



*Committee Report, Vol. 17, No. 1*  
**DHHS Privatization of Child Welfare  
and Juvenile Services**

**Performance Audit Committee  
Nebraska Legislature**

*November 2011*

## **Performance Audit Committee**

Senator John Harms, Chair  
Senator Heath Mello, Vice Chair  
Senator Annette Dubas  
Speaker Mike Flood  
Senator Lavon Heidemann  
Senator Bob Krist  
Senator John Wightman

## **Legislative Audit Office**

Martha Carter, Legislative Auditor  
Clarence Mabin, Auditor  
Dana McNeil, Auditor  
Stephanie Meese, Legal Counsel  
Sandy Harman, Committee Clerk

Audit reports are available on the Unicameral's Web site ([www.nebraskalegislature.gov](http://www.nebraskalegislature.gov))  
or can be obtained from Martha Carter, Legislative Auditor, at (402) 471-2221.

**LEGISLATIVE AUDIT OFFICE**  
**Nebraska Legislature**  
**State Capitol • Box 94945 • Lincoln, NE 68509-4945 • (402) 471-2221**

*Committee Report, Vol. 17, No. 1*

**DHHS Privatization of Child Welfare and Juvenile Services**

*November 2011*

---

*Prepared by*  
Martha Carter  
Clarence Mabin  
Dana McNeil  
Stephanie Meese



# **Table of Contents**

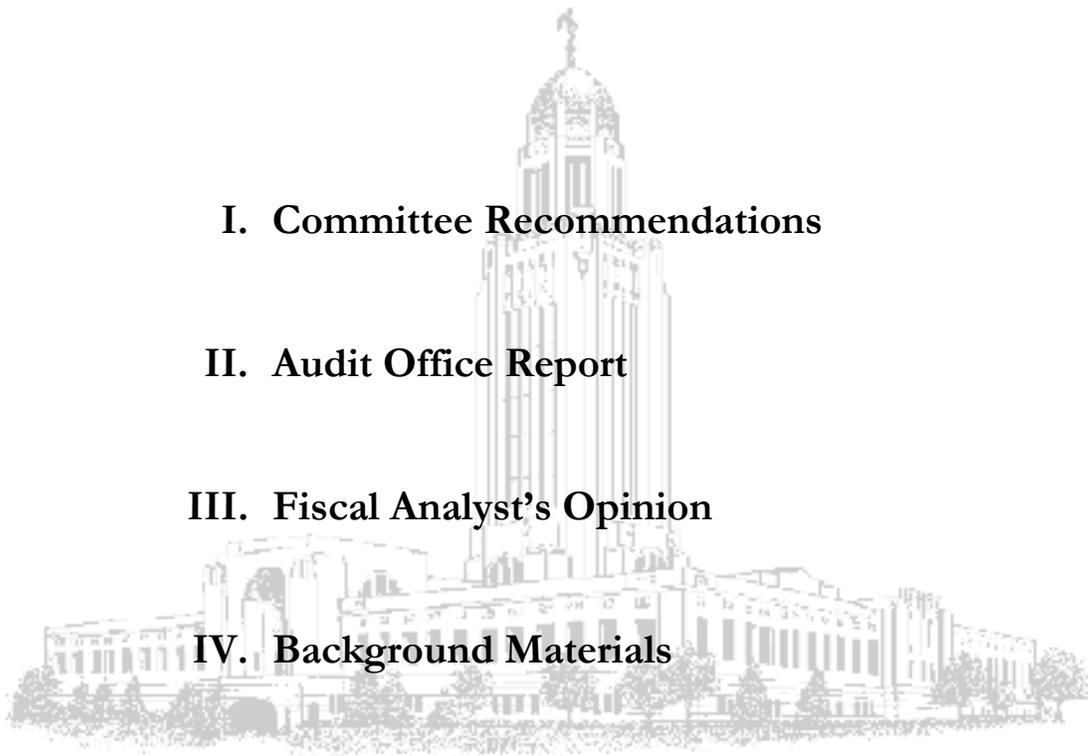
---

**I. Committee Recommendations**

**II. Audit Office Report**

**III. Fiscal Analyst's Opinion**

**IV. Background Materials**



*Table of Contents*





*I. Committee Recommendations*



# Audit Summary and Committee Recommendations

---

## Audit Summary

This performance audit was undertaken at the request of the Health and Human Services Committee as part of its review, under interim study resolution LR 37, of the child welfare and juvenile services privatization initiative implemented by the Department of Health & Human Services (DHHS or department) Division of Children and Family Services. Specifically, the Legislative Performance Audit Committee directed the Legislative Audit Office (Office) to (1) provide a timeline of major events in the implementation privatization; (2) assess how DHHS, policymakers, and stakeholders know whether privatization of services is working effectively to assure children's safety; (3) assess whether the Executive Branch exceeded its authority in implementing reform without legislative involvement; and (4) assess whether contract oversight is sufficient.

The audit produced a comprehensive timeline of events relating to privatization, along with several significant findings, including that the Division of Children and Family Services (CFS or division) failed to:

- conduct a cost-benefit analysis or similar assessment prior to entering into the lead-agency contracts in 2009, which is contrary to best practice and was a critical error in the contracting process;
- identify key performance goals for improvements they expected to see following privatization or benchmarks or timeframes for meeting such goals; and
- make significant progress in reducing the number of children placed out of their homes.

Nebraska's high rate of children placed out of their homes was one of the reasons CFS administrators cited as demonstrating the need for privatization. Another was Nebraska's low scores on the six data indicators that are part of the federal Child and Family Services Review process, and we also found little improvement in those scores since privatization began.

We determined that the Executive Branch did not exceed its authority in pursuing privatization without involvement of the Legislature. However, we also found that goals such as safely reducing the number of children placed out of their homes are policy questions that should be considered by the Legislature, because the legislative process allows for the coalition building needed to make substantive change.

Time constraints limited the auditors' review of contract oversight to a comparison of the CFS process to the typical process identified in government contracting standards. With the significant exception of the need for additional cost analysis mentioned above, we found that the process was generally in compliance with those standards.

Division administrators generally agreed with the audit findings and indicated that efforts were already underway to identify key outcome goals, along with benchmarks and timeframes for meeting them. The division also expressed its desire to work collaboratively with the Legislature and Judiciary to bring about system change.

## **Committee Recommendations**

The Committee adopted the audit staff's draft recommendations, which begin on page V. In addition, the Committee believes that this performance audit report, the State Auditor's financial audit report, and information presented at the LR 37 public hearings document a critical lack of financial and performance accountability by the Department of Health and Human Services (DHHS or department) and makes the following recommendations to address this significant problem.

### **DHHS Management/Agency Structure**

While the Committee believes that former and current DHHS management are in part responsible for the failure to provide adequate accountability, the Committee also believes that the department structure is part of the problem. The Committee questions whether any CEO could provide meaningful oversight of the multiple major programs within the agency. Similarly, the Committee questions whether any CFS director could provide enough attention to the broad scope of significant responsibilities under his or her review. Within the child welfare and the juvenile services program, the Committee questions whether the merging of the two populations into single system has resulted in a good "fit" or should be reconsidered.

**Recommendation:** The Committee recommends that the Legislature's Health and Human Services Committee, or a working group of that 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 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.

**Recommendation:** The 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 Committee and the Health and Human Services Committee.

### **Contracting Process**

The Committee believes that process used by CFS administrators to contract for child welfare and juvenile services was inadequate in significant ways. In particular, the absence of a written analysis of the

potential costs (through a cost-benefit or similar analysis) and the inadequacy of the assessments of the ability of potential providers to provide the necessary services and maintain financial viability were of concern. The Committee believes that statutory changes are needed to prohibit any state agency from entering into contracts that may present a high risk of service disruption and expose the state to high financial liability because of lack of adequate analysis and documentation.

**Recommendation:** The 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.

**Recommendation:** The 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**

Committee members are extremely concerned about, and find unacceptable, the difficulty the Legislature has had in getting accurate, timely fiscal information from DHHS about the child welfare services' contracts. The Legislature is responsible for appropriating funds to state agencies and must be able to obtain information about how those funds are spent.

The Committee is also concerned that budget program 347, which contains 26 subprograms—including Child Welfare Services, Temporary Assistance to Needy Families (TANF), and Employment First, among others—is too large and that having so many significant subprograms in one budget program hampers effective oversight. The Committee believes that the program needs to be broken up into smaller areas in order to facilitate appropriate oversight and understands that the Legislative Fiscal Office is reviewing options for doing so.

**Recommendation:** The 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 Committee will work with the Appropriations Committee and will request the participation of the DHHS CEO as well. The 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.

## **SECTION II: Is Privatization Working?**

### *Findings Relating to Outcomes*

Our conclusion is that, to date, few outcomes show improvement and those that have improved do not show the degree of change we believe policymakers and other stakeholders expect from privatization specifically or from the broader system reform of which it is a part. For the goals and indicators we studied, including certain measures from the 2008 Child and Family Services Review (CFSR), the rate of out-of-home placements, and five indicators suggested by Children and Family Services (CFS or division) administrators, we found:

**Finding #1:** CFS met the performance improvement goals for five of the six data indicators prior to the start of privatization. (p. 25)

**Finding #2:** Scores on the data indicators since privatization began have been mostly down. Two scores went up since privatization began—one increased enough that it met the intermediate improvement goal for the first time—but the remaining four indicators went down. (p. 27)

**Finding #3:** Since 2006, there has been no significant decrease statewide in the proportion of children placed out of their homes but the rate improved (dropped) four percent between April 2010 and April 2011. (p. 30)

**Finding #4:** Fewer children are being placed in state custody, but the rate of decline is less than what is taking place nationally, which suggests that Nebraska should be doing more. In addition, the rate has slowed, not increased, since privatization began in 2009. (p. 37)

**Finding #5:** The proportion of kinship placements has increased since 2006, including a noticeable increase since privatization began in 2009. (p. 39)

**Finding #6:** We agree with CFS administrators that since 2009, there has been improvement in placement stability and kinship placements. Adoption timeliness measures have also improved, although that trend started before privatization began. We disagree that the measures relating to permanency, reentry, and maltreatment in foster care have improved in meaningful ways. (p. 41)

**Finding #7:** Nebraska is not unique in its inclusion of the juvenile services population in the data used to calculate the out-of-home rate and this factor alone does not appear to explain Nebraska's high rate compared to other states. (p. 32)

**Recommendation:** 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.

\* \* \*

#### *Findings Relating to Goals*

**Finding #8:** If CFS administrators intended the 70/30 reversal in the proportion of children removed from their homes to be a figurative goal, then the Division failed to adequately communicate that intent to stakeholders. (p. 30)

**Finding #9:** CFS administrators' failure to identify key goals, as well as performance benchmarks and timeframes for achieving them is contrary to best practice and their failure to recognize the importance of these reflects questionable professional judgment. (p. 34)

**Finding #10:** The statistical goals set by the Children's Bureau for improvement in the CFSR data indicators, which are measured in tenths-of-a-percent increments, are difficult to understand. (p. 41)

**Discussion:** While division administrators' commitment to establish key goals, timeframes and benchmarks is a good step, it does not change the fact that those important accountability tools have not been in place to date. That is first and foremost an accountability problem: without clear goals, it is very difficult to hold CFS—or any other part of the system—accountable, and the CFS leadership's failure to recognize that is concerning.

**Recommendation:** 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 Committee and that the division has the 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 CFSSR data indicators—to emphasize meaningful levels of change at a big-picture level and that are more comprehensible. The 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.

**Finding #11:** Goals that CFS cannot accomplish on its own, including safe-reduction, are policy issues that should involve the Legislature. (p. 36)

**Discussion:** CFS is only one part of the child welfare and juvenile services and many goals that may be desirable—like safe-reduction—cannot be accomplished without commitment from other key players, especially the judiciary. As the policymaking arm of state government, the Legislature could bring the key players together to identify goals that all key players can support. With or without privatization, we believe real system change will only occur when that kind of coalition is in place.

**Recommendation:** 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 Committee should consider having a candid discussion with key stakeholders—especially the judiciary.

\* \* \*

In addition to CFS administrators’ general unwillingness to commit to key goals, we found other aspects of their approach to measuring progress problematic, as reflected in the following findings.

**Finding #12:** CFS staff’s analysis of indicators they believe reflect system improvement was confusing, did not contain consistent information on the indicators and, in some cases used inaccurate methodologies, which are transparency problems. (p. 36)

**Discussion:** CFS makes a tremendous amount of data available through its Web site and we commend it for that level of transparency. However, transparency should also include producing and making available a clear and thorough analysis of progress on various indicators.

**Recommendation:** As recommended above, CFS administrators should work with the HHS Committee to identify the type of information and analyses of most value to policymakers and other stakeholders.

### **SECTION III: Questions of Legal Authority**

**Finding #13:** DHHS neither overstepped Executive Branch authority nor violated state law by contracting out child welfare and juvenile services without legislative involvement. (p. 45)

**Recommendation:** None.

### **SECTION IV: Contract Oversight Standards**

Our review of the lead agency contracts compared to contract oversight standards resulted in the following findings.

**Finding #14:** CFS's contracts with the lead agencies meet the Adequacy of Contract Provisions standards. (p. 48)

**Finding #15:** CFS staff met standards relating to the process for analysis of business needs, goals, objectives and services prior to determining whether contracting was necessary. (p. 50)

**Finding #16:** CFS did not conduct any type of cost-benefit analysis prior to entering into the 2009 lead agency contracts, which conflicts with contracting standards and we believe was a critical error. (p. 51)

**Discussion:** State government should have a protection in place to keep a state agency from being able to enter into substantial personal services contracts without conducting or obtaining a detailed analysis of the potential financial implications.

**Recommendation:** 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.



***II. Audit Office Report***



*Legislative Audit Office Report*

**DHHS Privatization of Child Welfare and Juvenile Services**

*November 2011*

---

*Prepared by*  
**Martha Carter**  
**Clarence Mabin**  
**Dana McNeil**  
**Stephanie Meese**



# CONTENTS

---

INTRODUCTION.....	1
SECTION I: Timeline of Nebraska’s Child Welfare/Juvenile Services Reform .....	5
Detailed Timeline of Events .....	9
SECTION II: Is Privatization of Child Welfare and Juvenile Services Working?.....	23
Nebraska’s Child Welfare and Juvenile System Goals .....	23
CFS Failure to Identify Key Goals, Benchmarks, and Timelines for System Improvement .....	33
CFS Concerns About the Auditors’ Goals.....	34
CFS Indicators of System Improvement.....	36
SECTION III: Legal Questions About Privatization .....	43
Overview of Government Contracting Issues.....	43
State Statutory Requirements .....	44
SECTION IV: Sufficiency of the Department of Health and Human Services’ Contract Oversight of the Lead Contractors .....	47
Overview of Contract Oversight .....	47
Adequacy of Contract Provisions.....	48
Planning/Decision to Contract .....	49
Appendix: Overview of Nebraska’s Performance on the 2008 Child and Family Services Review (CFSR) .....	53



# INTRODUCTION

---

## **“Child Services System”**

For ease of reading, this report uses the phrases, “child services system” or “child services” to refer collectively to the child welfare system and juvenile services system.

Due to concerns regarding the privatization of the child services system, on February 7, 2011, the Legislature adopted LR 37, a resolution that designated the Health and Human Services Committee (HHS Committee) to review, investigate, and assess the effect of the child welfare and juvenile services reform initiative implemented by the Department of Health & Human Services (DHHS or department). As part of this resolution, the HHS Committee exercised the option of requesting that the Legislative Performance Audit Committee conduct an audit of the child services system reform.

In February 2011, the Legislative Performance Audit Committee (Committee) directed the Legislative Audit Office (Office) to conduct a performance audit of DHHS’ privatization of the child welfare and juvenile services system. Specifically, the Committee directed the Office to address:

- Documentation of the timeline of major events in the implementation privatization and of the goals for privatization expressed at the time it was being considered and then implemented;
- How DHHS, policymakers, and stakeholders know whether privatization of services is working effectively to assure children’s safety;
- Whether the Executive Branch exceeded its authority in implementing reform without legislative involvement; and
- Whether contract oversight is sufficient—including DHHS oversight of the lead contractors and, if time permits, the lead contractors oversight of their subcontractors.

Section I of this report addresses the first point and gives an overview of child services system reform in Nebraska. Sections II through IV answer the specific questions posed for this audit.

## **Defining “Privatization”**

In this report, we use the term “privatization” to refer to the 2009 lead-agency contracts that transferred some administrative responsibilities (service coordination) to the contractors. The Division of Children and Family Services (CFS or division) staff, and other DHHS staff, disagree with this characterization. From their perspective, privatization began with the contracts signed in 2010 that trans-

ferred case management responsibility to the private agencies.<sup>1</sup> There is no standard definition of “privatization” in the child welfare and juvenile services field. While some define it only when case management is transferred, others define it more broadly.<sup>2</sup>

We believe that the transfer of service coordination represented a step that can fairly be called privatization— not full privatization, but certainly a step in that direction. In addition, throughout the audit, we heard policymakers and other stakeholders refer to privatization when referring to the 2009 lead-agency contracts. Consequently, we believe it is fair, and least confusing, to use the term that way.

The table below shows the general progression of privatization of children’s services in Nebraska.

**Progression of Privatization in Child Welfare and Juvenile services Contracts**

<b>Year</b>	<b>Type of Contract</b>	<b>Description</b>
Before 2008	Service Delivery	Primarily the traditional purchase of service model: HHS contracted with a company to provide a specific services (or set of services) and paid the company when the service was provided.
2008	Safety and In-home Services	These contracts departed slightly from the traditional contract model in that they allowed the contractor to provide some of the contracted services through subcontracts with other providers
2009	Lead-agency	These contracts represent the first significant step in privatization of children’s services because contractors were given some responsibility (service coordination) beyond providing services.
2011	Expanded Lead-agency	These contracts represent another significant step in privatization as contractors were given some decision-making authority (case management).

Source: Audit staff categorization based on conversations with CFS.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The methodologies used are described briefly at the beginning of each section.

We appreciate the assistance of DHHS administrators during the audit.

### ***Acronyms***

ACF: Administration for Children and Families  
AFCARS: Adoption and Foster Care Analysis and Reporting System  
APA: Auditor of Public Accounts  
CAFCON: Children and Family Coalition of Nebraska  
CFS: Children and Family Services  
CFSR: Child and Family Services Review  
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  
NCSL: National Conference of State Legislators  
NeAHSC: Nebraska Association of Homes and Services for Children  
NGA: National Governor's Association  
NFC: Nebraska Families Collaborative  
NIGP: National Institute of Government Purchasing  
NSAA: National State Auditor Association  
NSIS: Nebraska Safety Intervention System  
PIP: Program Improvement Plan  
RFB: Request for Bid  
RFQ: Request for Qualifications



## SECTION I: Timeline of Nebraska’s Child Welfare/Juvenile Services Reform

---

The scope statement for this audit directed us to compile a timeline of major events in the implementation of privatization. This section begins with a summary of those events, followed by a detailed timeline. Although privatization did not take place until 2009, both the summary and the timeline begin with earlier events that led to the broader system reform (which, in 2010, agency representatives began calling “Families Matter”) of which privatization is a part. A methodology note at the end of this section provides additional detail about the timeline.

