# Report to the Legislature

# Legislative Resolution 37 (2011): Review, Investigation and Assessment of Child Welfare Reform

Health and Human Services Committee
December 15, 2011

***Abbreviations used in this report or in the child welfare system:***

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| ACF: | Administration for Children and Families |
| AFCARS: | Adoption and Foster Care Analysis and Reporting System |
| APA: | Auditor of Public Accounts |
| CAC: | Child Advocacy Center |
| CAFCON: | Children and Family Coalition of Nebraska |
| CASA: | Court-Appointed Special Advocate |
| CFOM: | Children and Family Outcomes Monitor |
| CFS: | Division of Children and Family Services (a part of DHHS) |
| CFSP: | Child and Family Services Plan |
| CFSR: | Child and Family Services Review |
| CJA: | Children's Justic Act |
| CMS: | federal Centers for Medicaid and Medicare Services |
| CPS: | Child Protective Services |
| CSE: | Child Support Enforcement |
| CWLA: | Child Welfare League of America |
| DAS: | Department of Administrative Services |
| DHHS: | Department of Health and Human Services |
| FCRB: | Foster Care Review Board |
| HHSS: | Health and Human Services System |
| KVC: | KVC Behavioral Healthcare Nebraska |
| LPA: | Legislative Performance Audit Division of the Legislature |
| LPA Committee: | Legislative Performance Audit Committee |
| MHCP: | Medically Handicapped Children's Program |
| NCSL: | National Conference of State Legislators |
| NeAHSC: | Nebraska Association of Homes and Services for Children |
| N-FOCUS: | Nebraska Family Online Client User System |
| NGA: | National Governors' Association |
| NFC: | Nebraska Families Collaborative |
| NIGP: | National Institute of Government Purchasing |
| NSAA: | National State Auditor Association |
| NSIS: | Nebraska Safety Intervention System |
| OJS: | Office of Juvenile Services (a part of DHHS) |
| PIP: | Program Improvement Plan |
| RFB: | Request for Bid |
| RFQ: | Request for Qualifications |

Service Areas:

- CSA – Central Service Area
- ESA – Eastern Service Area
- SESA – Southeast Service Area
- NSA – Northern Service Area
- WSA – Western Service Area

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| SNAP: | Supplemental Nutrition Assistance Program (formerly known as food stamps) |
| TANF: | Temporary Assistance for Needy Families |
| 1184 Teams: | Child abuse and neglect investigation teams (created pursuant to LB 1184 in 1992) |

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# INTRODUCTION

Fifteen state senators, including all seven members of the Health and Human Services Committee, introduced Legislative Resolution 37 on January 14, 2011. The resolution directed the committee to review, investigate and assess the effects of child welfare reform which the Nebraska Department of Health and Human Services began implementing in July of 2009. The committee held a public hearing on LR 37 on January 28, 2011, and reported the resolution to the Legislature for further action on January 31, 2011. LR 37 was adopted by the Legislature on February 7, 2011, and Speaker of the Legislature Mike Flood signed it on February 10, 2011.

**MEMBERS OF THE HEALTH AND HUMAN SERVICES COMMITTEE:**

Senator Kathy Campbell, District 25, Chairman
Senator Dave Bloomfield, District 17
Senator Tanya Cook, District 13
Senator Mike Gloor, District 35, Vice-Chairman
Senator Gwen Howard, District 9
Senator Bob Krist, District 10
Senator Paul Lambert, District 2 (joined the committee in November 2011 after Senator Norm Wallman, District 30, changed committee membership)

**COMMITTEE STAFF:** Clerk, Diane Johnson; Legal Counsel, Michelle Chaffee

## PROCESS

Between February and November 2011, Health and Human Services Committee members and staff undertook a wide array of research, interviews, correspondence, consultations, briefings, surveys and public hearings. Other individuals, legislative divisions, and groups undertook specific tasks at the committee's request. These tasks are briefly summarized below. Along with the committee's work, these resources form the basis for the committee's findings, and recommendations presented in this report.

# ACKNOWLEDGEMENTS

The committee expresses appreciation to the following:

The Legislative Fiscal Office, the Legislative Research Division, the Legislative Performance Audit Committee and Performance Audit Office, the Office of the Public Counsel (Ombudsman's Office), the Nebraska Supreme Court, the Court Improvement Project (including the Through the Eyes of the Child Initiative), the Nebraska Department of Health and Human Services, the Nebraska Auditor of Public Accounts, the Nebraska Foster Care Review Board, KVC Behavioral Health Care Nebraska, the Nebraska Families Collaborative, the Nebraska Appleseed Center for Law in the Public Interest, Voices for Children in Nebraska, the National Council of State Legislatures. We also thank the countless

individuals with professional and personal interests in the well-being of children who took the time to share their experiences, concerns, and vision with members of the Health and Human Services Committee.

# OVERVIEW

Throughout the work on LR 37, three tenets emerged to form a context for the findings and the recommendation of the Health and Human Services Committee:

**Child welfare reform is not synonymous with privatization; neither is privatization synonymous with child welfare reform.**

**Privatization is a tool, not an end in itself, to child welfare reform.**

**The success of states and communities in addressing child welfare is primarily predicated on ensuring that all three branches of government are involved in the development of a strategic plan and an implementation plan prior to initiating contracting with statewide lead agency.**

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## Child welfare reform is not synonymous with privatization; neither is privatization synonymous with child welfare reform.

Private entities have had a long history in child welfare. Since the 1800s non-profits have contracted with government entities to provide services to children. The private sector, in fact, was engaged in serving families long before public child welfare agencies.[1] This public-private partnership expanded between 1962 and 1974 as a result of amendments to the Social Security Act. The 1980 passage of the Adoption Assistance and Child Welfare Act provided an influx of federal funds available to contract with private entities to provide child welfare services.

There are a variety of definitions and varying degree of activities identified as privatization. Generally the term has come to refer to the range of strategies that involve "the provisions of publicly-funded services and activities by non-governmental entities." [2] Despite the different forms, generally the public sector retains ownership, financial responsibility, accountability and therefore some form of administrative responsibilities. [3]

Proponents of privatization of government services, in general, tout the flexibility of the private sector's capacity to develop and eliminate services, its heightened responsiveness to client needs, quality, its potential for increased accountability, and the efficiencies inherent in private marketplace competition.

Opponents of privatization of government services argue that the very nature of

1 Mary Myslewicz,"*Privatization of Child Welfare Services: An Analysis of the Kansas and Florida Privatization Initiatives,*" University of Washington, School of Public Affairs, June 2007.

2 Nightingale, D.S.,& Pindus, N. (1997). *Privatization of public social services: A background paper.*

3 Beecher, J.S. (1998). *Twenty myths about privatization.* Washington .DC: National Academy of Public Administration, Alliance for Redesigning Government.

public service make them inappropriate for privatization.[4] Some contend that competition, a lynch pin of privatization, does not meaningfully exist, especially in the arena of social services. This process results in the government creating one authorized buyer (a monopsony). Because of the once-removed principal-agent relationship between the government and the agencies actually providing the services, prices are unlikely to drop unless the government diligently monitors and evaluates the cost of the services provided.

Additionally, opponents maintain cost savings are difficult to determine and are skewed by the limited information for meaningful cost/benefit analysis, the increased costs in monitoring highly complex systems, the historical under funding of social services, the duplication in administrative costs, and the possibility that private entities will bid low to secure initial contracts and raise prices later.[5]

Currently, although widely used, the term "privatization" has no single definition in child welfare or in other human services. In child welfare, some use the term broadly to refer to all contracted service arrangements while others use it more narrowly. Contracting and public-private partnerships represent the concepts of the wide use of private entities providing direct services for child welfare. Recent use of the term privatization in child welfare is most often defined as the contracting out of the case-management function, with the result that contractors make the day-to-day decisions regarding the child and family's case.[6]

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**Privatization is a tool, not an end in itself, for child welfare reform.**

Privatization is a tool that can be usefully employed in certain environments to enhance service provision. As William Gormley, University Professor and Co-Director of the Center for Research on Children in the U.S. at Georgetown University pointed out; governments should take care not "to select a hammer when they really need a wrench."[7]

H. Brinton Milward, the Providence Service Corporation Chair in Public Management and the Director of the School of Government and Public Policy at the University of Arizona, has conducted studies of what happens when governments privatize public services--which in the literature is known as "governing the hollow state." It is promoted as the solution to government

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4 Starr, P. (1988)the meaning of privatization. *Yale Law and Policy Review,* 6, 6-41.

5 Freundlich, M. & Gerstenzang, S. (2003). *An Assessment of the Privatization of Child Welfare Services: Challenges and Successes.* Washington, DC: CWLA Press, 5.

6 U.S. Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation, *Child Welfare Privatization Initiatives Assessing Their Implications for the Child Welfare Field and for Federal Child Welfare Programs* December 2007 retrieved September 12, 2011 at http://aspe.hhs.gov/hsp/07/CWPI/models/

7 Gormley, W.T. (1994-1995) Privatization revisited. *Policy Studies Reviews,* 215-231.

inefficiency and mismanagement, but can only work well if government manages the process well. This point is illustrated in the child welfare realm by a study published by the Child Welfare League of America (CWLA) that focused on six privatization initiatives, stating, *"To the extent that privatization worked, it generally was only where the public agency developed strong management, monitoring and quality assurance capabilities and appropriately structured the initiative.*[8]

Research shows that a contractor's ability to perform will be limited by many of the same barriers faced by the previous public system: Privatization does not remedy all systemic barriers – including but not limited to inadequate funding, staffing shortages, inadequate service capacity, and lack of coordination across systems.[9] Private agency workers experience the same frustrations that public agency workers experience such as high stress, lack of career advancement opportunities, and lack of educational preparation for child welfare work.[10] Early results indicate that simply transferring case management and decision making to the private sector may not improve case outcomes without adequate social, physical, and mental health resources; and foster and adoptive homes in communities; and qualified agency staff that are offered ample supports.[11]

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**The success of states and communities in addressing child welfare is primarily predicated on ensuring that all three branches of government are involved in the development of a strategic plan and an implementation plan prior to initiating contracting with statewide lead agency.**

In the course of work on LR 37 it became apparent that DHHS did not fully use well-documented research or the analysis of national consultants before going forward with the initiative. Numerous guidelines, checklists and studies outline key components when utilizing privatization models. A number of studies provide insightful perspectives in the development of privatization initiatives. Their cautions certainly would underscore what Nebraska should have heeded before embarking on privatization in 2009.

Children's Rights, a non-profit advocacy organization, released one of the first national studies on the effects of privatization on child welfare services in 2002.

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8 Freundlich & Gerstenzang, above n 5, 14.

9 *Child Welfare Privatization Initiatives,* above n 6, http://aspe.hhs.gov/hsp/07/CWPI/models/

10 Gleeson, J. P., Smith, J. H., & Dubois, A. C. (1993). Developing child welfare practitioners:Avoiding the single-solution seduction, *Administration in Social Work, 17*(3), 21-37.

11 U. S. Department of Health and Humans Services, Office of the Assistant Secretary for Planning and Evaluation, *Child Welfare Privatization Initiatives Assessing Their Implications for the Child Welfare Field and for Federal Child Welfare Programs Topical Paper #1 Assessing Site Readiness: Considerations about Transitioning to a Privatized Child Welfare System* September 2007 retrieved August 28, 2011 at http://aspe.hhs.gov/hsp/07/cwpi/site/report.pdf

[12] The report identified a number of "lessons learned" regardung efforts in other jurisdictions that proved to be effective and those that were not effective or, in some cases, were disastrous. Based on these "lessons learned," the report provides 17 recommendations to assist communities that may be considering privatization. Recommendations included:

- Know the vision and goals of privatization; implement in phases.
- Know that privatization is not likely to save money.
- Privatization must have the sustained commitment of high-level leadership or it is unlikely to succeed.
- Service capacity – including linkages to other service systems such as mental health and substance abuse – should be the central focus.
- Develop and use rigorous monitoring systems.

