LB 821

Provides for the Nebraska Children's Commission and the Office of Inspector General of Nebraska's Child Welfare Act

The Legislature finds and declares that:

- The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report on the LR 37 study;
- Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;
- To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:
  - The integration, coordination, and accessibility of all services provided by the state, whether directly or through contracting;
  - Reasonable access to appropriate services statewide, and efficiency in service delivery; and
  - Availability of accurate and complete data and ongoing data analysis to identify important trends and problems as they arise; and
  - As the primary state agency serving children and families, the Department of Health and Human Services must:
    - Exemplify leadership, responsiveness, transparency, and efficiency;
    - Program managers must strive cooperatively to ensure programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

It is the intent of the Legislature that the Nebraska Children's Commission provide a broad restructuring of the goals of the child welfare system and provide a structure for the Commission that maintains the framework of the three branches of government and their respective powers and duties.

The Nebraska Children's Commission is created as a high-level leadership body to:

- Create a system-wide strategic plan for child welfare reform of programs and services;
- Review the operations of the department regarding child welfare and recommend as a part of the strategic plan either the establishment of a new division within the department or a new state agency; and
- Provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare programs.

The Commission voting members shall include:

- The CEO of the department or his/her designee;
- The Director of CFS or his/her designee; and
- Sixteen members appointed by the Governor representing:
  - A director of a child advocacy center;
  - A regional administrator of a behavioral health authority;
  - Community members from each service area (the representative from the eastern service area may be from a Pilot Project lead agency or collaborative member);
  - A prosecuting attorney who practices in juvenile court;
  - A guardian ad litem;
  - A biological parent currently or previously involved in the child welfare system;

    - A foster parent;
    - A CASA volunteer;
    - A Foster Care Advisory Committee member or a member of a local foster care review board;
    - A child welfare services agency that directly provides a wide range of child welfare services, that is not a member of a lead agency collaborative;
    - A young adult previously in foster care; and
    - A representative of a child advocacy organization representing legal and policy issues that include child welfare.
- The Commission non-voting ex officio members shall include:
    - The Chair of the Health and Human Services Committee or a committee member designee;
    - The Chair of the Judiciary Committee or a committee member designee;
    - The Chair of the Appropriations Committee or a committee member designee;
    - Three persons appointed by the State Court Administrator
- Non-voting ex officio members may:
    - Attend meetings and participate in discussions of the commission
    - Provide information to the commission on the policies, programs, and process of each of their respective bodies;
    - Gather information for the commission; and
    - Provide information back to their respective bodies from the commission.
    - The non-voting ex officio members shall not vote on decisions or on the direction of the development of the strategic plan.

The Commission shall

- Meet within sixty days after the effective date of the act
- Select from its members a chairperson and vice-chairperson
- Meet not less than once every three months
- Meetings may be held at any time on the call of the chairperson
- Be within the CEO of the department office
- Hire a staff to carry out the responsibilities of the commission.
- Hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in developing the statewide child welfare strategic plan
- Terminate June 30, 2014, unless continued by the Legislature.

The Nebraska Children's Commission shall work with:

- Service area administrators, the 1184 teams, local foster care review boards, child advocacy centers, the teams created pursuant to the Nebraska Supreme Court's Through the Eyes of the Child Initiative, community stakeholders, and advocates for child welfare services and programs to establish networks in each service area.
- Networks shall permit community collaboration to strengthen the continuum of services available to child welfare agencies and to provide resources for children and juveniles outside the child protection system.
- Each service area shall develop its own unique strategies to be included in the statewide strategic plan.
- The department shall assist in identifying the needs of each service area.

The Commission will create and/or oversee committees as it deems necessary to include, but not be limited to:

- A committee to examine state policy regarding prescription of psychotropic drugs for state wards;
- Title IV-E Demonstration Project Committee;
- Foster Care Reimbursement Rate Committee;
- Members of the committees may be
  - Members of the Commission or
  - May be a non-member of the Commission who is assigned, with the approval of the majority of the Commission, for their subject matter.
- Committee to examine the structure and responsibilities of the Office of Juvenile Services, the committee shall:
  - Review the role and effectiveness of the youth rehabilitation and treatment centers and
  - Make recommendations to the commission on the future role of the youth rehabilitation and treatment centers in the juvenile justice continuum of care.
  - Review the responsibilities of the Administrator of the Office of Juvenile Services, including
    - Oversight of the youth rehabilitation and treatment centers and juvenile parole, and
    - Make recommendations to the commission relating to the future responsibilities of the administrator.