### Summary

Nebraska’s recent efforts to reform its child services system were prompted by years of ranking among the top states in the proportion of children removed from their homes, calls for change from families, child advocates and legislators, and input from Health and Human Services System (HHSS) workers. A key, additional impetus was the state’s sub par performance in the 2002 federal Child and Family Services Review (CFSR). The review periodically evaluates states in safety, permanency and well-being outcomes for children.<sup>3</sup>

In June 2006, Gov. Dave Heineman announced a series of six directives to improve the state’s management of foster children and other state ward cases. The following year the upper administrative tier of the state child services system underwent major restructuring after the governor signed legislation merging the three HHSS agencies into a single entity, the Department of Health and Human Services (DHHS or department). The legislation also created a new DHHS division, Children and Family Services (CFS or division).<sup>4</sup>

Gov. Heineman in June 2007 appointed Todd Landry director of the new division. Mr. Landry, formerly the CEO of the Child Saving Institute in Omaha, told a newspaper reporter shortly after his appointment that he had a mandate to “reform the system, to get different outcomes.” In July, the governor announced his priorities for the restructured department; among them, acceleration of child services reform and a better performance in the upcoming CFSR.<sup>5</sup>

Mr. Landry, speaking at a conference of child services stakeholders in Lincoln that November, said that, even if Nebraska has improved its child services system, the state might fail the upcoming CFSR because the federal government raised CFSR standards since the 2002 review. The conference commenced the state’s self-evaluation, a pre-

liminary step to the CFSR process. Attendees established a program improvement plan team that, among other tasks, was to identify “action plans” for improving child services.<sup>6</sup>

One of those action plans took public form March 17, 2008, when Mr. Landry announced a Request for Bid (RFB) from private agencies to provide safety and in-home services to at-risk youth. The RFB was part of a larger strategy to better coordinate services delivery through increased centralization. In June, the CFS administration signed services contracts totaling \$32.7 million with five lead agencies, effective July 1. CFS administrators said the contracts contained incentives for agencies to meet performance results in key CFSR measures—although a few winning bidders had concluded they would not make money and declined to sign contracts. Also, some child advocates characterized the implementation schedule as “aggressive.”<sup>7</sup>

### **Initiation of Privatization**

Two months after implementation of the contracts, DHHS administrators took a significant step toward privatization with the publication of a framework of recommendations for reform of out-of-home care. In the framework, released September 5, 2008, contracting agencies were to be responsible for child welfare and juvenile services as well as services coordination. CFS workers retain case management oversight responsibilities; critical case decisions—child and community safety assessments, whether to recommend removal of children from homes, etc.— would continue to be made by division staff.<sup>8</sup>

The division solicited public opinion of the plan through e-mails and, beginning in mid-September, by holding 14 forums statewide. DHHS notes from the forums indicated that some participants believed the reform was moving too fast. And at least one participant advised CFS to provide potential contract bidders with accurate numbers of clients expected to be served—a recommendation reiterated directly to Mr. Landry by two prominent children’s advocates in the state. One of those advocates in a September 24 letter to the director claimed the safety and in-home services data had been inaccurate and that “as a result, there is some concern with current contracted providers as to whether there is sufficient funding to meet current demand for these services.”<sup>9</sup>

In response to public feedback that July 1, 2009 was too soon for full implementation of the contracts, DHHS extended the date to January 1, 2010. On December 2, 2008, the department released a Request for Qualifications (RFQ) to provide out-of-home services. Some of the goals articulated in the RFQ were reduction of the number of children in out-of-home care from 70 percent to 30 percent, and re-

duction of the time children are in state custody. DHHS estimated the RFQ contracts would be \$119 million annually. The department said contract negotiations would begin in early 2009.<sup>10</sup>

Meanwhile, in March 2009, DHHS officials received a courtesy copy of the 2008 CFSR report. Nebraska had performed poorly, but an unsurprised Mr. Landry said the report only confirmed what the department already knew from the self-evaluation.<sup>11</sup>

The department experienced two significant leadership changes during contract negotiations: in April 2009, Todd Reckling, an administrator in the CFS policy section, became CFS director, replacing Mr. Landry, who had accepted a job in Texas; that June, Gov. Heineman appointed Kerry Winterer to replace former DHHS CEO Chris Peterson, who retired Jan. 2.<sup>12</sup>

By late July all six agencies selected by the state to coordinate child welfare and juvenile services had signed the initial “implementation” contracts. Generally, the agencies agreed in these contracts to develop infrastructure, staffing and programming necessary for services coordination. Most of the contracts required the agencies to begin providing services by October 1, 2009, with full implementation on January 1, 2010. The majority of the contracts were later amended to a November 1, 2009 beginning date and an April 1, 2010 full implementation date. A second set of contracts, the “services” contracts, to be signed in the fall of 2009, required the agencies to actually provide the services coordination.<sup>13</sup>

On October 26, one of the six agencies, the Alliance for Children and Families, announced it would not sign a services contract. The agency’s president said he had learned recently the contract would be about \$1 million less for the year than expected. Mr. Reckling explained that the state had to withhold some contracts money to pay for services since July 1. The remaining agencies signed the final contracts by November 20. In interviews at the time, some agency executives said the limited amount of state money would pose challenges. The agencies will have to be “very creative,” one agency executive said.<sup>14</sup>

### **Problems with Privatization Emerge**

Developments the following year proved the executives’ remarks to have been foresighted. On April 2, 2010, Cedars Youth Services announced it would withdraw as a lead agency because of inadequate reimbursement from the state. Cedars anticipated losing more than \$5.5 million during the 20-month contract and another agency, Visinet, said it was considering whether to withdraw from its contract. Visinet filed for bankruptcy one week later, triggering an emergency

mode among DHHS workers who suddenly had to find foster care and other services for an estimated 2,000 children in eastern and southeastern Nebraska.<sup>15</sup>

The back-to-back losses of two lead agencies prompted legislators' increased scrutiny of the reform effort. On April 9, Sen. Tim Gay, the Health and Human Services Committee chairman, said Mr. Reckling was "ultimately responsible" for proceeding with privatization, even though some had counseled the division to first try a pilot project. Four days later, the committee introduced an interim study resolution on privatization. Also in April, the vice president for National Advocacy and Public Policy at Boys Town wrote Mr. Winterer that the agencies were serving significantly more children than they had expected because, during the budget planning phase, the state had supplied data that "appears to have been off."<sup>16</sup>

That August, a news article indicated KVC-Nebraska, one of the three remaining agencies, invested \$5.5 million of its own money during the first eight months of its contract. According to the article, the head of another lead agency, Nebraska Families Collaborative, said NFC would lose an estimated \$2.5 million in the contract's first year. Later that month, an official at Boys and Girls Home, the third agency, told the HHS Committee his organization recently laid off 50 workers. Less than a month later, officials with Boys and Girls Home and DHHS disclosed they had mutually agreed to terminate the contract.<sup>17</sup>

On October 15, 2010, Mr. Winterer announced plans to transfer more case management responsibilities to the lead agencies. At a November 30 briefing with DHHS officials, senators expressed concerns about the planned transfer. In January 2011, the HHS Committee, now chaired by Sen. Kathy Campbell, introduced LR 37, which called for an investigation of the reform. Lawmakers passed the resolution 43-0 in February. The remaining lead agencies, at an earlier hearing on the resolution, expressed support for the measure. "LR 37 recognizes that the first phase of the reform effort did not go as well as any of us would have hoped," the NFC executive director said.<sup>18</sup>

## Detailed Timeline of Events

- September 2002 The U.S. Department of Health and Human Services releases the 2002 Nebraska Child and Family Services Review (CFSR) final report. Nebraska met national standards in the incidence of maltreatment of children in foster care and foster care re-entries, among other standards. However, the report found that the state failed to achieve substantial conformity with any of the seven safety, permanency and well-being measures. (Few states achieved substantial conformity with any of the seven measures.<sup>19</sup>) The CFSR is a periodic evaluation of states' safety, permanency and well-being outcomes for children. Nebraska completed its plan to address the CFSR findings, known as a Program Improvement Plan (PIP), in 2005.<sup>20</sup>
- December 23, 2003 The Governor's Children's Task Force releases its report, *A Roadmap To Safety For Nebraska's Children*. Governor Mike Johanns created the task force in the wake of a number of recent, violent child deaths in Nebraska. Among the issues addressed in the report were caseworker workload and retention issues.<sup>21</sup>
- April 13, 2004 Gov. Johanns signs child welfare legislation that includes allocation of \$5.5 million to help pay for 120 additional social services workers. The legislation was prompted by the 2003 Children's Task Force Report.<sup>22</sup>
- January 6, 2005 Nebraska Supreme Court Chief Justice John Hendry announces establishment of the Supreme Court Commission on Children in the Courts. A goal of the commission is to ensure state courts are as responsive as possible to children in the court system.<sup>23</sup>
- June 21, 2006 Gov. Dave Heineman announces a series of Health and Human Services System (HHSS) directives targeting the state's management of foster children and other state ward cases. Among the governor's concerns, he said, is that the state continues to have one of the highest rates of children in out-of-home care in the nation, according to data from a national child advocacy organization.
- Shortly after the announcement, an attorney for a national child advocacy organization suing the state in federal court said that the governor's recommendations lacked both specifics and a commitment to secure money needed to fix the system. The advocacy organization, along with the Appleseed Center for Law in the Public Interest and several law firms, alleged in the 2005 lawsuit that the state foster care system is failing to protect thousands of abused and neglected children. (A federal judge in 2007 accepted the recommendation of a magistrate to dismiss the lawsuit based on a 1971 U.S. Supreme Court ruling that federal courts should abstain from hearing certain issues brought by plaintiffs who have related issues pending in state courts. The magistrate also denied the petitioners' request for class certification, but he concluded that most of the seven named plaintiffs—all of them current or former foster children in DHHS custody—had “demonstrated a risk of fu-

ture harm” that was “sufficiently real” to give them legal standing to sue the state.)<sup>24</sup>

- August 21, 2006 Gov. Heineman announces “dramatic progress” since the June directives. He referred to the reduction of state wards from a record 7,803 in April to 7,603 in July. The governor said the data were too preliminary to be described as a trend, but that he was encouraged. “I do not expect this to be an overnight success, and there may well be bumps along the way,” he said. “I am, however, pleased to see progress beginning to take shape.”<sup>25</sup>
- September 27, 2006 The “Through the Eyes of the Child Initiative” is inaugurated at the end of a three-day summit at Lied Lodge in Nebraska City. Attendees included Gov. Heineman, Chief Justice Hendry and his successor, Michael Heavican, Attorney General Jon Bruning, and more than 200 other stakeholders in the juvenile services system.<sup>26</sup>
- December 20, 2006 Despite the addition of 120 social services workers in 2004, caseloads remain too high among Nebraska child welfare and protection services workers, according to the 2005 annual report of the HHSS Office of Protection and Safety. The report indicated that average caseloads fell from about 129 percent above state standards in 2004 to about 114 percent in 2005.<sup>27</sup>
- January 24, 2007 The Foster Care Review Board (FCRB) says Nebraska has made “huge progress” toward reducing the number of children in foster care, but that even more gains are needed. Executive Director Carol Stitt, speaking shortly after the FCRB issued their annual report, said the state cannot achieve true reform of the foster care system without spending more money.<sup>28</sup>
- March 15, 2007 Gov. Heineman signs legislation restructuring HHSS. The bill, LB 296, merged the three HHSS agencies into a single entity, the Department of Health and Human Services (DHHS or department). The bill also created the Division of Children and Family Services (CFS or division) within the department. Under the former system, children and family programs were managed by the same director responsible for the state’s veterans’ homes and for behavioral health and developmental disabilities services.<sup>29</sup>
- April 2007 CFS begins implementation of the new social services safety model, the Nebraska Safety Intervention System (NSIS). Among other goals, the NSIS was designed to improve safety decisions, provide clarity of purpose for initial and continual assessments, and improve the ability to professionally support decisions.<sup>30</sup>
- June 26, 2007 Gov. Heineman appoints Todd Landry, CEO of the Child Saving Institute in Omaha, to head the newly created division. Mr. Landry said he has a mandate to “reform the system, to get different outcomes.” He said too many children are in foster care and are moving too often. “We are going to have to make some significant changes,” he said.<sup>31</sup>

- July 10, 2007 Gov. Heineman announces his priorities for the restructured DHHS; among them, the acceleration of child welfare reform and improvement in the state’s performance on the upcoming CFSR.<sup>32</sup>
- September 14, 2007 Mr. Landry announces “a new day” in child welfare and juvenile services in Nebraska. Earlier in the week, CFS administrators released a new mission statement and announced an administrative restructuring.<sup>33</sup>
- November 15, 2007 At a conference commencing the state’s self-evaluation for the upcoming CFSR, Mr. Landry tells more than 140 child welfare and juvenile services stakeholders that Nebraska might fail the second round of the CFSR, despite any improvement since the 2002 review, because the federal government has raised the CFSR standards. The self-evaluation is a preliminary step to the CFSR process and includes reviewing data on foster children and interviewing stakeholders in the child welfare and juvenile services. Conference attendees created a Program Improvement Plan development team to monitor the state’s progress and to identify strategies, goals, action plans and benchmarks.<sup>34</sup>
- November 29, 2007 The Partners Council holds its first meeting. The council, comprised of stakeholders in the state child welfare and juvenile services systems, was established by Mr. Landry to monitor outcomes and improvements and to provide him input on improving federal outcomes.<sup>35</sup>
- December 2007 The Children’s Behavioral Health Task Force, created by LB 542 and comprised of legislators, DHHS officials and child advocates, releases its report. One of the DHHS responses to the report was to develop a “true continuum of services” that reflected the department’s goal of serving children with the appropriate services “at the right level of care, in the right setting (and) for the right amount of time.”<sup>36</sup>
- February 13, 2008 Gov. Heineman signs LB 157, the Nebraska “safe haven” bill.<sup>37</sup>
- March 17, 2008 Mr. Landry publicly announces a Request for Bid (RFB) from private agencies to provide “a continuum of Safety and In-Home services” for at-risk children. The RFB, part of a larger strategy to better coordinate the delivery of services through increased centralization, developed from one of many PIP action steps.<sup>38</sup>
- June 11, 2008 The state signs contracts with five lead agencies to provide comprehensive safety and in-home services to CFS clients.<sup>39</sup>
- July 1, 2008 CFS begins implementation of the safety and in-home services contracts. The implementation reduced from about 115 to five the number of service contracts the department had to monitor. The division said the contracts—totaling \$32.7 million—will provide incentives for agencies to meet performance results related to safety, permanency and well-being. However, some child advocates said the division timeline—from the RFB announcement in

March to the July 1 starting date—was “aggressive.” In addition, some winning bidders had concluded they would not make money and declined to sign contracts.<sup>40</sup>

- July 11, 2008 Mr. Landry says he wants to accelerate a two-year trend in the net decline of children entering the state welfare system. More children were released from the system than entered it during the period, and Mr. Landry said the state’s new goal is to reduce the current number of state wards by about 800 by the end of the year. CFS and the FCRB will spearhead the new effort. “While we celebrate the progress that’s been made, there’s still more work to do,” Gov. Heineman said.<sup>41</sup>
- July 14, 2008 The second CFSR begins with on-site reviews of 65 cases in Dawson, Hall and Douglas counties.<sup>42</sup>
- August 8, 2008 Mr. Landry briefs the Partners Council on the CFSR, out-of-home reform and other child services issues. He said that none of the 26 or more states that have completed the current CFSR round have passed the review.<sup>43</sup>
- September 5, 2008 CFS releases a framework of recommendations for the reform of out-of-home care. The framework built on ideas underlying the Safety and In-Home Services program that began two months earlier. Under the proposed framework, contracting agencies would provide services and services coordination. The proposed framework gives CFS case management oversight responsibilities; critical case decisions—child and community safety assessments, whether to recommend removal of children from homes, etc.—would continue to be made by division staff. The document indicates the contracts would take effect July 1, 2009.<sup>44</sup>
- September 12, 2008 Jerry Davis, vice president and director of National Advocacy and Public Policy for Boys Town, issues a memorandum, “Privatization: Lessons Learned.” Mr. Davis wrote that privatization outcomes nationwide “have been mixed” and improvements in costs or effectiveness typically take two or more years.<sup>45</sup>
- September 18, 2008 CFS holds the first of five public forums in the Eastern Service Area on the department’s plan to reform out-of-home care. In total, the division organized 14 forums statewide. Among the comments from participants in the Eastern Service Area forums was an admonition to the department to provide bidders accurate information on the number of children projected to be served. “Numbers need to be much more accurate than In-Home,” according to department notes on one of the forums. “The provider will meet with failure if [*sic*] bid one thing and then experience another.” According to notes on the September 18<sup>th</sup> and 29<sup>th</sup> forums, participants suggested the reform was moving too fast: “Why the rush to reform?” notes from one of the forums stated.<sup>46</sup>

- September 22, 2008 In a letter to Mr. Landry, Children and Family Coalition of Nebraska (CAFCON) president Jim Blue advises the CFS director to take steps to reduce potential lead contractors' financial risk. Mr. Blue, after expressing support for the proposed reform, wrote that adequate funding was crucial. "While we understand that there will be 'no new money' for the out-of-home component, it is very important that financial resources are available to support the new care coordination responsibility," he wrote.<sup>47</sup>
- September 24, 2008 The Nebraska Association of Homes and Services for Children (NeAHSC) president recommends in a letter to Mr. Landry that the department create a workgroup of potential bidders and DHHS staff to review child services data and develop utilization projections before commencement of the bidding process. Echoing statements by the CAFCON president two days earlier, Nick Juliano called the reform "a step in the right direction," but wrote that the In-Home services data had been inaccurate. "As a result, there is some concern with current contracted providers as to whether there is sufficient funding to meet the current demand for these services," he wrote."<sup>48</sup>
- October 5, 2008 Kathy Bigsby-Moore, director of Voices for Children in Nebraska, says the success of privatization will depend on how well DHHS monitors the reform. Ms. Bigsby-Moore, referring to a recent legislative audit report about the department's inadequate oversight of transportation contracts, said, "That (monitoring) hasn't been their strong suit."<sup>49</sup>
- November 6, 2008 DHHS releases a summary of the input CFS received in emails and at the 14 public forums it organized on its plan to expand reform of child welfare and juvenile services. As a result of respondents' concerns that the July 1, 2009 target date was too soon, the division announced it has extended the full implementation date to January 1, 2010.<sup>50</sup>
- November 14, 2008 The Nebraska Legislature begins the special session on the safe haven legislation passed earlier this year. During the week-long session, lawmakers adopted LB 1, which limited the safe haven provisions to infants under 30 days old.<sup>51</sup>
- November 26, 2008 CFS releases its plan to reform out-of-home care. Acknowledging the current "heavy focus" on high-end services and services provided to children who have been removed from their homes, the division said it is committed to child services system reforms that will include serving more children in their homes and providing them the right level of service. In response to the e-mail and public forums feedback, the division included in the release a revised framework of recommendations that described in greater detail the duties and case coordination roles between CFS case managers and services contractors.<sup>52</sup>
- December 2, 2008 CFS releases the request for qualifications (RFQ) to provide services coordination and non-treatment continuum of care services. Some of the division goals articulated in the document were: to ensure the safety of children; re-

duce the time children are in state custody; reduce from 70 percent to 30 percent the number of children in out-of-home care. The division estimated that final contracts from the RFQ will total \$119 million a year. The RFQ reflected the division administrators' intention to "create a continuum of services," including coordination of services, by combining all safety and in-home and out-of-home non-treatment services.<sup>53</sup>

- March 13, 2009 The state receives a courtesy copy of the CFSR final report. Nebraska received an overall rating of "strength" on indicators related to repeat maltreatment, foster care reentry and placing children in close proximity to their parents and with siblings. However, the report concluded Nebraska failed to achieve substantial conformity with any of the seven measures related to children's safety, well-being and permanency. Receipt of this report set the stage for development of a PIP.<sup>54</sup>
- March 22, 2009 Gov. Heineman signs LB 603 that, among other things, created the Children's Behavioral Health Oversight Committee within the Legislature. The bill was, in part, a response to concerns raised during the 2008 safe haven debate.<sup>55</sup>
- March 27, 2009 DHHS says most states did not do well in the 2008 CFSR and only three of 19 states that have so far undergone the current review performed better than Nebraska in system outcomes. The federal government toughened the CFSR standards since 2002; for example, raising the standard to obtain substantial conformity from 90 percent to 95 percent, DHHS said. In an interview, Mr. Landry, the CFS director, said the CFSR results were unsurprising. "This really was a validation of everything we had seen ourselves" in the statewide self-evaluation, he said.<sup>56</sup>
- April 2, 2009 Todd Reckling, formerly an administrator in the CFS policy section, becomes division director. Mr. Reckling replaced Mr. Landry, who accepted a job in Texas.<sup>57</sup>
- May 1, 2009 The FCRB votes to inform the Legislature's HHS Committee of the board's misgivings with the privatization plan. Board Chairwoman Georgie Scurfield said she questioned the department staff's ability to monitor the contracting agencies. "This will require a far greater level of oversight by DHHS than has been seen up until now," she said in a Journal Star article. The news article also reported contract negotiations with the six selected contractors were ongoing.<sup>58</sup>
- June 11, 2009 CFS officials submit a draft PIP to the U.S. Department of Health and Human Services. The PIP was prepared and submitted in response to the CFSR final report.<sup>59</sup>
- June 29, 2009 Gov. Heineman appoints Kerry Winterer chief executive officer of DHHS. Mr. Winterer replaced former CEO Chris Peterson, who retired Jan. 2.<sup>60</sup>

- July 29, 2009 The last of the six agencies selected by the state to coordinate child welfare and juvenile services signs its “implementation” contract with CFS. The agencies agreed in the contracts—all signed in July—to develop infrastructure, staffing and programs necessary to provide the services coordination. Most of the contracts called for the agencies to begin providing the services October 1, 2009, with full implementation dates of January 1, 2010. The majority of contracts were later amended to a November 1, 2009 beginning date and to an April 1, 2010 full implementation date. The six agencies were: Alliance for Children and Family Services; Boys and Girls Home; Cedars Youth Services; Nebraska Families Collaborative; KVC Behavioral Healthcare Nebraska; and Visinet. A second set of contracts, the “services” contracts, expected to be signed in the fall, would require the agencies to actually provide the services.<sup>61</sup>
- October 26, 2009 The Alliance for Children and Families announces its decision not to sign a services contract with the state. Gary Henrie, Alliance president, told the Journal Star the agency learned recently its contract would be about \$1 million less for the year than expected. The Alliance would have coordinated services in the Central Service Area. Mr. Reckling, the CFS director, told the newspaper the state had to withhold some of the contracts money to pay for services provided since July 1.<sup>62</sup>
- November 20, 2009 The last of the five remaining lead agencies signs its services contract with the division. The contracts generally obligated the agencies to provide an “individualized system of care” for state wards involved in the child welfare and juvenile services system. Some agency heads told the news media that the limited amount of money the state will spend in the first full year—now reported to be \$106 million—will pose challenges to the reform effort. The agencies will have to be “very creative,” said Judy Dierkhising of Nebraska Families Collaborative.<sup>63</sup>
- December 15, 2009 KVC announces it will open an Omaha office that will eventually employ 180 people in Nebraska. The Omaha World Herald reported that, according to KVC officials, the company will be serving more than 1,500 children when the transition phase ends in January. Also on December 15, the FCRB releases its annual report on the state child services system. The report cited some progress, but also noted serious concerns, including an increase in the percentage of children who returned to the system after being reunited with their families, and privatization reform that was moving too quickly. Mr. Reckling, the CFS director, told the newspaper that Nebraska, unlike Kansas, is not privatizing the entire system. “We’re not relinquishing our critical decision-making responsibilities for children and families,” he said. Mr. Reckling said the transition, which he said began in September 2008, would be completed in April 2010.<sup>64</sup>
- January 2010 A partnership of CFS quality assurance staff, child reform contractors and representatives of Nebraska’s five service areas begin conducting quarterly reviews in the service areas. This periodic review process, referred to as the

Mini Child and Family Services Review, was part of the draft PIP the state developed to address the 2008 CFSR.<sup>65</sup>

