

**ONE HUNDRED SECOND LEGISLATURE - SECOND SESSION - 2012**  
**COMMITTEE STATEMENT**  
**LB821**

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**Hearing Date:** Wednesday February 01, 2012  
**Committee On:** Health and Human Services  
**Introducer:** Health and Human Services  
**One Liner:** Create the Nebraska Children's Commission and require legislation to create the Department of Children's Services

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**Roll Call Vote - Final Committee Action:**  
Advanced to General File with amendment(s)

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**Vote Results:**  
**Aye:** 6 Senators Bloomfield, Campbell, Gloor, Howard, Krist, Lambert  
**Nay:**  
**Absent:** 1 Senator Cook  
**Present Not Voting:**

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**Proponents:**

Senator Kathy Campbell  
Carolyn Rooker  
Beth Baxter  
Tom McBride  
Jennifer Carter  
Carol Crumpacker  
Jonah Deppe  
Casie Lanning  
Mary Thunker  
Sarah Swanson

**Representing:**

Health and Human Services Committee  
Voices for Children  
Nebraska Association of Regional Administrators  
Epworth Village  
Nebraska Appleseed  
Child Guidance Center  
NAMI Nebraska  
Self  
Alphabet Soup Kids  
Self

**Opponents:**

Kerry Winterer

**Representing:**

Department of Health and Human Services

**Neutral:**

Pam Oltman

**Representing:**

Self

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**Summary of purpose and/or changes:**

LB 821 creates a state agency to oversee all programs providing services to children and creates the Nebraska Children's Commission

. The Legislature finds that children receiving services from DHHS are:

- o Served through a fragmented, poorly coordinated service delivery model that has potential for duplication of effort, service gaps, cost shifting and disagreement regarding payment responsibilities;
- o Many times this results in a dysfunctional system that is difficult to navigate;
- o State agencies are not pooling resources or leveraging financing to provide a coordinated system of care for behavioral health services resulting in residential placement with high cost and poor outcomes;
- o It is in the best interest of children that a single state agency be created to oversee all child welfare services in the state.

The agency will be child focused, providing integrated, seamless, solution-based interventions that take into account the

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needs of the whole child utilizing innovative evidence-based programs and practices

. The Health and Human Services Committee with the Department of Health and Human Services and the Nebraska Children's Commission shall prepare legislation for introduction in the One Hundred Third Legislature, First Session, 2013, to create the Department of Children's Services. The Department of Children's Services will:

- o Be responsible for child welfare, behavioral health, developmental disabilities, public health, and medicaid as such programs apply to children;
- o Assume responsibilities for duties currently assigned to the Office of Juvenile Services and Children and Family Services of the department.

. The legislation for the agency shall include:

- o That the Division of Medicaid and Long-Term Care in the department shall remain the designated single state agency for purposes of federal regulations as required by federal regulations; however an assistant director of the Division of Medicaid and Long-Term Care regarding children shall serve as an assistant director in the Department of Children's Services and oversee medicaid programs and services relating to children in the agency;

- o A chief executive officer of Department of Children Services shall be appointed by the Governor and will have broad experience with reforming child welfare services in complex systems;

- o The services of a chief financial officer with specialized skills for financial oversight;

- o The services of a chief information officer with specialized skills regarding information management;

- o That the Department of Children Services utilize a system-of-care approach based on the principles of inter-agency collaboration, individualized, strength-based care practices, cultural competence, community-based services and accountability;

- o An independent entity specializing in medicaid analysis conduct a cross-system analysis of current services and funding sources to identify general fund and federal utilization, funds for effective services for at-risk children for home-based and school based intervention, and expanding federal funds to reduce general fund expenditures on such services; and

. The Department of Children Services begin providing services July 1, 2013.

. The Nebraska Children's Commission is created to create a statewide strategic plan for reform of the system of child welfare programs and services in the state. The commission shall:

- o Provide a permanent forum for collaboration among state, local, community, public, and private stakeholders in child welfare programs.