In 2006 the U.S. Department of Health and Human Services' Office of the Assistant Secretary for Planning and Evaluation funded the ***Child Welfare Privatization Initiatives Project*** to provide information to state and local child welfare administrators who are considering or are in the process of implementing privatization reforms. The project produced technical assistance papers on a range of topics providing insights about factors that should be considered when approaching, or improving upon, privatization.

**Readiness** This technical assistance paper was organized around 12 overarching questions that administrators should ask themselves when assessing their "readiness." These questions were designed to encourage agency administrators and legislators to ask critical questions and make important choices *prior* to the decision to transition services to the private sector.[13]

**Implementation** This technical assistance paper asserted that implementation requires certain decisions: whether to expand the use of contracted case management services (or even to restructure existing contracts); what programs, payment systems and administrative models to use; the roles and authority of public and private agency workers; and how to configure contract monitoring systems.

**Peer Advice** Research describes the experience of private agency administrators from Massachusetts, Missouri, Florida, Kansas, and Ohio in performance contracting. These leaders offered advice on considering risk- or results-based contracts.[14] Among their suggestions were:

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12 Freundlich & Gerstenzang, above n 2 .

13 *Child Welfare Privatization Initiatives,* above n 11, http://aspe.hhs.gov/hsp/07/cwpi/site/report.pdf

14 McCullough & Associates, Inc. (2005). *Child Welfare Privatization Summary of National Trends: A Synthesis of Research and Framework for Decision* retrieved at http://www.achsa.net/upload/File/Newsletters/2008/08_August/Links/8-01_Update/CW/Child%20Welfare%20Privatization%20-%20Summary%20of%20National%20Trends%20-%20A%20Research%20Synthesis,%20McCullough%20&%20Associates,%2011-2005.pdf

- To make sure the financing option gives flexibility in funding and specifies the outcomes desired – but make sure you have information technology and quality-assurance capacity to monitor both costs and outcomes.
- Require accreditation as an added protection for quality.
- Understand the importance of data accuracy, accessibility and integrity.

**Data** Additional research demonstrates the importance for planners to use accurate data to weigh various target population and service options, including data that capture demographics, service utilization patterns, expenditures, and outcomes for the proposed population. This information is essential in defining the scope of services and establishing the funding needed to develop contracts and to assess the merits and risks of different fiscal models (for example, case rates or performance-based payments).[15]

**Contracts** Another component of successful implementation is that contracts are designed to address system needs. Administrators who have gone through the contract process advise building in mechanisms for broad-based stakeholder involvement in the initial design phase, in the ongoing evaluation of performance, and in the revision of approaches as needs change.[16] The public agency is relying heavily on a single, or a small number, of contractors. This can create serious problems if the contractor fails to perform.[17]

**Outcome Measurements** Technical assistance also illustrated the importance of making decisions about which outcome measures and performance indicators should be monitored.[18]

In addition to the key components of privatization outlined above, research proposed that when planning to initiate privatization, a broad group of stakeholders should reach a consensus on a shared vision and should use an inclusive planning process.[19] Suggested participants include service providers, representatives of all levels of the public agency (including caseworkers), juvenile and family court judges, parents, state legislatures, auditors, and the service community (such as mental health and substance abuse providers).[20]

In Kansas and in Florida state legislatures initiated privatization. Two studies on privatization in Kansas found that because key stakeholders were not fully involved in the planning and design efforts, there was confusion during implementation regarding the roles and responsibilities of the public and private

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15 *Child Welfare Privatization* , above n 11, http://aspe.hhs.gov/hsp/07/CWPI/models/

16 Ibid.

17 Ibid.

18 Ibid.

19 *Literature Review on the Privatization of Child Welfare Services,* Planning and Learning Technologies, Inc., The University of Kentucky, August 2006.

20 Ibid., 18.

agencies.[21] Additionally, without the support and inclusion of the courts, schools, and other local agencies there was not trust that private providers would deliver adequate services.[22]

Lisa Snell, in *Child-Welfare Reform and the Role of Privatization,* stresses the important role of the courts when changing service delivery models. "While the courts serve as a needed check and balance for the child welfare system most of the time, the issue is making sure the courts have confidence in the efforts being made to release the child to the parents or to terminate parental rights. Better coordination and communication is needed between the courts and the child welfare system to ensure that the courts have enough information to make timely, yet safe and accurate decisions about children in the foster care system." [23] The courts must be brought into the planning and ongoing oversight of privatization efforts to ensure that judges feel confident in recommendations made about entering and exiting care. Inversely, prior to implementing privatization reforms, private agencies must be trained on the information judges need to help them make timely, safe and appropriate decisions about the children and families that come before them.[24]

The LR 37 process has made it clear that there was a plethora of research on "lessons learned" prior to the department's initiating privatization. Unfortunately, a review of other states' mistakes reads like a checklist of the problems that Nebraska could have avoided.

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21 Ibid.; James Bell Associates, Inc. (2001). *External Evaluation of the Kansas child Welfare System: July 2000-June 2001.*(FY2001 Final Report). Unpublished; Figgs, J. & Ashlock,S. (2001) Family Preservation/Foster Care/Adoption:Kansas Public/Private Partnership Initiative. *2001 Better Government Competition.*

22 *Literature Review on the Privatization of Child Welfare Services,* above n 19.

23 Snell, Lisa, *Child-Welfare Reform and the Role of Privatization,"* Policy Study No. 271, 7, retrieved at http://reason.org/files/60dbb93a64832e8624f4e2116383a0b0.pdf

24 *Literature Review on the Privatization of Child Welfare Services,* above n 19, 19.

# CHAPTER SUMMARIES and COMMITTEE FINDINGS

*"I would like to offer that child welfare reform doesn't have to be a cookie-cutter process across the entire state. Each service area can operate from a single statewide vision, common goals, common outcomes, but they can implement strategies that considers their strengths, their needs, the gaps in service and care, and their resources...And finally, to implement proven system of care principles that effectively address the needs of children with multiple and complex needs in their families. There's extensive literature and research about systems of care principles that have proven to be effective. We've experienced them here in central Nebraska as well as countless communities and states across the nation. It's more than paying lip service to reform. It's a commitment to implementing principles, to learn about those principles, to act upon them, and to provide resources that fully support principles and implementation."*

*~ Regional behavioral health services administrator*

## SUMMARY OF CHAPTER 1 – Child Welfare Evolution: Nationally and in Nebraska

Chapter 1 presents a broad overview of child welfare's evolution nationally and in Nebraska. Compiled by Kathy Bigsby Moore, former Executive Director of Voices for Children in Nebraska, this chapter documents the increasing impact federal legislation has had on child welfare policies at the state and local level. For example, the Child and Family Services Review ("CFSR"), created by the federal government, evaluates how well (or poorly) states provide safety, permanency, and well-being for children. The CFSR emphasizes comprehensive, outcomes-based processes to improve accountability, and evidence-based interventions within child welfare systems.

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *Chapter 1 demonstrates that there have been many initiatives and programs over the years to address child abuse and neglect in Nebraska,*
- *However, for the most part, they have been neither long-term nor comprehensive. Many have involved one branch of government or focused on specific issues in response to crises.*
- *As a result, there have been child welfare initiatives; but the structure has not been in place to provide constant and consistent child welfare reform.*
- *Chapter 1 illustrates the need for a comprehensive, inclusive approach to child welfare reform.*
- *Accordingly, the committee believes it is time to initiate a long term, broad-based child welfare reform vision with strategic planning that involves all branches of government, stakeholders and communities of interest.*

## SUMMARY OF CHAPTER 2 – Detailed Time Lines

Chapter 2 presents two time lines:

- DHHS' activities leading to privatization and the events that unfolded as privatization occurred; and
- Health and Human Services Committee's LR 37 activities

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *The time line highlights the disastrous effects of the lack of a strategic plan for lead agency service coordination and privatization by DHHS. For example, the lack of appropriate cost analysis resulted in fiscal*

*unsustainability within the first few months and has continued despite additional infusions of monies.*

- *The time line demonstrates the drive to continue privatization in the face of crisis and challenges, despite warnings from stakeholders to slow down and requests to evaluate privatization's impact on the system.*

- *For example, in April 2010, CEDARS announced that it would end its contract because of inadequate financial reimbursement; and Visinet imploded financially, leaving DHHS caseworkers with the challenge of finding services for 2,000 children in the Southeast and Eastern Service Areas. Nevertheless, Kerry Winterer, Chief Executive Officer of DHHS, told the HHS Committee that the privatization plan for the child welfare system would proceed, stating, "That ship has sailed."*

- *Furthermore, in response to the 2010 Foster Care Review Board report highlighting purported deficiencies (including inadequate documentation; high staff turnover; payment delays to foster families and subcontractors; and transportation, placement and visitation concerns), Todd Reckling, Director of the Division of Children and Family Services, said the state was "making progress."*

- *Citing improvement metrics showing "no repeat maltreatment in foster care" as proof the state was making progress, Mr. Reckling said, "We are moving in the right direction."*

- *Inexplicably, in the face of a third lead agency's failure and millions of dollars owed to subcontractors in the Western, Central, and Northern Service Areas for unreimbursed services, DHHS still did not have a strategic plan in place and it still did not stop to evaluate the impact of lead agency failures on direct-service providers, foster parents, and most importantly, children.*

- *Rather, with no long term plan, no evaluation of the lead agency failures, and despite assurances in December 2009 from Mr. Reckling that "We're not relinquishing our critical decision-making responsibilities for children and families," DHHS reversed its direction and went further into full privatization, turning over case management in the Southeast and Eastern Service Areas to the two remaining lead agencies.*

- *The decision to give lead agencies the additional responsibilities inherent in case management seemed to be based solely on the lead agencies' need to control costs.*

- *At a November 2010 LR 568 briefing by DHHS officials, legislators expressed skepticism about the planned transfer of case management responsibilities to the lead agencies. Senator Tim Gay, then Chairman of*

*the HHS Committee, called the plan "pretty vague," but Mr. Reckling stated, "We do believe we're on the right path."*

- *Ignoring calls to slow down the reform, DHHS representatives said that the department was headed in the right direction, but successful reform would take time. Subsequently, LR 37 was introduced and the Legislature adopted the resolution on a 43-0 vote. The issues that began within months of privatization continued through the summer of 2011, during which time the department gave lead agencies additional funds; but still there was no comprehensive, collaborative strategic plan for child welfare reform.*

## SUMMARY OF CHAPTER 3 – Legislative Performance Audit Report

Chapter 3 presents two key elements of this report: the results of the performance audit and the Legislative Performance Audit Committee's LR 37 recommendations.

The Legislative Performance Audit Committee authorized the performance audit, which was to address four specific questions:

1. What was the chronology of events in child welfare reform?
2. How do policy makers and stakeholders know if privatization is working?
3. Did the Executive Branch exceed its authority?
4. Is contract oversight sufficient?

The performance audit found that the Division of Children and Family Services failed to:

1. Conduct a cost-benefit analysis or similar assessment prior to entering into the lead-agency contracts in 2009, which was contrary to best practice and was a critical error in the contracting process;

2. Identify key performance goals for improvements the division expected to see following privatization, or benchmarks, or time frames for meeting such goals; and

3. Make significant progress in reducing the number of children placed out of their homes.

Recommendations adopted by the Legislative Performance Audit Committee include:

- Under the issue of management and agency structure:

1. Determine whether changes are needed to facilitate appropriate oversight and accountability of programs DHHS administers, including privatization;

- Under the issue of contracts:

1. Require DHHS to work with the Department of Administrative Services in letting private services contracts;

2. Require a cost-benefit, or similar analysis, for proposed personal services contracts valued at $25 million or more; and

3. Implement a moratorium on adding any additional DHHS service areas to any new or existing lead agency contract.

- Under the issue of budget recommendations:

1. Performance-based budgeting for two budget cycles in child welfare service programs; and

2. Establish the child welfare system as a separate program for budget purposes. The performance audit report also called on the Division of Children and Family Services to work with the HHS Committee to ensure collaboration in the development of goals for child welfare.