The Commission will work with other child welfare and juvenile entities including, but not limited to:

- State Court Administrator
  - Facilitated Conferencing shall:
    - Be included in strategic plan discussion;
    - Continue to be utilized as determined by the court of jurisdiction;
  - Be funded and contracted through entities at least to the same extent as provided on the effective date of the act
- Douglas County Crossover Youth Practice Model; and
- Nebraska Juvenile Services Delivery Project.

The Nebraska Children's Commission shall create a statewide strategic plan for child welfare program and service reform in Nebraska considering, but not limited to:

- The potential of contracting with private, nonprofit entities as lead agencies in a manner that maximizes the strengths, experience, skills, and continuum of care of the lead agency.
- Any lead-agency contracts entered into or amended after the effective date of this action shall detail how the qualified licensed agencies, as part of their efforts to develop the local capacity for a community-based system of coordinated care, will implement community based care through competitively procuring either:
  - Contracting for specific components of foster care and related services or;
  - Comprehensive services for a defined eligible population of children and families.
- Intentional strategies for high-quality evidence-based prevention and early intervention services;
- Realignment of services areas to coterminous with the judicial districts;
- Identification of the type of information needed for a clear and thorough analysis of progress on child welfare indicators.

- A lead agency after the effective date of this act shall:
    - Have a board of directors of which a least fifty-one percent of the membership is comprised of Nebraska residents who are not employed by the lead agency or a subcontractor of the lead agency;
    - Complete a readiness assessment as developed by the department to determine viability
    - Not more provide more than thirty-five percent of direct services; and
    - Provide accountability for meeting the outcomes and performance standards related to child welfare services established by NE child welfare policy and the federal government.

The Commission shall review the operations regarding child welfare programs and services and recommend as a part of the strategic plan and make a choice regarding the establishment of a new division within the department or the establishment of a new state agency

The department shall, with direction from the Commission, within three months after the effective date of this act, contract with an independent entity specializing in medicaid analysis to conduct a cross-system analysis of current prevention and intervention programs and services provided by the department for the safety, health, and well-being of children and funding sources to:

- Identify resources that could be better allocated for services to at-risk children and juveniles transitioning to home-based and school-based interventions, and
- Provide info to expand services to reduce GF and expand federal funds;

The department shall:

- Fully cooperate with the Commission;
    - Provide info on child including reports, data, programs, process, finances and polices;
- Collaborate regarding the development of a plan for a state wide automated child welfare information system and
- Coordinate and collaborate with the Commission regarding the engagement of an evaluator to provide a child welfare system evaluation.

The Commission shall provide a written report the the Health and Human Services Committee of the Legislature on the status of its activities on or before:

- August 1, 2012, September 15, 2012, and November 1, 2012.
- The statewide strategic plan and written report shall be provided to the HHS Committee and the Governor on or before December 15, 2012.

The Office of Inspector General of Nebraska Child Welfare is created within the Office of Public Counsel.

It is the intent of the Legislature to:

- Establish a full time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;
- Assist in improving operations of the department and the Nebraska child welfare system;
- Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of children; and
- Provide a mechanism for investigation and review to determine if individual complaints and issues of inquiry reveal problems in the system that necessitate legislative action for improved policies and restructuring of the child welfare system.

It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to:

- Interfere with the duties of the Legislative Performance Audit, Legislative Fiscal Analyst, or
- Interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government.

The Inspector General shall:

- Be appointed by the Public Council with approval from the Chairman of the Executive Board and the Chairman of the Health and Human Services Committee of the Legislature.
- Carry out the duties of the office within the amount available by appropriation through the Office of Public Council for the Office of Inspector General.
- Be subject to the control and supervision of the Public Counsel; however, removal of the Inspector General will require approval of the Chairmen of the Executive Board and Chairman of the Health and Human Services Committee of the Legislature.
- Be a person well equipped to analyze problems of law, administration, and public policy and during his employment not be actively involved in partisan affairs.
    - No former of current executive or manager of the department may be appointed Inspector General within five years of service to the department
    - Not later than two years after the date of appointment the Inspector General shall obtain certification as a Certified Inspector General

The Office shall investigate:

- Allegations of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of, or a person under contract with, the department, a private agency, a child care facility, a foster parent, or any other provider of child welfare services or which may provide a basis for discipline pursuant to the Uniform Credentialing Act; and
- Death or serious injury in foster homes, private agencies, child care facilities, and other programs and facilities licensed by, or under contract with, the department and death or serious injury in any case in which services are provided by the department to a child or his or her parents.
- Any case involving an investigation under the Child Protection Act, which case has been open for one year or less.
- The department shall report all cases of death or serious injury to the Office.

