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SPECIAL REPORT

**Eastern Service Area Pilot Project
and the Contract with Saint Francis
for Child Welfare Case Management Services**

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ACRONYMS

CAP	Corrective Action Plan
CEO	Chief Executive Officer
CFS	Nebraska Department of Health and Human Services Division of Children and Family Services
CFSR	U.S. Department of Health and Human Services Child and Family Services Review
COO	Chief Operating Officer
CQI	Continuous Quality Improvement
DAS	Department of Administrative Services
DHHS	Department of Health and Human Services
ESA	Eastern Service Area
HIPAA	Health Insurance Portability and Accountability Act
KVC	KVC Behavioral Health Care Nebraska
LR 37	Legislative Resolution 37
NFOCUS	Nebraska Family Online Client User System
OIG	Office of Inspector General of Nebraska Child Welfare
PIP	Program Improvement Plan
PPP	Payroll Protection Plan
Public Health	Nebraska Department of Health and Human Services Division of Public Health
RFP	Request For Proposal
TSG	The Stephen Group
VPR	Vendor Performance Report

EXECUTIVE SUMMARY

On December 21, 2020, the Office of Inspector General of Nebraska Child Welfare (OIG) opened an investigation into the contract between the Nebraska Department of Health and Human Services (DHHS) and Saint Francis Community Services of Nebraska, Inc. (Saint Francis)¹ for child welfare case management services in the Eastern Service Area (ESA).² The purpose of the OIG investigation was to assess the stability of the contract in light of Saint Francis' financial difficulties and to review the administration, performance, and contract monitoring of the ESA contract.

The OIG acknowledges that Saint Francis employees, including dedicated case managers, have worked diligently to maintain the safety and well-being of children in the ESA as part of their mission to serve the vulnerable children in the State's care. This is hard work and this report is in no way meant to disregard their efforts and value to the child welfare system.

The OIG's investigation encompasses the events and performance of Saint Francis since the start of the original contract in 2019 through the time of this writing.

In January 2019, DHHS began the procurement process to secure a contract with a private provider for child welfare case management services in the ESA. Saint Francis submitted a bid that was questionably low and potentially inconsistent with state statute regarding caseload ratios. DHHS awarded the contract to Saint Francis in June 2019, began the process of case transfer in October 2019, and full implementation of the contract began in January 2020.

Concerns about Saint Francis' performance under the terms of the contract surfaced early in the process and have continued to increase over time. Saint Francis has been required by DHHS to submit corrective action plans (CAP) for failing to meet the following contractual requirements: completing case plans within 60 days; documenting placement changes in the State's case management system within 72 hours; meeting the duties and responsibilities with regard to court performance; using E-Verify as part of the hiring process; completing required background checks for employees; meeting caseload ratios as set out in Nebraska statute; and, conducting monthly face to face visits with children and families. Additional issues raising concern have included Saint Francis' financial stability and the risk to its Child Placing Agency license.

Nebraska has conducted a pilot project for the privatization of child welfare case management services in the ESA for over a decade. Numerous evaluations of the pilot project have been conducted concluding that there has been no measurable improvement in outcomes with the

¹ Throughout this report Saint Francis Ministries, Inc. and Saint Francis Community Services in Nebraska, Inc. will be referred to collectively as "Saint Francis," unless a reference to either specific corporation is necessary for clarity.

² The Eastern Service Area is comprised of Douglas and Sarpy Counties, including the city of Omaha.

privatization of case management. The difficulties with Saint Francis' performance under the ESA contract have brought into starker relief the long-standing challenges and risks inherent in a privatized case management system.

As a result of the investigation, the OIG found:

- 1. Saint Francis has failed to meet key terms of the contract.**
- 2. The Eastern Service Area Pilot Project has demonstrated unacceptable risk in the privatization of case management.**

The OIG recommends DHHS take the following actions:

1. DHHS should terminate the current Eastern Service Area contract with Saint Francis.

Saint Francis has not complied with several key terms of the contract for nearly two years and therefore, DHHS should terminate the current contract with Saint Francis.

2. DHHS should end the Eastern Service Area Pilot Project.

The ESA Pilot Project has extended for 12 years and has provided the State with a significant amount of data, all of which suggests that the privatization of case management has not delivered the intended benefits.

The pilot project in the ESA for privatized case management should come to a close with the termination of the contract with Saint Francis and DHHS should look for new ways, outside of privatized case management, to partner with private providers and other stakeholders in the child welfare system to work towards the common goal of protecting children and supporting families.

INTRODUCTION AND SCOPE

The Office of Inspector General of Nebraska Child Welfare Act was enacted, and the Office of Inspector General of Nebraska Child Welfare (OIG) was created, by the Nebraska Legislature in 2012. The OIG provides accountability for and oversight of Nebraska's child welfare and juvenile justice systems through independent investigations, identification and monitoring of systemic issues, and recommendations for improvement. The primary aim of the OIG's investigations and reviews is improving operations through identification of systems issues and needed policy changes.

The OIG was created as part of several recommendations that came out of Legislative Resolution 37 (LR 37), conducted by the Health and Human Services Committee of the Legislature, which was an extensive and thorough review of Nebraska's attempt to privatize the child welfare system. Since the OIG was created in response to concerns regarding privatization in the child welfare system, monitoring the Department of Health and Human Services Division of Children and Family Services' (CFS) case management contract in ESA is a priority for the office.

In late 2020, an internal investigation of Saint Francis Ministries, Inc. substantiated allegations of fraud and financial mismanagement by the President and Chief Executive Officer (CEO) and Chief Operating Officer (COO) at Saint Francis Ministries, Inc. As a result, on December 21, 2020, the OIG opened an investigation into the ESA contract with Saint Francis to assess the stability of the contract in light of Saint Francis' financial difficulties and to review the administration, performance, and contract monitoring of the ESA contract.

To be clear, the OIG's review of the performance of Saint Francis is related to Saint Francis' ability to meet its contractual obligations. For this investigation, the OIG examined the overall contract performance data tracked by DHHS but did not conduct broad file reviews of cases in the ESA.

Finally, it is important to note that at the time of this writing the current emergency contract with Saint Francis is ongoing and continues until February 2023 with the possibility of a one year extension. The OIG's investigation encompasses the events and performance in the ESA since the start of the original contract with Saint Francis in 2019 through the time of this writing.

Conducting the Investigation

The OIG requested documents from DHHS and Saint Francis on January 29, 2021. The OIG received documents from DHHS and later from Saint Francis between February 12, 2021 and April 20, 2021.

Interviews were conducted with DHHS Administration on February 25 and 26, 2021; and, March 10, 2021. Interviews with Saint Francis executives were conducted on April 28 and 29, 2021.

The OIG also attended all Legislative Hearings and Briefings related to the ESA contract with Saint Francis.

BACKGROUND

History of Privatization in Nebraska 2002-2019

It is important to understand the context in which the decision to privatize case management in Nebraska's child welfare system was made.

In 2001, the Children's Bureau of U.S. Department of Health and Human Services began conducting Child and Family Services Reviews (CFSR) in each state. The CFSRs are intended to be periodic reviews of a state's child welfare system for the purposes of ensuring conformity with federal child welfare requirements and to help states improve their child welfare safety, wellbeing, and permanency outcomes. After a CFSR is completed, states develop a Program Improvement Plan (PIP) to address areas in their child welfare system that need improvement. States must successfully complete their plans to avoid financial penalties for nonconformity with federal standards.³

Nebraska's first CFSR took place in 2002 and it revealed that Nebraska was failing to achieve substantive conformity with federal standards on all seven of the measured outcomes.⁴ In response, Nebraska implemented a Children and Families' PIP in 2002 meant to reform the State's child welfare system and come into compliance with the seven federal measures. The central approach of the PIP was Family Centered Practice which is focused on meeting a child's needs within his or her family when possible, in order to engage, involve, strengthen, and support families to reduce the number of children in out of home care. For the next six years, Nebraska developed different iterations of the PIP and was subject to continued reviews but Nebraska continued to fail in all seven measures of the CFSR.

In 2006, Nebraska's Governor at that time also publicly expressed concern that Nebraska had one of the highest rates of children in out of home care.⁵ In addition, in the next few years, further pressure on the State's child welfare system was developing due to a fiscal strain on the state budget.⁶ As a result, DHHS was attempting to both fix its flailing child welfare system and to address financial short falls.

³ U.S. Department of Health and Human Services (U.S. DHHS), Administration for Children and Families, Administration, Administration on Children, Youth and Families, Children's Bureau (2020). Child and Family Services Reviews Fact Sheet. <http://acf.hhs.gov/media/12306>

⁴ U.S. Department of Health and Human Services (U.S. DHHS), Administration for Children and Families, Administration on Children, Youth and Families, Children's Bureau (2003). Final Report: Nebraska Child and Family Services Review. <http://govdocs.nebraska.gov/epubs/H8060/B002-2002final.pdf>

⁵ Legislative Resolution 37 (2011): Review, Investigation and Assessment of Child Welfare Reform, p. 2-2. <https://nebraskalegislature.gov/reports/health.php>

⁶ Platte Institute for Economic Research (2009). Nebraska's Foster Care Conundrum: Federal Reimbursement Hinders Reform.

While responding to the continuing problems identified in Nebraska's second CFSR review and the increasing number of children in out of home care, DHHS moved to "privatize" the delivery of child welfare related services through the use of private, contracting agencies, or as they became know, the Lead Agencies.

As initially conceived, within the privatized system the State would maintain responsibility for case management and all related decisions for system involved children and families. This meant the State was responsible for placement decisions, constructing case plans, providing updates and making recommendations to the court, and working towards timely permanency for the children. Responsibility for the day-to-day service coordination and provision of services across the state would then be assigned to the Lead Agencies. The Lead Agencies would be responsible for securing and delivering professional services provided directly to families, such as foster care, treatment, supervised visitation, and any other service related to the carrying out of the case plan. In a 2010 memo from DHHS, the agency explained the benefits of privatization included:

...produc[ing] positive outcomes and efficient operation of services to children and families. The potential economic advantage to contracting for case management functions is that outcomes for children and families will be achieved more quickly and efficiently than if provided by state government.

Within a span of ten months (September 2008-July 2009), the State released a Request for Proposal (RFP) for service coordination and signed Lead Agency contracts. This timeline for the privatization process by the State conflicted with U.S. DHHS's recommendation that states spend 12-18 months in preparation for RFP development related to privatization initiatives.⁷

In 2009, six agencies were awarded the contracts as Lead Agencies to implement services for all five CFS service areas (Western, Central, Northern, Southeast, and Eastern). Those agencies were: Alliance for Children and Family Services; Boys and Girls Home; Cedars Youth Services; Nebraska Families Collaborative, later known as PromiseShip⁸; KVC Behavioral Healthcare Nebraska (KVC); and Visinet. These Lead Agencies were to be fully operational by April 2010.

However, before negotiations of the contract details were completed, the Alliance for Children and Family Services decided not to move forward with the DHHS contract citing concerns that under the contract the company would lose money. The remaining five agencies signed the additional contracts even though funding was a major concern for the Lead Agencies.

⁷ U.S. Department of Health and Human Services (U.S. DHHS); Office of the Assistant Secretary for Planning and Evaluation (2007). Child welfare privatization initiatives: Assessing their implications for the child welfare field and for federal child welfare programs. <https://aspe.hhs.gov/basic-report/assessing-site-readiness-considerations-about-transitioning-privatized-child-welfare-system>.

⁸ Nebraska Families Collaborative (NFC) underwent rebranding in 2018 and is now known as PromiseShip. For the duration of this report NFC will be referred to as the most recent commonly known name of PromiseShip.

On April 2, 2010, the day after privatized service coordination was to be fully implemented, Cedars Youth Services announced it was withdrawing from the contract, indicating a potential \$5.5 million loss as the reason for the withdrawal.

On April 8, 2010, Visinet filed for bankruptcy. Visinet's operations ended just seven days later at midnight on April 15, 2010. Approximately 2,000 children were affected, leaving DHHS challenged to find foster families and essential services for those state wards on short notice.

In May 2010, the Foster Care Review Board reported concerns about critical problems it attributed to the privatization effort including inadequate case documentation, high staff turnover, payment delays to third parties, and child placement issues. Despite all the early concerns about the privatization model, DHHS continued with the three remaining contracts and maintained the position that the privatization effort was on the right track. However, financial and service related issues persisted with the three remaining agencies (PromiseShip, Boys and Girls Home, and KVC).

In October 2010, less than six months into the fully implemented privatization model, Boys and Girls Home's contract with DHHS was terminated by mutual agreement. DHHS took back service coordination in the Western, Central, and Northern Service Areas. The two remaining agencies, PromiseShip and KVC, continued operating in the Eastern and Southeast service areas, and received an additional \$6.3 million in funds from DHHS.

Later that same month DHHS decided to change the privatization model. Rather than service coordination, the Lead Agencies would take over case management, the State's core responsibility, in the ESA. Under this structure, DHHS would receive hotline calls and investigate the accepted cases. If abuse or neglect was substantiated and a child came into care, or a family agreed to participate in a voluntary case (a case that does not require the involvement of the court), the Lead Agency would then be responsible for case management including placement, securing and delivering professional services provided directly to families, constructing case plans, providing updates and making recommendations to the court, and working towards timely permanency for the children. In January 2011, case management responsibilities were transferred to the remaining two Lead Agencies, KVC and PromiseShip, and DHHS provided an additional \$19 million (shared between the two agencies).

LR 37 was introduced in the Nebraska Legislature in January 2011. The intent of the resolution was to investigate and assess the privatization reform efforts. LR 37 was adopted and the Health and Human Services Committee, Nebraska Auditor of Public Accounts, and Legislative Performance Audit Committee conducted an extensive review of Nebraska's efforts to privatize case management services.

On December 15, 2011, the *Legislative Resolution 37 (2011): Review, Investigation and Assessment of Child Welfare Reform* report was submitted to the Nebraska Legislature and contained recommendations for both DHHS and the Legislature.

On March 1, 2012, KVC indicated that it would be ending case management services and would not renew its contract in the ESA. KVC reported it had spent \$14 million of its own money since 2009 and would not continue to do so, as negotiations for additional funds had not materialized.