- o Consist of twenty-six members representing the three branches of government and a wide array of public and private stakeholders, including:

- The chief executive officer of the Department of Health and Human Services/Department of Children's Services, chairperson;

- The Governor;

- The Chief Justice of the Nebraska Supreme Court;

- The chairperson of the Judiciary Committee of the Legislature;

- The chairperson of the Health and Human Services Committee of the Legislature;

- A member of the Judiciary, Appropriations, HHS Committees of the Legislature, appointed by the Executive Board of the Legislative Council;

- Three members appointed by the Governor;

- Three members appointed by the Chief Justice of the Nebraska Supreme Court; and

- Twelve members appointed by the executive committee of the commission through an application and selection process, representing stakeholders in the child welfare system and who may include:

- \* Representatives of prosecuting attorneys, preferably those who practice in juvenile court;

- \* Guardians ad litem;

- \* Biological parents currently or previously involved in the child welfare system;

- \* Foster parents;

- \* Court-Appointed Special Advocate volunteers;

- \* Foster Care Review Board members or volunteers;

- \* Children's service providers;

- \* Youth currently or previously in foster care; and

- \* Child advocacy organizations.

. The executive committee of the Nebraska Children's Commission is created. Members of the executive committee

from those listed above include, the chief executive of the Department of Health and Human Services or the Department of Children's Services, the Governor, the Chief Justice, the Chair of HHS Committee and Chair of Judiciary Committee;

- . The executive committee of the Nebraska Children's Commission shall advise the commission regarding the interaction among the three branches of government related to child welfare programs and services. The members of the executive committee shall each represent his or her own branch of government, and no member of the executive committee shall participate in actions that could be deemed to be the exercise of the duties and prerogatives of another branch of government or that improperly delegate the powers and duties of any branch of government to another branch of government.
- . 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 community networks.
  - o Community networks shall permit community collaboration to strengthen the continuum of services available to child welfare agencies and to provide resources for persons outside the child protection system.
  - . Each service area shall develop its own unique strategies to be included in the statewide strategic plan.
  - . The Nebraska Children's Commission shall create a statewide strategic plan for child welfare program and service reform in Nebraska considering, but not be limited to:
    - o The potential utilization of lead agencies:
      - In collaboration with community networks;
      - Maximizes their strengths, experience, skills, and continuum of care; and
      - Eliminates financial incentives that may conflict with the best interests of the children, or result in a reduction of necessary and appropriate services;
      - In addition to geographical lead agency examples from other states,
      - Lead agency models shall include those that focus on evidence-based programs for target populations of children and youth within communities; and
      - Focus on being service coordinators as brokers for coordination of services;
    - o Provision of leadership, by the Commission and the Department of Children's Services, in intentional strategies to support high-quality evidence-based prevention and early intervention services that reduce risk and enhance protection for children;
    - o Realignment of service areas to be coterminous with the judicial districts;
    - o A system wide evaluation by a national entity with expertise in evaluation of child welfare systems;
    - o Identification of the type of information needed for a clear and thorough analysis of progress on child welfare indicators;
  - . The Nebraska Children's Commission Fund is created, it is the intent of the Legislature to appropriate \$100,000 for FY2012-13 from the Nebraska Health Care Cash Fund to the Nebraska Children's Commission Fund,
  - . The department shall implement a process to obtain and utilize data analytics, business intelligence, or similar information technology for accessing real time data in order to foster better decision making with the goal of better outcomes relating to services to children and families.
  - . Appropriate money from the Nebraska Health Care Cash Fund to the Nebraska Children's Commission Fund to carry out the act.
  - . Emergency clause exists.

**Explanation of amendments:**

> The Legislature finds that children receiving services from the Department of Health and Human Services are:

- o Served through a fragmented, poorly coordinated service delivery model that has potential for duplication of effort, service gaps, cost shifting and disagreement regarding payment responsibilities;
- o Many times this results in a dysfunctional system that is difficult to navigate;
- o State agencies are not pooling resources or leveraging financing to provide a coordinated system of care for behavioral health services resulting in residential placement with high cost and poor outcomes;
- o It is vital all three branches of government communicate to ensure coordination and collaboration for the health and well-being of Nebraska's children.
- o It is the intent of the Legislature that in creating the Nebraska Children's Commission to provide a broad restructuring