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *The committee concurs with the findings and recommendations of the Legislative Performance Audit Committee and incorporates into our recommendations the Performance Audit Committee's recommendations on contract oversight, moratorium, leadership, organizational structure, fiscal responsibility, collaboration, data improvement, and the establishment of goals, benchmarks, and time frames.*

- *The committee agrees with the Legislative Performance Audit Committee's analysis of the challenges discussed in the scope of questions outlined by its report and, in response, believes a broad child welfare reform initiative is necessary.*

- *The committee outlines a plan for child welfare reform in its LR 37 recommendations. These recommendations include the performance audit recommendations that Nebraska's child welfare service system be restructured and its leadership be strengthened.*

- *The committee believes that in order to meet each child's needs, it is imperative that restructuring occur in order to break down organizational silos and bring all resources to the table.*

## SUMMARY OF CHAPTER 4 – Hearing Testimony

Chapter 4 summarizes the testimony provided at public hearings and private briefings before the committee. The committee was especially concerned that opportunities be provided for people from across the state to be heard. One of the biggest challenges prior to the passage of LR 37 was the limited dialogue that occurred between DHHS and stakeholders, policy makers, legislators and the judiciary regarding privatization.

Accordingly, the committee invited representatives of a broad array of stakeholder groups to testify at each hearing, and also took testimony from the public at large. Stakeholders included foster children, direct service providers, foster parents, biological parents, prosecutors, guardians ad litem, court-appointed special advocates, lead agency representatives, psychologists, judges, child advocates, and DHHS administrators.

Hearings were held in Scottsbluff, Grand Island, Lincoln, Norfolk, and Omaha and generated approximately 30 hours of testimony from some 70 individuals. Testimony revealed how privatization has affected children, biological and foster families, the courts, service providers, and other stakeholders. In addition, the committee heard from more than 25 individuals during 20 hours of closed hearings and briefings.

Three main themes emerged from the hearings:

1. concerns regarding loss of services and how services are paid for;

2. issues with the child welfare workforce, including high case loads, worker turnover, lack of appropriate training leading to questionable decision-making, lack of oversight, and insufficient services for children; and

3. problems with provider compensation and sustainability that resulted from lead agency failures.

Underlying all the testimony were examples of DHHS' lack of communication and collaboration throughout the entire process.

### *HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:*

- *In the Northern, Central, and Western Service Areas, individuals highlighted the difficulties encountered when Boys and Girls Homes served as the lead agency, including devastation to service providers from lost revenue when Boys and Girls Homes left.*

- *Boys and Girls Homes' business plan was to limit the use of outside providers and to perform as many direct services as possible itself.*

- *As a result, many long-serving contracting agencies closed when Boys and Girls Homes refused to contract with them.*

- *Of those with whom Boys and Girls Homes did contract, many were owed money when Boys and Girls Homes left.*

- *Lost revenue led to loss of services and foster homes. The damage caused by Boys and Girls Homes is still being felt more than a year later.*

- *In the Southeast and Eastern Service Areas, testimony highlighted one of the committee's major concerns:* ***Who knows the child?*** *By statute, the state is responsible for the care of children in its custody. However, today the Children and Family Outcomes Monitor (CFOM - the department's worker in court) does not have any first-hand knowledge of the child.*

- *The Children and Family Outcomes Monitor's job has become oversight of the paperwork rather than oversight of the child.*

- *In addition, testimony by prosecutors, subcontractors, and biological and foster parents revealed many serious issues with lead agency case management, including high case loads, high worker turnover, lack of knowledge of the case history, and lack of appropriate documentation for decision-making –- all of which ultimately hinder permanency for the child.*

## SUMMARY OF CHAPTER 5 – Report of the Auditor of Public Accounts

Chapter 5 is the Executive Summary of the Auditor of Public Accounts' *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures July 1, 2009 through March 31, 2011.*

### *HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:*

- *The financial oversight of the lead agencies was woefully inadequate from the beginning. The committee is disturbed by the very rudimentary oversight of the lead agency contracts.*

    - *The lack of basic financial planning and accountability led to millions of dollars spent on lead agencies: one that later did not participate in a contract, two that ended the contracts owing millions of dollars to subcontractors, and two that needed massive*

*infusions of funds to continue the contracts. As a result, contrary to DHHS' stated goal to operate within existing resources, the financial audit revealed a 27% increase in child welfare costs between 2009-2011.*

- *There was insufficient vetting and inconsistent assessment of the lead agencies.*
- *The financial audit raised concerns regarding the lack of performance bonds for lead agencies.*
- *The normal state process for bidding contracts, overseen by the Department of Administrative Services (DAS), was not used.*
    - *DHHS maintains the contracts were exempted from the DAS process under Neb. Rev. Stat 73-507(2)(e), which provides that exceptions to the competitive bidding provisions may be granted for "contracts with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual."*
- *Additionally, lead agency contracts have been amended as many as eight times without rebidding.*
- *The contracts have morphed from service coordination contracts to full privatization contracts for case management of state wards.*
    - *One lead agency contract was expanded to include two prior lead agency contracts, resulting in full privatization in a large urban geographic setting with child welfare responsibility from beginning to end. Those responsibilities included voluntary interaction with the family; influence in the investigation through Initial Response Unit teams; and making all service and case recommendations for the child and family including placement, therapy, visitation, reunification, termination of parental rights, guardianships, adoption and after care.*
- *The financial audit shows that the state spent proportionally more in privatized service areas than in service areas still under state management.*
    - *Funding in the areas served by DHHS stands in stark contrast to the funds made available to two lead agencies and the privatization effort in the Southeast Service Area and the Eastern Service Area.*
        - *The DHHS portion of the Eastern Service Area as well as*

*the Western, Central and Northern Service Areas have not had proportionally additional funds provided, despite having the same challenges faced by children and families in the areas supervised by lead agencies.*

- *For example, as the financial audit report notes, "NFC required as much as $6 million, or 39% more than did DHHS to provide essentially the same type and number of client services."*

- *In fact, because Boys and Girls Homes failed, the Western, Central and Northern Service Areas had great challenges as subcontractors were left with debts resulting in a reduction of resources, loss of providers, and shrinkage of services for children and families.*

- *The committee agrees with the financial audit report's findings that DHHS did not monitor contracts, which meant DHHS:*

  - *could not ensure that contract requirements were met,*

  - *did not provide financial oversight of subcontractors, and*

  - *did not discover or prevent inaccurate billing by lead agencies.*

- *Of special concern to the committee is the financial audit's determination that no documentation existed for the additional expenditures. The financial audit report states ". . . along with the initial $7 million for the implementation contracts there* ***appears to be no documentation*** *supporting the various contract amendments that have given rise to ballooning service costs -- such as the total $6 million contractual increase for NFC and KVC per Amendment 5, and a further $19 million in overall service contract increases for those same two providers per Amendment 7."*

- *Finally, the committee shares the financial audit report's concern that there is no tracking of financial data in N-Focus, which undermines lead agency accountability and DHHS' oversight function.*

## SUMMARY OF CHAPTER 6 – Legislative Fiscal Office

Chapter 6 includes the Legislative Fiscal Office's briefing, "Fiscal Overview of Child Welfare Privatization in Nebraska," presented October 18, 2011, at the request of the committee. The purpose of the briefing was "to assist state senators in their examination of child welfare reform and the privatization of service coordination and case management, asking the public policy questions that are needed for making decisions in the future."

- **Why were increased costs incurred?**
  - The lead agency contracts were global transfer contracts which are the most at-risk contracts. Contractors receive a set amount regardless of the number of children served or the level of cost of the services.
  - A case-rate contract that sets a certain amount per child per month regardless of the level of care or cost of service was another option considered. Initially, there was not adequate information to establish a case rate; although movement to a case rate continued to be discussed.
  - Contractors who ended lead agency contracts, and those remaining, stated that the costs were substantially higher than anticipated based on information provided prior to signing the contracts, including the number of youth in foster care, the non-court involved cases, and court-ordered treatment costs not covered by Medicaid.
  - In January 2011 after the three other lead agencies' contracts ended, the department gave case management to the two remaining lead agencies to provide them with some control over services. However, the state is still ultimately responsible for children who are state wards; and courts are responsible for providing services as determined to be in the best interest of children. Contractors cite judges' ability to order specific placement as one of the cost drivers that leads contractors to request additional funds.
  - The transfer of case management was not planned at the start of privatization. Transferring case management did help tie funding closer to decision-making. However, it disabled the state's infrastructure because it eliminated the "back stop" for case management and service coordination in the event contractors terminate the contracts.
- **How much did child welfare spending increase?**
  - Statewide expenditures for child welfare grew from $105.2 million in FY 2008-09 to $127.4 million in FY 2009-10 to $139.2 million in FY 2010-11.
  - Total expenditures, compared to the budget, increased by $20.5 million in FY 2009-10 and by $29.1 million in FY 2010-11.
- **How was the increase paid for?**
  - Additional amounts in child welfare were financed by 1) using carryover funding, 2) savings from staff reductions, and 3) federal funding offsets to the General Fund in subprograms within Program 347 (Child Welfare is one of 27 programs in Program 347).
  - Additional funds were paid to contractors that either would have been lapsed to the General Fund or used to lower General Fund expenditures.

- Amendment Five (October 2010): $6 million of $9 million in Emergency Temporary Assistance to Needy Families Funds ("TANF") were utilized that had not been factored in when appropriations were set because it was unclear whether Nebraska would qualify.
- Amendment Seven (January 2011): $19 million from remaining Emergency TANF staff reductions, carryover, Aid to Dependent Children ("ADC") fund mix changes, and new TANF funding for family preservation services.
- Amendment Eight (June 2011): $5.5 million increase in KVC contract was from under-spending in other subprograms located in Program 347.

- **Will additional funds be needed in FY11-12 and FY12-13?**
  - Based on the contracts with KVC and NFC and estimates, the current appropriations amount appears more than adequate. However, there are many assumptions attached to the contracted amounts and staying at those levels will require significant changes.
  - The repeated need of "one time" funding causes skepticism, especially considering contracts in FY11-12 in actual dollars are less than FY10-11 for KVC and, when adjusted for additional caseload, less for NFC.
  - In order to meet contracted amounts, fewer children must enter care and permanency must accelerate. **The lowering of the overall costs is the result of the assumption that there will be a reduction in the number of children served by approximately 15%.**
  - Contractors and DHHS indicate this will be done by establishing a new assessment process, accelerating permanency, implementing structured decision-making, improving performance, and depending on DHHS to reduce the number of referrals.
  - KVC stated to the Legislative Fiscal Office staff that KVC had contributed $14 million in private funds to the reform effort in Nebraska and no further private funding is available. NFC stated it had provided $7.5 million and would contribute $2 million more.
  - If the overall number of children being served is not reduced, further amendments to the contract will be necessary as any shortfalls beyond the above commitments will require further negotiations.

- **Are additional funds available?**
  - Federal stimulus (ARRA) funds are no longer available and unexpended balances are not authorized to be reappropriated. DHHS does have $7.1 million in FY 2011-12 and $9.4 million FY 2012-13 that could be used for additional child welfare costs.

- DHHS requested $5 million in "detention services." In reality the need was $200,000 in FY 2011-12 and $400,000 in FY 2012-13. The balance of the $4.8 and $4.6 million was an indirect way to increase funding for services to state wards.

- **What is the state getting through privatization?**
  - Privatization has resulted in higher costs to date. The structure alone lends itself to higher costs. Initially two systems were being supported under the privatization model. Even after case management moved to the contractors and 77 FTE DHHS positions were no longer required, additional DHHS staff is necesaary for monitoring contracts.
  - Contractors are required to meet certain standards, assuming those standards are enforced by the state through oversight.
  - One reason for privatization according to a NCSL consultant is to change a culture. When compared to national averages, Nebraska exceeds other states in the removal of children from their homes. Contractors indicate they are committed to right-sizing child welfare because removing children when not needed causes harm to children.

- **Conclusion**
  - Child welfare contracts were increased substantially with little or no involvement from the Legislature, even though the Legislature controls the appropriation process. DHHS increased the contracts without legislative involvement by: 1) moving money between subprograms; 2) carrying over unused balances for the prior three years; 2) using federal stimulus (ARRA) funds; and 4) transferring case management, which allowed the department to reduce personnel and operation costs.
  - Huge system changes will need to occur to keep costs within contracts.
  - If additional funding is required, DHHS has some flexibility, but far less than it has had in the last two years.