Several bills to come out of LR 37's recommendations were passed during the legislative session in 2012, including Legislative Bill (LB) 961. LB 961 required that child welfare case managers be employees of DHHS. However, after KVC announced the end of its contract, a special provision was created allowing for a "case management lead agency model pilot project" in the ESA. The creation of the pilot project permitted DHHS to continue to contract with a private agency for case management services in the ESA while still complying with the new case manager law.

PromiseShip was left as the sole Lead Agency in the ESA providing case management services. The agency's contract would be extended multiple times for the duration of its service to the ESA, including the provision of additional funds on numerous occasions.

In 2014, LB 660 passed into law which allowed DHHS to extend the Lead Agency contract for the ESA as part of the pilot project, and required an evaluation be completed on the pilot project by the end of 2014. That evaluation was completed by Hornby Zeller Associates, Inc. as detailed below.

In October 2016, the Department of Administrative Services (DAS) put out a new RFP for case management services in the ESA. This was the first RFP for a contract for case management services, as case management responsibilities were initially transferred to PromiseShip and KVC as part of the October 2010 change to the privatization model, not as the result of an RFP. PromiseShip and Magellan Choices for Families were the only two agencies to submit a bid in 2016. DHHS made the decision to award PromiseShip the contract. Magellan filed a protest against the award to PromiseShip. By May 2017, DAS ended the RFP process and rejected both bids. DHHS signed an extension to PromiseShip's contract for another two years.

As discussed in more detail below, in 2019 a new RFP was issued for the case management contract in the ESA. PromiseShip (the existing provider at that time) and Saint Francis were the two bidders. In June 2019, DHHS announced its Intent to Award the contract for case management in the ESA to Saint Francis.

Evaluations of Privatization in Nebraska

As noted above, concerns about the effectiveness and consequences of privatizing case management in Nebraska surfaced quickly after the implementation of Lead Agencies. Over the course of the privatization effort, six separate reports and evaluations have been completed. The evaluations, each with nuanced differences in scopes, have provided a historic record of privatization efforts. (See Chart 1.)

1. EVALUATIONS SUMMARY

DATE	TITLE	SCOPE	AUTHOR
December 2010	Report on Child Welfare Reform	Clarify if the contracting of services resulted in a stabilization of placements, services being provided in a timelier manner, increased safety of children, and the achievement of permanency sooner.	Foster Care Review Board
December 2011	LR 37: Review, Investigation and Assessment of Child Welfare Reform	Review, investigate and assess the effects of child welfare reform which the Nebraska Department of Health and Human Services began implementing in July 2009.	Nebraska Legislature-Health and Human Services Committee
November 2012	Assessment of Child Welfare Services in Nebraska	Analyze the degree to which privatization has been successful in improving outcomes for children and parents, whether the costs have been reasonable, the readiness and capacity of any lead agency or the department to perform child welfare services.	Hornby Zeller Associates, Inc.
October 2013	A Case Study of the Effects of Privatization of Child Welfare on Services for Children and Families: The Nebraska Experience	Consider twelve aspects in a description of the large-scale effort to privatize child welfare services in the state of Nebraska that began in 2008, problems leading to a need for child welfare reform, and possible factors that motivated policymakers to shift services from the public to the private sector.	University of Nebraska-Lincoln, Department of Psychology
December 2014	An Assessment of Child Welfare Privatization in Nebraska	Evaluation of the pilot project to include a comparison of the performance of case management functions by PromiseShip in the Eastern Service Area with that of the Department of Health and Human Services in the remainder of the State; an analysis of whether case management should be the duty of DHHS or performed by a private entity pursuant to a contract with the Department and whether the cost is reasonable, given the outcomes and cost of privatization; and an update to the information and data from the 2012 Assessment of Child Welfare Services in Nebraska report.	Hornby Zeller Associates, Inc.
May 2019	Nebraska Department of Children and Family Services- Assessment of Outsource Model in Nebraska's Eastern Service Area	Determine the appropriate path forward should DHHS continue with the outsource model, ascertain if the model has been effective to date and how it could be made more effective if the State were to move forward with the outsource model.	The Stephen Group

Foster Care Review Board Report (2010)

In December 2010, a little over a year into the reform effort, the Foster Care Review Board issued the first report focused on what changes had occurred specific to child safety, service capacity, and oversight since the implementation of the privatization model.⁹

The Foster Care Review Board recommended that: legislative action be taken to review reform efforts by DHHS; DHHS concentrate efforts to address Lead Agency performance issues through contract management and oversight; and Lead Agencies ensure workers are better trained, completing case documentation and case plans in an appropriate and timely manner to assure the safety of system involved children.

LR 37 Report (2011)

The Nebraska Legislature's Health and Human Services Committee submitted a final LR 37 report to the Legislature in December 2011.¹⁰ The report included supplementary reports from both the Auditor of Public Accounts¹¹ and the Legislative Performance Audit Committee.¹²

The LR 37 report contained over 35 recommendations, including one key recommendation: that case management should be returned to the State. The reported noted:

Contracting out case management results in the State being dependent on a private entity for the provision of an essential specialized service that is extremely difficult to replace. As a result, the risk of a private entity either voluntarily, or involuntarily, abandoning the contract creates a high risk to the entire child welfare system.

In addition, the HHS Committee made recommendations for: improvements to case management practices; increased oversight of the child welfare system; an improved procurement process along with contract monitoring; and, contracting with a management expert for an objective assessment of reform efforts.

⁹ Nebraska Foster Care Review Board (2010). Nebraska Foster Care Review Board: Report on Child Welfare Reform. https://fcro.nebraska.gov/pdf/FCRO-Reports/Reform_report_2010_final_.pdf.

¹⁰ Nebraska Health and Human Services Committee (2011). Legislative Resolution 37 (2011): Review, investigation and assessment of child welfare reform. Lincoln, NE: Nebraska Unicameral Legislature.

¹¹ Auditor of Public Accounts (2011). Attestation Report of the Nebraska Department of Health and Human Services Child Welfare Reform Contract Expenditures: July 1, 2009 through March 31, 2011. Lincoln, NE: Nebraska Auditor of Public Accounts <http://www.auditors.state.ne.us>.

¹² Performance Audit Committee (2011). DHHS Privatization of Child Welfare and Juvenile Services. Committee Report, Vol. 17, No. 1, Lincoln, NE: Legislative Audit Office.

Hornby Zeller Associates (2012)

A year later in November 2012, Hornby Zeller Associates delivered an evaluation of Nebraska's privatization effort which had been commissioned by DHHS.¹³ Hornby Zeller Associates asserts themselves as specialists in "using rigorous analysis to answer questions posed by government and non-profit agencies encompassing the fields of child welfare, public health, mental health, substance abuse, courts, adult and juvenile corrections, and early childhood and family support."

With two years of privatization experience and data available for review, the report concluded that child welfare outcomes had not improved under privatization and that both the Lead Agency and DHHS were equally capable of providing case management services in the ESA. As a result, Hornby Zeller found that the costs of privatization could not be considered reasonable and noted that it would have been reasonable for the State to have expected to invest more money before seeing cost savings from privatization.

The 2012 evaluation also observed that the quality of the relationship between the State and private agencies was key to the current situation:

The sheer level of upheaval [experienced in the preceding two years] had eroded the trust between private and public agencies – which is needed for any kind of system, privatized or not, to operate effectively.

Hornby Zeller went further, noting that while both the public and private entities stated they utilized family-centered practices, which was the original goal of the reform efforts and privatization, there was a lack of evidence supporting the use of such practices. The authors indicated the need for the entire system to move further towards family-centered practices consistent with an ongoing commitment to preserve families whenever it can be done safely. The report also highlighted the need to develop valid measures of progress beyond those required at the federal level.

Speaking to Nebraska's use of a privatization model to improve the child welfare system, the report stated:

...it is not at all clear that privatization improved outcome achievement [for Nebraska]. Nor is it clear that it detracts from that achievement. For that to be known, a more stable situation will have to prevail. Second, very few of the outcomes achieved either privately or publicly approach what they should be...whether the services are delivered privately or publicly, the approach will need to change if the outcomes are to improve...this is not an

¹³ Hornby Zeller Associates Inc. (2012) Assessment of Child Welfare Services in Nebraska. https://nebraskalegislature.gov/FloorDocs/102/PDF/Agencies/Health_and_Human_Services__Department_of/356_20121203-093240.pdf

issue of public or private administration. It is a question of what is needed for the effective administration of the child welfare system by anyone.

In conclusion, the researchers recommended continued privatization in the ESA with the State providing case management for all other areas for the foreseeable future to allow for stabilization of the system.

University of Nebraska Case Study (2013)

In 2013, another review of Nebraska's efforts to reform child welfare through privatization was published. The case study, published by the University of Nebraska-Lincoln Psychology Department, explored the quality and availability of services for children and families served by the Nebraska child welfare system during the privatization effort.¹⁴

The case study suggested that DHHS had unnecessarily rushed the large scale initiation of privatization and it resulted in a reduction in quality and availability of services, and an increase in costs – in essence, the very opposite of the intended effect had materialized.

While the case study relied heavily on the findings of the LR37 report, it presented compelling information in explanation as to why Nebraska's move towards privatization had not produced the expected results. Included in that explanation were factors such as, mixed support from stakeholders, lack of a cost-benefit analysis prior to implementation, limited or low competition for services due to a poor distribution of services across the State, Lead Agencies that lacked experience in managing large-scale contracts, a limited hiring pool of skilled workers, a poorly constructed procurement process, and unclear roles and responsibilities between public and private agents.

Hornby Zeller Associates (2014)

In December 2014, Hornby Zeller submitted a follow up to their 2012 report commissioned by the Executive Board of the Legislature.

The major outcome of the follow up study was the finding that the State was still not experiencing any measurable benefits from having privatized child welfare case management, and that there was no measurable difference in the outcomes for children and families between the private and public agency. In addition, the report noted that any cost savings were most likely a result of shifting costs to the clients and to Medicaid, where they still impacted the State budget but did not get counted as child welfare costs.

¹⁴ Hubel, Grace S.; Schreier, Alayna; Hansen, David J.; and Wilcox, Brian, "A case study of the effects of privatization of child welfare on services for children and families: The Nebraska experience" (2013). Faculty Publications, Department of Psychology. 824. <http://digitalcommons.unl.edu/psychfacpub/824>

In addition, the report noted that what savings had materialized had been offset by the huge loss in federal funding.

The report included a similar finding to one noted in the 2012 report – that privatization has caused disruption and dissension among the parties and within the community without obvious benefits to children and families.

Hornby Zeller 2014 laid out three options going forward:

1. Maintain privatization as it was currently structured in the ESA to avoid disruption to the system.
2. Acknowledge the attempt to privatize had not produced the anticipated results, end the Lead Agency contract and return all functions back to DHHS.
3. Refocus on the original intent of keeping children in their homes whenever possible and reduce the number of children in foster care by returning case management to DHHS and utilizing the privatization model to create a Lead Agency in charge of identifying best practice programs, securing startup money, bringing third party providers on board for training and support during implementation, and then monitoring those service providers for the State.

The authors recommended option three – re-tooling privatization towards service provision – but with the caution that “[u]ltimately, the choice of any alternative will only succeed if those involved in the child welfare system, including the Legislature, are realistic about the benefits and willing to accept the costs.”

The report concluded with the following opinion about all three options:

In the end, none of the options represents a turnkey operation leading to a more effective and more efficient child welfare system. The success of any change will depend on the commitment of those working in the system to implement that change to the benefit of children and families, and the decision as to which of the options is most likely to generate that commitment is one that needs to be made through Nebraska’s political processes.

The Stephen Group (2019)

Most recently, DHHS contracted with The Stephen Group (TSG) to help determine an appropriate path forward should the State continue with the privatization of case management and to ascertain if the model has been effective and how it could be made more effective. TSG describes themselves as “a business and government consulting agency that combines strategic government and private sector intelligence with a deep government and regulatory experience.”

In its May 2019 report, TSG found that despite challenges, PromiseShip, the only remaining Lead Agency at that time, had been able to achieve comparable cost and performance outcomes in comparison to the other four service areas despite a lack of clear vision of the State's objectives, a historical lack of collaboration between the State and the vendor, and very few financial incentives to encourage innovation or drive performance improvement.

TSG recommended that if Nebraska continued to use an outsource model in the ESA, it make essential changes to the method in which it manages the relationship with the Lead Agency including: incorporating a performance-based contract with financial controls; requiring the agency to develop an array of services to meet federal Family First Prevention Service Act; the development of a Stakeholder Engagement Plan; the development of a contract oversight process that includes a Quality Assurance Team; and the implementation of a Child Welfare Leadership Team consisting of representatives from all DHHS divisions.

The report notably concluded the following:

[It is] recommended that the State balance the desire to be prescriptive with flexibility to allow the Subrecipient [the Lead Agency] to be innovative.

If the goals of outsourcing are to produce superior results and innovation, in constructing a different relationship with the future vendor and through improved financial and performance management of the contract, DCFS could see lower costs and improved outcomes. This could also allow Nebraska to fully realize the promise of an outsourcing model.

Summary

Emerging from these reports are several broad themes regarding the case management privatization efforts over the past decade:

1. Lead Agencies have not done any better or worse than the State in regard to measured outcomes. Lead Agencies might perform better on some measures at certain points in time, but were not consistently better at all outcomes consistently across time.
2. The State has yet to see the efficiencies and cost savings anticipated with the utilization of private case management.
3. The realization of innovative ideas and services in the ESA has been very limited at best.

EASTERN SERVICE AREA CONTRACT AND SAINT FRANCIS' PERFORMANCE

Overview of the Procurement Process

The Department of Administrative Services (DAS) is the central procurement authority for the State. Neb. Rev. Stat. §73-301 states that DAS “shall review and approve or disapprove any contract for personal services between a private entity and a state agency” if the personal services are currently provided by state employees and will be replaced by services performed by the private contractor.¹⁵ DAS may approve a contract if the economic advantage of contracting for the service is “not outweighed by the public’s interest in having the particular service performed directly by the state agency.”¹⁶

The bidding process created by DAS must be followed for any contract over \$50,000.¹⁷ The state agency can be responsible for the bidding process or the bidding process can be handled by DAS if the state agency requests DAS’s assistance.¹⁸

When the agency chooses to have DAS manage the procurement process, the agency provides DAS with specifications for the RFP, and provides a list of predetermined evaluators. DAS will then direct the process including advertising the RFP, managing the Questions and Answer period, collecting the bids, and reviewing them for completeness. DAS will then forward the proposals (bids) to the evaluation team members for independent scoring. Once the bids have been evaluated and scored, each evaluation team member then returns the proposal back to DAS.