of the goals of the child welfare system and to provide a structure to 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:
  - o Create a system-wide strategic plan for child welfare reform of programs and services;
  - o 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
  - o Provide a permanent forum for collaboration among state, local, community public and private stakeholders in child welfare programs.
- > The Commission voting members shall include:
  - o The CEO of the department or his/her designee;
  - o The Director of CFS or his/her designee; and
  - o 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;
    - \* 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 Board member or a member of a local foster care review board;
    - \* A children's service provider;
    - \* A youth currently or previously in foster care; and
    - \* A child advocacy organization.
- > The Commission non-voting ex officio members shall include:
  - o The Chair of the Health and Human Services Committee or a committee member designee;
  - o The Chair of the Judiciary Committee or a committee member designee;
  - o The Chair of the Appropriations Committee or a committee member designee;
  - o Three persons appointed by the State Court Administrator
- o 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.
- o The non-voting ex officio members shall not vote on decisions or on the direction of the development of the strategic plan.
- > 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.
  - o 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 committees as it deems necessary to include, but not be limited to:
  - o Examine state policy regarding prescription of psychotropic drugs for state wards;
  - o Title IV-E Demonstration Project Committee;
  - o Foster Care Reimbursement Rate Committee;
- > The commission will work with other child welfare and juvenile entities including, but not limited to:
  - o State Court Administrator Facilitated Conferencing;
  - o Douglas County Crossover Youth Practice Model; and
  - o 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:
  - o The potential of contracting with lead agencies in a manner that maximizes the strengths, experience, skills and continuum of care;
  - \* Contracting for specific components of foster care;
  - \* Services for a defined eligible population of children and families;
  - \* Lead agencies shall have a board of directors fifty one percent who are not employed by the lead agency; complete a readiness assessment; not directly provide more than thirty-five percent of direct services and provide accountability for outcomes.
  - o Intentional strategies for high-quality evidence-based prevention and early intervention services;
  - o Realignment of services areas to coterminous with the judicial districts;
  - o Identification of the type of information needed for a clear and thorough analysis of progress on child welfare indicators.
- > The commission shall contract with an independent entity specializing in medicaid analysis to conduct a cross-system analysis of current services and funding sources.
- > The department shall fully cooperate with the commission; collaborate regarding the development of a plan for a state wide automated child welfare information system and coordinate with the commission regarding the engagement of an evaluator to provide a 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 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:

- o Establish a full time program of investigation and performance review to provide increased accountability and oversight of the Nebraska child welfare system;
- o Assist in improving operations of the department and the Nebraska child welfare system;
- o Provide an independent form of inquiry for concerns regarding the actions of individuals and agencies responsible for the care and protection of children.

Confusion of the roles, responsibilities and accountability structures between individuals, private contractors, and agencies in the current system make it difficult to monitor and oversee the Nebraska child welfare system; and

- o 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 to 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:

- o Be appointed by the Public Council with approval from the Chairman of the Executive Committee and the Chairman of the Health and Human Services Committee of the Legislature.
- o 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.
- o 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 Committee and Chairman of the Health and Human Services Committee of the Legislature.
- o 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.

> The office shall investigate:

- o Allegations of possible misconduct, misfeasance, malfeasance, or violations of statutes or of rules or regulations of the department by an employee of the department, a private agency, a licensed 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

- o Death or serious injury in foster homes, private agencies, child care facilities and programs, and other programs and facilities licensed by 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.
- o Any case involving an investigation under the Child Protection Act, which case has been open for one year or less.
- o The department shall report all cases of death or serious injury to the office.
- > Any investigation conducted by the Inspector General shall be independent of and separate from an investigation pursuant to the Child Protection Act.
- > If the Inspector General, in conjunction with the Public Counsel, determines it appropriate, or upon a request from a law enforcement agency or prosecuting attorney, the Inspector General may suspend an investigation until a criminal investigation or prosecution is completed, or has proceeded to a point that reinstatement of the Inspector General investigation will not impede or infringe upon the criminal investigation or prosecution.
- > The office shall have access to all information and personnel necessary to perform the duties of the office.
  - o 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:
  - o The complaint alleges malfeasance, misconduct, misfeasance, violation of a statute or of rules and regulations of the department, or a basis for discipline pursuant to the Uniform Credentialing Act;
  - o The complaint is against a person within the jurisdiction of the office; and
  - o 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.
- o 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. Counsel is allowed to be present and the same privileges and immunities are extended as in the district court.
- > The office may access all relevant records through subpoena, compliance with a request of the office, and voluntary production.
  - o 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.
  - o 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.
- > The Inspector General's report of an investigation shall be in writing to the Public Counsel and shall contain recommendations. The report may recommend:
  - o 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.
  - o 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 of any confidential information contained in the report.
- o 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.

> A process for appropriate distribution of the report to pertinent individuals is outlined in the amendment.

> 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 and the status of implementation of recommendations and may also include recommendation 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.

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Kathy Campbell, Chairperson