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *The Legislative Fiscal Office reports from late 2009 to June 30, 2011 that state expenditures for privatization are over $250 million. In addition, beginning in 2009, many lead agencies participating in privatization, by their own estimates, contributed at least $30 million in private funds. Moreover, subcontractors either through contributions in services, or by lost revenue, have provided millions of dollars in private funding to the child welfare system. Despite the total funds allocated and spent on child welfare, the state still does not have a fiscally sustainable system.*

- *The lead agencies asserted that transferring case management to them would save money. Apparently this has not occurred as a new*

*benchmark of a 15% reduction of children and youth in the child welfare system is required to finance the current contracts.*

- *The committee finds that the Legislature should require better accountability and monitoring systems to ensure funding reflects realistic assessment of system needs and funding is used as the Legislature intended.*
- *DHHS should add a financial expert to formulate and monitor the child welfare system as well as provide data analysis and needs forecasting.*
- *The committee finds that there was no analysis of the cost of the child welfare system prior to privatization. In addition, apparently no detailed baseline of the state's system was established prior to structuring the requests for proposals from potential contractors. As a result, DHHS made the faulty assumption that the contracts could be performed though "existing resources," even with additional uncompensated requirements, such as after-care services.*
- *As the Legislative Fiscal Office noted, the real costs exceed projections due to the lack of a thorough fiscal evaluation and a cost-benefit analysis prior to implementing privatization. Additionally, in spite of numerous assertions from DHHS that a case rate would be developed, to date one has not been negotiated. Neither have other risk mitigation components been developed that other states have used, for example, stop loss provisions or the establishment of special funds for high needs cases.*
- *A case rate pays an amount for each child referred to a lead agency. The risk to the lead agency is reduced because it is paid for each child in its system. The lead agency is required to provide all services to the child at a per person rate.*
    - *Accordingly, as lead agencies point out, the lead agency can achieve financial security by effectively managing the cost and level of services. The opportunity to make money is proportional to the degree to which the cost per case can be reduced relative to the rate being paid.*
        - *Thus, gains are achieved by reducing or changing the intensity and mix of services. The fewer services provided to children and families, over the longest period of time, the more funds from the case rate are added to lead agencies' revenue.*
- *The challenge for DHHS is to accurately determine a case rate. The actuarial approach for determining a case rate uses* ***historical child welfare data*** *to predict the child welfare cost in the future.* ***Using historical child welfare data is highly problematic for a number of reasons:***

- *First, the **quality** of historical cost data is questionable.*
  - *As discussed in both the Legislative Fiscal Office report and the Auditor of Public Accounts financial audit report, Nebraska child welfare costs have been impossible to accurately ascertain.*

- *Second, the target child population served has been **unclear**. (See Chapter 8, Foster Care Review Board Report; and Chapter 9, Data, for further discussion).*
  - *Much pre-privatization data identify children who are "wards of the state," while current data identified by DHHS and lead agencies are for "children served." "Children served" includes children who are wards of the state, siblings of wards of the state, non-court involved children, and voluntary cases. Some data is supplied by lead agencies and not independently verified by the state.*

- *Third, levels of services **change over time**. Services provided in the past may not be an accurate reflection of the cost of the service mix provided to children and families in the future.*

- *Finally, **whose financial data should be used** to set the rate?*
  - *For example, lead agencies have provided DHHS their financial data and examples of potential case-rate-setting methods to review and consider.*
  - *However, the committee maintains it would be very important for DHHS to provide similar specific financial data from the service areas managed by the state.*

➢ *It is essential to have accurate financial, population, and service data to be able to compare the case rate for the public sector to the lead agency proposed rate. This would assist policy makers in determining if privatization is cost-effective.*

➢ *Additionally, if the lead agency's proposed case rate is found to be an appropriate cost-benefit solution, then a national expert should be retained by DHHS to develop a prospective statistical model which includes a case rate for all child welfare service areas in the state.*
  - *It is not appropriate to continue to fund two service areas managed by private agencies at a higher rate than the areas managed by DHHS. Equity in funding must be ascertained and attained.*

## SUMMARY OF CHAPTER 7 – Surveys

Chapter 7 provides information from several surveys of key groups with intimate experience with the child welfare service system: judges, team members of the Supreme Court's Through the Eyes of the Child initiative, foster and biological parents, and attorneys.

Survey of Judges and Survey of Team Members, Through the Eyes of the Child Initiative

Staff for the Supreme Court's Court Improvement Project surveyed judges and team members separately using questions developed at the request of Senator Campbell and with her collaboration.

The judges survey went only to the 44 judges then active with juvenile jurisdiction. Thirty-eight completed the survey for a response rate of 85%.

The team members' survey went to county attorneys, parents' attorneys, guardians ad litem, DHHS employees, private agency employees, Foster Care Review Board staff, court-appointed special advocates, foster parents, service providers, and court personnel. Through the Nebraska Supreme Court's initiative known as Through the Eyes of the Child, people in these capacities participate on "teams" for individual children's cases within the court system. One-hundred forty-four people responded to the survey. A response rate cannot be calculated because team membership is fluid and the entire number of team members is unknown.

Respondents were divided into two groups: those whose jurisdictions were in the Eastern and Southeast service areas that had fully privatized case management (except for a third of the Douglas County cases); and those in the Central, Northern, and Western service areas that had gone back to DHHS case management and service coordination following the failure of the single contractor in that part of the state.

The surveys asked for comparisons of key factors at three points in time: prior to the first major privatization effort involving lead agencies, during the first effort of partial privatization, and during the current full privatization if services in the Eastern and Southeast areas and no privatization in the rest of the state.

A chart summarizing the two surveys' results follows. Responses are detailed in Chapter 7 of this report.

| **Survey Results Summary** | | | | |
|---|---|---|---|---|
| **Judges and Team Members, Through the Eyes of the Child** | | | | |
| ***late July and early August, 2011*** | | | | |
| | **Judges** | | **Team Members** | |
| Item | Privatized Areas | Non-Privatized Areas, post-privatization* | Privatized Areas | Non-Privatized Areas, post-privatization* |
| **Services** | | | | |
| *Availability* | worse | worse | worse | worse |
| *Access* | about the same | worse | worse | worse |
| *Access in OJS Cases* | worse | worse | worse | worse |
| *Foster Home Availability* | [not asked] | [not asked] | worse | worse |
| *Quality* | slightly worse | slightly worse | worse | worse |
| **Caseworker** | | | | |
| *Knowledge* | worse | slightly worse | worse | worse |
| *Judgment* | slightly worse | worse | worse | worse |
| *Preparation* | worse | worse | worse | worse |
| *Contact with children* | slightly worse | worse | worse | worse |
| *Responsiveness to children's needs* | slightly worse | slightly worse | worse | worse |
| *Responsiveness to Parents' Needs* | [not asked] | [not asked] | worse | worse |
| *Contact with other parties* | slightly worse | worse | worse | worse |
| *Stability (low turnover)* | [not asked] | [not asked] | worse | worse |
| *Capacity, OJS cases* | worse | worse | worse | worse |
| **Placement** | | | | |
| *Access in OJS Cases* | worse | worse | worse | worse |
| *Stability* | worse | worse | worse | worse |
| **Case Plan Court Reports** | | | | |
| *Timeliness* | better | worse | worse | worse |
| *Quality* | about the same | about the same | worse | slightly worse |

| **Judges' Responses to Guardian ad Litem Statements** | | |
|---|---|---|
| Statement | Judges in privatized areas | Judges in non-privatized areas |
| *I am satisfied with the participation of GALs in my court* | Agree. Agreement is somewhat weaker than that of judges in non-privatized areas | Agree. Agreement is somewhat stronger than that of judges in privatized areas |
| *GALS in my court provide useful information on children's needs* | Agree. Agreement is somewhat weaker than that of judges in non-privatized areas | Agree. Agreement is somewhat stronger than that of judges in privatized areas |
| *GAL input has been more important since privatization* | Agree. Agreement is somewhat weaker than that of judges in non-privatized areas | Agree. Agreement is somewhat stronger than that of judges in privatized areas |

** In almost every category, the post-privatized areas are improving as compared to these areas when they were privatized.*

Survey of Foster and Biological Parents

At Senator Campbell's request, the Office of the Public Counsel (Ombudsman's Office) surveyed foster and biological parents. From the last week of July to mid-September, current and former foster parents across Nebraska answered the 21-question survey; ultimately, the Ombudsman's Office received 269 completed surveys from this group. Results are based on fewer than 269, however, because the office used responses only from foster parents who had experience with all three organizational components of the system: DHHS, lead agencies, and foster care agencies. This means, for example, only 154 provided answers relating to all three components of the system on the question dealing with communication, and only 137 offered answers relating to all three components of the system on the question dealing with providing information relating to the foster child to the foster family prior to placement.

The office also interviewed or received completed surveys from 132 biological parents.

The surveys asked for foster parents' level of satisfaction with communication, responses to their requests and problems, transportation, medical, and psychological services for the child, visitation schedules, payments, and support services made available to the foster parents, such as respite care. In addition, we asked the foster parents whether they had received adequate information about their foster child before accepting him or her into their home. Biological parents were asked to indicate their level of satisfication with DHHS and the lead agencies.

- Of 130 biological parents, when asked how many caseworkers had managed their case in the past 12 months, 130 responded as follows:
  1. One Caseworker - 30 %
  2. Two Caseworkers - 25.4 %
  3. Three Caseworkers - 23.1 %
  4. Four Caseworkers - 12.3 %
  5. 5 to 7 Caseworkers - 6.2 %
  6. 8 to 10 Caseworkers - 3 %

- This means that 21% had four or more case managers in 12 months.

When he presented the report to the HHS Committee on October 18, 2011, Marshall Lux, Public Counsel, observed that one problem we often see in bureaucracies is

> . . . a certain level of arrogance. They are the experts. They know. They don't need you to tell them what's right. . . . My point is that you can privatize the system or not . . . that's up to you; but don't think you're getting away from bureaucracy by moving the management of the system from DHHS to the lead agencies because they are bureaucracies too.

The complete results of the Ombudsman's Office survey of foster and biological parents is found in Chapter 7 of this report and online at http://goo.gl/nAIzW . The Center for Public Policy at the University of Nebraska-Lincoln produced its own analysis of the survey results and those are also found in Chapter 7 and at the website address above.

Survey of Attorneys

At Senator Campbell's request, the Nebraska Appleseed Center for Law in the Public Interest surveyed members of its listserv of about 275 child welfare attorneys in Nebraska in the Fall of 2011. Ninety attorneys completed the survey. Respondents included a county attorney, public defenders, guardians ad litem, attorneys for juveniles, attorneys for birth/biological parents, attorneys for foster parents, and attorneys for grandparents and other relatives.

The majority of the respondents (29%) have practiced juvenile law for ten to twenty years. For most respondents (33%), juvenile court work makes up 25% to 30% of their practice.

The Public Policy Center at UN-L compiled survey results, analyzed the data, and reported results to Appleseed. Those results are detailed in Chapter 7 of this report. Appleseed's website also presents information on the attorney survey survey at http://neappleseed.org/blog/5058 .

One section of the survey asked respondents to rate 14 elements of the child welfare system:

- Availability, timeliness, quality, and stability of services
- Caseworker knowledge and judgment of case
- Caseworker contact with children and families; responsiveness to children and families' needs
- Caseworker contact with attorney; contact with other parties
- Caseworker turnover
- Timeliness and quality of case plan court report
- Placement stability

With one exception, attorneys in privatized areas and non-privatized areas rated each of the elements significantly lower under full privatization than before. (Attorneys in non-privatized areas did not rank "stability of placement" significantly lower under privatization than before privatization.)

Attorneys in both privatized and non-privatized disagreed or strongly disagreed with the statement, "Privatization, as it is currently structured, will eventually be successful."