There are exceptions to the procurement rules and process including “emergency contracts.”¹⁹ An emergency occurs when there is an “urgent or unexpected requirement or when health and public safety . . . is at risk.”²⁰ Such contracts are exempt from certain requirements of the normal bidding process.

¹⁵ *Neb. Rev. Stat.* §73-302.

¹⁶ *Neb. Rev. Stat.* §73-304.

¹⁷ *Neb. Rev. Stat.* §73-304.

¹⁸ Department of Administrative Services, Material Division: Title 9 Standard Conditions and Terms of Competitive Bid Solicitation and Offer. Retrieved from https://www.nebraska.gov/rules-and-regs/regsearch/Rules/ADM_Services_Dept_of/Title-009_Material_Division.pdf on 06/11/2021.

¹⁹ *Neb. Rev. Stat.* §73-507.

²⁰ *Neb. Rev. Stat.* §73-502.

2019 Request for Proposal and Contract in the Eastern Service Area

In January 2019, DHHS began the procurement process to secure a new contract with a private provider for child welfare case management services in the ESA. This was the second attempt at an RFP for case management services as the RFP process in 2016 failed resulting in the extension of PromiseShip's Lead Agency contract. DHHS decided to have the procurement process managed by DAS. According to DHHS Administration, DHHS CEO, in consultation with the Children and Family Services Director, had final approval of the bid. DAS then executed the contract.

On January 9, 2019, DAS released an RFP based on a cost model, seeking a contractor to provide full case management child welfare services in the ESA. Two agencies, PromiseShip (the existing provider at that time) and Saint Francis expressed interest in the RFP.

As part of the RFP process there is a Question and Answer period during which bidders can submit questions to clarify the requirements of the RFP or "any assumptions upon which the bidder's proposal might be developed."²¹ Understanding the requirements of the RFP is critical because the RFP requirements become the terms and conditions of the contract.²² In addition, the responses to the questions are binding and are incorporated into the contract.²³ Questions were to be submitted by January 23, 2019 and responses were posted by DHHS on February 13, 2019.

One question submitted by a bidder specifically asked where the staffing ratios were found. In its response, DHHS directed bidders to Nebraska state law at Neb. Rev. Stat. §68-1207 which requires a case ratio between 12 to 17 cases for each case manager. DHHS also noted that reference to this requirement could be found on page 23 of the ESA Operations Manual which was Attachment Two of the RFP.²⁴ In addition, the RFP itself requires all bidders to abide by state law.²⁵

In April 2019, Saint Francis submitted a proposed bid of \$197 million for a five-year contract. Saint Francis' proposal indicated that it used a dyad model approach to calculate caseload ratios. The dyad model incorporates both case managers and family support workers into the caseload ratio. This model allowed case managers to have higher caseloads on the theory that there are

²¹ State of Nebraska State Purchasing Bureau, Request for Proposal for Contractual Services: RFP 5995 Z1, section 1 *Procurement Procedure*. Retrieved from <https://das.nebraska.gov/materiel/purchasing/5995/5995.html> on 06/11/21.

²² *Ibid*.

²³ State of Nebraska State Purchasing Bureau, Request for Proposal for Contractual Services: RFP 5995 Z1, section 2 *Terms and Conditions*. Retrieved from <https://das.nebraska.gov/materiel/purchasing/5995/5995.html> on 06/11/21.

²⁴ State of Nebraska State Purchasing Bureau, Request for Proposal for Contractual Services: RFP 5995 Z1, Addendum 2- Questions and Answers & Revised Schedule of Events. Retrieved from <https://das.nebraska.gov/materiel/purchasing/5995/5995.html> on 06/11/21.

²⁵ State of Nebraska State Purchasing Bureau, Request for Proposal for Contractual Services: RFP 5995 Z1, section 6 *Proposal Instructions*. Retrieved from <https://das.nebraska.gov/materiel/purchasing/5995/5995.html> on 06/11/21.

actually two workers for each case. In Nebraska, however, family support workers have a different role and cannot be counted towards the caseload ratio. Thus, Saint Francis’ approach in its bid resulted in caseloads exceeding Nebraska’s statutory requirements.

PromiseShip submitted a proposed bid of \$341 million over five years to maintain the existing contract for case management services.

An evaluation and scoring process was conducted by the predetermined evaluation team, including oral interviews with each agency. PromiseShip scored highest in the corporate overview, technical approach, and financial requirements categories. Saint Francis scored highest in the cost category and the oral interview portion. Overall, Saint Francis was given the highest score. (See Chart 2.)

2. FINAL EVALUATION SCORE RESULTS ²⁶

	Possible Points	<i>PromiseShip</i>	<i>Saint Francis</i>
CORPORATE OVERVIEW	300	275.83	265.00
TECHNICAL APPROACH	1700	1483.00	1362.17
FINANCIAL REQUIREMENTS	200	153.50	101.00
COST PROPOSAL	880	506.87	880.00
TOTAL POINTS <u>WITHOUT</u> ORAL INTERVIEW	3080	2419.20	2608.17
ORAL INTERVIEW	446	294.8	299.4
TOTAL POINTS <u>WITH</u> ORAL INTERVIEW	3526	2714.00	2907.57

On June 3, 2019, DHHS posted an “Intent to Award” the contract to Saint Francis. A subaward process ensued to negotiate and finalize the terms of the contract. The RFP expressly contemplates that the State and the provider will negotiate prior to the execution of the contract to finalize some of the specific terms of the contract, for example, mutually agreed upon performance targets for certain requirements.

²⁶ State of Nebraska State Purchasing Bureau, Request for Proposal for Contractual Services: RFP 5995 Z1, Final Evaluation Document retrieved from <https://das.nebraska.gov/materiel/purchasing/5995/5995.html> on 06/11/2021.

On June 14, 2019, PromiseShip filed a formal protest. It alleged that, among other things, the proposal from Saint Francis did not comply with state law as it related, for example, to the required caseload ratios, and that Saint Francis' cost proposal was unrealistic and not properly vetted as part of the RFP evaluation.

On June 17, 2019, DAS sent a letter to Saint Francis noting the statutory caseload requirement at Neb. Rev. Stat. §68-1207 and noting that the RFP requires that the services are provided in accordance with state law. DAS asked for clarification on whether Saint Francis would comply with this requirement and asked Saint Francis to describe how it would meet this requirement. DAS noted that such clarification may be included in an Addendum to the contract. DAS's June 17th letter also requested that the transfer date of cases start earlier than January 1, 2020 as originally contemplated in the RFP. DHHS suggested that the transfer begin on October 1, 2019 and asked that this be considered as part of the negotiations.

On June 24, 2019, Saint Francis responded to the DAS request explaining that Saint Francis uses a dyad model in which both case workers and family support workers are included in caseload calculations. Saint Francis stated that it was willing to switch to a case management staffing model which includes only case managers in calculating caseload ratios. But to do this Saint Francis stated it would need more money, as the change would increase their cost by \$15 million.

The request for additional funds, however, risked invalidating Saint Francis' bid. According to conversations with DHHS Administration, DHHS was required to evaluate Saint Francis' ability to meet the terms of the RFP at the cost submitted. If a provider is unable to meet the requirements at the cost indicated in the bid, the bid would be made invalid. DHHS would then either have to go on to another vendor (in this case the only other vendor that submitted a bid, PromiseShip), reissue the RFP, or return case management back to DHHS case managers.

In an email on June 27, 2019, Saint Francis stated to DAS that it would be able to accommodate the caseload ratio requirement at the original bid amount by modifying its dyad model to add additional case manager positions.

With PromiseShip's protest still open and ongoing, DHHS executed the contract with Saint Francis on July 1, 2019 for a little over \$197 million for services from July 2, 2019 through June 30, 2024. Addendum One to the contract executed by DHHS on July 3, 2019 includes a clarification of Saint Francis' commitment to and process for meeting the caseload ratio requirement. Addendum One also notes that the parties would further negotiate the start date for the transfer of cases.

On July 3, 2019, PromiseShip's protest was dismissed by DAS.

In August 2019, the ESA contract was amended (Amendment One) with an updated schedule of the Initial Award payments.

In October 2019, the ESA contract was amended (Amendment Two) to begin case transfers on October 21, 2019, rather than January 1, 2020. As a result of this change, the initial award for the

first year of the contract was also increased by an additional \$11 million dollars (from approximately \$18 million to over \$29 million).

In September 2020, the contract was amended again (Amendment Three) to change the insurance requirements under the contract.

Lawsuits

In July 2019, PromiseShip and Kathy Bigsby Moore filed a lawsuit against the Department of Health and Human Services, Department of Administrative Services, and Saint Francis regarding the ESA contract.²⁷ This lawsuit was dismissed.

A second lawsuit was filed by Laura Virgl, represented by Nebraska Appleseed, against Saint Francis, Dannette Smith (DHHS CEO), Jason Jackson (DAS Director), and Matt Wallen, former CFS Director, claiming privatization in the ESA is unconstitutional. This lawsuit is currently pending.²⁸

Saint Francis' Structure and Services

Saint Francis Ministries, Inc. is a nonprofit, child welfare organization headquartered in Salina, Kansas. Saint Francis Ministries, Inc. provides an array of social services including adoption services, foster care, family preservation, independent living, residential programs and mental health services in six different states.²⁹ Saint Francis Ministries, Inc. owns and operates subsidiaries in multiple states, including Kansas, Oklahoma, Texas, Mississippi, Arkansas, and Nebraska. Saint Francis Ministries, Inc. has a corporate Board of Directors and also elects the Board of Directors for each of its subsidiaries.

Saint Francis Ministries, Inc. has two wholly owned subsidiaries in Nebraska registered with the Nebraska Secretary of State – Saint Francis Community Services in Nebraska, Inc. and Saint Francis Ministries in Nebraska, Inc.

Saint Francis Community Services in Nebraska, Inc. was an existing entity in Nebraska prior to the ESA RFP. Saint Francis Community Services in Nebraska, Inc. provides child welfare services, agency supported foster care, and preadoption services in the Western and Central Service Areas. Offices are located in Grand Island, Scottsbluff, and North Platte. These programs are run by two Directors who report to the Vice President of Children and Family Services-North Region at Saint Francis Ministries, Inc., the corporate office.

²⁷ Case Number: CI 19-2255/Lancaster County.

²⁸ Case Number: CI 19-2911/Lancaster County.

²⁹ Per the Saint Francis Ministries website, the agency provides the following services in each of these states: Adoption (Oklahoma, Nebraska, Kansas); Foster Care (Texas, Nebraska, Kansas); Family Preservation Services (Nebraska, Arkansas); Independent Living Services (Kansas); Residential Programs (Mississippi, Kansas); and, Substance Abuse and Mental Health Services (Kansas).

As reported by Saint Francis leadership, Saint Francis Ministries in Nebraska, Inc. was intended to be the entity operating the ESA contract. This never came to fruition, however, and Saint Francis Community Services in Nebraska, Inc. remains the contracting entity for the ESA contract. Saint Francis Community Services in Nebraska, Inc. has offices located in Omaha and Bellevue. Its operation in the ESA has its own organizational structure that includes a Regional Vice President working in Nebraska who reports to the same Vice President-North Region as does the Western and Service Area operations. However, Saint Francis Community Services in Nebraska, Inc.'s operation in the ESA does not coordinate with the other Saint Francis programs operating in Nebraska.

Saint Francis' Nebraska operations function more as divisions of the national corporate entity, Saint Francis Ministries, Inc., rather than a standalone Nebraska corporation. Saint Francis Community Services in Nebraska, Inc. does have a Board of Directors with sixty-seven percent Nebraska residents that is in control of all service areas. But there is no Executive Director of the Nebraska entity. Rather, as noted, both operations – those for case management in the ESA and the services in the Western and Central Service Areas – report up to the corporate office. Most key administrative functions are run through the corporate office. For example, the ESA contract has its own operating budget that is nested within the corporate budget. Corporate headquarters maintains the overall budget for each division. All funds are sent directly to corporate headquarters and then funneled to the ESA. Corporate headquarters maintains the essential infrastructure for each subsidiary or division, handling finances, payroll, human resources, IT support, and other operating functions. Each division pays corporate headquarters a service allocation fee, up to ten percent, for those services.

Saint Francis' Startup in the Eastern Service Area and Transition of Cases

Beginning in July 2019, preparation for the transition of cases from PromiseShip to Saint Francis began. DHHS created an ESA Transition Team responsible for management of the transition both publicly and internally. Town hall meetings were held to provide information to the public and internally the team monitored Saint Francis' progress as it established the necessary components to take over case management from PromiseShip.

While Saint Francis had already been providing support services in other service areas of the state, case management in the ESA was new to the company.

In order to start transferring cases in October 2019 and meet the goal of full implementation by January 2020, Saint Francis needed to secure a building to operate from, adapt internal case management infrastructures from its Kansas based operation to meet requirements for operations in Nebraska, develop an appropriate service array by means of securing contracts with third party service providers, and cultivate a qualified staff sufficient to meet caseload requirements over the course of a three month period. During the RFP process Saint Francis leadership had indicated the transition of case management services in the ESA would be easier for the company due to the fact that it had experience setting up an infrastructure in other states, and it had experience operating in Nebraska given its existing child placing services in other areas of Nebraska.

It was reported by all who were interviewed by the OIG that in general the transition of cases went well, if not better than anticipated. However, some stress points in the process remained.

Less than 30 days before case transfers to Saint Francis were to begin, a concern about caseloads and the availability of case managers surfaced. Saint Francis had brought over a significant number of former PromiseShip employees, but not all had migrated over to the new Lead Agency. The staffing issues were compounded by the fact the PromiseShip also needed to retain an adequate number of case managers for the duration of the transition period. As a result, there was concern that neither agency would have enough case managers to be effective in their service to children and families.