Investigations by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection Act.

- Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall:
    - Cooperate with any investigation conducted by the Inspector General;
    - Immediately upon request by the Inspector General, provide copies of all law enforcement reports relevant to the Inspector General's investigation;
        - All law enforcement reports provided pursuant to this section are not public records;
        - Shall not be subject to discovery by any other person or entity; and
        - Except to the extent otherwise provided in the Office of Inspector General of Nebraska

Child Welfare Act the confidentiality of all law enforcement reports shall be maintained
    - Collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation.
- If the Inspector General in conjunction with the Public Counsel determines appropriate, may suspend an investigation by the office until:
    - A criminal investigation or prosecution is completed; or
    - Has proceeded to a point that, in the judgment of the Inspector General, the investigation will not impede or infringe upon the criminal investigation or prosecution.
- Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

The office shall have access to all information and personnel necessary to perform the duties of the office.

- A full investigation conducted by the Office shall consist of retrieval of relevant records through subpoena, compliance with a request of the Office, or voluntary production, review of all relevant records, and interviews of all relevant persons.

Complaints to the office may be made in writing. The Office shall also maintain a toll-free telephone line for complaints. A complaint shall be evaluated to determine if it is within the functions of the Office and whether a full investigation is warranted.

The Office shall not conduct a full investigation of a complaint unless:

- The complaint alleges malfeasance, misconduct, misfeasance, violation of a statute or of rules and regulations of the department, or there is a basis for discipline pursuant to the Uniform Credentialing Act;
- The complaint is against a person within the jurisdiction of the Office; and
- The allegations can be independently verified through investigation.

The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation.

- A complaint for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

All employees of the department, all foster parents, and all owners, operators, managers, supervisors, and employees of private agencies, licensed child care facilities, and other providers of child welfare services shall cooperate with the office re full access to and production of records and information within the confidentiality and protection outlined in the act.

The office may:

- Issue subpoenas, enforceable by action in an appropriate court, to compel any person to appear, give sworn testimony, or produce documentary or other evidence .
- Allowed Counsel to be present; the same privileges and immunities are extended the individuals as in the district court.
- Access all relevant records through subpoena, compliance with a request of the office, and voluntary production.

All investigations conducted by the office shall be conducted in a manner designed to ensure the preservation of evidence for possible use in a criminal prosecution.

- Reports of investigations conducted by the office shall not be distributed beyond the entity that is the subject of the report without the consent of the Inspector General.
- Except when a report is provided to a guardian ad litem or an attorney in the juvenile court pursuant to subsection (2) of section 34 of this act, the office shall redact confidential information before distributing a report of an investigation.
- The office may disclose confidential information to the Chairperson of the Health and Human Services Committee of the Legislature when such disclosure is, in the judgment of the Public Counsel, desirable to keep the chairperson informed of important events, issues, and developments in the Nebraska child welfare system.
- Records and documents obtained or reports produced by the office in the course of an investigation are not public records.

The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend:

- Systemic reform or case-specific action, including a recommendation
  - For discharge or discipline of employees or
  - For sanctions against a foster parent, private agency, licensed child care facility, or other provider of child welfare services.
- All recommendations to pursue discipline shall be in writing and signed by the Inspector General.
- A report of an investigation shall be presented to the director within fifteen days after the report is presented to the Public Counsel.
- Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report.
  - The Inspector General, upon notifying the Public Counsel and the director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in juvenile court in which a case is pending.
- The report shall not be distributed beyond the parties except through the appropriate court procedures to the judge.

Within fifteen days after a report is presented to the director under this act, he or she shall determine whether:

- To accept, reject, or request in writing modification of the recommendations contained in the report.

The Inspector General may consider the director's request for modifications, but is not obligated to accept such request. Such report shall become final upon the decision of the director to accept or reject the recommendations in the report or, if the director requests modifications, within fifteen days after such request or after the Inspector General incorporates such modifications, whichever occurs earlier.

In accordance with the Public Counsel statutes, no report or other work product by the Inspector General shall be reviewable in any court. Neither shall the office be required to testify or produce evidence.

The act does not require the office to investigate all complaints. The Inspector General with input from the Public Counsel shall prioritize activities as necessary to further the intent of the act and assist

legislative oversight of the Nebraska child welfare system.

On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of Legislature and the Governor a summary of reports and investigations made under the Office of Inspector General Act for the preceding year.

- The summaries shall detail recommendations regarding issues that will increase accountability and legislative oversight of the Nebraska Child welfare system and improve operations of the department.
- The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.