### *HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:*

- *The purpose of the surveys was to gain insights regarding privatization and child welfare from individuals who have direct interaction with the child welfare system on a day-to-day basis: judges, Eyes of the Child*

*teams, foster care providers, biological parents, attorneys, and guardians ad litem. The primary effort was to reach out to the judicial branch because all the research on child welfare reform and privatization make very clear that collaboration and involvement of the judicial branch is paramount.*

- *Biological parents are the key factor for resolving family issues within the child welfare system. Foster parents are the primary source of care and support for children outside the home. As the principal constituents – second only to the children – of the child welfare system, their voices were an important component of LR 37.*
- *The committee was struck again and again by the dedication and commitment of foster parents to do the very best for the children in their care. This was demonstrated even in the surveys, as the data showed that foster parents were more concerned about the lack of communication and professional support from case managers and agencies than they were about payment issues, despite abysmal compensation provided to foster parents. For the most part, the providers who are recruiting, training, and supporting foster parents were given higher marks for their consistent contact and general helpfulness. A number of long-time foster parents have noted they may not continue due to the confusion, turnover, and sense of disrespect for their role in the child welfare system.*
- *Of special note is the consistency of the findings across all the surveys. This is especially highlighted in the results regarding timely permanency for children in the currently privatized areas. The surveys illustrate privatized case workers' lack of knowledge of the child, lack of understanding of the judicial system, and lack of documentation in the files. All of these shortcomings reduce the odds that children will find permanency.*
- *The biological parent survey reveals a disturbing trend in case management that is reiterated in the Foster Care Review Board Report (Chapter 8 of this report) – the high number of case manager turnovers. Of the 130 biological parents asked in the survey how many caseworkers had managed their case in the past 12 months, 21% had four or more case managers in 12 months.*
- *Additionally the surveys demonstrate that attorneys and judges strongly disagree with the statement "Privatization as structured will eventually be successful." After reviewing the survey results, the committee must concur with that lack of optimism.*

## SUMMARY OF CHAPTER 8 – Foster Care Review Board

The Foster Care Review Board (FCRB), under the Foster Care Review Act (Neb. Rev. Stat. §43-1301-4318), independently tracks children in out-of-home care;

reviews children's cases; collects and analyzes data related to the children; and makes recommendations on conditions and outcomes for Nebraska's children in out-of-home care, including any needed corrective actions. In response to a request from the Health and Human Services Committee, the Foster Care Review Board, in conjunction with its annual report, provided an analysis of the data from January to June of 2011 regarding privatization and its effects on children and youth.

The FCRB analyzed data on 8,258 children who were in out-of-home care in calendar year 2010 and children who were in out of home care through June 2011. The FCRB conducted reviews on 4,730 cases in 2010 and 2,383 cases through June 2011. Based on these reviews, the FCRB reports:

- There were caseworker and placement changes that were not reported as mandated by state law.
- A comparison of children reviewed in 2008 to children reviewed during the change in case management in June 2011 shows that the top three concerns are:
    1. "No documentation" of safety and appropriateness of placement increased from 19% to 37%;
    2. Lack of complete case plan climbed from 26% to 43%; and
    3. Children in out-of-home care with four or more DHHS case managers went from 35% to 51%; and 21% of children under lead agencies had four or more case managers *in the first six months* of 2011 (Southeast Service Area - 29.7%; Eastern Service Area, Agency 1- 18.8%, Agency 2 - 6.6%).
- Documentation is vital because it provides evidence on which judges and others may base prudent decisions on placement, services, health, and education. The following shows the percentage of documentation <u>missing</u> in several areas for which documentation is required:
    1. Lead Agency 1: 22% visitation, 38% home study, 35% therapy, 41% educational, and 32% immunization.
    2. Lead Agency 2: 20% visitation, 51% home study, 40% therapy, 51% educational, and 53% immunization.
    3. DHHS: 21% visitation, 28% home study, 33% therapy, 37% educational, and 24% immunization.
        - From November 2009 to January 2011 there was a 6% reduction in the number of children placed out of home, but there was a loss of 17% of licensed foster homes and a 15% reduction in child care facilities.
        - From January to June 2011 regarding sibling visitation:

        - 1,162 children had no sibling, were placed with their siblings, or the court found sibling visitation was not appropriate.

        - Of the remaining 1,222 children, sibling visitation occurred 65% of the time; but 34% of the children either had no documentation regarding visits or were not having visits with their siblings.

    - Almost 20% of children reviewed by FCRB in 2010 had a psychiatric diagnosis.

- Magellan Behavioral Health is the administrative services company managing Nebraska's Medicaid mental health treatment. A child's diagnosis must meet the "medical necessity" definition in order for Medicaid to pay for services. At times, despite the child's treating therapist's evaluation and assessment, Magellan determines the level of treatment requested does not qualify as medically necessary under Nebraska regulations and therefore is not covered by Medicaid. Accordingly, Medicaid payment is often the determining factor regarding children's placement, service, and treatment despite the opinion of the child's therapist.

- FCRB reports special populations of children also have difficulty obtaining appropriate treatment. These include children with special physical conditions, those with behavioral issues, those involved with the juvenile justice system, and those with developmental delays and substance abuse.

- Nebraska's child welfare system needs the development and strengthening of oversight of DHHS, lead agencies, subcontractors and contracts.

- Children and Family Outcome Monitors ("CFOMs") are DHHS workers responsible for monitoring children in the child welfare system and are to provide state oversight of cases. However, CFOMs have no personal knowledge of the cases they oversee; they monitor only through information from lead agencies rather than from their own independent case knowledge; and they do not know the children for whom they are responsible.

- Appendix D of the FCRB report compares Nebraska federal CFSR results with those in Kansas, Tennessee and Florida (states that initiated privatization efforts prior to Nebraska).

- Based on the analysis of data from 2010 and the first half of 2011, the FCRB makes the following recommendations to rebuild the child welfare infrastructure:

    - Stabilize the system by reducing workloads for front-line workers, and increase retention, training and supports. Examples include

    - Weigh cases according to demands and complexity (number of siblings; level of need) and consider other duties assigned (transportation, visitation monitoring) when developing reasonable caseload size.

- Training, supervision, and caseload size should reflect the need for timely and accurate record keeping, both for comprehensive clarity in children's files and for entry into the SACWIS system for reporting to the FCRB as required by statute.
    - Increase the number of placements available and increase the appropriateness of those placements. Examples include:
        - Increase the resources provided to foster parents.
        - Ensure that relative placements receive adequate support and oversight.
        - Ensure that reimbursement rates for relative and non-relative foster parents are adequate to provide room and board.

- Increase the number of foster homes available, especially those willing to take older children, sibling groups, or children with difficult behaviors; and increase the capacity of group homes and shelters to meet current needs.

- Develop a process that will allow someone placing a child in a home to have sufficient information about other children in the home so that a safety assessment can be made.

- Collaboratively develop a comprehensive, clearly defined, and communicated plan on how the child welfare system will be structured. Plans must include:

    - achievable goals, with time lines for goal achievement;

    - standards for service delivery, documentation, and court participation;

    - a way to respond to safety issues;

    - clarity as to how children are counted in the system so that comparisons with other states can be more accurately made;

    - adequate and clear evaluation and oversight processes;

    - a moratorium on additional structural changes until a plan is developed;

- improved access for mental health and substance abuse services for children and parents, including services to address children's behavioral issues;
- an examination what managed mental health care will and will not fund; and
- an examination of the appeals process to ensure it is realistic.

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *The FCRB's review of cases indicates a variety of concerns regarding the safety, permanency and well-being of children in out-of-home placement under lead agencies. Research* shows that permanency substantially drops with each case manager. Children with one case manager achieved permanency in 74.5% cases. However, for children with two or more case managers, it drops to 17.5%, down to .1% for those who had six or more. Accordingly, the committee is deeply concerned that an average of 21% of children in the first six months of 2011 had four or more case managers.* (*Diane Riggs, *"Workforce Issues Continue to Plague Child Welfare,"* Summer 2007 *Adoptalk*, North American Council on Adoptable Children, retrieved at http://www.nacad.org/adoptalk/WorkforceIssues.html.)
- *In addition, the lack of appropriate documentation on at least a fourth, and up to half, of the children means potential safety, permanency and wellness issues for children.*
  - *"No documentation" cannot be assumed to mean the activity occurred appropriately but was not documented.*
  - *Rather, it must be assumed the action was not taken and therefore documentation does not exist. Accordingly, "no documentation" is of deep concern.*
  - *For example, when home studies and visitation documents do not exist in cases of supervised visitation, a child may be at risk.*
  - *No documentation also slows permanency for children because it means courts delay hearings while awaiting evidence on which to base decisions or support reasonable efforts.*
  - *The lack of documentation of children's health , education, evaluation, and therapy means that we do not know if children receive appropriate care and services.*
  - *At a minimum, lack of documentation shows lead agencies are not complying with contract requirements.*
  - *It also illustrates DHHS' ineffective monitoring of lead agency contracts in regards to visitation in over 20% of children's cases.*

- *The committee is concerned with the declining number of foster care homes and child care facilities. This array of services has to be rebuilt.*
- *Case management should be returned to DHHS to stabilize the system, fulfill the state's responsibilities to children, and improve outcomes for children and families. The state's commitment to permanency, safety, and well-being of children will be strengthened through direct responsibility for case management. When case managementis returned to DHHS, the department must commit to improving case management. Those improvements should include enhanced training, independent informed decision-making, accountability, and appropriate case load sizes. A stable work force will help expedite permanency and provide consistent adult mentors who personally know and support the children in the foster care system.*
- *True child welfare reform will only be achieved through stronger case management, strategic planning, broad collaboration, integration of services for children, and the combination of available funding streams.*

## SUMMARY OF CHAPTER 9 – Foster Care Compensation

Chapter 9 presents information on foster care compensation. Included is a letter from DHHS to Senator Campbell answering questions regarding compensation guidelines for foster parents; supervision of children in foster care; foster parent input; and number of foster parents.

Also included is the department's response to inquiries from Senator Campbell and Senator Annette Dubas. As part of her LR 286 interim study, Senator Dubas asked the following questions, which are based on federal requirements:

- How does the department, each lead agency, and each subcontractor determine the rate of payment for these costs for foster children?
  - food
  - daily supervision
  - school supplies
  - reasonable travel expenses for home visits
  - reasonable travel expenses for the child to remain in the school in which the child is enrolled at the time of placement
  - personal incidentals
  - liability insurance
- What process, if any, do the department, lead agencies and subcontrators use to take into account children's individual needs in determining payments to foster parents?
- What rates do the department, the lead agencies, and subcontractors currently pay to foster parents?

The department's method appears to be set at a fixed amount, which is to cover the cost of certain services (food, supervision, school supplies, transportation,

school enrollment, and personal incidentals). The state provides liability insurance as per Neb. Rev. Stat. §43-1320, and Medicaid covers children's health care costs.

The department pays higher rates for higher needs, as determined by a point system. Case workers go through a foster care payment (FCPay) checklist for each child, giving points for extra needs, behavioral problems, disabilities, etc. The point brackets are divided by age (0-5 years, 6-11 years and 12 years and older), with older children receiving more money than younger children as shown in Attachment F of DHHS' response to Senator Dubas. An additional category is used for respite care pay. Rates also differ from foster home to foster home based on their licensure status.

Additionally, DHHS may pay foster parents directly under the traditional foster parent arrangement or to an agency-supported foster care under a "tiered rate" system. According to the FCPay rate (Attachment F of DHHS' response to Senator Dubas):

- A traditional foster parent of a healthy child aged 0-5 with no behavioral or mental health issues will receive $246 per month, or $8.20 per day.
- Under the tiered rate, the agency providing foster care services receives $973.44 per month, or $32.00/day.

According to DHHS' response to Senator Dubas, the lead agencies, KVC and Nebraska Families Collaborative ("NFC"), use United States Department of Agriculture ("USDA") estimated costs of raising a child excluding health care and child care costs. KVC uses the median age of foster children in the Midwest and the USDA estimate of what it costs to raise a child of that age as the median for determining base rates.

DHHS' response states that subcontractors do not use an independent method for making payments to foster parents.

- They use the charts developed by DHHS, KVC, and NFC and then adjust for their administrative fees.
- As a result, the rates vary from agency to agency.
- However, four subcontractors have agreed to reimburse at the same rate to avoid competition.
- Several subcontractors indicated they reimburse families between 45-55% of the contracted rate received from DHHS or lead agencies.