In early October another issue with potential consequences for the transition arose. A robust service provider network had not been established by Saint Francis. An email obtained by the OIG documented that when asked for an update on the network – including a list of providers who had completed the applications, the number of signed contracts, names of providers under contract and service description – Saint Francis leadership indicated that no contracts had been established as there had been a delay from within the Saint Francis legal department.

Notwithstanding the issues of securing an available workforce and service provider network, in October the transfer of cases from PromiseShip to Saint Francis began as scheduled. It is also important to note that the transfer began prior to the completion of the Readiness Review of Saint Francis which was not completed by DHHS until later that month.

Contract Oversight and Saint Francis' Performance

Under the ESA contract, Saint Francis is responsible for family on-going case management, engaging parents and children in services, and working towards timely permanency for children. Based on publically available data from DHHS, under the ESA contract Saint Francis is responsible for the care of about 2,000 children. This responsibility is inclusive of placement (recruiting and supporting traditional foster care homes and kinship homes), securing and delivering professional services directly to families, constructing case plans, providing updates and making recommendations to the court, and working towards timely permanency. DHHS maintains the duties of investigating accepted intakes by the hotline and then, if abuse or neglect is substantiated, transfers the case to Saint Francis for case management and service provision.

Ultimately DHHS is legally responsible for the provision of child welfare services in the ESA even though it contracts out case management to a Lead Agency. Nebraska law states that the “Department of Health and Human Services shall have legal custody of all children committed to it.”³⁰ That obligation cannot be contracted away. As a result, DHHS must monitor and assess

³⁰ Neb. Rev. Stat. §43-905.

Saint Francis' performance under the contract both to ensure Saint Francis is meeting the States' obligation to children and to assess Saint Francis' performance and the value of the contract.

As part of meeting their legal obligation, DHHS established an ESA Oversight Team. The current ESA Oversight Team includes the CEO, CFO, General Counsel, CFS Director, CFS Deputy Directors, Central Office staff, and the Contract Monitoring Team. The Contract Monitoring Team consists of the DHHS Service Area Administrator, Contract Managers, Contract Monitors, Continuous Quality Improvement (CQI) Director and team, and Finance Administrator and team. Different Oversight Team members meet daily, weekly, monthly, and quarterly with Saint Francis to discuss emerging topics or issues, performance, and operations.

DHHS also provides quarterly contract monitoring reports that track Saint Francis' performance in 12 main areas.³¹ The quarterly reports are publicly available on DHHS's website. In addition to the quarterly reports, in March 2021, DHHS also began producing a monthly scorecard to provide a more regular summary of how Saint Francis is meeting key performance indicators and contract requirements.

The 12 main areas for which Saint Francis is monitored are:

- Case transfers and assessments – the process in which Saint Francis accepts a case transferred from DHHS;
- Case management and supervision – the responsibilities noted above that affect the safety, permanency, and wellbeing of children;
- Service array – the breadth and availability of services that Saint Francis can provide to meet the needs of children and families;
- Service monitoring by Saint Francis of its subcontractors;
- Educational opportunities for children;
- Community engagement by Saint Francis to find support for families in the community;
- Foster care capacity so that Saint Francis has the necessary placement options available for children;
- Workforce documentation to ensure adherence to educational and training requirements for staff;
- Use of public and private funds to ensure Saint Francis is helping families apply for public programs like Medicaid or utilize community supported programs such as food assistance when eligible;

³¹ Nine of the 12 performance areas monitored by DHHS are integrated into state wide performance monitoring as part of the federal PIP.

- Utilization management to assess if Saint Francis is providing the right service at the right time for families;
- Administrative review focused on budget and expenses; and
- Information systems to ensure there is proper and secure access to the sensitive and personal information in the systems Saint Francis and DHHS must use.

A significant amount of time and resources are invested in, and expended by, DHHS in the monitoring of case management and services in this one service area.

DHHS started tracking Saint Francis' performance on January 1, 2020, with the completion of the transition. Within a matter of weeks Saint Francis was having difficulties meeting certain conditions of the contract. As noted earlier, emails obtained by the OIG show that the transfer of cases to Saint Francis began in the fall before Saint Francis had any subcontractors in place for services. In mid-January 2020, less than one month into the full transfer of cases, emails between DHHS and Saint Francis show that only 19 of the 38 contractors who received subcontracts from Saint Francis had executed the contract.

Saint Francis was also not achieving the required caseload ratios at the start of the contract and within the first month, as early as January 2020, there was a downward trend in caseload ratios. In emails, Saint Francis officials stated that they believed they would be close to the statutorily required caseloads soon. Saint Francis has not met the caseload ratios at any point during the contract.

At the end of January 2020, DHHS's Contract Administrator sent a letter to the CFO at Saint Francis noting the tardiness and absence of financial reports as required under the contract, and requiring compliance by March 31, 2020. Saint Francis responded on February 6, 2020, explaining that in October 2019, Saint Francis experienced a server and back up failure resulting in the loss of several months of financial data making it difficult for Saint Francis to meet its reporting obligations. Saint Francis expected the problem to be fully resolved by May 2020.

Early in 2020 it was brought to the OIG's attention that Saint Francis left older and hard to place youth in the Project Harmony Triage Center for extended periods of time despite the fact that the program was not equipped or staffed to be a placement option beyond a 24 hour period.³² In order to correct the situation, Saint Francis contracted with a sub-contractor for a Triage Foster Home placement option and indicated to the OIG that the agency was exploring the development of an in-house solution in addition to the sub-contractor contract. A Triage Foster Home agrees to take care of youth for a brief period of time until a more permanent placement can be found. While this addressed the immediate distress and alleviated the misuse of the Triage Center,

³² The OIG investigated related complaints that alleged Saint Francis was utilizing office space overnight for youth in need of placement in addition to misuse of the Triage Center. The OIG did not reach a conclusion in the matter, but was satisfied that a remedy for the situation in general had been implemented by the agency.

concerns surfaced about how the development of an in-house option would factor into a contractual limitation on Saint Francis, dictating that no more than 35% of their service array could be provided in-house.

In addition to the issues that arose as the contract began, Saint Francis has had ongoing difficulty meeting some basic performance measures under the contract. Three months into the full implementation of the contract, DHHS determined that certain performance issues required a Corrective Action Plan (CAP). (See Chart 3 on page 25.)

As was explained to the OIG by a member of DHHS Administration, a CAP is an opportunity for the Lead Agency to correct performance issues that would otherwise result in a breach of contract. It is an opportunity to cure the breach. When a CAP is requested, the Lead Agency provides DHHS with a plan detailing how it intends to improve its performance. DHHS reviews the plan, and can approve it or provide feedback and request modifications to the plan. Once DHHS approves the CAP, the Lead Agency then implements the plan detailed in the CAP and DHHS monitors the Lead Agency's progress to determine if the CAP has been successfully completed, meaning the performance meets the contractual requirements.

On March 31, 2020, DHHS sent the first request for a CAP related to two issues: the failure to complete case plans within 60 days and the failure to document a child's placement changes within 72 hours in the Nebraska Family Online Client User System (NFOCUS), a data base used by DHHS to record and store important case documentation and information.

On April 3, 2020, DHHS requested a CAP related to court performance issues.

On April 7, 2020, DHHS requested a fourth CAP related to a failure to use E-Verify (an electronic employment verification process used for new hires).

On April 21, 2020, all four CAPs were approved by DHHS. While Saint Francis was able to complete the CAP related to court performance by the end of April 2020, concerns about performance issues would continue to develop over the course of Saint Francis' first year, and beyond into its second year.

By July 2020, DHHS was concerned with Saint Francis staff turnover and its ability to meet caseload ratios as defined by statute. As a result, DHHS requested a Hiring Plan from Saint Francis that was to outline the agency's strategies to meet caseload standards and maintain a stable workforce for the ESA. The Hiring Plan was received by DHHS on September 15, 2020. However, as of the date of this report, Saint Francis has yet to exceed a 54% compliance rate with the statutory caseload ratio.

In October 2020, DHHS requested a CAP to ensure background checks were being conducted on all new employees. Saint Francis submitted a CAP to address the issue and on November 5, 2020, the plan was given approval by DHHS.

On January 21, 2021, DHHS requested two more CAPs from Saint Francis, this time related to caseload ratios and monthly face to face visits. At that same time, Saint Francis and DHHS revised four previously issued CAPs that were still not complete: failure to complete case plans

within 60 days; failure to document placement changes within 72 hours; failure to utilize E-Verify; and failure to properly conduct background checks on employees. On February 12, 2021, DHHS accepted all of the CAPs except the caseload CAP which was not accepted until April 1, 2021.

In March 2021, 17 months after cases began transferring to Saint Francis, DHHS started reviewing 100% of Saint Francis' case files.

3. SAINT FRANCIS CORRECTIVE ACTION PLANS

CAP	Date CAP was Requested by DHHS	Status of CAP as of August 2, 2021
CASE PLANS WITHIN 60 DAYS	March 31, 2020	In Progress
PLACEMENT DOCUMENTATION WITHIN 72 HOURS	March 31, 2020	In Progress
COURT PERFORMANCE	April 3, 2020	Complete
USE OF E-VERIFY	April 7, 2020	Complete
BACKGROUND CHECKS	October 2, 2020	Complete
CASELOAD RATIOS	January 21, 2021	In Progress
MONTHLY FACE TO FACE VISITS	January 21, 2021	In Progress

Detailed Summary of Corrective Action Plans (CAPs)

The following is a detailed summary of the CAPs and Saint Francis' progress under those CAPs. Progress for the CAPs is detailed in quarterly reports by DHHS and in the monthly scorecards. To date, DHHS has released three scorecards covering data for March, April, and May 2021.

Court Performance

Under this CAP, Saint Francis was required to provide documents and communicate to legal parties in a timely manner, attend court and be prepared, and follow court orders and court procedures. In March 2020 a few judges in the ESA notified DHHS of their concerns with Saint

Francis' performance in court. For example, judges described instances of Saint Francis workers violating court orders by placing a child in a parental home, not providing specific services, case managers not being present at court hearings, and not submitting court reports in a timely manner. On April 3, 2020, DHHS requested a CAP related to Court issues.

Even though Saint Francis completed the court performance CAP with approval from DHHS, issues have continued. A judge in the ESA found DHHS in contempt of court based on a Saint Francis employee not following court orders. DHHS was fined \$5,000 and then requested \$5,000 restitution from Saint Francis.

Other issues have been reported. In two cases judges removed the Saint Francis worker as case manager. DHHS workers in the ESA have taken over the case management duties in those cases. In other cases, courts have found that reasonable efforts have not been made by Saint Francis to meet the case plan goals. A "no reasonable efforts" finding prevents the State from drawing down federal funds for that case and, most importantly, that finding means there is a delay in moving the children in that case to permanency. Another ESA judge voiced concerns that Saint Francis did not submit documents on time, therefore delaying proceedings. The judge also voiced concern that Saint Francis was not following court orders. Other practitioners in juvenile court have also expressed their concerns regarding Saint Francis' court performance, including court attendance, timeliness of court reports, providing court ordered services, and communication issues.

DHHS leadership meets weekly with Saint Francis and provides a weekly tracking report to Saint Francis leadership noting the court issues by each Judge identified from the previous week. In addition, Saint Francis was required to submit a plan to address court issues on April 23, 2021.

Case Plans Documented within 60 Days

Under this CAP, Saint Francis is required to complete a case plan for all children within 60 days of becoming a state ward or within 60 days of the start of a non-court involved case. A case plan details the family's goals and outcomes. A case plan must be developed even if the court case has not been adjudicated or disposition is not scheduled. Case plans are to be updated before every court hearing, or as ordered by the Court, and whenever new information is shared that impacts the achievement of permanency for the child. Case plans should be updated at least every six months. Saint Francis' goal under the CAP was to meet the statewide target of 95% of case plans completed within 60 days. It was the expectation that Saint Francis would resolve the issue within 90 days.

Saint Francis started at 48% compliance in April 2020. By September 2020, Saint Francis was at 93% in compliance. In December, the compliance rate dropped to 77%.

The DHHS ESA Quality Performance Scorecard for March 2021 showed Saint Francis completing 93.9% of case plans within 60 days. But, the scorecard for April 2021 showed Saint Francis at 87.3% compliance and in May compliance dropped nearly ten percentage points to 78.4%.

Documentation of Placement within 72 Hours

This CAP requires Saint Francis to document in NFOCUS within 72 hours any placement change for a child in out of home care. Saint Francis' goal was to meet the statewide target of 95%.

Saint Francis started at 61% compliance in April 2020. By September, Saint Francis was 80% in compliance. In December, the compliance rate dropped to 67%.

The target goal was later changed to 98%. The DHHS ESA Quality Performance Scorecard for March 2021 showed Saint Francis was meeting this requirement 89.9% of the time. The scorecard for April 2021 showed Saint Francis at 90.5% compliance. The scorecard for May 2021 showed a drop in compliance to 85.3%.

Use of E-Verify

Saint Francis is required to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of an employee.

During a Personnel File Review for Saint Francis employees, it was discovered that Saint Francis was not using the E-Verify process to verify the work eligibility status of employees. Rather, Saint Francis was using a verification system through the Social Security Administration. On April 7, 2020, DHHS requested a CAP to ensure Saint Francis was using E-Verify.

During the Personnel File Review conducted on December 17 and 18, 2020, a sample of 29 files of new employees hired after the CAPs were reviewed. Out of the 29 files, 26 of the files indicated the federal E-Verify form had been completed timely.

DHHS completed a file audit for Saint Francis employees from April 19 through April 21, 2021. DHHS selected 75 files for the audit. For the 23 newly hired staff Saint Francis was 100% in compliance with E-Verify. DHHS posted a CAP compliance report to the agency website on July 30, 2021, noting that the CAP was considered complete as on July 9, 2021.

Background Checks

Saint Francis is required to complete and maintain background checks for any agents, employees, interns, volunteers, or subcontractors that have direct unsupervised contact with any child or family. This must be completed when the employee is hired and every two years

thereafter. Prior to proper background checks being completed, persons are not to have unsupervised client contact.³³

On October 2, 2020, DHHS requested a CAP on background checks due to Personnel File Reviews showing Saint Francis employees did not have the proper background checks completed. Some employees had to be put on a hold from client contact until the checks were completed.

