fun. We've invited the whole community in. So not related to any of this, but please come. []

SENATOR LATHROP: All right. Thanks. []

JODI FENNER: Thanks. []