Also in Chapter 9 is documentation in response to Senator Campbell's requests to KVC and NFC for compensation guidelines for foster parents; supervision of children in foster care; foster parent input; and number of foster parents.

*The above summary of DHHS's responses was compiled by Joselyn Luedtke, JD, legislative aide to Senator Annette Dubas.*

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *Foster care parents are the front-line, direct-service providers for the care, safety, and well-being of Nebraska children who are placed out of their homes. Foster parents are a critical component for a positive transition of children back into their homes in a timely manner. Additionally, foster parents are critical for providing high-quality, skilled services to children with special needs who, without that care, will potentially require higher levels of service.*
- *Foster parent surveys (see Chapter 7) demonstrate that the safety net provided by foster care families is fragile and damaged. Additionally, the Foster Care Review Board Report (see Chapter 8) indicates a decrease in foster care homes in the state. Increased focus on recruiting and retaining high-quality, experienced, trained foster parents is paramount if Nebraska's child welfare reform is to succeed.*
- *Foster care parent compensation in Nebraska is inconsistent. There is no statewide standard required of DHHS, lead agencies and subcontractors. In order to ensure highly-trained, skilled foster parents, a basic statewide rate for compensation should be established. Foster Care "Minimum Adequate Rates for Children" (the "Foster Care MARC") is a study completed in 2007 by Children's Rights, the National Foster Parent Association and the University of Maryland School of Social Work. The Foster Care MARC's analysis is based on expenditures allowable under the Title IV-E Foster Care Maintenance Program of the Social Security Act. The Foster Care MARC sets a basic foster care rate that can be a resource for determining Nebraska's basic foster parent compensation rate.*
- *In addition, foster children have unique needs that may require increased travel. Such needs can include therapy and education requirements that are above the normal expectation of foster care. Also, infant care, teenager, and kinship care are areas of compensation that should be explored. Foster care compensation should be adjusted as necessary to reflect these costs.*
- *Foster children should not be subject to additional isolation, embarrassment or insecurity from lack of appropriate, well-fitting, new clothing. Accordingly, foster parents should be provided appropriate biannual clothing allowances for children in their care.*

## SUMMARY OF CHAPTER 10 – Contracts

Chapter 10 contains information the committee received on contracts:

- Legislative Performance Audit Report (excerpts of recommendations regarding contract process and oversight)

- Nebraska Auditor of Public Accounts Audit (summary of excerpts re: contracts)
  - Boys and Girls Home contract settlement issues
  - Competitive bidding requirements
  - Determination of initial Service Contract amounts
  - Contract transition percentages

- Background information on service contracts prepared by legal counsel to the Government, Military and Veterans Affairs Committee.
  - LB 626, 2003 and Executive Order No. 02-03
  - Documenting service contracts
  - State agency directors' duties
  - Requirements for state agency contracts for service
  - History of child welfare exception from DAS bidding requirements
  - Additional statutes on service contracts: Neb. Rev. Stat. 73-301 to 306

- DHHS Memo: Overview of Issues Related to DHHS Service Delivery and Coordination Contract with Boys and Girls Home, Inc.
  - Prepared for Health and Human Services Committee, September 7, 2011
  - Purpose of the overview is to provide the committee with information regarding unresolved issues surrounding the three contracts between DHHS and Boys and Girls Homes for chid welfare and juvenile services entered into in November 2009 and terminated in February 2011.
  - Timeline of events
  - Legal issues regarding payment to subcontractors
    - DHHS authority
    - Subcontractors as third party beneficiary
  - Assignment of subcontractor claims
  - Settlement negotiations

- DHHS Memo: Contracting for Certain DHHS Duties under Juvenile Code and the Office of Juvenile Services Act, June 23, 2011
  - Whether DHHS has authority to contract with private entities for child welfare juvenile service case management.
  - General authority to contracted
  - OJS powers and duties
  - Case management under the Juvenile Code
  - Conclusion by DHHS:
    - Nebraska case law permits state agencies to contract out or delegate their governmental duties to private entities.
    - The Legislature has expressly granted DHHS the power to delegate under the OJS Act as in social services statutes
    - DHHS should retain a supervisory or final decision-making role in order to carry out these contracts.

***HEALTH AND HUMAN SERVICES COMMITTEE FINDINGS:***

- *DHHS did not take a number of crucial steps before embarking on privatization: there was limited data analysis, no cost-benefit analysis, no strategic plan, no formal implementation plan, no readiness assessment, only minimal planning to conduct formal contract oversight, no method for monitoring financial viability, scant documentation, and no evaluation process. The department's failure to do these things before entering into contracts (and multiple contract amendments) worth hundreds of millions of dollars has:*
  - *Exposed the state to financial liability.*
  - *Contributed to the lead agencies' financial instability.*
  - *Forced subcontractors (who were required to contract with lead agencies to continue to provide services in Nebraska) to engage in a system of untenable financial risk with no established process to respond to grievances or hold the lead agencies accountable.*
- *Front-loading of Boys and Girls Homes' contracts resulted in the loss of millions of dollars without services provided and, apparently, no appropriate contractual remedy for the state. Not only is this a breach of the state's fiduciary duty to taxpayers, it has destroyed resources that once provided essential services to families and children and left other resources in a state of financial instability.*
  - *Subcontractors are owed millions of dollars as a result of lead agencies' abandoning their contractual obligations.*
  - *Despite financial risk to themselves, subcontractors continue to provide the essential services for the protection and care of children for whom DHHS is legally responsible.*
  - *The committee encourages those subcontractors to avail themselves of legal means to remedy their losses.*
  - *Also, the committee finds that it is paramount to the reestablishment of trust in the child welfare system that the state find an equitable, appropriate, responsible solution to these issues.*
- *State government should institute protections to keep state agencies from entering into substantial personal services contracts without:*
  - *Conducting or obtaining a detailed analysis of the potential financial implications;*
  - *Maintaining appropriate documentation to support decisions;*
  - *Following the Department of Administrative Services bidding process; and*

- *Limiting the number, and breadth, of amendments to those agency contracts.*

➢ *By turning over case management to lead agencies, the state has failed to adequately supervise state wards in its care.*

- *Children and Family Outcome Monitors ("CFOMs") are required by law to review case plans at a level that maintains the state's supervisory and decision-making role for children.*
- *This is not possible under the current system. At the time of this report, each monitor has more than 80 cases – and the goal is for each one to have 120 cases.*
- *CFOMs do not have the time to conduct adequate reviews of recommendations' appropriateness for children. In reality, the "outcome monitor" is merely monitoring paperwork instead of gauging whether services are effective and suggesting changes if they are not.*

➢ *Numerous child welfare stakeholders have told the committee that when they tell DHHS their concerns about lack of services for children, the department responds "that is not the responsibility of the department – that is a lead agency function."*

- *There is a lack of response to concerns, and a limited capacity for evaluation or monitoring.*
- *The committee finds disruptions to the system have reached the level that DHHS is not fulfilling its statutory responsibilities to children as a result of privatization and the subsequent abdication of case management responsibility.*

➢ *Additionally, as the Auditor of Public Accounts report states, "Allowing the providers themselves to oversee the management of the cases that they handle gives rise to a potential conflict of interest – offering the opportunity, if not an actual incentive, for them to base decisions regarding the provision of services more upon cost criteria than upon the best interests of the recipients. Such a situation threatens not only to undermine the effectiveness of performance under the service contracts but also to prove harmful to the welfare of those receiving the services. To avoid these potential consequences, DHHS should discontinue the practice of allowing service providers to also assume case management functions."*

- *DHHS, in the Auditor of Public Accounts' report, responded " . . . because all case plans require court approval prior to implementation, they receive thorough scrutiny from county attorneys, guardians ad litem, parents' and juveniles' attorneys,*

*court-appointed special advocates, the Foster Care Review Board, and the Juvenile and Appellate Courts . . ."*

- *The committee finds that if the scrutiny from the entities listed above is the oversight mechanism for individual child welfare cases, then one could surmise their scrutiny is also important in oversight of privatization.*
- *The committee has reviewed, investigated and assessed through public hearings, reports, surveys, audits, documents, data and briefings the opinions of those listed above whom DHHS deems the appropriate entities to scrutinize both lead agency and DHHS action.*
- *The committee finds, and this report reflects, that the overwhelming, consistent, across-the-board determination expressed by representatives of all of these entities is that the lead agency contracts were ill-advised from the beginning; the movement of case management to lead agencies has produced neither the outcomes nor the cost savings for which the state contracted; continued amendments to the contracts that renegotiate compensation, services and outcomes is inappropriate; and, to date, DHHS has not produced an effective monitoring structure to perform oversight responsibilities.*

## CHAPTER 11 – Data

The committee received and reviewed extensive data submitted in hearing exhibits and available on websites. In addition, the committee requested information from DHHS, KVC, and NFC. Chapter 11 contains a summary of these data and copies of relevant information. The data in Chapter 11 has helped frame many of the committee's findings and recommendations.

The committee is concerned about several issues connected with data:

- Uncoordinated reporting, analysis, and "silos" of databases – whereby agencies and the state cannot access data – are chronic, pervasive, systemic, serious problems.
- The department and the Legislature should address data issues immediately.
- However, a good data system will not in itself alone further child welfare reform. Data analysis and synthesis are crucial.
- Additionally, child welfare reform requires systems thinking.
- All three branches of state government and child welfare stakeholders should collaborate in systems thinking and integration to ensure services for children's safety, permanency, and well-being.

Data Provided by DHHS

- Absence of repeat maltreatment, reunification within 12 months of first entry, re-entries after reunification, permanency for youth in care two years or longer, by service area
- Percentage of children served and allocation of budget by service area
- Explanation of data descriptions
- CFS court involved and non-court involved children, June 13, 2011
- Subset of number of wards, June 13, 2011
- Children placed with siblings, statewide, June 27, 2011
- Derived placement

KVC Youth Served Placement

- KVC Point in Time Report Comparison

NFC Youth Served Placements

- NFC Point in Time Report Comparison

Data Provided by DHHS and the Division of Behavioral Health

- Mental health and substance abuse ("MH /SA")by person served, 2010
- Hastings Regional Center number of children served, 2010
- State wards in care, September 3, 2011
- Funding sources for children's behavioral health services, 2010
- Behavioral health expenditures FY2010, children services by category
- Division of Behavioral Health children expenditures by region/Helpline
- FY2010 Nebraska Medicaid/CHIP expenditures for MH/SA services
- FY 2010 Nebraska Medicaid/CHIP expenditures for MH/SA services by state ward
- FY2007-10 Nebraska Medicaid/CHIP Expenditures for MH/SA services
- FY2010 Nebraska child welfare expenditure for MH/SA services
- Nebraska Medicaid behavioral health expenditures by service date, out-of-state psychiatric residential treatment facilities
- Regional Center and Youth Rehabilitation Treatment Center FY 2009-10

Data Provided by KVC

- Case worker education
- Caseload information and turnover
- Previous employers KVC
- Face-to-face caseworker-child contacts, Eastern and Southeast Service Areas, June-September 2011
- Face-to-face caseworker-parent contacts, Eastern and Southeast Service Areas, June-September 2011
- Case documentation of monthly consecutive team meetings, June-September 2011
- Case documentation of monthly consecutive parent contacts, June-September 2011

- Case documentation of monthly consecutive youth contacts, June-September 2011
- Case documentation of monthly consecutive provider contacts, June-September 2011
- Court report timeliness, August 2011 Eastern Service Area; September 2011 Southeast Service Area

Data Provided by NFC

- Caseworker training, education, experience
- Caseworker turnover
- Caseloads
- Face-to-face contacts, caseworker-children (wards) caseworker-children (non-wards)
- Face-to-face contacts, caseworker-parents (wards); caseworker-parents (non-wards)
- Current case plans
- Timeliness of case plans

Casey Family Program Selected State and National Child Welfare Statistics

- Rate of children in care in population 2009
- Rate of entry into out-of-home care, FY2009
- Rate of exits to permanency by state, 2009
- Nationally, entries are declining