On January 21, 2021, DHHS requested an updated CAP that would thoroughly address issues related to completing required background checks for every employee as required by the contract.

DHHS completed a file audit for Saint Francis employees from April 19 through April 21, 2021. DHHS selected 75 files for the audit. The files of the 23 newly hired staff were 100% in compliance with background checks. The 52 staff hired since September 2019 did not apply to the CAP, but improvements in those files show Saint Francis' efforts to correct the issues. Thirty out of the 52 (58%) files were in compliance with background checks. Twenty-two staff were out of compliance. Saint Francis was able to correct 20 files immediately and two staff were put on a hold from contact with children. As noted in the E-Verify section above, DHHS posted a CAP compliance report to the agency website on July 30, 2021, noting that this CAP was considered complete as on July 9, 2021.

Caseload Ratios

Saint Francis is required by law³⁴ and the ESA contract to meet caseload ratios – meaning 100% of its case managers will have caseloads within the statutory requirements. In January 2020, 40% of Saint Francis case managers were in compliance with the caseload ratios. Saint Francis had a goal to employ about 150 case managers in an effort to meet caseload standards. DHHS requested a Hiring Plan from Saint Francis due to concerns regarding Saint Francis staff turnover and ability to meet case load ratios as defined by statute. The Hiring Plan was received by DHHS on September 15, 2020, which outlines strategies to meet case load standards and maintain a stable workforce for the ESA. DHHS reported Saint Francis was at 54% compliance in December 2020.

On January 21, 2021, DHHS requested a CAP on caseload ratios to address how Saint Francis would be able to recruit, hire, and retain the number of case managers needed to meet caseload ratio. The goal for completion was set at 100% compliance by June 30, 2021. The DHHS ESA Quality Performance Scorecard for March 2021 showed only 44% of Saint Francis case

³³ Background checks are inclusive of Nebraska Sex Offender Registry, Nebraska Child and Adult Abuse and Neglect Central Registry, Nebraska Department of Motor Vehicles, and Criminal Background. Similar checks are to be completed in each state where the potential employee has resided.

³⁴ Neb Rev Stat § 68-1207.

managers were in compliance (meaning 56% were over the caseload ratios). DHHS reported Saint Francis was at 44.1% compliance in April 2021. In May, the scorecard indicated caseload compliance declined to 38% and in June the monthly caseload report indicated the number of case managers in compliance decreased again to 31%.

Monthly Face to Face Contact with Youth

Saint Francis is required to have face to face contact with youth every month. It is the expectation Saint Francis will meet this goal 100% of the time. Saint Francis has never met this measure and in December 2020 monthly face to face contact with state wards was occurring 87.8% of the time. Saint Francis had monthly face to face contact with non-court involved children in 86.9% of the cases.

On January 21, 2021, DHHS requested a CAP on monthly face to face contact with youth. The completion goal date was set for April 30, 2021 at 95% to match the federal target. The DHHS ESA Quality Performance Scorecard for March 2021 showed Saint Francis compliance at 92.8%. In April 2021, DHHS reported Saint Francis was at 89% compliance. In May, compliance dropped further to 84.5%.

Additional Issues

In addition to the performance issues requiring CAPs, other performance issues have also been noted by DHHS in correspondence and its quarterly reports.

Financial Reporting

DHHS sent a memorandum to DAS on April 27, 2020. The memo detailed a Vendor Performance Report (VPR) issued against Saint Francis. Saint Francis' monthly financial reporting had become tardy and incomplete within weeks of the fully implemented contract. The April 27 memorandum also outlined DHHS attempts to resolve the issue with Saint Francis in January 2020 but stated that the issue continued into March 2020, and was still not resolved. After the VPR memo was delivered to DAS, Saint Francis did start to submit reports in a timely manner, but still had ongoing deficiencies with the submitted documentation.

On June 15, 2020, DAS sent notice of the VPR to Saint Francis leadership, and asked for a meeting to resolve the issues. The senior leadership team met on June 29, 2020, and Saint Francis followed up with DAS on July 9, 2020.

HIPAA Violations

Also included in the April 27th VPR were the specifics of a situation in which Saint Francis experienced a security incident involving Nebraska based client information subject to Health Insurance Portability and Accountability Act (HIPAA) protections. DHHS indicated that Saint Francis failed to disclose the February 2020 incident within a 15 day timeframe, which violated the Business Associate Agreement, and was considered a breach of contract. The memo stated that Saint Francis had not informed DHHS of the incident until April 2020. DHHS requested additional information to make sure Nebraska families were protected, and after a delayed

response from Saint Francis, the Lead Agency eventually sent a letter to families who may have been affected by the incident months after the fact.

Child Placing Agency License

Saint Francis maintains a Child Placing Agency License through the DHHS-Division of Public Health (Public Health) so it can license, approve, and support foster homes. Prior to the ESA contract, Saint Francis operated as a child placing agency in different parts of Nebraska and continued to do so after the addition of the case management contract in the ESA. Saint Francis has licensed its own foster care homes to fulfil its contractual responsibilities for case management in the ESA.

On September 24, 2020, Public Health conducted a renewal inspection on Saint Francis' Child Placing Agency License at the Bellevue office only. A follow-up compliance check was conducted on December 1, 2020. Public Health notified Saint Francis on December 15, 2020, that it found violations of multiple regulations and listed twenty-five corrective action items that needed to be completed.

On February 25, 2021, Public Health sent another letter to Saint Francis informing the company that the information Saint Francis submitted to correct the violations was insufficient on 20 out of the 25 corrective action items. On June 4, 2021, Public Health imposed disciplinary probation on Saint Francis' child placing agency license. Saint Francis is required to come into full compliance by August 1, 2021.

Without a child placing agency license, Saint Francis would not be able to operate the ESA contract. Further, since the license is held by Saint Francis Community Services in Nebraska, Inc., the same legal entity under which the work in the Western and Central Service Areas is done, any issues with the license arising in the ESA would affect the operations in the Western and Central Services Areas too.

Saint Francis' Finances

In addition to the various performance issues, Saint Francis has also had significant financial issues throughout the contract. The reality and effects of Saint Francis' low bid became apparent within the first six months. The original contract set a "Do Not Exceed Amount" for each year, meaning Saint Francis was obligated to meet its contractual obligations within a set amount of funding each fiscal year. In March 2020, it became evident that Saint Francis would exhaust funds available to them prior to the end of the first year.

An ESA Child Welfare Contract Budget meeting was convened between DHHS and Saint Francis in early April 2020. Saint Francis' prepayment request for March 2020, once paid, left only \$10.15 million in the budget for April through June 2020. The prepayment request for April 2020 was for \$7.085 million, which was much higher than the previous months. This left Saint Francis with only \$3 million in the budget for the remainder of the fiscal year (May and June 2020). Given the average monthly expenses, Saint Francis would not be able to continue

operations through June 2020 and remain under the “Do Not Exceed” amount for the first year under the contract.

In addition, DHHS recognized that if the monthly payment requests continued to average \$4.5 to \$5 million per month, Saint Francis would also quickly hit its “Do Not Exceed” amount in the second year of the contract. DHHS estimated if this trend continued Saint Francis would be over budget in year two of the contract by \$12 million.

Internally, Saint Francis had long been aware of the financial challenges of the ESA contract and its low bid. Through information obtained by the OIG, it is clear that between January and June 2019 multiple employees with knowledge of the financial situation at Saint Francis predicted Saint Francis would lose \$6 million per year on the ESA contract. Employees advised the Saint Francis President and CEO, and COO not to sign the ESA contract as it was not sustainable. The Saint Francis President went forward with signing the contract.

In January 2020, a Saint Francis employee reported to the Saint Francis President concerns the organization would run out of money by March 2020. Saint Francis was projected to exceed their \$10 million line of credit and the bank refused to extend the line of credit. Saint Francis was able to secure a \$10 million Payroll Protection Plan (PPP) loan from the federal government under the CARES Act, which helped with its cash flow.

In September 2020 a Saint Francis employee sent the President and COO information regarding the projected loss for the Nebraska ESA contract. It was estimated Saint Francis would lose \$35,810,536 by June 2021. In October 2020, DHHS also determined Saint Francis would run out of money by February 2021.

In October 2020, a whistleblower report implicated both the Saint Francis President and COO of significant financial mismanagement and fraud and Saint Francis initiated an internal investigation. The investigation concluded the four main allegations against the President were substantiated. The financial mismanagement complaint against the COO was also substantiated. The two executives were terminated from their positions. Compounding concern for the financial stability of Saint Francis were now the questions of potential impropriety with Nebraska funds and fraud on the part of Saint Francis in entering into the ESA contract.

These concerns were addressed by representatives from both DHHS and Saint Francis in a public briefing held by the Legislative Health and Human Services Committee on January 22, 2021. At that hearing, Saint Francis Interim President admitted that Saint Francis failed to bid the contract properly and laid out in stark terms Saint Francis’ financial situation. The Interim President identified five “buckets” of financial concern:

- First, the contract in the ESA. Saint Francis lost \$10 million in the first year of the contract and was predicting a \$25 million loss in the second year.
- Second, Saint Francis had received a \$10 million overpayment from Kansas and was negotiating a plan with the State of Kansas to reinvest those funds in its work or return the overpayment.

- Third, Saint Francis' line of credit was set to expire on January 31, 2021. (The line of credit was extended to June 2021.)
- Fourth, Saint Francis had received a \$10 million Payment Protection Program grant under the CARES Act and, like many organizations, was not clear if that loan would be forgiven and if not forgiven what the timeline and terms of repayment would be.
- Fifth, Saint Francis planned to make significant changes internally to its programs and administration to stabilize its financial situation.

Emergency Contract

The financial uncertainty of Saint Francis and the financial issues under the existing contract for the ESA required immediate action and resolution. DHHS had multiple options available to it, including terminating the contract, or amending it. In a January 15, 2021 letter, DHHS outlined for Saint Francis expected additions and clarifications for a new contract. The Saint Francis response included a statement that the company would need a guarantee of more money no later than January 29, 2021. On January 20th DHHS CEO sent a reply to Saint Francis Interim President stating that there was no guarantee of additional funds and that Saint Francis was signaling their intention to breach the contract.

At the January 22, 2021, Legislative Health and Human Services Committee briefing, the Saint Francis Interim President testified to Senators that if Saint Francis did not secure a new contract by January 29th (the following week) with an increase in funding, including \$35 million to cover Saint Francis' loss in the first two years, Saint Francis would no longer be able to operate in the ESA. He further testified that by February 12, 2021, "there would be no more money in the bank." Negotiations continued between the two agencies and ultimately resulted in a \$158 million dollar emergency contract between DHHS and Saint Francis. The contract term is from February 1, 2021 through February 28, 2023. With this emergency contract, DHHS will pay Saint Francis more than it would have paid PromiseShip under its 2019 bid.

With the increased funds from the Nebraska emergency contract, Saint Francis was able to pay back \$10 million that it owed to Kansas Department for Children and Families. It also re-structured and closed down non-mission services and programs and reduced its workforce by 50 employees. These steps avoided an immediate financial crisis and Saint Francis was able to remain solvent. In addition, Saint Francis has secured a new line of credit. The remaining financial risk identified is the PPP loan. At the time of this writing, Saint Francis is still working through whether it will have to repay its PPP loan and on what timeframe.

DHHS utilized the emergency contract with Saint Francis as a means of avoiding disruption to a critical service. The emergency contract replaced the original contract which was terminated, although the terms of the original contract were incorporated by reference into the emergency contract. According to DHHS Administration, the justification for setting the duration of the emergency contract until 2023 was based on the fact that it was an emergency contract, thus DHHS needed to be judicious in setting the time frame. While statute does not provide a cap on how long an emergency contract can run, it was important for DHHS to use the emergency deviation only as long as necessary to move through the emergency. To do otherwise would

appear to try and avoid the proper procurement process. The option to extend the contract for one year was guided by statute which states any contract can be extended once for a period no more than one half the period of the original duration – the 25 month contract could then be extended once for a period up to 12 months.

In addition, the structure of the emergency contract was changed. Rather than providing a “Do Not Exceed” amount for the overall cost per year, the emergency contract breaks the payments into two categories – program costs and administration. The program costs are for allowable costs incurred in serving children in the ESA. There is no hard cap on these payments. Rather, the requirements that the services be allowable and that Saint Francis’ costs be within 5% of costs in the other service areas serve as the limiting forces on the program costs. The administrative costs are capped and any penalties that might be assessed on Saint Francis are taken from the administrative payments. The emergency contract also changed the termination provisions. Notice for termination was extended from 30 days’ notice to 180 days’ notice. In addition, the contract added a provision that specifies failure to complete a CAP as a reason for breach of contract.

When asked about the change in notice to terminate, DHHS Administration explained that the modification from requiring 30 days to 180 days was based on a balance between providing a measure of security to the vendor – assuring it and its employees that there would be no sudden end to the contract, putting people out of work – and being realistic about how long DHHS would need to smoothly transition case management back to the State or to another vendor.

Speaking to adjusting the payment structure into program costs and administrative costs, DHHS Administration indicated that it was an attempt to incentivize Saint Francis to manage its costs outside of providing services, which are not always under its control.

Regarding the determination of a breach under the contract, DHHS Administration explained that in most situations the program or division head would evaluate the situation relevant to a breach of contract and make the decision to either move forward with a CAP or terminate the contract as they are aware of the day to day operations of the contract and in the best position to evaluate if the requirements of the contract are being met. Thus, in this case it would be the DHHS CEO and CFS Director.

FINDINGS

Nebraska has not been immune to the complications and risk inherent in the privatization of child welfare services. The current contract with Saint Francis exemplifies many of the challenges with privatization.

After reviewing documents relevant to the Saint Francis contract, conducting interviews with DHHS and Saint Francis, reviewing academic research and literature, and US Department of Health and Human Services publications related to the privatization issue, the OIG finds:

SAINT FRANCIS HAS FAILED TO MEET KEY TERMS OF THE CONTRACT.

Saint Francis has failed to perform several elements of its contract throughout the life of the contract.