- April 1, 2010 All of the lead agencies fully implemented their services by this date.<sup>66</sup>
- April 2, 2010 Cedars Youth Services announces it will withdraw as a lead agency. Mr. Blue, the Cedars president and CEO, told the World-Herald the agency was withdrawing because of inadequate reimbursement from the state. “It became apparent to us that the cost to provide the services was substantially higher than we anticipated and funded by HHS,” he said. Mr. Blue anticipated losing more than \$5.5 million during the 20-month contract, the newspaper reported. Meanwhile, Jim Hoffman, Visinet CEO, told the newspaper his agency was reviewing its finances and considering whether to withdraw from its contract.<sup>67</sup>
- April 8, 2010 Visinet files for bankruptcy and the state terminates the contract. The end of operations for Visinet, at midnight April 15, triggered an emergency mode among DHHS workers, who suddenly had to find foster care, therapy sessions and other services for an estimated 2,000 children in eastern and southeastern Nebraska.<sup>68</sup>
- April 9, 2010 Mr. Reckling tells the World-Herald the department remains optimistic about reform, despite the recent loss of two lead agencies. “We’re in this for the long haul,” he said. He told the newspaper later that month the reform could take as long as five years to implement. Sen. Tim Gay, chairman of the HHS Committee, told the World-Herald Mr. Reckling was “ultimately responsible” for proceeding with the privatization plan, even though some had counseled the division to first try a pilot project.<sup>69</sup>
- April 13, 2010 HHS Committee introduces LR 568, an interim study resolution on privatization.<sup>70</sup>
- April 27, 2010 Former Visinet employees and a few foster parents and children protest at the Capitol. The former employees claimed clients have “fallen through the cracks” because the state has not provided them with services after Visinet filed for bankruptcy.<sup>71</sup>
- April 28, 2010 Mr. Davis, the vice president for National Advocacy and Public Policy at Boys Town, in a letter to Mr. Winterer, DHHS CEO, estimates lead agency contracts will be underfunded by \$23 million to \$24 million over the course of the 20-month contracts signed last year. Mr. Davis wrote that even subtracting from the projected shortfall the dollars the agencies had budgeted to lose, “additional dollars must be found” to cover unanticipated costs borne by the lead agencies. The agencies were serving significantly more children than they had budgeted for because, during the budget planning phase, the state had supplied data to the agencies that “appears to have been off,” Mr. Davis wrote.<sup>72</sup>

- May 14, 2010 Eighteen former Visinet subcontractors, in a letter to the Visinet chief financial officer, demand payment for approximately \$1.4 million in services they claim the company has defaulted on. A number of the claimants sent a similar letter to Mr. Reckling.<sup>73</sup>
- May 19, 2010 Mr. Reckling tells the HHS Committee and the Children's Behavioral Health Oversight Committee that DHHS administrators are attempting to understand the funding issues that undermined Cedars and Visinet, and Mr. Winterer tells the legislative panel that the department will audit the two agencies. Mr. Winterer said the privatization plan for the child services system will proceed. "That ship has sailed," he said. The panel also heard testimony on a resolution introduced by Sen. Gay, the HHS committee chairman, to review the reform.<sup>74</sup>
- May 21, 2010 The FCRB receives a report from its staff highlighting purported deficiencies in the child services reform effort. According to the report, the deficiencies included inadequate documentation, high staff turnover, payment delays to foster families and subcontractors, and transportation, placement and visitation concerns. Mr. Reckling, in an interview with the Journal Star, said the state was making progress. The state is tracking maltreatment of children in foster care, he said. The national standard is for 99.68 percent of such children to experience no maltreatment; as of March, Nebraska was at 99.62 percent. "We are moving in the right direction," Mr. Reckling said.<sup>75</sup>
- May 24, 2010 DHHS representatives announce the department has reached an agreement with Visinet regarding the payment of Visinet employees, subcontractors and foster parents. Under the agreement, DHHS will reimburse subcontractors and foster parents, and Visinet will pay its former employees.<sup>76</sup>
- June 16, 2010 The Children's Behavioral Health Oversight Committee holds a hearing on access to, and funding of behavioral health services for children in Nebraska.<sup>77</sup>
- July 16, 2010 CFS officials receive formal notification from the U.S. Administration For Children, Youth and Families that the federal office has approved the PIP the state officials submitted in May.<sup>78</sup>
- August 13, 2010 KVC-Nebraska invested \$5.5 million of its own money during the first 8 months of its contract with the state, according to financial reports. Also, Ms. Dierkhising, executive director of Nebraska Families Collaborative, said her organization would lose an estimated \$2.5 million in the first year of its contract. Mr. Winterer, the DHHS CEO, said the department and lead agencies continue to make changes as the reform proceeds. He said the agencies knew the process would involve risks.<sup>79</sup>
- August 20, 2010 Pathfinder Support Services president Brian Essen, in a letter to Sen. Gay, informs the HHS Committee chairman of the demand for payment Pathfinder has made to Boys and Girls Home and Family Services, one of the

remaining lead agencies. Mr. Essen attached a copy of the letter Pathfinder's legal counsel addressed to Boys and Girls Home demanding payment of \$364,749 within 14 days. Pathfinder is a Boys and Girls Home subcontractor.<sup>80</sup>

- August 25, 2010 A Boys and Girls Home representative tells the HHS Committee the agency has laid off 50 workers in the last month, including 28 two days ago. Chief Financial Officer Jeff Hackett told lawmakers the agency has solicited a consultant to improve cash flow and efficiency. Boys and Girls Home and the two other remaining lead agencies—Nebraska Families Collaborative and KVC Behavioral HealthCare—said they were spending millions of dollars to remain viable and cover losses.<sup>81</sup>
- August 27, 2010 A FCRB staff report raises concerns about missing information in state wards' case files. Ms. Stitt, the FCRB executive director, said the information includes case plans, placement details and documentation on court-ordered family visits and sibling contact. Mr. Reckling said the state has been working with lead agencies on the issue and believes progress has been made. He added that Nebraska is currently meeting three of six federal standards, compared with two of six last year.<sup>82</sup>
- September 11, 2010 Recent data from the U.S. Department of Health and Human Services indicates Nebraska is falling behind other states in the number of children in foster care. According to the federal department, in 2009 the number declined 6.5 percent, but *increased* nearly seven percent in Nebraska.<sup>83</sup>
- September 22, 2010 Legislators question top DHHS administrators about child services reform at an HHS Committee hearing on the department's budget.<sup>84</sup>
- September 30, 2010 DHHS and Boys and Girls Home announce they have mutually agreed to terminate the contract, effective Oct. 15. Boys and Girls Home held a contract for the Western, Central and Northern service areas. State officials said they will assume responsibility for payments Oct. 1 and will handle the agency's cases until a new lead agency is found.<sup>85</sup>
- October 2010 DHHS provides the remaining contractors with \$6.3 million beyond the original contract amount.<sup>86</sup>
- October 15, 2010 Mr. Winterer announces the department is developing a plan with lead agencies to transfer certain case management decision responsibilities to the agencies. The target date for the transfer is Jan. 1. Mr. Winterer would not say whether the transfer would require the lay-off of state workers, or how many state positions might be eliminated.<sup>87</sup>
- October 22, 2010 Ms. Stitt, in a letter to Mr. Winterer, expresses the FCRB's concerns with the foster care system. One of the six recommendations Ms. Stitt offered in the letter was that the "current system be stabilized (and) that a thorough review" of the reform plan be conducted. "It is unfortunate that DHHS is ac-

celerating the Reform effort as stated in the October 15, 2010, announcement,” she wrote.<sup>88</sup>

- November 3, 2010 Mr. Reckling says a pilot project to test various services provision models is not a “workable solution.” In a letter to child advocates who proposed a pilot project in the Eastern Service Area, the division director wrote the proposal’s “structure would potentially create even more confusion in the system for children and families.”<sup>89</sup>
- November 15, 2010 Amid calls from child advocates to slow down the reform, Gov. Heineman says DHHS is headed in the right direction, but that completion of reform will take time. “I hope everybody realizes what we’ve been doing in the last 40 years hasn’t worked,” he said.<sup>90</sup>
- November 16, 2010 Mr. Winterer, in a letter to the FCRB Chairman Alfredo Ramirez and Ms. Stitt, the executive director, writes the reform plan has had some successes, including a decline in the number of state wards and evidence of a decline in the percentage of children receiving out-of-home care. “The state will continue to work hard and ensure fewer children in state custody and fewer children removed from their homes,” Mr. Winterer wrote.<sup>91</sup>
- November 17, 2010 Ms. Bigsby-Moore of Voices for Children and Sarah Helvey of Nebraska Appleseed brief legislators and legislative staff on the child services reform. Ms. Bigsby-Moore listed some of the complaints of which her agency was aware: late or lower-than-expected payments; more children in the system than anticipated; staff qualifications and training concerns. Ms. Helvey said the state did not provide contractors with additional money to cover costs of services DHHS added to the contracts.<sup>92</sup>
- November 30, 2010 At a briefing by DHHS officials under LR 568, legislators express skepticism about the planned transfer of more case management responsibilities to the lead agencies. Sen. Gay, chairman of the HHS Committee, called the plan “pretty vague.” Committee member Sen. Campbell suggested the department needed to slow down the reform effort. “I think we have a very fragile phase one that we have not worked out all the kinks to that system, and we’re scrambling to go to phase two,” she said. Mr. Winterer told the committee the department planned to press on with the reform. “We do believe we’re on the right path,” he said.

Mr. Reckling, the division director, presented to the Committee an action plan that included additional funding for the reform, now known as “Families Matter.” He said the remaining lead agencies, KVC and Nebraska Families Collaborative, would receive additional one-time funding. (In a news release the following January, Mr. Reckling announced that KVC and NFC would receive \$12 million and \$7 million, respectively, within nine months.) Reckling also presented a handout with information that: the state has improved in CFSR data measures since 2008; the number of state wards is down; more children are being served in their homes and with relatives. The

officials disclosed the department was negotiating with the nationally known Casey Family Programs to assist in the reform effort.<sup>93</sup>

- December 2, 2010 The FCRB releases its annual report and a separate report. According to the reports, child services reform so far has not significantly reduced the number of children in out-of-home care. Mr. Reckling countered that one of the lead agencies has had less than one percent of children in its aftercare program return to foster care. In addition, Mr. Reckling reiterated that the division is currently meeting three of six federal child services standards, an improvement since 2008. “We have shared this information with the (FCRB), but they seem to be looking backward while we are focused on improvements,” he said.<sup>94</sup>
- December 9, 2010 The Nebraska Department of Administrative Services (DAS) approves the DHHS plan to transfer more case management responsibilities from state workers to the private lead agencies. Nebraska law requires DAS approval of contracts between state government and private entities if the contracts involve the replacement of state workers with private ones. DHHS administrators have said the transfer will happen January 3.<sup>95</sup>
- December 13, 2010 More than 40 stakeholders meet in Lincoln to begin planning an assessment of the reform effort. Casey Family Programs, which will provide consultation, technical assistance and funding to CFS, distributed to participants surveys designed to identify areas of concern.<sup>96</sup>
- January 2011 DHHS provides the two lead agencies with \$19 million beyond the original contract amount.<sup>97</sup>
- January 3, 2011 KVC and Nebraska Families Collaborative assume case management responsibilities for children and families in two of the state’s five Service areas.<sup>98</sup>
- January 5, 2011 DHHS officials report the state has exceeded or been within a fraction of a percentage of the national standard for absence of abuse of children by foster parents. In addition, the number of children in state custody declined from a record high of 7,803 in April 2006 to 6,250 on December 31, 2010.<sup>99</sup>
- January 14, 2011 LR 37 introduced. The resolution would authorize the HHS Committee to investigate and assess the child welfare and juvenile services reform initiative. The process would involve consultation with a “broad array” of stakeholders, public and private. On February 7, 2011, the Legislature adopted the resolution on a 43-0 vote.<sup>100</sup>

## **Methodology**

The primary purpose of this timeline is to document the significant developments in child services reform that culminated in the passage of LR37 by the Nebraska Legislature in February 2011. A subsidiary purpose of the timeline is to provide some historical context to the “Families Matter” reform that hold some interest for policy-makers and stakeholders. This contextual information is meant to be representative, not comprehensive. The timeline does not note every significant development in the recent history of child services reform in Nebraska.

## **Post Timeline Update**

During the course of this audit, DHHS announced some changes relating to privatization. First, in June 2011, DHHS CEO Kerry Winterer announced the appointment of Vicki Maca as Families Matter Administrator. According to Mr. Winterer, there was a need to have someone devoted full time to the Families Matter reform efforts. Ms. Maca is responsible for reform in the Eastern and Southeastern service areas. Todd Reckling, director of the DHHS division of Children and Family Services, retains responsibility for the Central, Northern and Western Service Areas.

Second, in August, CEO Winterer stated publicly that the agency might not use the lead-agency model of privatization beyond the two service areas in which it is now in place. Mr. Winterer said “the jury is still out” on whether to expand the model to the more rural portions of the state. In January, the Legislature considered a bill (LB 95) to prohibit the department from entering into lead-agency contracts for the central, northern and western service areas until at least June 2012. The bill was held by the Legislature after the Governor announced he had instructed department officials to voluntarily postpone any such contracts until the June 2012 date.

Lastly, in October 2011, Mr. Reckling resigned as CFS director. Mr. Winterer appointed Scot Adams, Director of the department's Division of Behavioral Health, as interim director while the department looks for a permanent director.



## **SECTION II: Is Privatization of Child Welfare and Juvenile Services Working?**

---

In any discussion of whether privatization in Nebraska is “working,” the first thing that has to be acknowledged is that implementation of this change has been rocky. Before the privatization contracts were finalized, one of the six agencies planning to participate decided not to continue due to concerns about contract financing. Of the five agencies that did sign contracts in 2009, three were no longer involved less than one year later. In addition, while the Department of Health and Human Services (DHHS or department) initially insisted that privatization would be accomplished within existing resources, by August 2011 it had, in fact, paid the contractors \$30.3 million more than originally planned. Clearly, implementation of privatization did not unfold as DHHS had envisioned it would.

The question for this section, however, is whether privatization is producing improved outcomes for children and families. This is a complex area and one in which measuring improvement is not always easy. Nevertheless, because of its impact on children and families, as well as the significant cost in state resources, it is essential that the Division of Children and Family Services (CFS or division) have clear goals as well as benchmarks and timeframes for meeting them—but we found it lacking in these areas. We also found minimal improvement to date in the key indicators that were identified by CFS as reasons for moving to privatization.

### **Nebraska’s Child Welfare and Juvenile System Goals**

We selected two goals for our analysis of whether outcomes have improved for children and families since the 2009 privatization: scores for selected measures from the 2008 Child and Family Services Review (CFSR) and reduction in the number of children placed out of their homes. We used these because CFS administrators cited outcomes in both areas as key indicators of the need to reform the child welfare and juvenile services system in Nebraska.<sup>101</sup>

In general, we found that CFS has met the goals for the CFSR measures we reviewed for this report, but most of that progress was prior to privatization; the results since 2009 lead-agency contracts went into effect have been mixed. In addition, the division has made little progress in reducing the number of children placed out of their homes.

## Child and Family Services Review

The Children's Bureau of the federal Department of Health and Human Services (Children's Bureau) conducts these periodic evaluations of states' safety, permanency and well-being outcomes for children. The reviews touch on many components of a state's child welfare and juvenile services system. Children's Bureau staff review state data and, in conjunction with CFS staff, conduct an on-site review of sample cases that includes interviews with relevant parties.

To date, there have been two rounds of reviews, which for Nebraska took place in 2002 and 2008. Nebraska (like many other states) did not score well in either review,<sup>102</sup> and DHHS administrators have often cited the performance on the CFSRs as evidence of the need for system reform. Because of differences in the standards and methodologies used in the two reviews, Nebraska's performance in 2002 and 2008 cannot be compared.<sup>103</sup> Consequently, in this section we focus on the most recent review, which occurred in 2008.

However, before discussing the 2008 CFSR, we need to acknowledge that there are legitimate criticisms of its measures and methodologies.<sup>104</sup> Some believe that problems with the CFSR are so significant that the results are "almost entirely worthless" in assessing a state's child services system's performance.<sup>105</sup> Others are less extreme but still caution that the CFSR is "generally viewed as portraying an incomplete picture of a state's child welfare performance."<sup>106</sup>

Our inclusion of the CFSR as a measure of child services outcomes is not an endorsement of everything covered in the review. However, regardless of its flaws, the CFSR is required by federal law and failure to participate could subject a state to financial sanction.<sup>107</sup>

### ***Nebraska's Performance on the 2008 CFSR***

The 2008 CFSR evaluated states' performance in two broad categories: (1) outcomes related to safety, permanency and well-being and (2) factors related to the children's services system. In this report, we focus only a group of six key measures or "data indicators" that are used to measure safety, permanence and well-being outcomes. We highlight the data indicators because they are commonly referenced as a means of assessing a state's improvement in the CFSR performance. The indicators are included in the lead-agency contracts and CFS staff track and publicize progress on the data indicators through the COMPASS system on the department Web site. (*See Appendix for discussion of other aspects of the CFSR.*)

Each data indicator and a general description of what it purports to measure is shown in Table 1, on page 25.

According to the Children’s Bureau, the national standard for each indicator, to which each state’s performance is compared, is set high to challenge states to improve their systems.<sup>108</sup> It is not surprising then that many states failed to meet the standards: about half the

states met the standards for the maltreatment-related measures; far fewer met any of the others.<sup>109</sup> Nebraska met only one—timeliness and permanency of reunification.

States that do not meet these standards are required to enter into a program improvement plan, or PIP, with the Children’s Bureau. (The PIP also contains items related to the other portions of the CFSR that are discussed in the Appendix.) The PIP goal for each data indicator may be the applicable national standard or a lower intermediate improvement goal.

The state has three years from the date when the PIP is finalized to show progress in meeting the goals.<sup>110</sup> The Children’s Bureau accepted the CFS PIP in July 2010 so Nebraska has until July 2013 to complete it. The Children’s Bureau monitors each state’s progress and may suspend assessment of financial penalties if progress is being made.

For Nebraska, an estimated minimum penalty of \$366,850 has been suspended while CFS works to meet the PIP goals.<sup>111</sup>

Although Nebraska met only one of the data indicator national standards in the 2008 CFSR, its performance improved during the two-year period in which the PIP was developed and by September 2009, CFS had met either the national standard or intermediate goal for five of the six indicators. Table 2, on page 26, shows the indicators, the national standards used in the 2008 CFSR, and Nebraska’s performance at the time of the 2008 review and as of March 2011, the most recent data accepted by the Children’s Bureau.<sup>112</sup>

**Table 1: 2008 CFSR Data Indicators**

General Description
<b>(1) Absence of Repeat Maltreatment</b> —Did the child experience another incident of maltreatment (abuse or neglect) after the incident that caused him or her to enter foster care?
<b>(2) Absence of Maltreatment in Foster Care</b> —Did the child experience maltreatment by a foster parent or provider?
<b>(3) Timeliness and Permanency of Reunification</b> —Was the child reunited within 12 months of coming into foster care? Did the child remain at home after reunification or return to foster care within 12 months?
<b>(4) Timeliness of Adoption</b> —Was the child adopted quickly?
<b>(5) Permanency for Children</b> —How many children “aged out” of foster care without permanent families?
<b>(6) Placement Stability</b> —How many children experienced frequent placement changes?

Source: Audit staff summary of descriptions in the Children’s Bureau’s *Child and Family Services Reviews Procedures Manual*.

**FINDING:** CFS met the performance improvement goals for five of the six data indicators prior to the start of privatization.

**Table 2: Nebraska Scores on the Six CFSR Data Indicators, 2008 and Current**

Data Indicator	National Standard (min.)	NE Score 2008	Improvement Goal	NE Score March 2011
(1) Absence of repeat maltreatment	94.6%	91.3%	91.3%	92.6%
(2) Absence of maltreatment in foster care	99.68	99.43	99.56	99.5
(3) Timeliness & permanency of reunifications (Permanency Composite 1)	122.6	110.8	111.9	110.1
(4) Timeliness of adoptions (Permanency Composite 2)	106.4	90.7	111.6	117.4
(5) Permanency for children and youth in foster care for long periods of time (Permanency Composite 3)	121.7	154.1	151.6	148.2
(6) Placement Stability (Permanency Composite 4)	101.5	89.8	92.7	92.7

Source: Children's Bureau 2008 CFSR Key Findings and CFS.

Notes: The 2008 score is based on data from 2005 to 2007. The March 2011 scores reflect an average of the previous twelve months. Each composite standard totals more than 100 because it consists of the sum of the scores for several individual measures. The Children's Bureau established the PIP goals for each state using a mathematical formula intended to provide parity in the goals across the states. For some indicators, the formula results in a goal that is only incrementally higher than the state's score in the review.

Between September 2009 and March 2011, the score for placement stability improved and the improvement was enough to meet the PIP goal for the first time. One other score increased slightly, but scores for the remaining four indicators went down. These scores are shown in Table 3.

**Table 3: Nebraska Scores on the Six CFSR Data Indicators, 2009 to 2011**

Data Indicator	September 2009	September 2010	March 2011	Difference 9/09 – 3/11
(1) Absence of repeat maltreatment	91.3%	92.2	92.6	+1.3
(2) Absence of maltreatment in foster care	99.7	99.7	99.5	-0.02
(3) Timeliness & permanency of reunifications (Permanency Composite 1)	112.69	111.33	110.1	-2.59
(4) Timeliness of adoptions (Permanency Composite 2)	128.15	122.59	117.4	-10.75
(5) Permanency for children and youth in foster care for long periods of time (Permanency Composite 3)	159.45	147.47	148.2	-11.25
(6) Placement Stability (Permanency Composite 4)	89.82	91.52	92.7	+2.88

Source: Data from CFS, calculations by audit staff.

Scores reflect an average of the previous twelve months.