# LR 37 RECOMMENDATIONS: Health and Human Services Committee

## 1. RETURN CASE MANAGEMENT TO THE STATE BY JULY 1, 2012.

- ***Policy Issue:*** A core function of government is to provide for children's safety, well-being, and permanency. The state is legally responsible for children in its custody. Accordingly, it should fully maintain the decision-making authority inherent in case management.
- ***Stability of System:*** Contracting out case management results in the state being dependent on a private entity for the provision of an essential specialized service that is extremely difficult to replace. As a result, the risk of a private entity either voluntarily, or involuntarily, abandoning the contract creates a high risk to the entire child welfare system.
- ***Conflict of Interest and Loss of Service Array:*** If a lead agency is providing services and service coordination, giving it case management has the potential to create a conflict of interest for the lead agency. That is because financial incentives may influence decisions for services that would be in the best interests of children. Additionally, privatization often reduces the spectrum of child welfare resources because lead agencies are a monopoly that reduces market competition and drives many providers out of the market.
- ***Lack of Expected Outcomes***: After two years of lead agency management and one year of case management, more than thirty million dollars of new monies have been spent on the child welfare system, but the outcomes for children and families have not appreciably improved. Additionally, issues involving caseloads, placement, case manager turnover, communication, and stability have had a negative outcome for children.
- ***Need for Case Management Stability:*** Training and longevity directly affect children's safety, well-being, and permanency. Meaningful child welfare reform can occur when competent, skilled case managers, educated in evidence-based and promising child welfare best practices, are providing direction to services for children and families, and giving the court high-quality, thoughtful evidence regarding the best interests of children.
- ***Case Management Improvements:*** The following improvements to case management are essential:
    - ***Decrease the average caseload*** for the number of children served by case managers by 10 % each year until the state reaches the CWLA standards.
    - ***Review the compensation of caseworkers and, if merited, adjust compensation*** until a fair, comparable standard for base compensation, including appropriate compensation for education, experience and performance outcomes, is reached.
    - ***Ensure appropriate state oversight of non-court and voluntary cases when any services are provided as a***

***result of a child safety assessment by DHHS,*** by developing a case plan that specifies the services to be provided and the actions agreed upon by the state and the family.

## 2. CREATE THE NEBRASKA DEPARTMENT OF CHILDREN'S SERVICES.

- ***Policy Issue:*** It is widely acknowledged that the needs of these children and families are currently being served through a fragmented service delivery model that is not well-coordinated, with a potential for duplication of effort, service gaps, cost-shifting and disagreement about payment responsibilities. Many times this results in a dysfunctional system that does not meet children's and families' needs and is often difficult to navigate. Further, state agencies are not currently pooling resources and leveraging the "smartest" financing to provide a coordinated system of behavioral health services. This, too, often results in Nebraska's children with the highest level of need being placed in secure or residential settings, which are proven to be the highest cost services with the poorest outcomes. The Department of Children's Services would be child-focused, providing integrated, seamless, solutions-based interventions considering the needs of the "whole child," using innovative, evidence-based programs and practices.
- ***Organization***: The Department of Children's Services would oversee all state child welfare programs. This would include child welfare, the Office of Juvenile Services, children's behavioral health, children's developmental disabilities, children's public health and children's Medicaid. The Division of Medicaid and Long-Term care would continue to be the "single state agency" as defined by in federal regulations, but an Assistant Director of Medicaid would co-serve in the Department of Children's Services and the Division of Medicaid and Long-Term Care. This Assistant Director would oversee Medicaid programs relating to children.
- ***Leadership:*** The Chief Executive Officer of the Nebraska Children's Service would be appointed by the Governor for approval by the Legislature and would report to the Governor. The CEO should have broad experience with child welfare reform in complex systems. Additionally, DHHS should use the exemptions provided under LB 218 (2011) to hire a Chief Financial Officer and a Chief Information Officer who would transition to the Department of Children's Services with specialized skills in financial oversight and information management.
- ***System of Care Model:*** The Department of Children's Services would use an approach to child welfare known as "system of care." This approach is based on the principles of inter-agency collaboration; individualized, strength-based care practice; cultural competence; community-based services, and accountability:

| From a System Characterized by: | To a System Characterized by: |
|---|---|
| Fragmented service delivery | Coordinated service delivery |
| Categorical programs and funding | Blended programs and funding |
| Limited array of services | Comprehensive array of services |
| Action that is reactive and crisis-oriented | Action to intervene early and prevent crises |
| Focus on "deep end," restrictive settings | Focus on least restrictive settings |
| Children and youth out of home | Children and youth within families |
| Centralized authority | Community-based ownership |
| Fostering "dependency" | Building on strengths and resiliency |

Pires, S. (1996). *Characteristics of systems of care as systems reform initiatives.* Washington, DC: Human Service Collaborative.

- ***Survey, Evaluation, Report:*** A third party that specializes in Medicaid (such as Mercer) should conduct a cross-system analysis of current services and funding sources to identify state General Funds currently in use that Nebraska can better leverage to generate federal funding. The analysis would identify current resources that could potentially be better allocated to more effective services when at-risk children and youth currently served in out-of-home placements begin the transition to home- and community interventions. This would enable the state to determine the resources available to support implementation of the Department of Children's Services. It would also identify what changes would be needed to obtain federal dollars as a match to state General Funds.
- ***Fiscal:*** A primary goal would be to replace state General Funds for at-risk children with federal funds, so the state can expand the funding base for children's programs while reducing overall state General Fund expenditures. As financing options are reviewed there would be a better understanding of the array of services that could be implemented.
- ***Process and Timeline:*** DHHS, in collaboration with and direction from the Nebraska Children's Commission, should complete a plan for the integration of agencies into the Department of Children's Services by January 1, 2013 and report to the HHS Committee and the Legislature, with implementation by July 1, 2013.

## 3. CREATE THE CHILDREN'S COMMISSION TO OVERSEE CHILD WELFARE IN NEBRASKA.

- ***Wide Membership, Strategic Plan:*** The Nebraska Children's Commission would function as an advisory body to all three branches of government. It would recommend how to develop and implement the Department of Children's Services and a statewide strategic plan for child welfare system reform. The Nebraska Children's Commission would

provide a permanent forum for collaboration among state, local, community, public, and private child welfare stakeholders.

- ***Commission Membership: Three Branches of Government and a Broad Coalition of Stakeholders:*** There would be twenty-five members of the Nebraska Children's Commission representing all three branches of government and a wide array of public and private stakeholders. Membership would include:
    - The CEO of the Children's Bureau (CFS Director), who would serve as commission chair and also be a member of the Executive Committee of the Commission;
    - The Governor, or his or her designee, who will also be a member of the Executive Committee of the Commission;
    - The Chief Justice of Nebraska Supreme Court, who will also be a member of the Executive Committee of the Commission;
    - The Chairman of the Judiciary Committee of the Legislature, who will also be a member of the Executive Committee of the Commission;
    - The Chairman of the Health and Human Services Committee of the Legislature, who will also be a member of the Executive Committee of the Commission;
    - A member of the Judiciary Committee of the Legislature;
    - A member of the Appropriations Committee of the Legislature;
    - A member of the Health and Human Service Committee of the Legislature;
    - Three members appointed by the Governor;
    - Three members appointed by the Chief Justice;
    - Twelve members representing stakeholders appointed by the Executive Committee of the Nebraska Children's Commission through an application and selection process as determined by the Executive Committee;
        - Representative groups of stakeholders may include prosecuting attorneys, preferably who practice in Juvenile Court; guardians ad litem; biological parents currently or previously involved in the child welfare system; foster parents; CASA volunteers; Foster Care Review Board members or volunteers; children's service providers; foster youth; and advocacy organizations.
- ***Executive Committee of the Nebraska Children's Commission:*** This committee would advise the commission with respect to the interaction among the three branches of government regarding child welfare programs and services. Each member of the Executive Committee would represent his or her own branch of government. No member of the Executive Committee would participate in actions (a) that could be deemed to be the exercise of the duties and prerogatives of another branch of government or (b) that improperly delegate the powers and duties of any branch of government to another branch of government.

- ***Funding:*** Initial funding of the Nebraska Children's Commission would be through the annual appropriation from the Health Care Cash Fund to the HHS Committee.

  The Health and Human Service Committee envisions that the Children's Commission would consider the following issues in developing the strategic plan.
- ***Lead Agencies:*** A review of the current lead agency model in an urban/geographic area as well as other models. Examples include lead agencies that focus on evidence-based programs for target populations within communities and/or function as brokers for coordination of services.
- ***Prevention and Early Intervention:*** Emphasis and leadership to construct intentional strategies to support high-quality, evidence-based prevention efforts that both reduce risks and enhances protective factors for children.
- ***Realignment of DHHS Service Area:*** In collaboration with the Supreme Court the DHHS service areas would be realigned to coincide with judicial districts and the Eyes of the Child teams.
- ***Evaluation***: Inclusion of a system-wide evaluation by a third party national entity with expertise in welfare systems, as a part of the strategic plan
- ***Community Network:*** Encourage each service area to foster a sense of community by creating a network of stakeholders. Each service area's network would identify its unique needs and resources, as well as strategies for addressing those needs and using those resources. This would help meet two vitally important objectives: strengthening the continuum of services, and strenthening community-based services.

## 4. CONTINUE TO REVIEW CHILD WELFARE REFORM.

The Health and Human Services Committee should monitor progress made toward its recommendations, those of the Auditor of Public Accounts, and those made by the Legislative Performance Audit Committee through LR 37. A report from the committee should be sent annually by December 15th from 2012-2014 to the Legislature, the Governor and the Chief Justice. DHHS should continue to provide information requested by the Health and Human Services Committee in a timely fashion. Additionally, reports required by DHHS to the Health and Human Services Committee should be completed and forwarded to the committee by September 15th each year. Additionally, DHHS should provide a copy of the annual statement required in Neb. Rev. Stat. §43-534 regarding Children and Family Policy to the Health and Human Services Committee by September 15th of every year. DHHS should present the child welfare budget to the HHS Committee in a budget request review hearing in accordance with Rule 8(4)(a) of the Rules of the Nebraska Unicameral Legislature as adopted January 12, 2011.

## 5. INCREASE FINANCIAL MONITORING.

The Appropriations Committee and the Legislative Fiscal Office should move child welfare appropriations from a subprogram to a "program" designation. DHHS should report quarterly on expenditures to the Appropriations and Health and Human Services Committees, specifically communicating any changes or movement of funds between sub accounts within the child welfare program. Performance-based budgeting would be required in the Division of Child and Family Services for the 2013-2014 and 2015-2016 budget cycles. This would require the agency to articulate verifiable and auditable goals and benchmarks and demonstrate progress in those areas. Additionally, DHHS should provide a copy of the annual statement required in Neb. Rev. Stat. 43-534 regarding Children and Family Policy to the Health and Human Services Committee by September 15. DHHS should present the child welfare budget to the HHS Committee in a budget request review hearing in accordance with Rule8(4)(a) of the Nebraska Unicameral Legislature as adopted January 12, 2011.

## 6. ESTABLISH CONTRACT REQUIREMENTS.

The exception from requiring the Department of Administrative Services' process for direct service contracts for child welfare should be limited to $25 million. Cost-benefit and financial implications of personal services contracts should be required for contracts valued at $25 million or more.

## 7. CREATE THE POSITION OF INSPECTOR GENERAL OF NEBRASKA CHILD WELFARE.

The Inspector General would be given jurisdiction to investigate state and private agencies that serve children. This position would enhance accountability and facilitate reform of the child welfare system.

## 8. REQUIRE DATA STANDARDS.

DHHS should identify the type of data and analysis for child welfare and make available a clear and thorough analysis of progress on chosen indicators. DHHS should explore and implement a process to obtain and use data analytics, business intelligence or similar information technology resources for accessing real time data to foster better decision-making.

## 9. DO NOT REINSTATE THE LEAD AGENCY MODEL IN CENTRAL, WESTERN, OR NORTHERN SERVICE AREAS.

There should be no extension of privatization of child welfare case management or reinstatement of a lead agency in the Central, Western or Northern Service Areas. This recommendation would also include no extension of privatization of case management in these service areas.