As noted in detail earlier in this report, within the first few months and over the course of the first year of the contract, Saint Francis was put on seven CAPs, four of which are still active: (1) the failure to complete case plans within 60 days; (2) the failure to document placement changes within 72 hours in NFOCUS; (3) the failure to meet statutorily required caseload ratios; and (4) the failure to conduct monthly face to face visits with children in care. In addition, there are several other issues noted in DHHS's quarterly contract monitoring reports that have not yet resulted in a CAP, but are concerning nonetheless. As noted by DHHS, CAPs reflect performance issues that might otherwise result in a breach of contract. Saint Francis then has potentially breached the contract seven different ways.

These performance measures matter to families and children. Involvement in the child welfare system carries trauma with it, particularly for children who are removed from their homes. As a result, the practices and performance measures in child welfare are focused not only on the safety of children, but on ensuring families receive the help they need in a timely manner so that the children can be moved to permanency as quickly as possible. Unnecessary delays in a case can prolong the trauma. Indeed, in DHHS's monthly scorecard, four of the CAPs are listed under the "Activities & Output" section which is defined by DHHS as "[m]easurements of actions and standards of **quality case management** that contribute to positive outcomes for children and families." (Emphasis in original.)

As a result, delays in case plans matter. The case plan is the roadmap for helping a family – what services does the family need, what changes is the parent required to make. Any delay in the case plan delays the next steps, and sometimes the first steps, a family must take to move forward. It is our understanding that some of the initial delays in case plans from Saint Francis were due in part to DHHS delays in transferring the case to Saint Francis and work was done to improve those processes. Yet, Saint Francis' performance on this measure has improved and declined in turns over the course of the contract. In the April scorecard, the percentage of case plans meeting the 60 day requirement had dipped again, and in the May scorecard compliance dropped nearly ten percentage points to 78.4%. The goal is 95%. Given the number of children served in the

ESA, this means that hundreds of children do not have plans in place to reunify with their families over two months after coming into the system.

Similarly, documenting a placement change is important to the safety of children in the system. It is a key way that the system documents where a child, who is in the care and custody of the State, actually is. This is necessary information for others who may be involved in the case. As with the case plans, Saint Francis' performance has improved and declined throughout the contract. There was a slight improvement in this measure in the April scorecard, but compliance dipped again in May to 85.3%. The goal is 98%.

It is important to note that the original CAP on court performance was deemed successfully completed in the first quarter of 2020. However, problems with court performance have persisted. Saint Francis was required to submit a plan in late April 2021 to address court issues. The OIG was told DHHS's legal team continues to work weekly with Saint Francis on court performance.

The most recent CAPs for face to face monthly contacts and caseload ratios are also key to child safety. Monthly face to face contacts are critical to ensuring a child's safety while in care and for ensuring progress in a case. Visiting a child on a regular basis is the way a case manager can check on the child's wellbeing and surroundings – whether at home or in an out of home placement – and it is a chance for a direct conversation, when possible, with the child. It presents an important opportunity to ensure the child is still safe and receiving appropriate care and treatment in their placement and to check on any progress or issues developing in the case. As with other CAPs, Saint Francis was making progress towards the goal of having face to face monthly contacts in 95% of cases. But the performance slipped in April 2021 and slipped further in May's scorecard to 84.5%. The consequences of an 84.5% compliance rate with face to face contact is that about 300 children did not see a case manager in person for over 30 days.

The issues Saint Francis has had from the beginning of the contract meeting the caseload standards is likely a key factor in several of the other performance issues noted above. The point of a caseload cap is to limit the number of cases, and children, that a caseworker must manage so that the caseworker can meet all the key and necessary duties that help to ensure a child's safety and move a case to resolution and permanency – things like timely case plans, regular visits, updated information on where a child is placed, and providing timely and updated information to the courts. If a caseworker has too many cases, it is not possible for them to complete all these tasks in a timely manner for each case and each child. Caseloads are critical to the work, and therefore to the health and safety of children.

Saint Francis has not come close to meeting the caseload ratio at any point during the contract. During the past two years, the highest compliance rate Saint Francis has achieved is 54% of workers in compliance. According to the most recent data, the caseload compliance rate for Saint Francis' workers reached an all-time low in June at 31%.

In addition to the contract performance measures detailed above, Saint Francis has also been out of compliance with its Child Placing Agency License for the entirety of the licensing year. Public

Health placed Saint Francis on disciplinary probation due to numerous violations found after a renewal inspection in the ESA. As noted, Saint Francis has until August 1, 2021 to cure the final violations. If they are unable to do this, Public Health may take additional steps. Without a child placing agency license, Saint Francis cannot operate the ESA contract.

While it may be reasonable to expect some performance issues in the early stages of the contract, Saint Francis' performance issues have persisted and even increased with new issues emerging. The result has been a consistent failure to meet key terms of the contract. Beyond the scope of contractual deficiencies, these failures represent children who have not been accounted for in the system, or seen in person and families that have not had a case plan that identifies how they will be reunified.

THE EASTERN SERVICE AREA PILOT PROJECT HAS DEMONSTRATED UNACCEPTABLE RISK IN THE PRIVATIZATION OF CASE MANAGEMENT.

There have been significant challenges with the privatization of child welfare in Nebraska. Many of these challenges are inherent in the privatization of a fundamental governmental function such as case management, and some stem from how Nebraska chose to implement privatization.

The result has been repeated disruptions in the system and crisis points in the child welfare system. Attempting to privatize service coordination and eventually case management through the ESA Pilot Project has produced numerous terminated contracts, contract extensions, emergency contracts, and finally a transition from one agency to another. These events have generated instability in the ESA and statewide, exposed the lack of an effective performance enforcement mechanism for DHHS, and highlighted the financial uncertainty associated with the effort.

Privatization in Nebraska has caused instability in the child welfare system.

It is important to remember that at the heart of this privatized system are the vulnerable abused and neglected children and their families who are served by the child welfare system and who have experienced trauma. Disruption in the child welfare system can result in instability in individual cases and a prolonging of those cases.

Turnover and disruption is inherent in a privatized system. With each new RFP process there is the potential for a change in vendor. In addition, companies can fail in the midst of a contract causing additional moments of change. These transitions create disruptions in the child welfare system. All of these challenges have happened throughout the pilot project in the ESA.

First, in the ESA, the risk that the vendor could change every few years with each new RFP is built into the pilot project. Thus far, Nebraska has only experienced one change in vendor as the result of an RFP because the RFP in 2016 failed. But the transition from PromiseShip to Saint Francis demonstrated that the transition to a new Lead Agency creates disruption.

The transition to a new Lead Agency requires a transfer of existing staff (in the best case scenario) and the hiring of new staff. Staffing changes often means caseworker changes for the

children and families in the system. Caseworker changes very often prolong a child's case and time in the system. The new Lead Agency must also secure a network of service providers to ensure continuity in services like foster homes, mental health providers, and visitation workers. In addition, the Lead Agency must set up all the infrastructure necessary to operate and provide this critical service – everything from office space, IT support, financial operations, and human resources.

Saint Francis faced all these challenges even as it indicated its ability to set up an infrastructure in the state would be aided by its experience setting up case management in other states, and its existing experience in Nebraska providing child welfare services in the Western and Central Service Areas. Yet, adapting its model for case management to the laws, regulations, policies and procedures in Nebraska took time and resources and in some areas has not been successful.

The effects of this transition can be felt by the families and other providers. For example, the significant delay in securing subcontractors to provide services to children and families – services that were already in place for many families – can necessitate that providers continue to provide those services without a contract or risk the disruption of needed services to children.

Even a delay in the RFP process creates uncertainty and risks disruption in the system. The second RFP, in 2016, produced only two bids and included a formal protest submitted by one bidder. DHHS eventually rejected both bids and the process was terminated. DHHS then entered into an extended contracts with the existing Lead Agency, PromiseShip, to maintain case management services. While the provider stayed the same in 2016, the time limited nature of the extension contracts necessarily means the potential for a change in providers is always on the horizon. Shorter term contracts create uncertainty for the provider and can stifle innovation – a key proposed benefit of privatization.

Second, the Lead Agency can fail or terminate the contract forcing an unplanned transition. This was the repeated experience in the first years of privatization. In 2009, the initial statewide RFP resulted in five signed contracts, three of which were terminated within six months and a fourth was terminated within a year as a result of bankruptcy and other financial concerns. Each time a vendor failed or terminated the contract, it created a significant disruption in the system. Case management was returned to the State stabilizing the system in those service areas where lead agencies no longer existed.

Saint Francis' financial difficulties created the same risk of disruption in the current contract. After the disclosure of the financial mismanagement at Saint Francis Ministries, Inc., its financial position was precarious. As noted, Saint Francis' Interim President testified that the financial health and stability of Saint Francis relied not only on the contract in Nebraska, but also on four other factors. Saint Francis would need to: (1) address the \$10 million overpayment from the State of Kansas; (2) secure a line of credit, as their current line was set to expire in five months (June 2021); (3) ascertain if or when they would be required to pay back a ten million dollar Payment Protection Program (PPP) loan; and, (4) restructure their administration and programs in order to reestablish financial stability.

The financial position of Saint Francis Ministries, Inc. mattered greatly to the operations in Nebraska. Saint Francis' operations in Nebraska function more as a division of the corporate entity, rather than an independent Nebraska corporation. As noted earlier, the operations budget for Nebraska rolls up into the corporate entity and all payments from Nebraska are made to the corporate entity and then distributed back down to the Nebraska operations in the ESA. Much of the administrative work – personnel, human resources, payroll, the phone system, and email – are all handled by the corporate entity. Therefore, any risk to the solvency or existence of the corporate entity would have affected the Nebraska operations in the ESA.

In addition, Saint Francis' financial position clearly mattered to the Nebraska operations as the Saint Francis Interim President stated on January 22, 2021 before the Health and Human Services Committee that Saint Francis would be out of money in Nebraska and cease operations as of February 12, 2021 if a contract with substantial new funding was not signed within the week – by January 29, 2021.

The result was an emergency contract with Saint Francis. DHHS testified they had the option to bring case management back in house or request a new RFP, but chose to keep Saint Francis as its Lead Agency to avoid disruption in the system.

Disruption is an ever present risk in a privatized system. This has been demonstrated repeatedly in the ESA pilot project. Those disruptions have real life effects on the children served in the ESA.

Performance under a contract cannot be guaranteed, jeopardizing the State's legal and ethical obligations to children in the system.

The State cannot contract away its legal obligation to the children and families of Nebraska. When a private agency assumes responsibility for case management, the State is dependent on the Lead Agency to meet both state and federal mandates, as well as the State's duty to the children in the care and custody of the State. As a result, robust oversight is critical.

As noted, DHHS has created a robust oversight team for the contract with Saint Francis and different team members meet daily, weekly, monthly, and quarterly with Saint Francis to discuss emerging topics, issues, performance, and operations. This important oversight is resource and time intensive.

Public Health has also been required to dedicate a significant amount of resources to monitoring Saint Francis. Saint Francis has been out of compliance with child placing agency regulations in the ESA for the past year which has resulted in Saint Francis' license being placed on disciplinary probation. Public Health is now completing weekly inspections of Saint Francis' ESA offices until such time the deficiencies have been corrected.

DHHS, as a whole, invests a significant amount of time and expends a large amount of resources on monitoring Saint Francis and their provision of services in the ESA.

However, despite the robust efforts of DHHS to provide support and guidance to Saint Francis in its attempt to improve performance and come into compliance with the contract, Saint Francis

has not been able to perform under the contract. DHHS oversight cannot provide a mechanism to guarantee or enforce an acceptable level of performance from any Lead Agency. DHHS has provided Saint Francis with ample time to comply with the terms of the contract and has provided guidance and personnel to work with Saint Francis. But DHHS cannot, regardless of the amount of oversight, control Saint Francis' ability to perform under the contract. As a result, DHHS risks its ability to meet its legal and ethical obligations to the children in the system.

Privatization in Nebraska has resulted in financial uncertainty.

When DHHS chose to award Saint Francis the new ESA contract in 2019, many stakeholders expressed their disbelief that Saint Francis would be able to do the job for the amount proposed. DHHS expressed faith in Saint Francis' bid, and that it would be able to provide case management services within its proposed cost.

However, Saint Francis has not performed the required services under the contract at the amount bid. As noted, Saint Francis expended its allotment in the first year of the contract by May 2020 with two months left in the fiscal year. It was clear even then that Saint Francis would run out of money even earlier in the second year of the contract, by February 2021, as it did.

As a result, and to avoid disruption in the system, DHHS terminated the original contract and signed an emergency contract with Saint Francis. The emergency contract provided \$35 million additional dollars and restructured the way in which Saint Francis was paid by separating the costs into "program costs" – meaning those costs paid to a third party for the direct services to the families served – and "administrative costs." The program costs are limited only by the requirement that the costs be allowable and be within 5% of the average costs in the other service areas. This definition and separation of the costs provides clarity. It ensures that the necessary services for children and families will be covered, as they should be. However, it also removes the hard cap on spending that was attempted in the original contract. Therefore the ceiling and predictability of overall spending under the contract is lost.

DHHS is now paying Saint Francis more for case management than it would have paid per PromiseShip's RFP cost proposal in 2019. The ESA contract is now costing the State more money, time, and administrative resources without an improvement in performance.

The history of privatization demonstrates the same. At several points, DHHS was required to provide additional dollars to the Lead Agencies in order to avoid losing those providers. If the State is unwilling or unable to take back case management, it is difficult for DHHS to responsibly deny requests from the Lead Agencies for more money to support child welfare services. DHHS may have ultimately accepted these demands for more money to avoid disruption to children and families. But the result is that the State is put in a contractual and financial choke hold.

In addition, based on all the evaluations of privatization in Nebraska, the expectation that the use of a privatization model for case management services within the ESA will result in more efficiencies and actualized cost savings has never been realized. In 2010, DHHS stated in a memo that the reason to privatize case management services was for the economic advantage,

saying “the potential economic advantage to contracting for case management functions is that outcomes for children and families will be achieved more quickly and efficiently than if provided by state government.” As noted earlier in the report, the evaluations of privatization of case management in Nebraska’s child welfare system have not found any cost savings, or modest cost savings at most, as a result of privatization.