**FINDING:** Scores on the data indicators since privatization began have been mostly down. Two scores went up since privatization began—one increased enough that it met the intermediate improvement goal for the first time—but the remaining four indicators went down.

### **Safely Reducing the Number of Children Placed Out of Their Homes**

CFS officials and Governor Dave Heineman have argued the need to safely reduce the number of children placed out of their homes, citing Nebraska’s consistently high rate of out-of-home placements compared to other states. For example, a comparison of federal FY2009 data by Casey Family Programs (Casey), a foundation that works with states, including Nebraska, to improve the child services system, showed Nebraska’s rate was 12 percent—more than double the national average of 5.6 percent.<sup>113</sup> Nebraska has rated either first or second highest in this category for at least 10 years.<sup>114</sup>

Some have criticized this comparison and a discussion of that criticism follows this analysis, starting on page 31. However, there is considerable support for the safe-reduction goal itself. Casey and two state policy organizations—the National Conference of State Legislatures (NCSL) and the National Governor’s Association (NGA)—support it.<sup>115</sup> In 2009, NCSL and NGA joined Casey in sponsoring a three-day policy institute titled “Changing the Outcome: Achieving and Sustaining a Safe Reduction in Foster Care.”<sup>116</sup>

#### *Casey Family Programs’ 2020 Goal*

In 2005, Casey set a goal of reducing out-of-home placements by 50 percent by 2020. Casey did not select 50 percent based on any evidence that it is always the perfect proportion of children placed out of their homes. Instead, it selected this goal to indicate the need for dramatic change.<sup>117</sup>

In 2010, Casey reported on progress toward the goal since 2005. Casey found that 19 states had reduced their out-of-home populations by at least 4.5 percent per year, which put them on track to meet the goal.<sup>118</sup> Another 23 states, including Nebraska, experienced a smaller annual reduction. The remaining eight states experienced increases. The details are shown in Table 4, on page 28.

An important concern about the safe-reduction goal is that children’s safety not be compromised to meet it. Casey believes the reductions since 2005 have occurred without creating additional safety risks to children, based in part on two measures used in the 2008 CFSR: ab-

sence of repeat maltreatment and re-entry into foster care. According to Casey, these measures are “widely viewed as the primary child safety indicators in child welfare.”<sup>119</sup>

**Table 4: State Progress on Casey Family Program 2020 Goal, FFY2005 to 2009**

Goal	No. of States	States
On Target (reduced by 4.5% or more each year)	19	California, Connecticut, Florida, Georgia, Hawaii, Idaho, Maine, Maryland, Massachusetts, Minnesota, Montana, New Hampshire, New Jersey, Oklahoma, Ohio, Oregon, Pennsylvania, Tennessee, and Vermont.
Right Direction (reduced by less than 4.5% each year)	23	Alabama, Colorado, Delaware, Illinois, Iowa, Kansas, Kentucky, Louisiana, Michigan, Missouri, <b>Nebraska</b> , New Mexico, New York, North Carolina, North Dakota, Rhode Island, South Dakota, Texas, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.
Needs Improvement (increased)	8	Alaska, Arizona, Arkansas, Indiana, Mississippi, Nevada, South Carolina, Utah.

Source: Casey Family Programs, *National Trends in Foster Care*, PowerPoint presentation at NCSL Fall Forum by Melissa Correia, December 2010.

The absence-of-repeat-maltreatment measure looks at whether a substantiated incident of maltreatment occurred within six months of the incident that brought the child into state custody. According to Casey, repeat maltreatment went down nationally from eight percent in 2005 to about five percent in 2009.

The re-entry rate measure looks at whether a child who was reunified with his or her family came back into foster care within 12 months of reunification. According to Casey, that rate has remained about the same since 2005.<sup>120</sup>

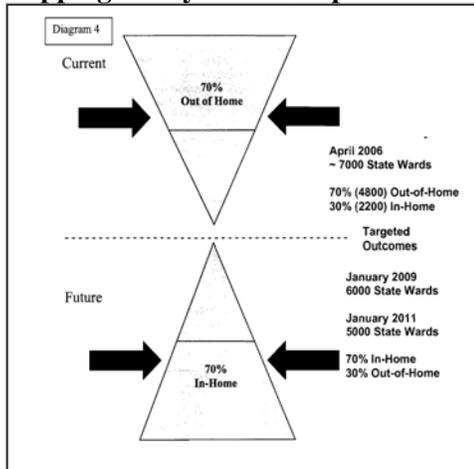
That neither of these measures has gone up while the number of children in foster care has gone down suggests that children’s safety has not been compromised. However, even Casey acknowledges the limitations in the two measures and states:

Measures of child safety need to be expanded and improved, and alternative measures to those in the CFSRs should also be developed to provide a more comprehensive picture of child safety. For example, state child welfare systems could track the rate of serious injury caused by abuse or neglect. Adding a severity measure would greatly strengthen states’ understanding of child safety during or following a CPS investigation or assessment.<sup>121</sup>

## Nebraska's Safe Reduction Goal

The goal of reducing the number of children in foster care was first made in June 2006 by Governor Heineman. At that time, Governor Heineman announced directives for DHHS regarding the child services system, including two that would reduce the number of children in foster care: resolving cases of very young children and achieving permanency for children who had spent 15 or more of the previous 22 months in state custody.<sup>122</sup> The Governor did not set a specific numeric goal for the reduction he hoped to see.

### Flipping the Pyramid Graphic



Source: Creating Change and Providing Hope for Nebraska's Children, Adolescents and Their Families, DHHS, January 4, 2008.

A January 2008 DHHS report implementing recommendations of the Children's Behavioral Health Task Force contains the first published mention of the CFS goal of reversing the proportion of out-of-home to in-home placements. (This goal is also referred to as “flipping the pyramid,” as demonstrated in the box at left.) The goal is based on data from April 2006, when the number of children in state custody reached an all time high of 7,803.<sup>123</sup> About 4,800 of those children (or 70 percent) were placed out of their homes, the remaining 2,200 (30 percent) were in their homes.

The department report cited the 2006 statistics along with the expectation that an improved service array would result in the ability to maintain 70 percent of the children at home, and it set a “targeted outcome” of reaching that goal by 2011. The goal of maintaining 70 percent of the children in state custody at home by 2011 was repeated in the 2008 Request for Bid for safety and in-home contracts,<sup>124</sup> the precursor to the 2009 lead-agency contracts.

We could find no further mention of the intention to achieve the 70/30-flip goal by 2011. Other documents include the 70/30-flip goal but no target date for meeting it.<sup>125</sup> In fact, near the end of this audit, division administrators told us that the goal had not been meant literally; instead, it was meant figuratively—to show the vision of a dramatic change in the delivery of CFS services. They stated that the current goal is to bring Nebraska's rate closer to the national average.<sup>126</sup>

We were surprised by this explanation as we had heard the 70/30 flip discussed several times during the audit without any mention that it was anything but a literal goal.<sup>127</sup> In addition, on more than one occasion we had heard stakeholders pondering the details of the 70/30 flip—clearly it was their impression that this was a literal goal as well.<sup>128</sup>

**FINDING:** If CFS administrators intended the 70/30 reversal in the proportion of children removed from their homes to be a figurative goal, then the division failed to adequately communicate that intent to stakeholders.

Even if division administrators intended the 70/30-flip goal to be figurative, it still represented their vision that significantly more children could and should be served in their homes. However, we found that such a change has not occurred. As shown in Table 5, between 2006 and 2011, the percentages changed only one percent, to 68/32; although the rate improved (dropped) four percent between April 2010 and April 2011.

**Table 5: Children Placed Out-of-Home 2006 to 2011**

	Children in State Custody		
	Total	Out of Home	In Home
Apr06	7,803	5,412 (69%)	2,391 (31%)
Apr09	6,356	4,511 (71%)	1,845 (29%)
Apr10	6,360	4,561 (72%)	1,799 (28%)
Apr11	6,300	4,306 (68%)	1,994 (32%)

Source: Derived placement tables, CFS Web site. Statistics are for single points-in-time, as of the end of the month. The out-of-home figures consist of children whose status is either placed out of home or runaway; the in-home figures consist of children whose status is at home or independent living.

**FINDING:** Since 2006, there has been no significant decrease statewide in the proportion of children placed out of their homes but the rate improved (dropped) four percent between April 2010 and April 2011.

We also reviewed the statewide figures for the two safety measures identified by Casey and found that the changes in these measures has been positive, suggesting that children’s safety has not been compromised. (Although since there has not been a large change in the number of children placed out of their homes, this is not as significant a concern as it might have been.) Table 6, on page 31, shows the details on these measures.

**Table 6: Safety Measures**

<b>Measure 1: Reentry Rate (lower score is better)</b>			
	<b>March 2006</b>	<b>March 2009</b>	<b>March 2011</b>
National Standard	9.9%		
Nebraska	12.2%	13.2%	13.3%
<b>Measure 2: Absence of Repeat Maltreatment (higher score is better)</b>			
National Standard	94.6%		
Nebraska	90.6%	91.3%	92.6%

Source: CFS Web site.

We also want to reiterate the limitations on what these two measures cover; we are relying on them only in so far as they *suggest* that there has not been a change in how safe children are in state custody.

As referenced earlier, we conclude this analysis with a discussion of the criticisms of out-of-home rate comparisons.

### ***Criticism of Out-of-Home Rate Comparisons***

Comparisons of states' out-of-home rates rely on data in the federal Adoption and Foster Care Analysis and Reporting System (AFCARS). However, the Administration for Children and Families (ACF), which manages AFCARS, discourages such comparisons because each state's data reflects the policies and definitions used by that state—and differences in those policies and definitions may be significant.

The difference people mentioned to us the most during this audit is that Nebraska, unlike some other states, includes the juvenile services population. We looked at this concern from two perspectives: first, we tried to determine which states do, in fact, include the juvenile services population; second, we asked CFS to calculate Nebraska's rate without this population.

ACF does not release information about the states that include the juvenile services populations.<sup>129</sup> However, according to Casey, 30 states in addition to Nebraska include this population.<sup>130</sup> In addition, these 30 states have out-of-home rates across the spectrum, from well-below to well-above the national average as shown in Table 7, on page 32.

**Table 7: States That Include Juvenile services Population in Their Out-of-Home Placement Rates, Federal FY2009**

<b>Out-of-home Rate (Per 1,000)</b>	<b>States</b>
10 or more %	<b>Nebraska (12%),</b> West Virginia (11%)
9%	Iowa, Oklahoma, Rhode Island, Wyoming
8%	Indiana, Michigan, North Dakota, Vermont
7%	Kentucky, Massachusetts, South Dakota
6%	California, Colorado, Connecticut, Pennsylvania, Washington
<b>5.6%</b>	<b>National Average (All States)</b>
5%	Hawaii, Maryland, Wisconsin
4%	Delaware, Louisiana, Minnesota, North Carolina, Ohio, Tennessee, Texas
3%	Idaho, New Hampshire, Utah

Source: Casey Family Programs and National Kids Count Web site.

For our second perspective on the potential impact of the juvenile services population, we asked CFS staff to calculate Nebraska’s rate without it, which reduced the rate from 12 percent to 9.4 percent.<sup>131</sup> Of course, the 9.4 percent rate is not directly comparable to the national average of 5.6 percent because the national average would be lower if the juvenile services population were excluded for all states. Still, even if the 5.6 percent dropped only slightly when all juvenile services populations were excluded, Nebraska would still be at least 50 percent higher. These figures are shown in Table 8.

**Table 8: Federal FY2009 Out-of-Home Rates**

<b>Out-of-Home Population</b>	<b>Out-of-Home Rate Per 1,000 Children</b>
National Average Including Juvenile services Population	5.6%
Nebraska Rate Including Juvenile services Population	12%
National Average Without Juvenile services Population	Not available, but lower than 5.6%*
Nebraska Rate Without Juvenile Justice Population	9.4 %

Source: CFS and Casey Family Programs.

\* This rate includes the juvenile services population in other states so it would be lower if that population was removed for all states.

**FINDING:** Nebraska is not unique in its inclusion of the juvenile services population in the data used to calculate the out-of-home rate and this factor alone does not appear to explain Nebraska’s high rate compared to other states.

## **CFS Failure to Identify Key Goals, Benchmarks and Timeframes for System Improvement**

Throughout most of the audit, CFS administrators were reluctant to tell us their specific goals for system reform or benchmarks that would indicate whether progress is being made.<sup>132</sup> The administrators told us they had many goals for system reform—including improvement in the six CFSR data indicators as well as other CFSR measures and reduction in number of children placed out of their homes—but they were unwilling to identify specific key goals from within many different measures they track, as primary indicators of whether the system is, in fact, improving.

They were also reluctant to set benchmarks or timeframes for improvements. When we would ask for this kind of information, the most common answer we got was “we are not where we want to be, but we are moving in the right direction.”<sup>133</sup> We eventually received a commitment that division staff would identify key goals and establish benchmarks and, but that commitment came after our last meeting about goals—the only one attended by the DHHS Chief Executive Officer.<sup>134</sup>

A week before the draft audit report was due, we received a description of the process CFS plans to follow to develop goals.<sup>135</sup> The document provided to us does not identify the specific outcomes division administrators intend to focus on but say they have identified: “key priority outcomes [that] include some CFSR measures as well as measures that NE has identified to be significant to our reform efforts, to include key data collected by the FCRB.”<sup>136</sup> The document also states that the division will be working with Casey to develop the outcomes and strategies and measurements for meeting them.<sup>137</sup>

While we support this step, it does not change the fact that two years into privatization, CFS officials do not have clear goals in place. This is problematic as we believe that goals, timeframes and benchmarks are essential to successful reform based on our review of other states experiences and research on managing change in large organizations.<sup>138</sup> According to John P. Kotter, a former Harvard Business School professor and expert on leading change, the importance of a clear vision—which we believe should be reflected in key goals—is that:

Vision plays a key role in producing useful change by helping to direct, align, and inspire actions on the part of large numbers of people. Without an appropriate vision, a transformation effort can easily dissolve into a list of confusing, incompatible, and time-consuming projects that go in the wrong direction or nowhere at all.<sup>139</sup>

Casey also supports the need for specific goals as well as accountability in tracking outcomes. In recent recommendations for improving the federal CFSR process, Casey highlighted these areas in their recommendations that the CFSR:

- Ensure that public child welfare agencies are strongly focused on outcomes and results; and
- Reliably and accurately measure progress in achieving critical outcomes.<sup>140</sup>

Casey also addresses the CFS officials' concern that reform should not focus *solely* on numbers, recognizing the need to balance data with real-life experience, in the recommendation that the CFSR:

- Complement quantitative measures with qualitative feedback from children and parents regarding their experiences with child welfare services, and ensure that both quantitative and qualitative data are used to improve outcomes for children.<sup>141</sup>

In addition, the Legislature has recognized the value in establishing goals and timeframes for meeting them. For example, 2007 legislation that established the Children's Behavioral Health Task Force required the Task Force to include in its plan for children's behavioral health "measurable benchmarks and timelines for the development of a more comprehensive system of substance abuse and behavioral health services for children."<sup>142</sup>

Finally, a report by the National Governor's Association on improving child services systems highlights the importance of goals, stating: "A child welfare system that is guided by clear goals, is adequately resourced, and is held accountable to measurable improvements can improve outcomes for children."<sup>143</sup>

<p><b>FINDING:</b> CFS administrators' failure to identify key goals, as well as performance benchmarks and timeframes for achieving them is contrary to best practice and their failure to recognize the importance of these reflects questionable professional judgment.</p>
--

### **CFS Concerns About the Auditors' Goals**

Division administrators expressed concerns about our use of certain CFSR indicators and the rate of out-of-home placement to assess improvement in outcomes since privatization began. Following is an explanation of their concerns and our perspectives on them.

### *Timeliness of Analysis*

Administrators told us they believe it is too soon to make such comparisons—especially the assessment of the proportion of children placed out of their homes. They argue that it could take five years to see noticeable changes in the numbers, especially given the unexpected disruptions during implementation of privatization.<sup>144</sup> They also believe that the January 2011 transfer of case management responsibilities will significantly improve outcomes.<sup>145</sup>

It may be true that disruptions during implementation have hampered performance improvements and it may also be true that performance will improve following the transfer of case management responsibilities. However, regardless of what the future holds, it is reasonable to assess where things stand at this point in time. Policymakers and other stakeholders are understandably concerned about whether signs of improvement are beginning to emerge after the challenges of the last two years. Additionally, while major change may take time to fully accomplish, we think it is reasonable to expect *some* signs of improvement in less than five years.

### *Focus on Children, Not Numbers*

Another concern expressed by administrators was that they did not want to commit to numeric targets because they believe doing so shifts the focus away from the needs of individual children. We agree with CFS up to a point—numbers alone do not tell the whole story. But it is also true that it is difficult to have meaningful discussion at a policy level by talking about individual cases. A few numeric targets are necessary to frame any policy discussion, but the impacts on specific people impacted by the discussion are equally important.

### *Goals CFS Cannot Accomplish Alone*

CFS officials were also hesitant to commit to specific numeric targets because they are not in control of all aspects of the system and they do not want to be criticized for failing to meet targets that they cannot control.<sup>146</sup> We acknowledge that CFS is not in control of some key aspects of the child welfare and juvenile services system—most significantly, the judiciary is responsible for decisions about whether a child will be removed from home and, if removed, whether and when the child will return home. We disagree with division administrators that the best solution is to avoid setting goals. Instead, we believe goals that cannot be accomplished by CFS alone, such as safely reducing the number of children placed out of their homes, should be handled as policy changes and considered by the Legislature. The legislative process provides the opportunity for open discussion and

compromise that can forge the supportive coalition among the various key parties necessary for substantive change to occur.

**FINDING:** Goals that CFS cannot accomplish on its own, including safe-reduction, are policy issues that should involve the Legislature.

### **CFS Indicators of System Improvement**

The document we received from CFS staff that discussed their plans to identify key goals also included a discussion of the indicators they believe support their conviction that things are “moving in the right direction.”<sup>147</sup> The indicators, described as “outcomes of progress,” are:

- number of state wards;
- kinship placements;
- placement stability;
- absence of maltreatment in foster care;
- permanency for foster children;
- foster care re-entry;
- timeliness of adoption; and
- out of home placements.

A discussion of these indicators follows. We note, however, that the CFS analysis contained inconsistencies and was unclear in places; it appeared to have been put together quickly in response to our questions. In addition, some of the methodologies used in the calculations were inaccurate and we describe these below. That is problematic because policymakers and other stakeholders need to have a clear understanding of what CFS believes is working.

**FINDING:** CFS staff’s analysis of indicators they believe reflect system improvement was confusing, did not contain consistent information on the indicators, and, in some cases used inaccurate methodologies which are transparency problems.

#### *Fewer State Wards*

CFS staff state the number of children in state custody “decreased by 21.8% between April 2006 and July, 2011. . . . The number has stabilized between July 2009 and July 2010 and then there was another decrease of 4% from July 2010 to July 2011.”<sup>148</sup> We disagree with these statistics because the methodology division staff used is faulty: the 2011 figures were revised and are no longer comparable to the earlier figures.

Using the comparable figures from the CFS Web site, Nebraska’s rate has gone down 17.7 percent in the five years between 2006 and 2011. The national rate went down 19.2 percent in the four years between 2006 and 2010. In addition, Nebraska was seeing a better rate of reduction before privatization began in 2009. These statistics are shown in Table 9.

**Table 9: Decrease in State Wards Nationally and in Nebraska, 2006 to 2011**

	National		Nebraska	
	Number	% change	Number	% change
2006	505,000	NA	7,603	NA
2007	488,000	-3.4	7,084	-6.8
2008	457,000	-6.4	6,704	-5.4
2009	421,000	-7.9	6,419	-4.3
2010	408,000	-3.1	6,361	-0.9
2011	NA	NA	6,251*	-1.8
2006 to 2011		-19.2		-17.7

Source: National – AFCARS, September; Nebraska – Derived Placement Tables CFS Web site, July, except for 2011 which is June.

\*This figure does *not* include a revision proposed by CFS near the end of the audit, because the revision would have made the 2011 figure not comparable with other years.

**FINDING:** Fewer children are being placed in state custody, but the rate of decline is less than what is taking place nationally, which suggests that Nebraska should be doing more. In addition, the rate has slowed, not increased, since privatization began in 2009.

CFS staff also provided us with statistics for the two privatized DHHS Service Areas that showed a greater decrease in the number of state wards than we believe is accurate. Based on the data on the CFS Web site, the number of state wards in the two privatized service areas—Eastern and Southeastern—has gone down only one percent. Table 10 shows the increase or decrease in each service area from July 2009 to July 2011.

**Table 10: Change in the Number of State Wards in Each Service Area, 2009 to 2011**

Service Area	July 2009	July 2011	Difference
Central	732	567	-23%
Eastern	2625	2601	-1%
Northern	523	603	+15%
Southeastern	1882	1861	-1%
Western	657	605	-8%

Source: Derived Placement Tables, CFS Web site.

In addition, the numbers show that in the two privatized service areas, there was a greater reduction between 2006 and 2009—prior to privatization—than has occurred since 2009. This is shown in Table 11.

**Table 11: Change in the Number of State Wards in Privatized Service Areas, 2006 to 2009**

Service Area	July 2006	July 2009	Difference
Eastern	3026	2625	-13%
Southeast	2189	1882	-14%

Source: Derived Placement Tables, CFS Web site.

*Fewer Out of Home Placements*

Earlier in this section, we noted that division staff had proposed a methodology different from what we used, and with which we disagreed. Staff revised the figures for the past 12 months, removing youth who had turned 19 and removing cases in which there was a conflict in the DHHS data system about whether a child was, in fact, in state custody.<sup>149</sup> This change reduced the total number of wards, so the number of children at home was a higher proportion of the total. (We had a second disagreement with CFS methods but resolved that during their review of the draft audit report.)