**10. DO NOT EXTEND CURRENT CONTRACTS.** There should be no extensions of the current contracts with lead agencies in the Eastern and Southeast Service Areas past the termination date of the contract. Amendments to the current contracts would be allowed in order to comply with any legislation that may be enacted.

## 11. DIRECT DHHS TO APPLY FOR A IV-E WAIVER DEMONSTRATION PROJECT.

Obtaining such a waiver would allow Nebraska to use funds for more than out-of-home care. In September 2011, Congress passed HR 2883, the Child and Family Services Improvement and Innovation Act, partly a routine reauthorization of funding for core Child Welfare programs, and partly a further step towards institutionalizing Title IV-E Waivers.

## 12. USE THE STATE MISCELLANEOUS CLAIMS ACT

The committee recommends that the state's Miscellaneous Claims Act be used to resolve claims from subcontractors who may have been owed money when Boys and Girls Homes ceased to be the lead agency in the Central, Western, and Eastern Service Areas.

## 13. CONTINUE TO BUILD ON WORK DONE BY THE LB 603 COMMITTEE.

The HHS Committee and the LB 603 Committee should continue to monitor the relationship between child welfare and behavioral health. The goal should be to establish an integrated system with a braided funding process. Specific attention should be given to the cost-shifting from Medicaid to the child welfare system. A continuum of appropriate residential and community-based services is essential.

## 14. REQUIRE A STANDARD MINIMUM BASE RATE FOR FOSTER CARE PAYMENTS AND DEVELOP ADDITIONAL TIERED COMPENSATION TO PROVIDE FOR CHILDREN WITH SPECIAL CIRCUMSTANCES.

Foster parent surveys represent that the safety net provided by foster care families is fragile and damaged. Increased focus on recruiting and retaining high quality, experienced, trained foster parents should be a priority under child welfare reform. Foster Care "Minimum Adequate Rates for Children" (the "Foster Care MARC") is a study completed in 2007 by Children's Rights, the National Foster Parent Association and the University of Maryland School of Social Work. The Foster Care MARC's analysis is based on expenditures allowable under the Title IV-E Foster Care Maintenance Program of the Social Security Act, which defines foster care maintenance payments as covering the cost of providing food, clothing, shelter, daily supervision, school supplies, personal incidentals, insurance and travel for visitation with a child's biological family. The Foster Care MARC sets a basic foster care rate. In addition to foster care compensation, additional funds will be provided for travel unique to foster care children –

appointments, visitation, etc. – and bi-annual age-appropriate clothing allowance will be provided.

## 15. COMMEND THE JUDICIAL BRANCH.

The Judicial Branch has collaborated with the University of Nebraska and the Legislature in developing several child welfare projects, including the Court Improvement Project, Through the Eyes of the Child teams, the Children's Summits, and the Supreme Court Commission on Children.

The HHS Committee encourages the Judicial Branch to extend its collaboration through full partnership in the Nebraska Children's Commission; to undertake activities to strengthen guardian ad litem effectiveness; and to continue to explore and implement innovative programs for children and juveniles.

## 16. CONTINUE DISCUSSIONS AMONG THE HHS COMMITTEE, THE JUDICIARY COMMITTEE, THE CHIEF JUSTICE, DHHS, AND THE JUDICIARY TO ASCERTAIN THE BEST ALIGNMENT OF CROSS-OVER CHILDREN AND OFFICE OF JUVENILE SERVICES.

Cross-over children – those who are involved in both the child welfare system and the juvenile justice system – present unique needs. The committee believes that inter-branch discussions will lead to improved services for these children. Inter-branch discussion would include continuing and evaluating the Douglas County Juvenile Probation Pilot. If appropriate, a similar pilot program may be initiated in a rural judicial district.

## 17. ENCOURAGE COLLABORATION WITH HIGHER EDUCATION.

DHHS should explore potential collaborative partnerships with higher education institutions, such as programs and systems for data, implementation science, social work, business organization, and child welfare research. For example, social work programs could be used for child protection staff training across the state.

## 18. THE HEALTH AND HUMAN SERVICES COMMITTEE AGREES WITH THE RECOMMENDATIONS OF THE NEBRASKA AUDITOR OF PUBLIC ACCOUNTS AND THE LEGISLATIVE PERFORMANCE AUDIT COMMITTEE.

# LR 37 RECOMMENDATIONS: Nebraska Auditor of Public Accounts

The Auditor of Public Accounts' Report recommends the following:

- DHHS implement procedures to control service contract costs, monitor lead contractors' financial records, and inform the Legislature of any significant changes to child welfare service delivery and funding.

- DHHS' procedures for evaluating prospective lead contractors be strengthened. If, despite any concerns noted during such evaluations, negotiations for entering into service contracts continue, DHHS should take measures to address those concerns specifically, such as requiring performance bonds and perform intensive monitoring.

- DHHS implement policies and procedures to ensure all financial and service delivery records, including details pertaining to both accounts payable and receivable, banking information, invoices, and all other relevant documentation, is obtained from a lead contractor immediately following termination of a service contract with that provider. DHHS should also implement policies and procedures for ensuring that service contract provisions requiring compliance with applicable HIPAA procedures are followed.

- DHHS implement policies and procedures to review and maintain supporting documentation for amounts owed and payments made pursuant to a settlement agreement.

- DHHS complete the settlement of Boys and Girls Homes' contracts as soon as practicable. The Auditor of Public Accounts also recommends that DHHS implement procedures to ensure any future terminated contracts with lead contractors are settled in a timely manner.

- DHHS develop procedures to ensure all such information regarding the provision of child welfare services is accurately maintained in NFOCUS.

- DHHS implement internal control procedures to ensure that duplicate provider payments are not made. Additionally, the Auditor of Public Accounts recommends DHHS implement internal control procedures to ensure that payments for client services are made only to the lead contractors responsible, pursuant to the contract, for coordinating and providing specific client services.

- DHHS implement procedures to ensure all information regarding services for children is entered and accurately tracked on NFOCUS in a timely manner. We also recommend DHHS ensure compliance with contracts. Furthermore, APA recommend DHHS ensure all subcontractors and foster

families are paid correctly and timely.

- DHHS implement procedures to ensure all rates billed by the contractors are appropriate and reasonable in order to determine the total costs for a child and to ensure compliance with Federal requirements. The Auditor of Public Accounts also recommends DHHS obtain the rates the contractors are paying their subcontractors and foster families.
- DHHS develop procedures to ensure lead contractors are paid in compliance with the terms of the service contracts.
- DHHS implement procedures to ensure all information requested by the Auditor of Public Accounts is provided in a timely manner. Further, the Auditor of Public Accounts recommends DHHS inform the Auditor of Public Accounts of all significant information regarding the examination.
- DHHS implement oversight procedures to ensure the lead contractors comply with contractual provisions requiring the timely payment of their subcontractors. The Auditor of Public Accounts also recommends DHHS adopt procedures to ensure all lead contractors oblige subcontractors to obtain the insurance coverage required under the Master Operations Manual.
- DHHS competitively bid service contracts worth millions of dollars, as a matter of course, to ensure the fair and reasonable expenditure of public funds, as well as to make certain that the state receives the best services for the lowest possible price.
- DHHS discontinue the practice of allowing service providers to assume case management functions. Instead, DHHS should segregate these responsibilities by either resuming them itself or bidding out the case management functions to neutral oversight providers capable of making objective determinations when assessing the quality and cost effectiveness of the services offered.
- DHHS implement procedures to ensure contracted amounts are reasonable and adequately supported.
- DHHS implement procedures to ensure contract provisions are met. The Auditor of Public Accounts recommends further that DHHS include provisions in future contracts for penalties if contract provisions are not met. Finally, the Auditor of Public Accounts recommends DHHS implement procedures to ensure the accuracy of assignment dates entered into NFOCUS by lead contractors.
- DHHS implement procedures, including regular reviews of external system users, to ensure the NFOCUS access of former employees of lead contractors is revoked timely. The Auditor of Public Accounts recommends also that greater emphasis be placed upon the contractual duty of lead contractors to notify DHHS immediately when employees with NFOCUS access terminate employment.

- DHHS implement procedures for ensuring the following: 1) prospective subcontractors are properly researched before being allowed to enter into service contracts; 2) all payments to those subcontractors are made in compliance with the terms of the service contracts; 3) there is ongoing monitoring of compliance with the terms of the service contracts, including a periodic review of the qualifications of all service provider staff; 4) the rate schedule used by DHHS to compensate service providers is reasonable; and 5) amounts paid to subcontractors of Boys and Girls Homes under a settlement agreement are accurate and verified to supporting documentation. In particular,the Auditor of Public Accounts recommends that DHHS examine thoroughly the activity of the McConaughy Discovery Center, trade name for BSM, Inc., to ensure all payments for services are made in compliance with the terms of the service contracts, and strong controls are in place to allow for the adequate monitoring and performance oversight of both providers.

# LR 37 RECOMMENDATIONS: Legislative Performance Audit Committee

DHHS Management/Agency Structure

The LPA Committee recommends that the Legislature's Health and Human Services Committee, or a working group of that LPA Committee, evaluate the 2007 restructuring of DHHS to determine whether changes are needed in order to facilitate sufficient oversight and accountability of the programs the agency administers. The LPA Committee suggests that the HHS Committee consider contracting for the opinion of a management expert as part of the study, in order to get an objective assessment about what changes would be the most effective.

The LPA Committee recommends that the DHHS CEO conduct a comprehensive evaluation of CFS staff to determine whether the division has made good matches between individuals and the positions they hold and report the results back to the LPA Committee and the Health and Human Services Committee.

## Contracting Process

The LPA Committee will work with the Health and Human Services and the Government, Military and Veterans Affairs committees to propose and/or support legislation requiring agencies to work with the Department of Administrative Services in the letting of personal services contracts to ensure adequate accountability and sound contracting practices.

The LPA Committee will work with the Health and Human Services Committee to propose legislation establishing a moratorium on adding any additional DHHS service area to any new or existing lead agency contract to provide services in the child welfare system and juvenile justice system and for wards of the state pursuant to the child welfare reform initiative known as Families Matter.

## Budgeting Changes

The LPA Committee will explore legislation to require: (1) performance-based budgeting for the CFS Division for the 2013-2014 and 2015-2016 budget cycles—and then sunset—which would require the agency to articulate verifiable and auditable goals and benchmarks and demonstrate progress in those areas; (2) creating Child Welfare Services as a separate budget program and possibly changing other subprograms from program 347 to separate programs; and (3) funds within program 347 be earmarked by the Legislature for specific purposes. The LPA Committee will work with the Appropriations Committee and will request the participation of the DHHS CEO as well. The LPA Committee acknowledges that budget process changes, as well as contract-process changes discussed later in this section, may have fiscal impacts and will further identify those along with other consideration related to these recommendations.

### Privatization Outcomes

The Health and Human Services Committee may wish to consider whether it is satisfied with the current level of improvement in outcomes for children and families.

### Privatization Goals

In establishing goals, timeframes and benchmarks for system improvement, CFS administrators must work with the Health and Human Services Committee to ensure that division goals reflect areas of interest to the HHS Committee and that the division has the HHS Committee's assistance in working towards goals that CFS cannot accomplish on its own. In addition, CFS staff need to develop ways of discussing system improvement that go beyond statistical changes—like those used for the CFSR data indicators—to emphasize meaningful levels of change at a big-picture level and that are more comprehensible. The LPA Committee strongly encourages division representatives to report quarterly (or at a frequency determined by the HHS Committee) to the HHS Committee on progress towards the identified goals.

The Legislature's Health and Human Services Committee may wish to introduce legislation to establish goals for reform of the child welfare and juvenile services system. If it does this, the HHS Committee should consider having a candid discussion with key stakeholders—especially the judiciary.

### Data

CFS administrators should work with the HHS Committee to identify the type of information and analysis of most value to policymakers and other stakeholders.

### DHHS Contract Oversight

The Legislative Performance Audit Committee will work with the HHS Services and Government committees to propose or support legislation to require a written cost-benefit or similar analysis, or an opinion by a financial expert, of the potential financial implications of personal services contracts valued at $25 million or more.