As the pilot program in Nebraska demonstrates, there is little predictability in the costs of privatizing case management, creating financial uncertainty in the system. This trend has continued in the contract with Saint Francis.

RECOMMENDATIONS

After careful consideration of all the findings, produced by a thorough review of the evidence, the OIG recommends:

1. DHHS should terminate the current Eastern Service Area contract with Saint Francis.

DHHS should terminate the current contract with Saint Francis because Saint Francis has not complied with several terms of the contract for nearly two years. It was clear from the OIG investigation that the Saint Francis administration and staff in the ESA are dedicated to the mission of serving children. Unfortunately, in several areas, after more than two years, Saint Francis' performance is moving in the wrong direction. Key performance measures like caseload ratios and monthly visits are not improving to the level required. In practical terms this means case managers employed by Saint Francis are compromised in their ability to effectively serve children and families, and that vulnerable children in the system are going over a month without having an in person visit from their case manager to check on their safety and wellbeing.

DHHS has invested a substantial amount of time, money and resources into monitoring the ESA contract in an effort to guarantee positive performance outcomes. Saint Francis has been given ample time to remedy the issues. After two years, it is clear that even with robust oversight, DHHS has been unable to control Saint Francis' performance or enforce Saint Francis' contractual obligations.

Nebraska is spending a considerable amount of public dollars on this contract and is not receiving the services for which it contracted. This is particularly important to note at this time, as the State spends increasingly more public money to support the Lead Agency in the ESA. The fact that Saint Francis knowingly underbid the contract, putting itself in this position, must also be considered.

The State should not continue to pay any vendor for performance far below what has been contracted for. For these reasons, the OIG recommends that the contract with Saint Francis be terminated.

2. DHHS should end the Eastern Service Area Pilot Project.

In general, a pilot project is understood to be a small scale or short term evaluation of the feasibility, costs, and potentially adverse effects of an idea as a way of identifying improvements before full implementation. The ESA Pilot Project has extended for 12 years and has provided the State with a significant amount of data, all of which suggests that the privatization of case management has not delivered the intended benefits.

The pilot project has brought into stark relief the significant challenges and risks associated with the privatization of case management. The provision of child welfare services is a core government function. Under Nebraska law, DHHS "shall have legal custody of all children

committed to it.”³⁵ This creates a unique obligation that the State cannot contract away. As a result, the performance of any contractor operating in place of DHHS must meet the State’s obligation to the children in the system.

Nebraska law specifically notes the risks inherent in a privatized system noting that privatization has created a “dependence on one or more private entities for the provision of an essential specialized service. . . As a result, the risk of a private entity abandoning the contract, either voluntarily or involuntarily, creates a very high risk to the entire child welfare system . . .”³⁶

The ESA pilot project has demonstrated that the risk is real and has consequences. The Legislature has also found, in statute, that the State “has legal responsibility for children in its custody and accordingly should maintain the decision making authority inherent in direct case management of child welfare services.”³⁷ The long pilot project in privatization was an exploration of an alternative for case management that might have improved the system. The experiment has not borne that out.

To be clear, the OIG recognizes the critical role private providers play in the child welfare system. Without private providers and their important work, children in the system would not have the services and homes they desperately need. The State should continue to explore ways to partner with private providers on innovations and reforms to improve the system. But this particular partnership focused on case management, a key responsibility of the State’s, has not been successful.

Ending the contract and the pilot project will obviously necessitate a new transition in the ESA. As noted, this type of disruption is inherent in a privatized system. DHHS recognized this risk and has a detailed plan should a transition of case management back to the State become necessary. Included in that plan is the ability to utilize a Mobile Crisis Response Team. In addition, changes incorporated into the Emergency Contract with Saint Francis require 180 days notice to terminate the contract which provides the State with a six month period in which to work with Saint Francis on the transition. As a result, the OIG believes DHHS is well positioned to do this work.

Returning ESA case management to DHHS eliminates the inherent risk that the Lead Agency will change or fail, causing disruption, and provides an opportunity for stability and predictability. This may be particularly beneficial in addressing one of the most acute needs at the moment – stabilizing the essential workforce. It is important not to overlook the central role frontline workers and supervisors play within the families they work with. Providing a single, long term, consistent employer in DHHS can provide greater stability in the workforce.

³⁵ *Neb. Rev. Stat.* §43-905.

³⁶ *Neb. Rev. Stat.* §68-1211(6).

³⁷ *Neb. Rev. Stat.* §68-1211(1).

The pilot project in the ESA for case management should come to a close with the termination of the contract with Saint Francis and DHHS should look for new ways to partner with private providers and other stakeholders in the system to work towards the common goal of protecting children and supporting families.

AGENCY COMMUNICATION & RESPONSES

JENNIFER A. CARTER
Inspector General



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From: Jennifer A. Carter *JAC*
Inspector General

RE: **Eastern Service Area Pilot Project and Saint Francis' Performance under the Eastern Service Area Contract**

Date: August 2, 2021

Herewith, please find the Office of Inspector General of Nebraska Child Welfare's (OIG) Special Report of investigation into the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services.

Pursuant to Neb. Rev. Stat. §43-4328, please provide a response on or before **Monday, August 16, 2021**, and include whether DHHS is Accepting, Rejecting, or Requesting Modifications be made to the recommendations. If you or staff would like to discuss the report before you respond, we would be happy to arrange a time for a discussion.

We appreciate the courtesies and cooperation extended to our team during the investigation.

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

August 16, 2021

Jennifer Carter
Inspector General
Office of the Inspector General of Child Welfare
State Capitol, PO Box 94604
Lincoln, NE 68509

RE: ESA Pilot Project & Saint Francis Ministries Investigation

Dear Ms. Carter:

Thank you for sharing the OIG's Special Report of investigation into the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services, dated August 2, 2021.

The Department of Health and Human Services offers one correction to the report: on pages 23-24, triage foster homes are provided by APEX, a sub-contractor, not Saint Francis. DHHS accepts the report, but does not comment on the recommendations.

Thank you for the time and attention paid to services delivered to children and families of the Eastern Service Area. Please do not hesitate to contact my office should you have questions or need additional information, 402-471-9433. I can also be reached at dannette.smith@nebraska.gov.

Sincerely,

Dannette R. Smith, MSW
Chief Executive Officer
Department of Health and Human Services



STATE OF NEBRASKA
OFFICE OF INSPECTOR GENERAL OF CHILD WELFARE
State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-4604
402-471-4211
Toll Free 855-460-6784
Fax 402-471-4277
oig@leg.ne.gov

August 17, 2021

Dannette R. Smith
Chief Executive Officer
Department of Health and Human Services
301 Centennial Mall South
Lincoln, NE 68509

Dear CEO Smith,

Thank you for your response to the OIG's Special Report into the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services.

We appreciate your correction on pages 23-24. We have made that correction in the report.

Also, we appreciate that DHHS has accepted the OIG's report. However, Neb. Rev. Stat. §43-4328 requires the Department specifically to "accept, reject, or request in writing a modification of" the recommendations in the report. DHHS's response does not follow this statutory directive. Rather, it accepts the OIG's report but does not comment on the recommendations.

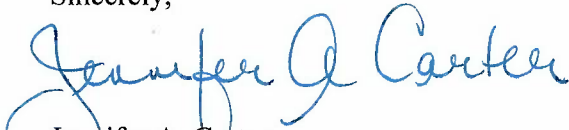
DHHS's specific response to the recommendations is a necessary precursor to other provisions within the OIG statute. As a result, for purposes of the processes designated under the statute, our office will interpret DHHS's acceptance of the report as an acceptance of the recommendations contained therein. Specifically, we will consider the report as final, per the language of Neb. Rev. Stat. §43-4328(1). In addition, as required under Neb. Rev. Stat. §43-4328(2), the OIG will share a copy of the report with Saint Francis Ministries this week. Saint Francis will have 30 days to respond by accepting, rejecting, or requesting a modification to the recommendations and, if necessary, requesting factual corrections to the report.

As you know, and as will be reiterated to Saint Francis, the report remains confidential and is not to be shared beyond the entity that is the subject of the report. (Neb. Rev. Stat. §43-4325.)

Please note, we will not share DHHS's August 16th response to the OIG report with Saint Francis. However, as per our usual protocol and in the interest of full transparency, we will attach DHHS's August 16th response to the OIG report should the report be released publicly in the future.

I am happy to discuss any of this with you if that would be helpful. Please do not hesitate to contact me at 402-471-4211 or jcarter@leg.ne.gov.

Sincerely,



Jennifer A. Carter
Inspector General

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES



Pete Ricketts, Governor

August 19, 2021

Jennifer Carter
Inspector General
Office of the Inspector General of Child Welfare
State Capitol, PO Box 94604
Lincoln, NE 68509

RE: ESA Pilot Project & Saint Francis Ministries Investigation

Dear Ms. Carter:

I am in receipt of your August 17, 2021 letter regarding DHHS's response to the OIG's special report. I apologize for this oversight, and request additional time to respond to the recommendations accordingly. I do not believe it to be appropriate to interpret our response as an acceptance. If additional time cannot be granted, then I would request DHHS's response to be interpreted as a general "rejection."

Please do not hesitate to contact my office should you have questions or need additional information, 402-471-9433. I can also be reached at dannette.smith@nebraska.gov.

Sincerely,

Dannette R. Smith, MSW
Chief Executive Officer
Department of Health and Human Services



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August 20, 2021

Dannette R. Smith
Chief Executive Officer
Department of Health and Human Services
301 Centennial Mall South
Lincoln, NE 68509

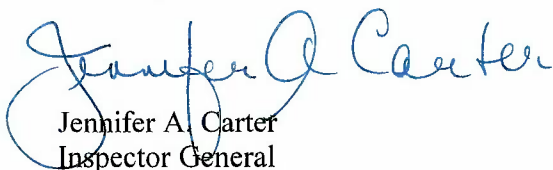
Dear CEO Smith,

We received your August 19th letter requesting additional time to respond to the recommendations in the OIG's special report on the Eastern Service Area pilot project and the contract with Saint Francis or, if an extension could not be granted, asking that the Department's original response be interpreted as a rejection of the OIG's recommendations.

The law requires a response within 15 days, so I am not able to grant an extension. Therefore, as you request, we will treat the Department of Health and Human Services' original response as rejecting both recommendations in the OIG report.

If we need to discuss anything further, please do not hesitate to contact me at 402-471-4211 or jcarter@leg.ne.gov.

Sincerely,


Jennifer A. Carter
Inspector General

JENNIFER A. CARTER
Inspector General



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oig@icg.ne.gov

August 17, 2021

William Clark
Interim President and CEO
Saint Francis Ministries
110 West Otis Ave
Salina, KS 67401

Dear Mr. Clark,

Herewith, please find the Office of Inspector General of Nebraska Child Welfare's (OIG) Special Report of investigation into the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services.

Pursuant to Neb. Rev. Stat. §43-4328, please provide a response to this office on or before **Friday, September 17, 2021**. The response must indicate whether Saint Francis is Accepting, Rejecting, or Requesting Modifications be made to the recommendations contained in the report and may correct any factual errors. If you or staff would like to discuss the report before you respond, we would be happy to arrange a time for a discussion.

Please note the report is confidential; Neb. Rev. Stat. §43-4325 directs reports of investigation conducted by the office shall not be distributed without the consent of the Inspector General.

We appreciate the courtesies and cooperation extended to our team during the investigation.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer A. Carter".
Jennifer A. Carter
Inspector General

September 15, 2021

Jennifer A. Carter
Inspector General
State of Nebraska
Office of Inspector General of Child Welfare
State Capitol, P.O. Box 94604
Lincoln, Nebraska 68509-6784

Dear Ms. Carter,

Enclosed please find the response of Saint Francis Ministries to the Office of Inspector General of Nebraska Child Welfare's (OIG) Special Report of investigation into the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services.

Please feel free to contact me or our corporate attorney, John Thurston, should you have any questions or require any clarifications.

Respectfully,



William J. Clark
Interim President/CEO
Saint Francis Ministries

**Saint Francis Ministries' Response to the Special
Report on the Eastern Service Area Pilot Project and
the Contract with Saint Francis for Child Welfare
Case Management Services, authored by the Office of
Inspector General of Nebraska Child Welfare**

Submitted September 16, 2021

Saint Francis Ministries' Response to the Special Report on the Eastern Service Area Pilot Project and the Contract with Saint Francis for Child Welfare Case Management Services, authored by the Office of Inspector General of Nebraska Child Welfare

The State of Nebraska's Office of Inspector General of Nebraska Child Welfare (hereinafter "OIG") issued a report of its findings and recommendations on the Eastern Service Area Pilot Project and the Contract with Saint Francis (hereinafter "SFM") for Child Welfare Case Management Services on August 2, 2021. By statute, SFM was given thirty days to issue a written response.

The report issued by the OIG stipulates two overall findings and two subsequent recommendations. Specifically, the OIG stipulates the following in its findings: 1) Saint Francis has failed to meet key terms of the contract, and 2) the Eastern Service Area Pilot Project has demonstrated unacceptable risk in the privatization of case management. Subsequently, the OIG issued two recommendations based on the findings noted above, specifically: recommendation 1: DHHS should terminate the current Eastern Service Area contract with Saint Francis, and recommendation 2: DHHS should end the Eastern Service Area Pilot Project.

SFM rejects recommendation 1 that the Nebraska Department of Health and Human Services (hereinafter "DHHS") terminate the current contract with SFM. **SFM does not concur** with the second recommendation that the Eastern Service Area Pilot Project should be ended by DHHS, and "DHHS should look for new ways, outside of privatized case management, to partner with private providers and other stakeholders in the child welfare system to work towards the common goal of protecting children and supporting families" either. However, SFM does recognize that ending privatization of case management in Nebraska is a policy decision to be made by elected officials.

SFM will address the findings that led the OIG to reach this recommendation. There are numerous omissions and some recent information of relevance that will be discussed below.

The OIG report concludes that SFM has failed to meet key terms of the contract with DHHS. How does the OIG define failure? The answer is found on page 4 of the report:

To be clear, the OIG's review of the performance of Saint Francis is related to Saint Francis' ability to meet its contractual obligations. For this investigation, the OIG examined the overall contract performance data tracked by DHHS but did not conduct broad file reviews of cases in the ESA.