*Increase in Kinship Placements*

According to division staff, there have been proportionally more kinship placements since privatization began in 2009, and we agree. (“Kinship” includes people known to the child as well as relatives.) As shown in Table 12, the proportion of such placements went up nine percent since 2006 and six percent since 2009.

**Table 12: Kinship Placements as a Percent of All Foster Family Placements**

Date	Total in Foster Care	Placed With Relatives or Friends (“Kin”)
April 2006	3,641	1,353 (37%)
April 2007	3,359	1,325 (39%)
April 2008	3,314	1,230 (37%)
April 2009	2,986	1,181 (40%)
April 2010	2,988	1,257 (42%)
April 2011	2,976	1,380 (46%)
2006 to 2011		+9%
2009 to 2011		+6%

Source: CFS.

**FINDING:** The proportion of kinship placements has increased since 2006, including a noticeable increase since privatization began in 2009.

*Changes in CFSR Data Indicators & Components*

Five of the indicators provided by staff are related to the CFSR data indicators discussed earlier in this section.<sup>150</sup> (*For ease of reference, the six indicators are listed in Table 13.*)

First, for indicator 6 (placement stability), staff provided the same information we covered earlier in this section—this indicator has improved since 2009.

**Table 13: 2008 CFSR Data Indicators**

<b>General Description</b>
<b>(1) Absence of Repeat Maltreatment</b>
<b>(2) Absence of Maltreatment in Foster Care</b>
<b>(3) Timeliness and Permanency of Reunification?</b>
<b>(4) Timeliness of Adoption</b>
<b>(5) Permanency for Children</b>
<b>(6) Placement Stability</b>

Source: Children’s Bureau’s *Child and Family Services Reviews Procedures Manual*.

Second, for indicator 2 (absence of maltreatment in foster care), staff asserts that the national standard was met for the first time in June 2011; however, according to the data on their Web site it was actually first met in 2009 and has held steady into 2011. Consequently, we disagree that this is a sign of improvement.

The remaining measures are individual components within the data indicators that are

composite calculations.

Third, division staff suggest that permanency for children is increasing in part because one component of indicator 5 (permanency for children) increased from 2010 to 2011. We agree, but note that the component score had plummeted the previous year so the gain in 2011 was just regaining ground that had been lost.

Fourth, staff suggests that two components of indicator 4 (adoption timeliness) have improved, and we agree. As shown in Table 14, on page 40, both the proportion of children whose adoptions were completed in less than two years, as well as the median number of months in care before adoption have improved.

**Table 14: Scores on Two Measures of Adoption Timeliness, 2006 to 2011**

	Measure 1	Measure 2
	Adoption < 2 Years	Median Mos in Care
3/2006	20.2%	35.9
3/2007	17.7%	37.2
3/2008	22.2%	34
3/2009	32.1%	32.6
3/2010	34.1%	27.8
3/2011	36.9%	28.1
Source: CFS Web site		

Fifth, division staff note that one component of indicator 3 (timeliness and permanency of reunification) has improved since 2006. The component—re-entry into foster care—measures the number of children who had been reunified with their families and came back into state custody within 12 months. Since re-entry is not desirable, a lower score is better.

The staff state “In FY2006 Nebraska had 14.1% foster care re-entry rate which is 4.2% higher than the national standard of 9.9% or less. Since then there has been a decrease in re-entry and as of July 2011 we are at 13.9%. We were as low as 12.9% in FY10 so this is an indicator to continually monitor.”<sup>151</sup> This is an example of one of the confusing portions of the CFS analysis. Although it describes some improvement in this rate since 2006 (from 14.1% to 13.9%), it also indicates that the rate went up between 2010 and 2011 (from 12.9% to 13.9%), which is after privatization began.

Ultimately, we disagree that this is a meaningful change because numbers represented by the percentages are small. In FY2006, 352 children reentered state custody compared to 294 as of July 2011—a difference of 58 children.<sup>152</sup> While we do not dispute that this was an improvement for those children, we believe that this change is not meaningful in the context of system “reform.”

In the division administrators’ written response to the draft report, they stated that they had not intended this example, or others in the document provided to us, as indicators of “meaningful” change; instead, they said they were simply a “report on the status” of these indicators. This response accentuates the problem we have already discussed—and which CFS agreed in its written response to address—it is not clear what goals the division believes should be priority indicators of system improvement or how much change in an indicator should be considered meaningful.

**FINDING:** We agree with CFS administrators that since 2009, there has been improvement in placement stability and kinship placements. Adoption timeliness measures have also improved, although that trend started before privatization began. We disagree that the measures relating to permanency, reentry, and maltreatment in foster care have improved in meaningful ways.

In addition, while CFS administrators must at one level focus on the statistical goals set by the Children’s Bureau for improvement in the CFSR data indicators, the actual change reflected in small, tenths-of-a-percent differences are difficult to understand.

**FINDING:** The statistical goals set by the Children’s Bureau for improvement in the CFSR data indicators, which are measured in tenths-of-a-percent increments, are difficult to understand.



## SECTION III: Legal Questions About Privatization

---

As discussed in Section I, as problems with the privatization of children’s services contracts began to unfold, members of the Legislature became increasingly concerned. One question that arose was whether the Executive Branch exceeded its authority in implementing the contracts that transferred service coordination responsibility to the contractors without legislative involvement. Our evaluation of that question is based on interviews with Department of Health and Human Services’ (DHHS or department) staff, our review of relevant statutes, and research of government contracting issues.

### Overview of Government Contracting Issues

The extent to which a government entity—state, local, or federal—can contract out its functions has been the subject of much debate. There appears to be some agreement among scholars that “inherently governmental” functions should not be contracted out.<sup>153</sup> Exactly what functions that consists of, however, is less clear.

The federal Government Accountability Office has stated that the key criterion in deciding whether a function can be contracted out lies in “whether the government maintains sufficient in-house capacity to be thoroughly in control of the policy and management functions of the agency.”<sup>154</sup> The Federal Activities Inventory Reform Act of 1998 (“FAIR Act”) defines an inherently governmental function as “an activity that is intimately related to the public interest as to mandate performance by government personnel.”<sup>155</sup> In March 2010, the Office of Federal Procurement Policy issued a proposed policy that would elaborate on the FAIR Act definition by identifying the following specific types of activities as indicative of performance of an “inherently governmental function”:

- 1) Binding the United States to take or not to take some action by contract, policy, regulation, authorization, order, or otherwise;
- 2) Determining, protecting, or advancing U.S. economic, political, territorial, property, or other interests by military or diplomatic action, civil or criminal judicial proceedings, contract management, or otherwise;
- 3) Significantly affecting the life, liberty, or property of private persons;
- 4) Commissioning, appointing, directing, or controlling officers or employees of the U.S.; and
- 5) Exerting control over the acquisition, use, or disposition of the property, real or personal, tangible or intangible, of the U.S., including the collection, control, and disbursement of appropriations and other Federal funds.<sup>156</sup>

Arguably, the child welfare and juvenile services system could be seen as fitting under the third option. To date, however, although many states have privatized portions of their child services system, there have been no legal challenges on this issue. (See the box at the left for a recent case in Washington state<sup>157</sup>). As such, we do not believe that DHHS has overstepped Executive Branch authority in contracting out these functions.

#### Legal Challenge in Washington State

In May 2011, a Washington county judge ordered the Washington Department of Social and Health Services to stop contracting with private agencies to manage child welfare cases until it can show that it complies with state law. What sets this situation apart from Nebraska's is that the Washington legislature, in 2009, authorized a limited pilot project regarding child welfare privatization to be implemented in 2013 and evaluated by 2015. The legislature also, however, developed a new statewide contracting procedure state-wide, and the injunction was filed based on the belief that Washington DSHS violated those procedures by their actions.

#### State Statutory Requirements

Nebraska statutes place many requirements and responsibilities on the DHHS child services system, including responsibilities for the care of children committed to the department and for children in the juvenile services system. A key requirement is that the department must supervise all public child services system.<sup>158</sup> In their response to our questions on this issue, DHHS officials acknowledged this responsibility and stated that "any child welfare services placed in the responsibility of DHHS by statute must be supervised directly by DHHS."<sup>159</sup>

Under Neb. Rev. Stat. § 68-1206, however, DHHS is allowed to contract with other social agencies to provide social services as long as the rates do not exceed the cost at which DHHS could provide the services.<sup>160</sup> Accordingly, DHHS stated, and we agree, that "DHHS has authority to contract with private entities for child welfare/juvenile services case management, provided that DHHS retains a final decision-making role."<sup>161</sup> As such, as DHHS has retained supervisory authority for the child services system, DHHS has not violated the law by contracting out services for the system.

Although there is not a statutory requirement regarding this matter, a concern has been raised in several public meetings about the lack of consultation with the Legislature regarding the decision to contract out child welfare and juvenile services system services. When we asked DHHS officials why they did not feel it was necessary to make legislative changes prior to making this change, they stated, "because clear statutory authority exists for DHHS to contract for child welfare/juvenile services, there was no identified need to pursue legislative action."<sup>162</sup> We agree that there is no requirement that DHHS consult with the Legislature prior to choosing to contract out services, and as such, find that, again, DHHS has not violated any laws in contracting out child welfare and juvenile services system services without legislative involvement.

**FINDING:** DHHS neither overstepped Executive Branch authority nor violated state law by contracting out child welfare and juvenile services without legislative involvement.

There are also statutory requirements regarding competitive bidding that agencies must follow when choosing to enter into certain types of contracts. The Auditor of Public Accounts addressed DHHS's compliance with these statutes in their report entitled *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures*.<sup>163</sup>



## **SECTION IV: Sufficiency of the Department of Health and Human Services' Contract Oversight of the Lead Contractors**

---

In this section, we report the results of our analysis of the sufficiency of the Department of Health and Human Services (DHHS) Children and Family Services division's (CFS or division) contractual oversight of the lead contractors. We compared the current (2011) CFS contracts with KVC Behavioral Healthcare Nebraska (KVC) and Nebraska Families Collaborative (NFC) to standards for government contract oversight in two main areas: Adequacy of Contract Provisions and the Planning/Decision to Contract. The contracts were signed on October 30, 2009 and the terms run from November 1, 2009 through June 30, 2014.<sup>164</sup>

We found that CFS met the standards in regards to the construction of the contracts and some of the standards relating to planning and deciding to contract. However, division staff did not conduct a formal cost-benefit analysis before entering into the contracts, which is contrary to the standards and we believe was a critical error. We discuss the results of our analysis below.

### **Overview of Contract Oversight**

DHHS employs individuals in both the service areas and the central office who do contract oversight and monitoring.<sup>165</sup> Additionally, they have a number of quality assurance activities to assist with general contract monitoring. The lead contractors are required to submit 15 different reports to CFS staff throughout the year.<sup>166</sup> There are also 10 different reviews that measure each lead contractor's performance.<sup>167</sup> The main assessment tools used by the department as contract oversight are the federal Child and Family Services Reviews (CFSR) and mini-CFSRs.<sup>168</sup> Contractors are required to conduct background checks and ensure the training of new employees. CFS staff, along with the lead contractors, developed a Personnel File Review quality assurance tool for CFS staff to utilize when reviewing personnel records.<sup>169</sup>

DHHS contracts with KVC and NFC specify requirements that they must meet either directly or through sub-contracting.<sup>170</sup> Both lead contractors cited personnel file review and critical incident reports as their main oversight over the subcontractors. Any issues that arise in the course of these activities are to be reported to DHHS by the lead contractors as they occur. The personnel file reviews were described as a random selection of files, in which the lead contractors check on the background, training, and driving requirements, of their employ-

ees as well as the employees of their subcontractors.<sup>171</sup> The lead contractors then review the findings with providers.<sup>172</sup>

### **Adequacy of Contract Provisions**

For the purposes of this audit, we looked at the processes laid out by DHHS but we did not examine if the processes were working as intended, as the Auditor of Public Accounts addressed this in their report (see the APA's *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures* for more information<sup>173</sup>). We reviewed the current lead agency contracts, including all amendments to them.<sup>174</sup> As of August 2011, there have been seven amendments to the original NFC contract and eight amendments to the two KVC contracts for the eastern and southeast service areas, respectively. The identified eight specific standards relating to the adequacy of the contract provisions are, does the contract:

- 1) clearly state the scope of services to be provided?
- 2) clearly define performance standards and measurable outcomes?
- 3) specify how vendor performance will be evaluated?
- 4) include positive and negative performance incentives?
- 5) identify staff that will be responsible for monitoring vendor performance?
- 6) clearly define the procedures to be followed if, during the course of performance of the contract, unanticipated work arises that requires modification to the contract?
- 7) describe payment methods and schedules?
- 8) include termination provisions?

We found that the contracts contain seven of the eight provisions. The one that is not included is number six, relating to procedures to be followed in cases where unanticipated work arises during the course of performance of the contract. However, this provision is addressed in the operations manual, which provides additional guidance to the contractors, and is part of the contract by incorporation. The operations manual provides both a procedure to request modification of the operations manual<sup>175</sup> itself and a procedure to resolve non-case specific conflicts between the contractors and DHHS.<sup>176</sup>

<p><b>FINDING:</b> CFS's contracts with the lead agencies meet the Adequacy of Contract Provisions standards.</p>
---

According to CFS officials, amendments to the contracts are made as needed with consideration of the basis for the request and availability of resources within the division's budget. The division has a statewide

contract team with procedures to review proposals for approval for a contract amendment.<sup>177</sup>

### **Planning/Decision to Contract**

As discussed in Section III of this report, the APA assessed CFS' ability to contract for services in their recent report. In that audit, the APA found that the division did not follow statutory competitive bidding requirements that the APA's office believed they should have, as "sound governmental accounting practices require that contracts involving the expenditure of millions of dollars in public funds be let for bid to ensure the fair and reasonable expenditure of those funds, as well as to make certain that the State receives the best services for the lowest possible price."<sup>178</sup> Department administrators disagreed with the APA's assessment of the competitive bidding requirements, as they believed that these contracts fell within the exemptions provided for by statute.<sup>179</sup>

In our audit, we examined the sufficiency of CFS officials' planning and decision making prior to its decision to privatize the child services system and juvenile services system. Sufficient planning is essential to ensure that the decision to contract out services is the best for the agency, as "an effective contract administration program will rely on pro-active planning documents that guide the public agency and the contractor towards exemplary performance."<sup>180</sup>

Contracting standards state that, prior to contracting for services, an agency should analyze business needs, goals, objectives and services to determine whether contracting out is necessary. According to division administrators, the planning period for the 2009 privatization contracts took place over an 18-month period, and the decision to enter into these contracts was based on the belief that private contractors offer "increased flexibility, the ability to adjust approaches more quickly, the ability to secure community expertise as needed and a joint ownership and accountability."<sup>181</sup>

CFS staff researched the implementation of models of service delivery in other states, as well as their quality assurance systems, before deciding to enter into the 2009 lead-agency contracts. Casey Family Programs offered support as well and helped facilitate a trip to Kansas to see how their system worked as well as set up a conference call with other states.<sup>182</sup>

Division staff also held a series of community meetings across the state and communicated with key stakeholders to solicit input. Once the lead contractors were chosen, but prior to the actual contracts being signed, several workgroups consisting of CFS staff and contractor staff helped develop contract requirements and oversight.<sup>183</sup>

**FINDING:** CFS staff met standards relating to the process for analysis of business needs, goals, objectives and services prior to determining whether contracting was necessary.

CFS administrators view the planning process as ongoing and continuous and believes that the frequent contract modifications reflect that viewpoint.<sup>184</sup>

### **Cost-Benefit Analysis**

Contracting standards also require that the agency conduct some type of cost-benefit analysis to evaluate whether contracting is more or less expensive than using agency staff.<sup>185</sup> CFS did not conduct such an analysis. CFS representatives explained that they did not do a formal cost-benefit analysis, because the 2009 privatization was never presented as a cost saving measure; it was instead expected to be cost neutral. Additionally, they stated they were very clear with potential contractors that they would be required to provide the contracted services without additional funding.<sup>186</sup> CFS said it based the dollar figures of the individual contracts on historical cost data and existing budget information.<sup>187</sup> Despite this attempt to anticipate future contract costs, it is clear that utilizing past and present DHHS financial data was not sufficient to accurately estimate the costs of privatization.

During their research, CFS administrators looked at child services systems in other states, including Kansas, Florida, Illinois, Missouri and Tennessee. Kansas and Florida, the only states other than Nebraska to pursue statewide privatization of children's services, both ultimately spent significantly more than they had originally budgeted.<sup>188</sup> When asked if they examined the financial impact child services system privatization had in Kansas and Florida, division administrators said they had and that there were factors present in those states that were not present in Nebraska that caused them to believe that the additional costs would not be a factor here. Specifically, they said the increased costs in Kansas were due to an already severely under-funded program coupled with the increased costs due to a consent decree of which they were a part. Also, individuals in Florida told them that they credited the rise in spending on child services system services to the private contractors lobbying the legislature for more money, which they cautioned could happen in Nebraska as well.<sup>189</sup>

Division administrators' decision not to conduct any type of cost-benefit analysis clearly violated best practices, as reflected in the contracting standards we reviewed. We believe that the staff were operat-

ing out of good intentions and a genuine belief that by making it clear to the contractors that there would no additional funding, no additional funding would, in fact, be needed. Subsequent events proved them wrong, as three of the original contractors either went out of business or were unable to continue under the contracts because of financial reasons, and CFS has paid the remaining contractors more than \$30 million more than originally anticipated.

**FINDING:** CFS did not conduct any type of cost-benefit analysis prior to entering into the 2009 lead agency contracts, which conflicts with contracting standards and we believe was a critical error.

### **Conclusion**

While DHHS met the majority of contract provision standards, the lack of some type of cost-benefit analysis is problematic. Rather than fully examining the potential costs involved with the privatization of child services system services, it appears that the department assumed that the contracts could be performed using existing funding simply because there was not any more money available. This assumption, in the face of evidence from other states to the contrary, seems to have played a large part in the problems surrounding child services system privatization in Nebraska.

### **Methodology**

Our analysis utilized contract management standards published by the National Institute of Government Purchasing (NIGP)<sup>190</sup> and the National State Auditor Association (NSAA).<sup>191</sup> We synthesized the standards contained in both pieces to create a framework to measure DHHS' performance in two main areas: Adequacy of Contract Provisions and the Planning/Decision to Contract.



## Appendix: Overview of Nebraska’s Performance on the 2008 Child and Family Services Review (CFSR)

The 2008 Child and Family Services Review (CFSR) evaluated states’ performance in two broad categories: systemic factors and outcomes related to safety, permanency and well-being.

### Systemic Factors

The CFSR assessment of systemic factors is fairly straightforward. There are seven systemic factors: statewide information system; case review system; quality assurance system; training; service array; agency responsiveness to community; and foster & adoptive parent licensing. Each of these factors was rated as either a “strength” or an “area needing improvement.”

Among the 46 states for which results were available in August 2011, Nebraska did as well as most states on the systemic factors. No state received a strength rating for all seven factors and only four states received a strength rating on six factors. Twenty-four states, including Nebraska, received strength ratings in five areas. Nebraska’s strengths were in: statewide information system; quality assurance system; training; agency responsiveness to community; and foster and adoptive parent licensing.

### Systemic Factors—Number of Strength Ratings Received by Each State

No. of Factors Rated as “Strength”	No. of States* (n = 46)	States
7 (all)	0	No states received seven strength ratings, although the District of Columbia did.
6	4	Connecticut, Idaho, Massachusetts, & Montana,
5	20	Arizona, Delaware, Hawaii, Illinois, Louisiana, Maine, Minnesota, Missouri, <b>Nebraska</b> , North Carolina, North Dakota, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, & Wyoming.
4	10	Alabama, Florida, Georgia, Kansas, Kentucky, New Jersey, Ohio, Vermont, West Virginia, & Wisconsin.
3	5	California, Michigan, Nevada, New Mexico, & Oregon.
2	5	Arkansas, Colorado, Indiana, Maryland, & New York.
1	2	Alaska & Virginia.

\* For the remaining four states, the reviews were completed but the results not yet available.

### Outcomes Related to Safety, Permanency and Well-Being

The assessment of the outcomes relating to safety, permanency and well-being outcomes is more complicated because the CFSR uses two sets of measures for the assessment. The first consists of seven broad outcomes, each of which has one or more specific items associated with it. The second consists of six data indicators that are compared against national standards.

### Broad Outcomes

Each of the seven broad outcomes is scored as substantially achieved, partially achieved or not achieved. In addition, each of the specific items receives a score of either “strength” or “area needs improvement.” The complete list of outcomes and associated items appears on page iv.

Overall, the 46 states for which results were available did not do as well on this first measure of outcomes relating to safety, permanency, and well-being as they did on the systemic factors. Only 10 states were in substantial conformity with *any* of the seven outcomes—9 of those only complied with one; the other complied with two.

Nebraska and 35 other states did not achieve substantial conformity on any of the seven outcomes. Among these states, Nebraska’s performance was one of the lowest: Nebraska was one of the 10 lowest ranked states on six of the seven outcomes. Alaska was the only other state that ranked as low.

### Number of Outcomes States Complied With, CFSR Round Two

Factors in compliance	No. of states (n = 46)	States
3 to 7	0	No states were in compliance with more than two outcomes.
2	1	Connecticut
1	9	Idaho, Massachusetts, Montana, Nevada, North Carolina, North Dakota, South Dakota, Texas, & Wyoming.
0	36	Alabama, Alaska, Arkansas, Arizona, California, Colorado, Delaware, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Illinois, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, <b>Nebraska</b> , New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Utah, & Vermont, Virginia, West Virginia & Wisconsin.