Therefore, the metrics used to judge success in this situation are simply contractual terms, not the real-world successes or failures of SFM. Again, SFM is not arguing the point that it failed to meet each metric contained in the contract. However, it is SFM's position that additional information should be considered, given the importance of these decisions to Nebraska children and families.

As noted in the OIG Annual Report 2013-2014:

“The overall effect of the child welfare system on the children it serves is notoriously difficult to study. Statistics regarding safety and key child welfare outcomes such as rates of abuse in foster care, rates of re-entry, placement stability, and family reunification are important and relatively easy to quantify. However, it is much more difficult to discern the overall impact of child welfare systems on the families they serve and whether past wards go on to become successful adults. There is debate as to what indicators best measure successful outcomes for the child welfare system.”

SFM maintains the position that the OIG report should take additional data into account when making its recommendation.

Federal Child and Family Services Reviews

The Children's Bureau of U.S. Department of Health and Human Services regularly conducts Child and Family Services Reviews (hereinafter “CFSR”) at the state level. According to the OIG report, much of the impetus to privatize aspects of the Nebraska child welfare system came from Nebraska's poor performance in the 2002 CFSR. At the time the state failed “to achieve substantive conformity with federal standards on all seven of the measured outcomes.” Interestingly, the OIG report does not follow up with the most recent federal data. This information is worth examining. The following two charts illustrate the most recent CFSR data from both Round 2 and Round 3.

Nebraska Federal Indicators Matrix - Round 3

Review Period: July 2021

NEBRASKA Good Life. Great Mission. <small>NEBRASKA CHILDREN'S SERVICES</small>	Recurrence of Maltreatment	Maltreatment in Care	Youth Entering Care Achieving Permanency in 12 Months	Re-Entry within 12 Months of Discharge	Youth in Care 12 - 23 Months Achieving Permanency in 12 Months	Youth in Care 24+ Months Achieving Permanency in 12 Months	Placement Stability
Target:	≤ 7.9%	≤ 7.00	≥ 43.8%	≤ 8.3%	≥ 46.2%	≥ 36.3%	≤ 4.12
Eastern	3.2%	2.82	32.4%	5.2%	35.4%	34.7%	3.90
Southeast	6.2%	3.19	35.2%	8.6%	56.7%	34.2%	2.52
Central	5.7%	0.67	46.6%	7.4%	59.2%	36.7%	2.82
Northern	1.1%	6.09	50.3%	6.1%	38.8%	38.5%	2.70
Western	8.1%	4.60	46.6%	4.9%	66.7%	53.7%	2.47
State	4.8%	3.23	38.6%	6.1%	45.2%	36.2%	3.09

■ = Passing
■ = Not Passing

Nebraska Federal Indicators Matrix - Round 2

Review Period: July 2021

NEBRASKA Good Life. Great Mission. HEALTHCAREPROFESSIONALS.CO	Absence of Maltreatment Recurrence	Absence of Maltreatment in Foster Care	Timeliness and Permanency of Reunification	Timeliness of Adoption	Permanency for Children in Foster Care	Placement Stability
Federal Target:	94.60%	99.68%	122.6	106.4	121.7	101.5
Eastern	95.14%	99.52%	106.9	111.3	143.0	104.8
Southeast	94.14%	99.79%	114.5	162.3	138.7	115.2
Central	95.45%	99.86%	103.5	157.8	159.3	102.6
Northern	97.03%	99.84%	129.4	123.7	165.3	113.4
Western	95.89%	99.85%	116.5	191.5	172.5	114.6
State	95.27%	99.70%	110.0	137.1	150.9	108.2

■ = Passing the Federal Indicator
■ = Not Passing the Federal Indicator

The data is clear. When DHHS was performing all case management in the state, Nebraska failed all seven benchmarks. Under the most recent data the Eastern Service Area met four out of the six federal standards in Round 2 and three out of the six federal standards of Round 3. The Eastern Service Area currently is performing better under certain benchmarks than regions where DHHS is performing case management. **Empirically, under metrics which are clearly important to the State of Nebraska, the children of the state are doing better than they were prior to privatization.** Also of note, the Eastern Service Area is the largest and most complex of the Service Areas within the State of Nebraska, bringing forth challenges that other Service Services do not need to contend with on a routine basis.

2021 Kids Count Data Book

Every year the Annie E. Casey Foundation gathers, processes, and publishes data on child health and welfare throughout the United States. The Foundation is a national non-profit devoted to developing a brighter future for millions of children and young people with respect to their educational, economic, social and health outcomes. According to the most recent data (accessed via www.aecf.org) Nebraska children are:

Ranked 7th in the nation in overall child well-being;

Ranked 2nd in the nation in Economic well-being;

Ranked 11th in the nation in Education;

Ranked 15th in the nation in Health;

Ranked 12th in the nation in Family and Community.

By way of comparison, in 2014 the Foundation found that Nebraska children were:

Ranked 10th in the nation in overall child well-being;

Ranked 5th in the nation in Economic well-being;

Ranked 9th in the nation in Education;

Ranked 24th in the nation in Health;

Ranked 20th in the nation in Family and Community.

Again, the children of Nebraska are doing better than they were prior to privatization, as measured by real-world data.

Caseload Ratios

The OIG report's primary point of contention with SFM is the failure to meet some of the metrics of the current contract with DHHS. The caseload ratio required by statute has not been met by SFM, just as it has never been met by DHHS. SFM agrees that the best outcomes for children and families are more readily achieved with low caseload ratios. That said, the statutory requirement only considers quantity, not quality of cases. A case manager could have ten very challenging cases that require more time and effort than another case manager must put into dozens of simpler cases. Caseload and workload are two different things. Few empirical studies have examined what the specific characteristics of caseload affect caseworkers' workloads in the child welfare system. Once again, the Eastern Service Area is the most complex and diverse Service Area in the State of Nebraska; with that, casework in the East is not necessarily comparable to casework in the West.

Caseload ratios have consistently been a challenge in the ESA and throughout the child welfare industry as a whole. Turnover is the primary culprit for this problem. The OIG report fails to consider the history of this issue in Nebraska. SFM requests that the following excerpts from OIG Annual Reports be considered in the OIG's final recommendations.

OIG Annual Report 2012-2013

“Caseworker turnover continues to be a problem. The lower number of different caseworkers assigned to a case, the higher rate of success for children and families. There needs to be a dramatic increase in the retention of caseworkers in every area of the state if there is an expectation that outcomes improve for families in the child welfare system.”

“In addition, caseloads are too high. The 2012 Nebraska Legislature enacted caseload requirements into law needing to be met by September 1, 2012. The caseload requirements have yet to be met.”

OIG Annual Report 2013-2014

“Ultimately, excellent caseworker performance is the key to a great CFS system. In order to continue to improve, CFS will need to attract stronger candidates, retain caseworkers longer, train them better, and lower their caseloads. This almost invariably means salaries will need to increase, educational standards will need to rise, and more caseworkers will need to be hired.”

“Any further efforts to reform the system need to focus on attracting, training, supporting, and retaining an excellent workforce.”

“In 2012 the Legislature passed LB 961 which mandated maximum caseload sizes for CFS caseworkers. No service area has yet met the caseload targets in any given month. CFS and NFC seem to treat the statutory caseload maximums as mere suggestions or unobtainable goals rather than mandates. Administrators at CFS and NFC seem to treat the statutory caseload maximums as mere suggestions or unobtainable goals rather than mandates. It is likely that administrators know what steps need to be taken to meet these goals but are being constrained from requesting the needed funding.”

OIG Annual Report 2014-2015

“A skilled and stable child welfare workforce is key to successful outcomes for children and families and the child welfare system as a whole. This is achieved when front line staff have manageable caseloads and workloads, when they are well-trained and educated, and when turnover is minimized. Increasing the professionalization and stability of the child welfare workforce has received significant attention in Nebraska in recent years from the Legislature, DHHS, and others. Efforts to improve the child welfare workforce through better training, education, recruiting, and retention show promise. However, these efforts are being undermined by Nebraska's persistently high caseloads, which have been shown to increase worker turnover

and limit a worker's ability to achieve good outcomes for children and families. In 2012, the Legislature required DHHS caseloads not be greater than 17. At the end of July 2015, the actual caseload for ongoing cases in all DHHS Service Areas was between 20 and 30 families for each worker."

OIG Annual Report 2015-2016

"Numerous OIG investigations this year revealed that high caseloads and workloads were directly contributing to negative outcomes for children and families in the child welfare systems. Staff serving Nebraska's vulnerable children and families have extremely important and demanding jobs. When staff have too much work, corners get cut, things get missed, and errors are made. Although minimum caseload standards for child welfare staff were put into place four years ago, DHHS still cannot meet the threshold established in Nebraska law."

"Given the likely fiscal implications of these recommendations, they are unlikely to be fully implemented without leadership and commitment from those outside the agency, including the Governor and Legislature."

OIG Annual Report 2016-2017

"However, not all areas where the OIG has made recommendations have seen similar progress. Four OIG recommendations, all related to CFS caseload and workload, remain incomplete. Workforce issues remain a major problem for Nebraska's child welfare system."

"The OIG has repeatedly noted in Annual Reports that DHHS has never complied with the minimum caseload standards required by Nebraska law since 2012. These caseload standards were adopted to improve the effectiveness of the child welfare workforce and help stabilize the child welfare system. This year, DHHS continues to be out of compliance with statutorily-mandated caseload standards. With a growing number of children in the system and budget cuts to child welfare operations, CFS will likely not be in compliance with the statutory caseload standards in the near future."

"CFS Administrators have indicated that calculating caseload standards according to statutory requirements is burdensome and they do not find the numbers useful."

OIG Annual Report 2017-2018

"In the past, the OIG has reported on continued caseload and workload issues that have troubled the child welfare system, and the OIG has highlighted that statutory requirements have not been met, but progress has been made over the past year."

"Though DHHS continues to be out of compliance with statutorily required caseload standards, caseload numbers are better than ever."

OIG Annual Report 2018-2019

“A skilled and stable child welfare workforce is key to successful outcomes for children and families and the child welfare system as a whole, especially when more and more is expected of this workforce. This is achieved when front line staff have manageable caseloads and workloads, when they are well-trained and educated, and when turnover is minimized. Increasing the professionalization and stability of the child welfare workforce has received significant attention in Nebraska in recent years from the Legislature, DHHS, and others. Efforts to improve the child welfare workforce through better training, education, recruiting, and retention show promise.

DHHS has been making progress in addressing these recommendations, but the caseload limits set forth in statute have not yet been reached. Efforts by DHHS continue in achieving manageable caseloads and workloads.”

OIG Annual Report 2019-2020

“In 2012, the Legislature passed into law a maximum caseload requirement. High caseloads contribute to worker burnout and turnover and are correlated to poorer outcomes for system involved children and families. Over the past eight years DHHS has improved their efforts to meet the caseload limits set forth in statute. However, caseload issues continued to trouble the Nebraska Child Welfare system during FY 19-20. Historically, DHHS efforts have not resulted in full compliance with the law and improved caseload numbers have been subject to limited sustainability.”

Additional Challenges

SFM requests that the OIG report take into account current labor force issues. Despite a concentrated effort by SFM to attract and retain case managers, this continues to be the central issue that plagues the child welfare system.

DHHS acknowledged its struggles with employee stability in 2018 in its Nebraska Child and Family Services Review Round 3 Program Improvement Plan:

“For the past decade, the child welfare profession has struggled, nationwide, to maintain a trained and skilled workforce dedicated to providing services and support to assist families in need of critical and immediate care and services. On average, workforce turnover within the child welfare profession is more than six times the national average when compared to turnover in other professions. In 2017, State of Nebraska Children and Family Services Specialists (CFSS) experienced a 32 percent annual rate of turnover. That percentage is reflective of employees leaving the agency and those seeking other positions within the agency. High turnover is a prominent and major factor as it relates to our ability to complete accurate and comprehensive assessments timely, engage families and ensure their voice and their choice for how to address the safety threats are heard.”

The historical challenges of workforce stability are being exacerbated by current events. The July 2021 numbers from the Bureau of Labor Statistics reveal a 2.6% unemployment rate in the Omaha region. Employers throughout the region are struggling to fill jobs; businesses have been routinely closing due to this challenge.

SFM also requests that the OIG report examine the impact of the COVID-19 pandemic on its ability to meet the metrics of the contract with DHHS. The OIG has been willing to acknowledge this impact in the past: “Finally, we would be remiss if we didn’t acknowledge the COVID pandemic and the enormous challenges it has brought to families and those that serve them. Hard decisions continue to be made throughout the systems about keeping children and youth safe, while staying connected to family.” (OIG Annual Report 2019-2020). The pandemic’s impact on this world has been immense. Surely, given the world’s pandemic status is still applicable, COVID-19’s impact on SFM’s ability to perform this contract must be considered.

In addition, at the beginning of this contract SFM agreed to DHHS’s request to begin case management ninety days prior to the original planned start date. Admittedly this was short-sighted. While we clearly wanted to be a good partner to the state, beginning three months early was ambitious. SFM was not fully prepared for this early start and has had difficulty in overcoming the challenges that resulted therefrom.

SFM requests the OIG report consider the retainage issue when making its final recommendations. Under the contract for the ESA, DHHS is allowed to retain payments to SFM if certain metrics are not met. DHHS has chosen this option and currently is withholding nearly \$2 million in payments to SFM. This is money that could be used for hiring bonuses, retention bonuses, etc. to help solve this employment conundrum at the heart of this situation.

Finally, SFM’s financial situation has changed since the OIG gathered information for its report. The five “buckets” of financial concern noted in the OIG report have all been resolved. SFM has righted its financial ship and now operates from a position of stability.

SFM asks that the OIG consider the issues identified herein when making its final recommendations. Given the historical and current data, it does not appear that “DHHS is well positioned to do this work” in the ESA. The empirical evidence clearly demonstrates that the health and welfare of Nebraska children have improved over the past few years during the ESA Pilot Project. **Simply put, Saint Francis does not concur with the recommendations of the OIG.**