### Nebraska Relative to Other States

Outcome	Compliance Range*	NE %	NE rank (of 46)
Safety 1	33% - 100%	37%	45
Safety 2	38% - 91%	52%	40
Permanency 1	12% - 70%	25%	42
Permanency 2	38% - 90%	67%	21
Well-being 1	20% - 66%	32%	39
Well-being 2	76% - 98%	76%	45
Well-being 3	52% - 90%	62%	44

\* The lowest and highest scores received on that outcome.

### Data Indicators

Nebraska’s performance on the six data indicators is discussed in Section II of the report.

**Outcomes and Indicators for  
CFSR Goals of Safety, Permanency and Well-Being**

**Safety**

Safety Outcome 1: Children are, first and foremost, protected from abuse & neglect.

1. Timeliness of initiating investigations of reports of child maltreatment
2. Repeat maltreatment

Safety Outcome 2: Children are safely maintained in their homes whenever possible and appropriate.

3. Services to family to protect child(ren) in home and prevent removal
4. Risk of harm to child

**Permanency**

Permanency Outcome 1: Children have permanency and stability in their living situations.

5. Foster care reentries
6. Stability of foster care placement
7. Permanency goal for child
8. Reunification, guardianship, or placement with relatives
9. Adoption
10. Permanency goal of other planned permanent living arrangement

Permanency Outcome 2: The continuity of family relationships and connections is preserved for children.

11. Proximity of foster care placement
12. Placement with siblings
13. Visiting with parents and siblings in foster care
14. Preserving connections
15. Relative placement
16. Relationship of child in care with parents

**Child and Family Well-being**

Well-being Outcome 1: Families have enhanced capacity to provide for children's needs.

17. Needs and services of child, parents, foster parents.
18. Child and family involvement in case planning
19. Caseworker visits with child
20. Caseworker visits with parents

Well-being Outcome 2: Children receive appropriate services to meet their educational needs.

21. Educational needs of the child

Well-being Outcome 3: Children receive adequate services to meet their physical and mental health needs.

22. Physical health of child
23. Mental health of child

Source: Final Report: Nebraska Child and Family Review, U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau, March 2009.

## Notes

---

<sup>1</sup> Todd Reckling (Children and Family Services [CFS] Division Director), Vicki Maca (Families Matter Administrator), Chris Hanus (Child Welfare Administrator), and Sherri Haber (CQI/Operations Administrator), meeting with auditors, July 20, 2011 and Sherri Haber, e-mail to auditors, September 1, 2011.

<sup>2</sup> For example, a recent Casey Family Program's report on privatization in Florida and Kansas defines privatization for that report as "contracting out the case management function and/or decision making authority" while acknowledging that others define the term more broadly. (Casey Family Programs, *An Analysis of the Kansas and Florida Privatization Initiatives*, April 1, 2010, p. 4.)

<sup>3</sup> Nebraska Department of Health and Human Services (DHHS), "Why Reform?" <http://www.hhs.state.ne/FamiliesMatter/WhatIs.htm>.

<sup>4</sup> State of Nebraska, "Governor Heineman Sets Direction for Child Welfare, Foster Care Improvements," <http://www.governor.nebraska.gov/archive/news/2006>; Margaret Reist, "Heineman pushes child welfare reform," *Lincoln Journal Star (LJS)*, June 21, 2006; State of Nebraska, "Governor Heineman Signs Plan to Restructure HHS into Law", <http://www.governor.nebraska.gov/news/2007>.

<sup>5</sup> State of Nebraska, "Governor Heineman Outlines Top Priorities for New Department of Health and Human Services," <http://www.governor.nebraska.gov/news/2007>.

<sup>6</sup> Martha Stoddard, "Signs of progress the goal in child welfare review," *Omaha World-Herald (OWH)*, November 16, 2007; DHHS, 2008 Child and Family Services Review (CFSR), Program Improvement Plan (PIP), May 28, 2010, <http://dhhs.ne.gov/jus/CFSRAprovedPIP.pdf>, p. 3.

<sup>7</sup> DHHS, Request for Bids: Safety and In-Home Service with Request for Bids (RFB), March 17, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/safety\\_rfb/rfb.pdf](http://www.dhhs.ne.gov/Children_Family_Services/safety_rfb/rfb.pdf); DHHS, 2008 CFSR, PIP, <http://dhhs.ne.gov/jus/CFSRAprovedPIP.pdf>, p. 3; DHHS, Archived Contracts, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/CWJS/archive.htm](http://www.dhhs.ne.gov/Children_Family_Services/CWJS/archive.htm); DHHS, 2008 CFSR, PIP, <http://dhhs.ne.gov/jus/CFSRAprovedPIP.pdf>, p. 3; Martha Stoddard, "Retooling Nebraska child welfare," *OWH*, July 1, 2008; DHHS, Request for Participation in Strategic Planning session, p. 1, undated, Performance Audit files.

<sup>8</sup> DHHS, Framework Recommendations For The Reform Of Out-of-Home Care, September 5, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHCR.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHCR.pdf), second page; DHHS, Out-of-Home Care—Input and Next Steps, November 6, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHRA11.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHRA11.pdf), p. 1; Plan For The Reform Of Out-Of-Home Care, November 26, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform26.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform26.pdf), p. 2; DHHS, 2008 CFSR, PIP, <http://dhhs.ne.gov/jus/CFSRAprovedPIP.pdf>, p. 4.

<sup>9</sup> DHHS, summary of all Eastern Service Area forums notes, September 18-29; notes from September 18 ESA forum; notes from September 29 ESA forum, notes provided to Performance Audit files by Division of Children and Family Services.

<sup>10</sup> DHHS, Out-of-Home Care Reform—Input and Next Steps, Nov. 6, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHRA11.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHRA11.pdf); DHHS Request for Qualifications (RFQ) for Service Coordination, Continuum of Care, December 2, 2008, p. 2,4,5, [www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOH-RFQ.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOH-RFQ.pdf).

<sup>11</sup> DHHS, 2008 Child and Family Review, Summary, March 2009, <http://dhhs.ne.gov/jus/CFSR/2008CFSRSUM.pdf>, p. 2: "Nebraska Improves in Child and Family Services Review," <http://www.dhhs.ne.gov/newsroom/newsreleases/2009/Mar/cfsr.htm>; JoAnne Young, "Nebraska falls short of standards in child welfare report," *LJS*, March 28, 2009.

<sup>12</sup> The Associated Press, "Heineman appoints new director of child services," in *LJS*, March 12, 2009; Paul Hammel, "HHS getting new boss," *OWH*, June 29, 2009.

<sup>13</sup> DHHS, archived contracts, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/CWJS/archive.htm](http://www.dhhs.ne.gov/Children_Family_Services/CWJS/archive.htm).

<sup>14</sup> JoAnne Young, "Central Nebraska agency not on board as foster care transition nears," *LJS*, October 27, 2009; DHHS, archived contracts, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/CWJS/archive.htm](http://www.dhhs.ne.gov/Children_Family_Services/CWJS/archive.htm); JoAnne Young, "Out-of-home foster care reform kicks off," *LJS*, November 9, 2009.

<sup>15</sup> Martha Stoddard, "Cedars Youth Services to drop contract with state," *OWH*, April 3; JoAnne Young, "Visinet's bankruptcy shrinks Nebraska foster care lead pool," *LJS*, April 8, 2010; Martha Stoddard, "HHS in lurch after losing one of its five private agencies," *OWH*, April 17, 2010; Nate Jenkins, The Associated Press, "Advocates say program woes hurt Nebraska children," in *LJS*, April 20, 2010.

<sup>16</sup> Martha Stoddard, "2<sup>nd</sup> child welfare agency to end contract," *OWH*, April 10, 2010; Martha Stoddard, "Child-welfare overhaul expected to take years," *OWH*, April 23, 2010; Legislative Journal, One Hundred and First Legislature, Second Session, Legislative Resolution 568; Jerry Davis, Vice President, National Advocacy and Public Policy, Boys Town, letter with attachment, Summary of Issues Impacting Success of System Reform, to Kerry Winterer, DHHS CEO, April 28, 2010, in Performance Audit files.

<sup>17</sup> JoAnne Young, "Child welfare reform costing more," *LJS*, August 13; JoAnne Young, "Senators take a look at child welfare reform in Nebraska," *LJS*, August 25, 2010; Paul Hammel, "Money woes threaten effort to reform child-welfare system," *OWH*, August 26, 2010; Health and Human Services Committee, meeting agenda, August 25, 2010, in Performance Audit files; "DHHS and Boys and Girls Home Agree to End Contract," September 30, 2010, <http://www.dhhs.ne.gov/newsroom/newsreleases/2010/Sept/>; JoAnne Young, *LJS*, October 1, 2010.

<sup>18</sup> "DHHS Announces Next Steps to Strengthen Child Welfare/Juvenile Services Reform," <http://www.dhhs.ne.gov/newsroom/newsreleases/2010/Oct/>; Martha Stoddard, "Private agencies get larger role: Nebraska is taking the next step in overhauling child welfare system," *OWH*, October 16, 2010; Martha Stoddard, "Lawmakers balk at HHS plan to hire contractors," *OWH*, December 1, 2010; Families Matter briefing handout, November 30, 2010, in Performance Audit files; "Families Matter Shows Promising Results," <http://www.dhhs.ne.gov/newsroom/newsreleases/2011/Jan/familiesmatter>; <http://nebraskalegislature.gov/>, LR37, statement of intent; JoAnne Young, "Time to step in; Senators consider child welfare reform resolution," *LJS*, January 29; JoAnne Young, "Legislature will investigate child welfare reform," *LJS*, February 7, 2011.

- 
- <sup>19</sup> U.S. Department of Health and Human Services, Administration for Children and Families, “General Findings From the Federal Child and Family Services Review,” undated, p. 6.
- <sup>20</sup> Final Report, Nebraska CSFR, p. 1, September 2002, <http://dhhs.ne.gov/jus/CFSR/CFSRFinal02.pdf>; DHHS, 2008 CFSR, PIP, <http://dhhs.ne.gov/jus/CFSRApprovedPIP.pdf>, p. 1.
- <sup>21</sup> “A Roadmap To Safety For Nebraska’s Children,” pages 2, 4, [www.hhs.state.ne.us/srd/CTS\\_Report03.pdf](http://www.hhs.state.ne.us/srd/CTS_Report03.pdf).
- <sup>22</sup> “Governor signs child-welfare bill,” *LJS*, April 13, 2004.
- <sup>23</sup> University of Nebraska at Lincoln, Center on Children, Families and the Law, Projects and Outreach, [http://ccfl.unl.edu/projects/outreach/judicial\\_commission](http://ccfl.unl.edu/projects/outreach/judicial_commission).
- <sup>24</sup> “Governor Heineman Sets Direction for Child Welfare, Foster Improvements,” [http://www.governor.nebraska.gov/archive/news/2006\\_6/21\\_child.html](http://www.governor.nebraska.gov/archive/news/2006_6/21_child.html); Margaret Reist, “Heineman pushes child welfare reform,” *LJS*, June 21, 2006; Butch Mabin, “Lawsuit: State failing foster children,” *LJS*, September 18, 2005; *Foreman v. Heineman*, U.S. District Court for the District of Nebraska, 4:05cv3241; filing 109, Memorandum and Order, Jan. 19, 2007; filing 90, Report and Recommendation, Aug. 16, 2006, pages 7, 8, 112, 117, 142. The magistrate judge concluded that two of the seven plaintiffs had reached the age of 19, were thus adults and, therefore, lacked standing to participate in the lawsuit.
- <sup>25</sup> Leslie Reed, “Progress seen in child welfare,” *OWH*, August 22, 2006.
- <sup>26</sup> State of Nebraska, [throughtheeyes.org](http://throughtheeyes.org), undated; Margaret Reist, “Leaders working at Children’s Summit to fix foster system,” *LJS*, September 25, 2006.
- <sup>27</sup> Leslie Reed, “Child welfare caseloads still high,” *OWH*, December 21, 2006.
- <sup>28</sup> Leslie Reed, “Progress seen in Nebraska’s foster program,” *OWH*, January 25, 2007; State of Nebraska, Report to Governor Heineman on the Special Research Project, Conducted by the Foster Care Review Board, August 2006 – January 2007,” [www.fcrb.nebraska.gov](http://www.fcrb.nebraska.gov), see Publications, Special Studies.
- <sup>29</sup> “Governor Heineman Signs Plan to Restructure HHS into Law,” [http://www.governor.nebraska.gov/news/2007\\_03/15\\_hhss.html](http://www.governor.nebraska.gov/news/2007_03/15_hhss.html).
- <sup>30</sup> DHHS, Nebraska’s Children and Family Services, 5 Year Plan (2009-2014), <http://nlc.state.ne.us/epubs/H8060/8003-2009.pdf>, p. 14, 15.
- <sup>31</sup> State of Nebraska, “Governor Heineman Names Todd Landry to Key Children & Family Services Post,” June 26, 2007, [http://www.governor.nebraska.gov/news/2007\\_06/26\\_family\\_service](http://www.governor.nebraska.gov/news/2007_06/26_family_service); Nancy Hicks, “Child Saving Institute exec hired for new state post,” *LJS*, June 25, 2007.
- <sup>32</sup> State of Nebraska, “Governor Heineman Outlines Top Priorities for New Department of Health & Human Services,” [http://www.governor.nebraska.gov/news/2007\\_07/10\\_hhss.html](http://www.governor.nebraska.gov/news/2007_07/10_hhss.html).
- <sup>33</sup> Martha Stoddard, “Children and Family Services’ overhaul aims for efficiency,” *OWH*, September 15, 2007.
- <sup>34</sup> Martha Stoddard, “Signs of progress in child welfare review,” *OWH*, November 16, 2007; 2008 CFSR-PIP, <http://dhhs.ne.gov/jus/CFSRApprovedPIP.pdf>, p. 3-4.
- <sup>35</sup> Chris Hanus, DHHS Child Welfare administrator, e-mail to Performance Audit, June 17, 2011, in Performance Audit files; DHHS, Nebraska’s Children and Family Services, 5 Year Plan (2009-2014), [http://nlc1.state.ne.us/pubs/H8060/8003\\_2009](http://nlc1.state.ne.us/pubs/H8060/8003_2009), p. 6-7.
- <sup>36</sup> DHHS, RFB, Safety and In-Home Services, p. 2, March 2008; “Children’s Behavioral Health Plan,” December 2007, [www.nlc1.nlc.state.ne.us/epubs/L3760](http://www.nlc1.nlc.state.ne.us/epubs/L3760).
- <sup>37</sup> Legislative Journal.
- <sup>38</sup> DHHS, Todd Landry, Cover letter, Request For Bid: Safety and In-Home Services, with RFB, March 17, 2008, [http://dhhs.ne.gov/Children\\_Family\\_Services/safetyrfb/cover\\_letter.pdf](http://dhhs.ne.gov/Children_Family_Services/safetyrfb/cover_letter.pdf); DHHS, 2008 CFSR-PIP, <http://dhhs.ne.gov/jus/CFSRApprovedPIP.pdf>, p. 3, 4.
- <sup>39</sup> Archived contracts, “2009 Service Delivery and Service Coordination Implementation,” [http://www.dhhs.ne.gov/Children\\_Family\\_Services/CWJS/archive/htm](http://www.dhhs.ne.gov/Children_Family_Services/CWJS/archive/htm).
- <sup>40</sup> DHHS, 2008 CFSR-PIP, <http://dhhs.ne.gov/jus/CFSRApprovedPIP.pdf>, p. 3; Martha Stoddard, “Retooling Nebraska’s child welfare,” *OWH*, July 1, 2008.
- <sup>41</sup> Martha Stoddard, “Drop in state wards hailed,” *OWH*, July 11, 2008.
- <sup>42</sup> DHHS, 2008 CFSR-PIP Summary, <http://dhhs.ne.gov/jus/CFSR/2008CFSRSum.pdf>, p.2.
- <sup>43</sup> Todd Landry, Partners Council Meeting, Aug. 8, 2008, PowerPoint, p. 4, in Performance Audit files.
- <sup>44</sup> DHHS, Framework Recommendations, September 5, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHCR.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHCR.pdf), p. 2, DHHS, Out-of-Home Care Reform—Input and Next Steps, November 6, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHRA11.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHRA11.pdf), second page; DHHS, 2008 CFSR-PIP, <http://dhhs.ne.gov/jus/CFSRApprovedPIP.pdf>, p. 4, May 28, 2010.
- <sup>45</sup> Jerry Davis, Vice President and Director of National Advocacy and Policy, Boys Town, memorandum to Boys Town Affiliate Site Executive Directors, “Privatization: Lessons Learned,” September 12, 2008, in Performance Audit files.
- <sup>46</sup> Summary of Eastern Service Area forum notes, September 18-29, 2008; provided to Performance Audit by DHHS Division of Children and Family Services, in Performance Audit files.
- <sup>47</sup> Jim Blue, CAFCON president, letter to Mr. Landry, September 22, 2008, in Performance Audit files.
- <sup>48</sup> Nick Juliano, NeAHSC president, letter to Mr. Landry, September 24, 2008, in Performance Audit files.
- <sup>49</sup> Nancy Hicks, “State plans to privatize all foster care services by summer,” *LJS*, October 5, 2008.
- <sup>50</sup> DHHS, Out-of-Home Care Reform—Input and Next Steps, November 6, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHCR.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHCR.pdf).
- <sup>51</sup> LB 1, Legislative Journal.

- <sup>52</sup> DHHS, Plan for the Reform of Out-of-Home Care, with addendum, second page, November 26, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform26.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform26.pdf); DHHS, Framework For Out-of-Home Care Reform, November 26, 2008, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOHCR.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOHCR.pdf), p. 10; Plan For The Reform Of Out-Of-Home Care, November 26, 2008, [http://www/dhhs.ne.gov/Children\\_Family\\_Services/OHReform26.pdf](http://www/dhhs.ne.gov/Children_Family_Services/OHReform26.pdf), p. 2.
- <sup>53</sup> DHHS, RFQ for Service Coordination, Continuum of Care, December 2, 2008, p. 2, 3, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/OHReform/OOH-RFQ.pdf](http://www.dhhs.ne.gov/Children_Family_Services/OHReform/OOH-RFQ.pdf).
- <sup>54</sup> DHHS, Nebraska's Children and Family Services, 5 Year Plan (2009-2014), p. 5; 2008 Child and Family Review, Summary, March 2009, <http://dhhs.ne.gov/jus/CFSR/2008/CFSRSum.pdf>, p. 2,3.
- <sup>55</sup> Legislative Journal; Legislative Research Office Session Summary.
- <sup>56</sup> DHHS, "Nebraska Improves in Child and Family Services Review," <http://www.dhhs.ne.gov/newsroom/newsreleases/2009/Mar/cfsr.htm>, Child and Family Review Summary, p.2, March 2009, <http://dhhs.ne.gov/jus/CFSR/2008/CFSRSum.pdf>; JoAnne Young, "Nebraska falls short of standards in child welfare report," *LJS*, March 28, 2009.
- <sup>57</sup> The Associated Press, "Heineman appoints new director of child services," in *LJS*, March 12, 2009.
- <sup>58</sup> JoAnne Young, "Foster Care Review Board opposes plan to privatize foster care," *LJS*, May 1, 2009.
- <sup>59</sup> Joseph Bock, acting associate commissioner, Children's Bureau, Federal Administration for Children and Families, letter to Todd Reckling, director, DHHS Division of Children and Family Services, July 13, 2010, in Performance Audit files.
- <sup>60</sup> Paul Hammel, "HHS getting new boss," *OWH*, June 29, 2009.
- <sup>61</sup> DHHS, archived contracts, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/CWJS/archive.htm](http://www.dhhs.ne.gov/Children_Family_Services/CWJS/archive.htm).
- <sup>62</sup> JoAnne Young, "Central Nebraska agency not on board as foster care transition nears," *LJS*, October 27, 2009.
- <sup>63</sup> DHHS, archived contracts, [http://www.dhhs.ne.gov/Children\\_Family\\_Services/CWJS/archive.htm](http://www.dhhs.ne.gov/Children_Family_Services/CWJS/archive.htm); JoAnne Young, "Out-of-home foster care reform kicks off," *LJS*, November 9, 2009.
- <sup>64</sup> Ross Boettcher, "Kansas family-services firm to open Omaha office," *OWH*, December 15; Paul Hammel, "Foster care board: 'Serious work' needed But the report for 2008 shows fewer kids in the system and more getting adopted," *OWH*, December 16, 2009.
- <sup>65</sup> DHHS, 2008 CFSR-PIP, <http://dhhs.ne.gov/jus/CFSRAprovedPIP.pdf>, p. 15, 16; DHHS, Statewide Assessment, May 2008, p. 5, <http://dhhs.ne.gov/jus/CFSR/StWdAst08.pdf>.
- <sup>66</sup> DHHS, History/Timeline, <http://www/hhs.state.ne.us/FamiliesMatter/WhatIs.htm>.
- <sup>67</sup> Martha Stoddard, "Cedars Youth Services to drop contract with state," *OWH*, April 3, 2010.
- <sup>68</sup> JoAnne Young, "Visinet's bankruptcy shrinks Nebraska foster care lead agency pool," *LJS*, April 8, 2010; Martha Stoddard, "HHS in lurch after losing one of its five private agencies," *OWH*, April 17, 2010; The Associated Press, "Advocates say program woes hurt Nebraska children," in *LJS*, April 20, 2010.
- <sup>69</sup> Martha Stoddard, "2<sup>nd</sup> child welfare agency to end contract," *OWH*, April 10, 2010; Martha Stoddard, "Child-welfare overhaul expected to take years," *OWH*, April 23, 2010.
- <sup>70</sup> Nebraska Legislative Journal, One Hundred First Legislative Session, LR 568, p. 35.
- <sup>71</sup> Martha Stoddard, "Child-welfare workers, parents seek answers," *OWH*, April 28, 2010.
- <sup>72</sup> Jerry Davis, letter to Kerry Winterer, with attachment, Summary of Issues Impacting Success of System Reform, April 28, 2010, in Performance Audit files.
- <sup>73</sup> Social services providers, letters, Demand for Payment, to Michael Wehling, CFO, Visinet; Request for Payment, to Todd Reckling, director, Children and Family Services, (both) May 14, 2010, both in Performance Audit files.
- <sup>74</sup> JoAnne Young, "Hearing focuses on child welfare reform, safe haven," *LJS*, May 19, 2010; Martha Stoddard, "Child Welfare: HHS hopes to learn from setbacks," *OWH*, May 20, 2010; Joint Meeting of the Health and Human Services Committee (HHS Committee) and Children's Behavioral Health Committee, meeting agenda, May 19, 2010, in Performance Audit files.
- <sup>75</sup> JoAnne Young, "Report outlines concerns with Nebraska foster care system," *LJS*, May 21, 2010.
- <sup>76</sup> Paul Hammel and Martha Stoddard, "Visinet, HHS reach agreement on payments," *OWH*, May 25, 2010.
- <sup>77</sup> Sen. Tim Gay letter to Sen. Danielle Conrad, Oct. 26, 2010, in Performance Audit files.
- <sup>78</sup> Joseph Bock, acting associate commissioner, Children's Bureau, federal Administration for Children and Families, letter to Todd Reckling, director, DHHS Division of Children and Family Services, July 13, 2010, in Performance Audit files.
- <sup>79</sup> JoAnne Young, "Child welfare reform costing more," *LJS*, August 13, 2010.
- <sup>80</sup> Brian Essen, President Pathfinder Support Services, Inc., letter to Sen. Tim Gay, chairman HHS Committee, August 20, 2010; Thomas Thomsen, letter to Robert Sheehan, president and CEO, Boys and Girls Home and Family Services, Inc., August 18, 2010, both in Performance Audit files.
- <sup>81</sup> JoAnne Young, "Senators take a look at child welfare reform in Nebraska," *LJS*, August 25, 2010; Martha Stoddard, "Families aim to make voices heard," *OWH*, August 26, 2010; HHS Committee, meeting agenda, August 25, 2010, in Performance Audit files.
- <sup>82</sup> JoAnne Young, "Agency releases report on Nebraska foster care," *LJS*, August 27, 2010.
- <sup>83</sup> Editorial, "Foster care numbers troubling," *LJStar*, September 11, 2010.
- <sup>84</sup> Sen. Tim Gay letter to Sen. Danielle Conrad, Oct. 26, 2010, in Performance Audit files.
- <sup>85</sup> "DHHS and Boys and Girls Home Agree to End Contract," DHHS, <http://www.dhhs.ne.gov/newsroom/newsrelease/2010/Sept/boysandgirls/>; JoAnne Young, "State loses another foster care provider," *LJS*, October 1, 2010.
- <sup>86</sup> Legislative Fiscal Office, *Child Welfare Privatization in Nebraska*, prepared by Liz Hruska, March 4, 2011, in Performance Audit files.
- <sup>87</sup> DHHS, "DHHS Announces Next Steps to Strengthen Child Welfare/Juvenile Services Reform," <http://www.dhhs.ne.gov/newsroom/newsreleases/2010/Oct/>; Martha Stoddard, "Private agencies get larger role," *OWH*, October 16, 2010.
- <sup>88</sup> State of Nebraska, Carol Stitt, executive director Foster Care Review Board (FCRB), letter, to Kerry Winterer and Sens. Mike Flood, Lavon Heidemann and Tim Gay, October 22, 2010, p. 3, in Performance Audit files.

- 
- <sup>89</sup> DHHS, Todd Reckling, director, Division of Children and Family Services, letter, p. 1, to children’s advocates, November 3, 2010, in Performance Audit files.
- <sup>90</sup> JoAnne Young, “Gov. Dave Heineman weighs in on besieged child welfare reform,” Lincoln Journal Star, November 15, 2010.
- <sup>91</sup> Kerry Winterer, DHHS CEO, letter to FCRB Chairman Alfredo Ramirez and Executive Director Carol Stitt, November 16, 2010, in Performance Audit files.
- <sup>92</sup> Handout, children’s advocates legislative briefing, November 11, 2010, in Performance Audit files.
- <sup>93</sup> Martha Stoddard, “Lawmakers balk at HHS plan to hire contractors,” *OWH*, December 1, 2010; DHHS, Families Matter handout, legislative briefing, November 30, 2010, in Performance Audit files; “Families Matter Shows Promising Results,” <http://www.dhhs.ne.gov/newsroom/newsreleases/2011/Jan/familiesmatter>.
- <sup>94</sup> Martha Stoddard, “Child welfare reforms criticize,” *OWH*, December 3, 2010.
- <sup>95</sup> JoAnne Young, “Agency submits caseworker plan; management can be transferred to private contractors,” *LJS*, December 9, 2010; Martha Stoddard, “Plan would put more child care in private hands,” *OWH*, December 10, 2010.
- <sup>96</sup> “Survey Results—Input to Evaluation of Families Matter,” prepared by Casey Family Programs, February 4, 2011, in Performance Audit files, Families Matter, [http://dhhs.ne.gov/FamiliesMatter/docs/Families\\_Matter\\_Leg\\_Brief\\_01312011.pdf](http://dhhs.ne.gov/FamiliesMatter/docs/Families_Matter_Leg_Brief_01312011.pdf).
- <sup>97</sup> Editorial, “Foster Parents Need Support,” *LJS*, January 19, 2011.
- <sup>98</sup> DHHS, Children and Family Services, Families Matter, Legislative Briefings, Families Matter Overview and Update, [http://www.dhhs.ne.gov/FamiliesMatter/docs/Families\\_Matter\\_Leg\\_Brief\\_01312011.pdf](http://www.dhhs.ne.gov/FamiliesMatter/docs/Families_Matter_Leg_Brief_01312011.pdf).
- <sup>99</sup> DHHS, “Families Matter Shows Promising Results,” January 5, 2011, <http://www.dhhs.ne.gov/newsroom/newsreleases/2011/Jan/familiesmatter.pdf>; JoAnne Young, “Legislative committee may evaluate child welfare reform,” *LJS*, January 5, 2011.
- <sup>100</sup> Nebraska Legislature, 102<sup>nd</sup> Legislature, <http://nebraskalegislature.gov>, LR 37, history.
- <sup>101</sup> Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, July 20, 2011; Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, July 26, 2011; Kerry Winterer, Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, August 16, 2011.
- <sup>102</sup> Nebraska Legislature, HHS Committee, Presentation in relation to Legislative Resolution 37, Jack Tweedie & Nina Mbengue, National Conference of State Legislatures (NCSL), June 23, 2011, p. 9.
- <sup>103</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *Final Report: Nebraska Child and Family Review*, March 2009, p. 6.
- <sup>104</sup> Two of these criticisms are (1) that the sample size of 65 cases is not statistically significant (National Coalition for Child Protection Reform, *The Trouble with Child and Family Services Reviews, The Federal Government’s Failed Attempt to Measure Child Welfare System Performance*, updated June 2008, p. 2) and (2) that individual measurements are too limited. An example of the latter is that the measure of maltreatment foster care includes *only* perpetrators who are foster parents or facility staff members; maltreatment by anyone else, like another child or someone visiting the home or facility, is not included. (Melissa Correia, System Improvement Advisor, Data Advocacy Program, Casey Family Programs, Presentation to the DHHS Partners’ Council Data and Evaluation Subcommittee, June 2, 2011.)
- <sup>105</sup> National Coalition for Child Protection Reform, *The Trouble with Child and Family Services Reviews, The Federal Government’s Failed Attempt to Measure Child Welfare System Performance*, updated June 2008, p. 1.
- <sup>106</sup> Casey Family Programs, *Role of Accountability in Child Welfare Finance Reform (The)*, in *Ensuring Safe, Nurturing and Permanent Families for Children*, April 2011, p. 3.
- <sup>107</sup> From Children’s Bureau Fact Sheet, statutory authority: 1994 Amendments to the Social Security Act (SSA).
- <sup>108</sup> U.S. Department of Health and Human Services, Administration for Children and Families, Administration on Children, Youth and Families, Children’s Bureau, *Final Report: Nebraska Child and Family Review*, March 2009, p. 5.
- <sup>109</sup> Children’s Bureau, Administration for Children and Families, Department of Health and Human Services, *Results of the 2007 and 2008 Child and Family Services Reviews*, PowerPoint Presentation, slide 37, undated (but either 2008 or 2009).
- <sup>110</sup> The formal PIP implementation phase is two years, but states are granted a third year in which to measure changes made late in the implementation phase. Joseph J. Bock, Acting Associate Commissioner, Children’s Bureau, Letter to Todd Reckling, Director, Division of Children and Families, July 13, 2010. (PIP Approval Letter)
- <sup>111</sup> PIP Approval Letter.
- <sup>112</sup> DHHS reports data on these measures to the Children’s Bureau quarterly, based on the federal fiscal year of October 1 to September 30. The Children’s Bureau reviews the data, and may ask DHHS to make corrections if necessary, before certifying that it accepts the data. Meeting with Sherri Haber, June 30, 2011.
- <sup>113</sup> Data from the federal Adoption and Foster Care Analysis and Reporting System (AFCARS), compiled by Dr. Susan Smith, Casey Family Programs Data Advocacy Director, and presented at Nebraska Partners Council Meeting, December 13, 2010.
- <sup>114</sup> Data from the federal Adoption and Foster Care Analysis and Reporting System (AFCARS), accessed on the National KIDS COUNT Program Web site, June 16, 2011.
- <sup>115</sup> NCSL, Legislative Strategies to Safely Reduce the Number of Children in Foster Care, Madelyn Freundlich, July 2010; NGA Center for Best Practices, Nine Things Governors Can Do to Build a Strong Child Welfare System, November 12, 2008; and Casey Family Programs, *2020 Strategy: a Vision for America’s Children*, 2010.
- <sup>116</sup> NCSL, “Changing the Outcome: Achieving and Sustaining a Safe Reduction in Foster Care,” November 4-6, 2009, Tampa, Florida, Overview, <http://www.ncsl.org/default.aspx?tabid=19198> (accessed June 8, 2011).
- <sup>117</sup> Brenden McKinney, Casey Family Programs, telephone call with auditors, June 17, 2011.
- <sup>118</sup> Casey Family Programs, *National Trends in Foster Care*, PowerPoint presentation at NCSL Fall Forum by Melissa Correia, December 2010.

- 
- <sup>119</sup> Casey Family Programs, *Ensuring Safe, Nurturing and Permanent Families for Children: Foster Care Reductions and Child Safety*, May 2011, p. 10.
- <sup>120</sup> Casey Family Programs, *Ensuring Safe, Nurturing and Permanent Families for Children: Foster Care Reductions and Child Safety*, May 2011, pp. 10-11.
- <sup>121</sup> Casey Family Programs, *Ensuring Safe, Nurturing and Permanent Families for Children: Foster Care Reductions and Child Safety*, May 2011, p. 12.
- <sup>122</sup> Governor's Press Release, "Gov. Heineman Sets Direction for Child Welfare, Foster Care Improvements," June 21, 2006.
- <sup>123</sup> DHHS, "Creating Change and Providing Hope for Nebraska's Children, Adolescents and Their Families," January 4, 2008, p. 23.
- <sup>124</sup> DHHS, Division of Children and Family Services, *Request for Bid – Safety and In-home Services*, March 17, 2008, pp. 2-3.
- <sup>125</sup> DHHS Division of Children and Family Services, "Request for Qualification to Provide Service Coordination and non-Treatment Continuum of Care Services," December 2, 2008 RFQ and KVC quarterly report to DHHS submitted on 4/15/2010, p. 19, row 3.1c refer to the "70/30 shift."
- <sup>126</sup> Kerry Winterer, Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, August 16, 2011.
- <sup>127</sup> Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meetings with auditors, July 20, 2011 and July 26, 2011; Partners Advisory Council, Data and Evaluation Subcommittee meeting, May 11, 2011.
- <sup>128</sup> Partners Advisory Council, Data and Evaluation Subcommittee meeting, May 11, 2011, Partners Advisory Council meeting, August 5, 2011.
- <sup>129</sup> Rosalyn Wilson (Regional Program Manager, Children's Bureau), e-mail to auditors, September 2, 2011.
- <sup>130</sup> Telephone conversation with Bill Stanton, Casey Family Programs, September 1, 2011.
- <sup>131</sup> Sherri Haber, e-mail to auditors, August 8, 2011.
- <sup>132</sup> Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meetings with auditors, July 20, 2011 and July 26, 2011, Aug. 16, 2011 meetings; Mr. Winterer at Partners Advisory Council meeting, Aug. 5, 2011.
- <sup>133</sup> Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, July 20, 2011; Kerry Winterer, Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, August 16, 2011.
- <sup>134</sup> Kerry Winterer, telephone call with auditors, August 26, 2011.
- <sup>135</sup> Sherri Haber, e-mail to auditors, August 31, 2011.
- <sup>136</sup> *Id.*
- <sup>137</sup> *Id.*
- <sup>138</sup> For example: Maine (Annie E. Casey Foundation, *Fixing a Broken System, Transforming Maine's Child Welfare System*, undated) and Maryland (Brenda Donald, Secretary, Maryland Department of Human Resources, *Creating Accountability for Safe Reduction*, PowerPoint presentation, November 2009. Other states are discussed in Casey Family Programs, *How Are the Children?*, May 2010.
- <sup>139</sup> John P. Kotter, *Leading Change*, Harvard Business Review Press, 1996, p. 7.
- <sup>140</sup> Casey Family Programs, *The Role of Accountability in Child Welfare Finance Reform*, in *Ensuring Safe, Nurturing and Permanent Families for Children*, April 2011, p. 3.
- <sup>141</sup> Casey Family Programs, *The Role of Accountability in Child Welfare Finance Reform*, in *Ensuring Safe, Nurturing and Permanent Families for Children*, April 2011, p. 3.
- <sup>142</sup> Children's Behavioral Health Task Force, *Children's Behavioral Health Plan*, December 2007, p. 21.
- <sup>143</sup> NGA Center for Best Practices, *Issue Brief: Nine Things Governors Can Do to Build a Strong Child Welfare System*, November 12, 2008, p. 2.
- <sup>144</sup> Chris Hanus, meeting with auditors, July 20, 2011; Kerry Winterer, meeting with auditors, August 16, 2011.
- <sup>145</sup> Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, July 26, 2011; Kerry Winterer, Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, August 16, 2011.
- <sup>146</sup> Kerry Winterer, Todd Reckling, Vicki Maca, Chris Hanus, and Sherri Haber, meeting with auditors, August 16, 2011.
- <sup>147</sup> Sherri Haber, e-mail to auditors, August 31, 2011.
- <sup>148</sup> *Id.*
- <sup>149</sup> Sherri Haber, e-mail to auditors, August 19, 2011.
- <sup>150</sup> Sherri Haber, e-mail to auditors, August 31, 2011. CFS staff included in their analysis the scores on some of these components from 2006, which was prior to the CFSR that we focus on in this report. We do not include the pre-2008 statistics in this discussion.
- <sup>151</sup> Sherri Haber, e-mail to auditors, August 31, 2011.
- <sup>152</sup> Sherri Haber, e-mail to auditors, September 7, 2011.
- <sup>153</sup> Charles T. Goodsell, "Six Normative Principles for the Contracting-Out Debate," *Administration & Society*, January 2007, 669. U.S. General Accounting Office, "Government Contractors: Are Service Contractors Performing Inherently Governmental Functions?" November 1991.
- <sup>154</sup> Yang Kaifeng & Gary VanLandingham, "How Hollow Can We Go? A Case Study of the Florida's Efforts to Outsource Oversight of Privatized Child Welfare Services," *The American Review of Public Administration*, June 22, 2011.
- <sup>155</sup> 31 U.S.C. § 501.
- <sup>156</sup> FEDweek, "CRS Reviews 'Inherently Governmental' Issue," [http://www.fedweek.com/hfi/HFI\\_showItem.php?ID=655](http://www.fedweek.com/hfi/HFI_showItem.php?ID=655) (accessed August 12, 2011).
- <sup>157</sup> Kevin Grman, "DSHS privatization halted by judge," *The Spokesman-Review*, May 17, 2011.
- <sup>158</sup> Neb. Rev. Stat. § 68-1207.
- <sup>159</sup> DHHS, Memo to auditors, June 23, 2011.
- <sup>160</sup> Neb. Rev. Stat. § 68-1206.

---

<sup>161</sup> DHHS Memo to auditors, June 23, 2011.

<sup>162</sup> *Id.*

<sup>163</sup> Nebraska Auditor of Public Accounts, *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures*, September 7, 2011, pp. 68-73.

<sup>164</sup> Amendment Five to the Nebraska Families Collaborative (NFC) contract states the original contract date as November 20, 2009 and Amendment Three refers to the original contract date as October 30, 2010. All other amendments to both contracts refer to the contract date as October 30, 2009.

<sup>165</sup> DHHS e-mail to auditors, August 1, 2011.

<sup>166</sup> These are: Annual QI Model/Program Reports; Quarterly Report (State); Quarterly Staffing Report (State); Length of Employment Quarterly Report (State); EBP/PP (Evidence-Based Practices/Promising Practices) Quick Indicator; non-EBP/PP Quick Indicator; Foster Parent Recruitment Plan and Quarterly Progress Report (State and Federal); Child and Family Services Plan and the Annual Service Plan Review (IVB Plan); Disaster Plan Report and Quarterly Progress (Federal); Chafee Foster Care Independence Plan and Quarterly Progress (Federal); Licensing Waivers Report Included in the IVB Plan (Federal); Training Plan for Family Permanency Specialists and Quarterly Progress (State and Federal); Monthly Financial Report; Quarterly Financial (State and Federal); and Detention Plan and Aftercare Services and Activities Report. Operations Manual, 8-1 to 8-13.

<sup>167</sup> Other types of reviews conducted are: Review of Service Model (Evidence Based and Promising Practices and Non-Evidence Based Programs); Out-of-Home Care Facilities/Licensing of Foster and Adoptive Homes/Approval of Relative Homes and Child Specific Homes (to determine whether all licensing/approval requirements and time frames are being met); Personnel File Review of Contractor staff having direct contact with children and families; N-FOCUS Data Entry and Integrity Review; Satisfaction Surveys; Utilization Management; Site Visits; and Family Team Meetings. Operations Manual, 10-3 to 10-9.

<sup>168</sup> Other types of reviews conducted are: Review of Service Model (Evidence Based and Promising Practices and Non-Evidence Based Programs); Out-of-Home Care Facilities/Licensing of Foster and Adoptive Homes/Approval of Relative Homes and Child Specific Homes (to determine whether all licensing/approval requirements and time frames are being met); Personnel File Review of Contractor staff having direct contact with children and families; N-FOCUS Data Entry and Integrity Review; Satisfaction Surveys; Utilization Management; Site Visits; and Family Team Meetings. Operations Manual, 10-3 to 10-9.

<sup>169</sup> DHHS e-mail to auditors, August 1, 2011.

<sup>170</sup> The contract, however, does not specify how KVC Behavioral Healthcare Nebraska (KVC) and NFC provide their oversight. DHHS e-mail to auditors, August 1, 2011.

<sup>171</sup> NFC meeting with auditors, July 7, 2011. KVC meeting with auditors, July 14, 2011.

<sup>172</sup> NFC meeting with auditors, July 7, 2011.

<sup>173</sup> Nebraska Auditor of Public Accounts, *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures*, September 7, 2011.

<sup>174</sup> The original contract dated October 30, 2009 and Amendments One through Five refer to the contract as the "Service Delivery and Service Coordination Contract." Amendments Six through Eight refer to the contract as the "Service Delivery, Coordination and Case Management Contract."

<sup>175</sup> Operations Manual, 2-1.

<sup>176</sup> This process is called "Professional Judgment Resolution" and requires the Service Area Contract Liaison and Contractor representative to first attempt to resolve the issue. If it cannot be resolved, the problem is referred to the Service Area Administrator and Contractor. If it still cannot be resolved, the issue is forwarded to the CFS Policy Section Administrator who works with the Director to make a final (non-appealable) decision. The process is not to exceed 10 business days, unless an extension is agreed upon by the parties. Operations Manual, 9-1.

<sup>177</sup> DHHS e-mail to auditors, August 1, 2011.

<sup>178</sup> Nebraska Auditor of Public Accounts, *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures*, September 7, 2011, p. 70.

<sup>179</sup> Nebraska Auditor of Public Accounts, *Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures*, September 7, 2011, p. 71.

<sup>180</sup> Elizabeth Wright, Ph.D., CPCM and William D. Davidson, CPPO, *Contract Administration* (Second Edition, National Institute of Government Purchasing [NIGP], 2011), p. 37.

<sup>181</sup> DHHS e-mail to auditors, August 1, 2011.

<sup>182</sup> DHHS meeting with auditors, July 21, 2011.

<sup>183</sup> DHHS e-mail to auditors, August 1, 2011.

<sup>184</sup> DHHS meeting with auditors, July 21, 2011.

<sup>185</sup> National State Auditors Association, *Best Practices in Contracting for Services*, June 2003.

<sup>186</sup> DHHS meeting with auditors, July 21, 2011.

<sup>187</sup> DHHS e-mail to auditors, August 1, 2011.

<sup>188</sup> JoAnne Young, "Child welfare reform evaluation committee learn about challenges to privatization," *LJS*, June 24, 2011. Casey Family Programs, *An Analysis of the Kansas and Florida Privatization Initiatives*, April 2010, pg. 3.

<sup>189</sup> DHHS phone call with auditors, August 24, 2011.

<sup>190</sup> Elizabeth Wright, Ph.D., CPCM and William D. Davidson, CPPO, *Contract Administration* (Second Edition, NIGP, 2011).

<sup>191</sup> National State Auditors Association, *Best Practices in Contracting for Services*, June 2003.

---



***III. Fiscal Analyst's Opinion***



## Note Regarding the Fiscal Analyst's Opinion

The following opinion was issued based on the draft recommendations not those ultimately adopted by the Committee. The Committee Recommendations include a note regarding the recommendations not reviewed by the Fiscal Analyst that may have a fiscal impact.



# State of Nebraska

SEP 30 2011

## LEGISLATIVE COUNCIL

### LEGISLATIVE AUDIT

PATRICK J. O'DONNELL  
Clerk of the Legislature

CYNTHIA G. JOHNSON  
Director of Research

JOANNE PEPPERL  
Revisor of Statutes

MICHAEL CALVERT  
Legislative Fiscal Analyst

MARSHALL LUX  
Ombudsman

2011  
EXECUTIVE BOARD  
JOHN WIGHTMAN, Chairman  
JOHN NELSON  
MIKE FLOOD  
CHRIS LANGEMEIER  
RUSS KARPISEK  
STEVE LATHROP  
RICH PAHLS  
DEB FISCHER  
MARK CHRISTENSEN  
LAVON HEIDEMANN (ex officio)



Legislative Fiscal Office  
PO Box 94604, State Capitol  
Lincoln, NE 68509-4604

October 3, 2011

Martha Carter  
Performance Audit  
1201 State Capitol  
Lincoln, NE 68509

Dear Martha,

I have reviewed the Legislative Audit Report of the Department of Health and Human Services Child Welfare and Juvenile Justice Reform recommendations. Per the statute, the Legislative Fiscal Office is to provide a fiscal analysis of the recommendations.

The recommendations will not have a direct fiscal impact, as they pertain to 1) satisfaction with the level of improvements in outcomes for children; 2) establishing goals, timeframes, and benchmarks; 3) improving communication with the Legislature and stakeholders and 4) better analysis of data. Although the specific recommendations for goal setting, improved communication and data analysis and satisfaction with outcomes themselves can be handled within existing resources; to achieve the goals, timelines and benchmarks and to increase the level of improvement in achieving better outcomes for children, it very likely will require additional resources. The amount cannot be determined until the specifics of each are developed.

The final recommendation is the consideration of introducing legislation to require a cost-benefit analysis or an opinion by a financial expert for personal services contracts over a certain dollar threshold. This may also take additional resources, but only be on contracts exceeding a certain large dollar amount and would apply to any state agency. The suggested threshold amount is \$100 million, and contracts of this magnitude are fairly rare.

Sincerely,

L. Hruska  
Legislative Fiscal Office





*IV. Background Materials*



## **BACKGROUND MATERIALS**

The Committee reviewed the following materials, along with the draft report, when it issued the findings and recommendations contained in Part I of this report:

- the Audit Office's draft findings and recommendations (provided for context);
- the agency's response to the draft report; and
- the Legislative Auditor's summary of the agency's response.



## Draft Findings and Recommendations

---

In this section, we group the specific findings from other sections of the report and propose draft recommendations for the Performance Audit Committee's consideration. Because this audit was conducted in response to a request from the Health and Human Services Committee, we have directed some possible statutory changes to that committee. (The page number after each finding refers to that finding's location in the body of the report.)

### SECTION II: Is Privatization Working?

#### *Findings Relating to Outcomes*

Our conclusion is that, to-date, few outcomes show improvement and those that have improved do not show the degree of change we believe policymakers and other stakeholders expect from privatization specifically or the broader system reform of which it is a part. For the goals and indicators we studied, including certain measures from the 2008 Child and Family Services Review (CFSR), the rate of out-of-home placements, and five indicators suggested by Children and Family Services (CFS or division), we found:

**Finding #1:** CFS met the Program Improvement Plan (PIP) goals for the six data indicators but most of that improvement occurred during development of the PIP, which was prior to privatization in 2009. (p. 21)

**Finding #2:** Improvement in the CFSR data indicator scores has been mixed since privatization in 2009: there has been improvement in the scores for two indicators but scores on the other four either stayed the same or decreased. (p. 22)

**Finding #3:** There has been no significant decrease in the proportion of children placed out of their homes since 2006. (p. 26)

**Finding #4:** Fewer children are being placed in state custody, but the rate of decline is less than what is taking place nationally, which suggests that Nebraska should be doing more. In addition, the rate slowed, not improved, since privatization began in 2009. (p. 32)

**Finding #5:** The rate of kinship placements has increased steadily since 2006, but privatization has not made a significant difference. (p. 36)

**Finding #6:** We agree with CFS administrators that there has been improvement in placement stability and adoption timeliness measures of the CFSR; both had been increasing prior to privatization in 2009, so it does not appear to be a factor in the improvement. The indicators relating to absence of maltreatment in foster care, permanency for children, and re-entry rate have not shown meaningful change. (p. 37)

**Finding #7:** Nebraska is not unique in its inclusion of the juvenile justice population in the data used to calculate the out-of-home rate and this factor alone does not appear to explain Nebraska's high rate compared to other states. (p. 28)

**Recommendation:** 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.

\* \* \*

*Findings Relating to Goals*

**Finding #8:** CFS administrators' failure to establish goals, timeframes and benchmarks is contrary to best practice and their failure to recognize the importance of these reflects questionable professional judgment. (p. 30)

**Finding #9:** CFS should develop ways of talking about system goals and progress towards meeting them that reflect significant change and are more comprehensible than the CFSR data indicators. (p. 38)

**Finding #10:** If division administrators intended the 70/30 reversal in the proportion of children removed from their homes to be a figurative goal, then they failed to adequately communicate that intent to stakeholders. (p. 26)

**Discussion:** While CFS's recent commitment to establish goals, timeframes and benchmarks is a good step, it does not change the fact that those important accountability tools have not been in place to-date. That is first and foremost an accountability problem: without clear goals, it is very difficult to hold CFS—or any other part of the system—accountable, and CFS administrators' failure to recognize that is concerning.

**Recommendation:** CFS should continue its efforts to establish goals, timeframes and benchmarks for system improvement; however, they should also work with the Legislature in

regards to goals that they cannot accomplish on their own. In addition, the division needs to develop a way of talking about statistical changes—like those in the CFSR data indicators—in ways that emphasize meaningful levels of change at a big-picture level and are more comprehensible.

**Finding #11:** Goals that CFS cannot accomplish on its own, including safe-reduction, are policy issues that should involve the Legislature. (p. 31)

**Discussion:** CFS is only one part of the child welfare and juvenile services system and many goals that may be desirable—like safe-reduction—cannot be accomplished without commitment from other key players, especially the judiciary. As the policymaking arm of state government, the Legislature could bring the key players together to identify goals that all key players can support. With or without privatization, we believe real system change will only occur when that kind of coalition is in place.

**Recommendation:** 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 Committee should consider having a candid discussion with key stakeholders—especially the judiciary.

\* \* \*

In addition to CFS administrators’ general unwillingness to commit to goals, we found other aspects of their approach to measuring progress problematic, as reflected in the following findings.

**Finding #12:** The CFS analysis of indicators they believe reflect system improvement was confusing and did not contain consistent information on the indicators, which is a transparency problem. (p. 32)

**Discussion:** The division makes a tremendous amount of data available through its Web site and we commend them for that level of transparency. However, transparency should also include producing and making available a clear and thorough analysis of progress on various indicators.

**Recommendation:** CFS should make efforts to present this information in a clear and concise fashion so that it is useful to stakeholders.

**Finding #13:** In CFS staff's calculation of the reduction in out-of-home placements between 2006 and 2011, they used an inaccurate method that gives the appearance of more change than has actually occurred. (p. 35)

**Recommendation:** CFS should correct this analysis.

### **SECTION III: Questions of Legal Authority**

**Finding #14:** The Department of Health and Human Services neither overstepped Executive Branch authority nor violated state law by contracting out child welfare and juvenile services services without legislative involvement. (p. 43)

**Recommendation:** None.

### **SECTION IV: Contract Oversight Standards**

Our review of the lead agency contracts compared to contract oversight standards resulted in the following findings.

**Finding #15:** The CFS contracts with the lead agencies meet the Adequacy of Contract Provisions standards. (p. 46)

**Finding #16:** CFS staff met standards relating to analysis of business needs, goals, objectives and services prior to determining whether contracting was necessary. (p. 47)

**Finding #17:** The division did not conduct a formal cost-benefit analysis prior to entering into the 2009 lead agency contracts, which conflicts with contracting standards and we believe was a critical error. (p. 48)

**Discussion:** State government should have a protection in place to keep a state agency from being able to enter into contracts valued at \$100 million without conducting or obtaining a detailed analysis of the potential financial implications.

**Recommendation:** The Legislative Performance Audit Committee or the Health and Human Services Committee may wish to consider introducing legislation to require a written cost-benefit analysis, or an opinion by a financial expert, of the potential financial implications of personal services contracts over a set dollar threshold.

RECEIVED

OCT 06 2011

October 6, 2011

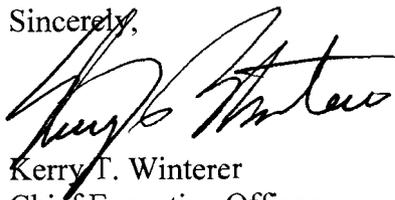
LEGISLATIVE AUDIT

Martha Carter, Legislative Auditor  
Legislative Performance Audit Committee  
Legislative Audit Office  
P.O. Box 94945, State Capitol  
Lincoln, NE 68509-4945

Dear Ms. Carter,

Attached is the Department's response to the Draft Report of the Legislative Audit Office "Department of Health and Human Services Child Welfare and Juvenile Services System Reform." We appreciate the opportunity to provide our responses and look forward to further review of the final report and recommendations.

Sincerely,



Kerry T. Winterer  
Chief Executive Officer  
Department of Health and Human Services

October 6, 2011

**Summary of DHHS Response to Legislative Auditor Office Draft Report – Department of Health and Human Services Child Welfare and Juvenile Services Reform**

**Finding #1: CFS met the PIP goals for the six data indicators but most of that improvement occurred during the development of the PIP, which was prior to privatization in 2009. (p. 21)**

*DHHS Response:* DHHS generally agrees with this finding. On a technical note, we discussed with Legislative Auditor staff that the Federal Children and Family Services Review (CFSR) was conducted in July 2008 and that the Program Improvement Plan was in development and negotiation from July 2008 until its final approval in July 2010 which was after privatization began in November 2009. In addition, as noted in Table 2 and 3, the data presented in the tables is for the previous twelve months. It may be more accurate to say that CFS met the federal improvement goals for the six data indicators but most of that improvement occurred prior to privatization in 2009.

**Finding #2: Improvement in the CFSR data indicator scores has been mixed since privatization in 2009: there has been improvement in the scores for two indicators but scores on the other four either stayed the same or decreased. (p. 22)**

*DHHS Response:* DHHS agrees with this finding.

**Finding #3: There has been no significant decrease in the proportion of children placed out of their homes since 2006. (p. 26)**

*DHHS Response:* DHHS agrees with this finding as it relates to a review of the proportion of children placed out of their homes since 2006. However, our efforts resulted in over 1,200 fewer Nebraska children in out-of-home care as of June 2011 compared to April 2006 as shown in Table 5 of the report. We are working closely with Casey Family Programs to develop and present for further discussion, an Operational Plan that will more clearly define goals, timelines and benchmarks with input from stakeholders.

**Finding #4: Fewer children are being placed in state custody, but the rate of decline is less than what is taking place nationally, which suggests that Nebraska should be doing more. In addition, the rate slowed, not improved, since privatization began in 2009. (p. 32)**

*DHHS Response: DHHS agrees with this finding. DHHS is committed to working closely with the Legislature, the courts, county attorneys, law enforcement and other stakeholders to develop strategies to accelerate Nebraska's progress.*

**Finding #5: The proportion of kinship placements has increased steadily since 2006, including a noticeable increase since privatization began in 2009. (p. 36)**

*DHHS Response: DHHS agrees with this finding. As Table 15 depicts, there was a 5% increase in kinship placements between April 2006 and April 2010 when Lead Contractors assumed full responsibility for services and service coordination and progress accelerated with a 4% increase between April 2010 and April 2011. We believe that a 4% increase in one year since privatization following a 5% increase over the prior five years, is significant. Research shows that there is a positive correlation between kinship care and placement stability. DHHS will continue its commitment to locate and increase use of kin for placements of children.*

**Finding #6: We agree with CFS that there has been improvement in placement stability and adoption timeliness measures of the CFSR; both had been increasing prior to privatization in 2009, so it does not appear to be a factor in the improvement. We disagree with CFS that the indicators relating to absence of maltreatment in foster care, permanence for children, and re-entry rate have not shown meaningful change. (p. 37)**

*DHHS Response: In discussion with Legislative Auditor staff on October 3, DHHS clarified that the report was intended as a status report on key indicators. It was not our intent, for example, to convey that the re-entry rate data represents a "meaningful change." In fact, that is why the report presents the data and identifies this as "an area to watch." We intended to convey that the fact that the re-entry rate for July 2011 was lower than in FY 2006 is an indicator of success but that the fact that it was even lower in FY 10 before coming up in July 2011 meant that it needs to be watched.*

**Finding #7: Nebraska is not unique in its inclusion of the juvenile justice population in the data used to calculate the out-of-home rate and this factor alone does not appear to explain Nebraska's high rate compared to other states. (p. 28)**

*DHHS Response: DHHS agrees with this finding.*

**Recommendation #1: 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. (p. 52)**

*DHHS Response: DHHS is committed to working with the Legislature and other stakeholders to develop strategies to ensure continued improvement in outcomes for children and families.*

\*\*\*

**Finding #8: CFS's failure to establish goals, timeframes and benchmarks is contrary to best practice and their failure to recognize the importance of these reflects questionable professional judgment. (p. 30)**

*DHHS Response: DHHS has publicly identified the Federal CFSR goals as Nebraska goals and has identified targeted improvements toward those goals and identified timeframes in negotiation with the Administration for Children and Families. These goals and targeted improvements are presented on the DHHS website under COMPASS (Children's Outcomes Measured in Protection and Safety Statistics). We also established 25 outcome measures in the performance based contracts entered into with Lead Contractors beginning November 2009. Those measures encompassed 13 areas including case assignment, child safety, community safety, maintaining children at home with family, timeliness and permanency of reunification, timeliness and permanency of adoption, permanency for children in foster care for long periods of time, placement stability, placement in a family like setting, maintaining family relationships and connections, needs assessment and case planning, detention and YRTC's. DHHS acknowledges that we did not set goals, timelines and benchmarks for every item. In addition, through our effort to be transparent, the volume of data we provide and the number and variety of goals has been broad. We are working closely with Casey Family Programs to develop and present for further discussion, an Operational Plan that will more clearly define goals, timelines and benchmarks. Participation by stakeholders is critical to our commitment to achieve outcomes and our openness to being accountable for our contribution to those outcomes.*

**Finding #9: CFS should develop ways of talking about system goals and progress towards meeting them that reflect significant change and are more comprehensible than the CFSR data indicators. (p. 38)**

*DHHS Response: DHHS agrees with this finding.*

**Finding #10: IF CFS intended the 70/30 reversal in the proportion of children removed from their homes to be a figurative goal, then the division failed to adequately communicate that intent to stakeholders. (p. 26)**

*DHHS Response: DHHS agrees with this finding.*

**Recommendation #2: CFS should continue its efforts to establish goals, timeframes and benchmarks for system improvement: however, they should work with the**

**Legislature in regards to goals that they cannot accomplish on their own. In addition, CFS needs to develop a way of talking about statistical changes-like those in the CFSR data indicators- in ways that emphasize meaningful levels of change at a big-picture level and are more comprehensible. (pp. 52-53)**

*DHHS Response: DHHS agrees with this finding.*

\*\*\*

**Finding #11: Goals that CFS cannot accomplish on its own, including safe-reduction, are policy issues that should involve the Legislature. (p. 31)**

*DHHS Response: DHHS is committed to working with the Legislature, the courts, county attorneys, law enforcement and other stakeholders to jointly address how best to achieve positive outcomes for children and their families.*

**Recommendation #3: The Legislature's Health and Human Services Committee may wish to introduce legislation to establish goals for reform of the child welfare and juvenile justice system. If it does this, the Committee should consider having a candid discussion with key stakeholders- especially the judiciary. (p. 53)**

*DHHS Response: To the extent possible, we encourage discussion about understanding and allowing for the flexibility needed in setting goals in recognition that adjustments may be needed to address a dynamic and complex system impacted by multiple external variables.*

\*\*\*

**Finding #12: CFS's analysis of indicators they believe reflect system improvement was confusing and did not contain consistent information on the indicators, which is a transparency problem. (p. 32)**

*DHHS Response: DHHS agrees, in part, with this finding. As stated in our response to Finding #6, the intent of the document was to identify the status of progress on key indicators and was not intended to convey that the data showed system improvement in all items. DHHS believes that the analysis provided could have been presented in a more straight forward manner or clearer manner and may be confusing. In addition, the out-of-home data reflected a comparison using two different, although valid, methodologies. The presentation of the data did not identify the changes in methodology. This was an error on our part and was unintentional. This was discussed with Legislative Auditor staff on October 3, 2011 and we understand that we are in agreement that the analysis must be done using consistent methodologies, that the error was unintentional and that the resulting correction to the data does not significantly alter the finding. DHHS*

*provides a significant amount of information and data publicly as part of our commitment to transparency and we accept our responsibility to present the information and data in a more understandable way. As mentioned earlier, we will work with Casey Family Programs on an Operational Plan and how best to more clearly communicate about data related to key goals.*

**Recommendation #4: CFS should make efforts to present this information in a clear and concise fashion so that it is useful to stakeholders. (p. 53)**

*DHHS Response: DHHS agrees with this finding.*

\*\*\*

**Finding #13: In CFS's calculation of the reduction in out-of-home placements between 2006 and 2011, they used an inaccurate method that gives the appearance of more change than has actually occurred. (p. 35)**

*DHHS Response: As noted in our response to Finding #12, the out-of-home data reflected a comparison using two different, although valid, methodologies. The presentation of the data did not identify the changes in methodology. This was an error on our part and was unintentional. This was discussed with Legislative Auditor staff on October 3, 2011 and we understand that we are in agreement that the analysis must be done using consistent methodologies, that the error was unintentional and that the resulting correction to the data does not significantly alter the finding. Using comparable methodologies, the data shows a 1% decrease in out-of-home care between 2006 and 2011. However, the data shows that a 3% increase in out-of-home care occurred between 2006 and 2009 and a 4% decrease in out-of-home care occurred between 2009, after the initiation of privatization, and 2011. It is our understanding, based on the October 3 meeting, that this information will be considered in revising this section of the report.*

**Recommendation #5: CFS should correct this analysis. (p. 54)**

*DHHS Response: DHHS agrees with this finding and will correct the report.*

\*\*\*

**Finding #14: DHHS neither overstepped Executive Branch authority nor violated state law by contracting out child welfare and juvenile justice services without legislative involvement. (p. 43)**

*DHHS Response: DHHS agrees with this finding.*

**Recommendation #6: None (p. 54)**

*DHHS Response: NA*

\*\*\*

**Finding #15: CFS's contracts with lead agencies meet the Adequacy of Contract Provisions standards (p. 46)**

*DHHS Response: DHHS agrees with this finding.*

**Finding #16: CFS staff met standards relating to analysis of business needs, goals, objectives and services prior to determining whether contracting was necessary. (p. 47)**

*DHHS Response: DHHS agrees with this finding.*

**Finding #17: CFS did not conduct a formal cost-benefit analysis prior to entering into the 2009 lead agency contracts, which conflicts with contracting standards and we believe was a critical error. (p. 48)**

*DHHS Response: DHHS agrees with this finding.*

**Recommendation #7: The Legislative Performance Audit Committee or the Health and Human Services Committee may wish to consider introducing legislation to require a written cost-benefit analysis, or an opinion by a financial expert, of the potential financial implications of personal services contracts over a set dollar threshold. (p. 54)**

*DHHS Response: In our discussion with Legislative Auditor staff on October 3, 2011, DHHS questioned whether a cost-benefit analysis will provide what is intended by this recommendation. We understand the intent of this recommendation is that DHHS have a more thorough fiscal analysis prior to significant systems change. This finding cites the National State Legislative Auditors Association publication entitled Best Practices in Contracting for Services (2003). That publication contains a general recommendation about evaluating options and conducting a cost/benefit analysis. However, the authors make it clear that the publication is intended as a tool and starting point in the development of practices designed to achieve a sound procurement process. The document notes that "the practices listed here may not be applicable in all situations, and other practices may accomplish the same things" (p. 1). A cost/benefit analysis is only one of a number of tools available to use in a decision-making process about the*

*expenditure of funds for a program or project. Other tools such as cost/effectiveness analysis, economic impact analysis, fiscal impact analysis, and social return on investment analysis may be more appropriate in a given situation. For instance, a cost/benefit analysis may not be appropriate for a decision relating to child welfare or health services because it requires the analyst to assign a monetary value to the benefits being measured. A new alternative can be more cost effective even if it costs the same or more than the current way of doing things.*

# LEGISLATIVE AUDITOR'S SUMMARY OF AGENCY RESPONSE

---

This summary meets the statutory requirement set out in Neb. Rev. Stat. sec. 50-1210 that the Legislative Auditor “prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the Section’s report or recommendations.”

On October 6, 2011, the Chief Executive Officer of the Department of Health and Human Services (CEO) submitted the agency’s response to a draft of the Performance Audit Office’s audit report, and the response agreed with most of the Office’s findings and recommendations. Of particular importance was the CEO’s agreement with the need for key goals, benchmarks, and timelines and commitment to develop them.

Audit staff made a number of changes in response to specific concerns noted in either the agency’s written response or the exit conference. The substantive provisions were given to Children and Family Services division staff for additional review and comment; the agency corrected a few technical errors but provided no additional comments.

