Appropriations Committee October 26, 2018

Rough Draft

STINNER: [00:00:01] And welcome to the Appropriations Committee. My name is John Stinner. I'm from Gering, Legislative District 48. I'd like to start off by having members do self-introductions, starting with Senator Clements.

CLEMENTS: [00:00:14] I'm Rob Clements from Elmwood, District 2, Cass and Sarpy County.

McDONNELL: [00:00:17] Mike McDonnell, LD5, south Omaha.

HILKEMANN: [00:00:23] Robert Hilkemann. Robert Hilkemann, District 4, west Omaha.

STINNER: [00:00:25] John Stinner, Legislative District 48. All of Scotts Bluff County.

WISHART: [00:00:31] Senator Anna Wishart, District 27, west Lincoln.

WATERMEIER: [00:00:32] Dan Watermeier from Syracuse, District 1.

STINNER: [00:00:35] We'll have other senators joining us. I know Senator Bolz is in a meeting. She's probably going to be here shortly. For our hearing this morning on Agency 12, State Treasurer, and Agency 25, Department of Health and Human Services, Program 354 Child Welfare, we will have invited testimony only. For those who have been invited to testify, at each entrance, you will find a cream testifier sheet. I would ask that you fill out one of those sheets and hand it to the committee clerk when you come up to testify. If you have any handouts, please keep those until you come up to testify, then hand them to the page. We will need 12 copies. If you do not have enough copies, raise your hand and the page will make additional copies for you. We ask that you begin your testimony by giving your first and last name and spelling them for the record. As a matter of committee policy, I'd like to remind everybody that the use of cell phones and other electronic devices are not allowed during the public hearing. At this time I would ask for all of us to silence our cell phones and make sure they are on vibrate. I do want to say a few things, is this hearing is informational. Obviously, it came from a report from our State Auditor. Just as a little bit of background information, a few years back, and I think Senator Hadley was still Speaker so probably two years back, I think there was concern, certainly, expressed by the State Auditor that we had no mechanism to follow up-- "we" meaning the Legislature-- to follow up on reports that they would issue. We had some debate about who should-- who should do that and what should be done. So LB151 was actually passed last legislative session and what LB151 did was say, OK, Appropriations, we're going to give you during your budget process the-- the Auditor report so then we could follow up. But additionally, I think based on what I saw in these audit reports, I thought an additional hearing, rather than waiting for the budget time because we're always under a big crunch, is to have-- is to open up these two hearings to inform the committee about what the specifics are, what-- what the background is behind these two reports. One deals with $2.6 million, another deals with $26 million. It catches your eye right away. So I thought for the committee purpose today, hearing, this is meant to be informational. So I may call people, that know that I've asked a couple people to sit in the audience, just to clarify some things. I may call back up the State Auditor or, in this case, the State Treasurer for additional testimony or questions to clarify some points or maybe even rebut some-- some points. So, as I said, this might be a little different than you're accustomed to. But, really, what I-- the end result is to walk out of here with a deeper understanding of what's going on and what we need to do as legislators. So with that, we will begin today's hearing. Treasurer Stenberg.

DON STENBERG: [00:03:48] We do have some handouts.

STINNER: [00:04:50] Good morning.

DON STENBERG: [00:04:51] Good morning. Mr. Chairman, members the committee, for the record, my name is Don Stenberg, D-o-n S-t-e-n-b-e-r-g, and I'm the Nebraska State Treasurer. I want to thank the committee for the invitation to discuss the State Treasurer's authority to open bank accounts on behalf of the state of Nebraska, the legal task for public versus nonpublic funds, and certain related issues. Several Nebraska Attorney General's Opinions clearly established that only the State Treasurer has the authority to open bank accounts on behalf of the state and Nebraska. Copies of two of those Opinions are Exhibits A and B in the materials we've handed out. Let me first address the fee account at the First National Bank of Omaha, which was part of a recent audit. When I talk-- when I took office in January of 2011, there were several reasons which caused me to believe, in good faith, that the fee account at the First National Bank was appropriate. First, the account was set up by my predecessor as State Treasurer as part of the Nebraska Educational Savings Trust program management agreement with First National Bank. The agreement was signed by the State Treasurer, the State Investment Officer, and a representative of First National Bank. All three parties were represented by their own highly competent legal counsel. Presumably had any of those lawyers felt that the account was inappropriate, they would have advised their clients not to sign the agreement. Second, as previously noted, the State Treasurer has the legal authority to open bank accounts for the state of Nebraska and, in fact, is the only person who has the authority to open bank accounts for the state of Nebraska. Third, the statutes make it clear that the Nebraska Educational Savings Trust is and was intended by the Legislature to be a trust. My reading of the statutes was that the trust is made up of three separate funds, all of which are part of the trust, not the property of the state of Nebraska. It appeared to me that my-- my predecessor's position that these were not state funds and, instead, were the property of the trust, and that therefore no appropriation was needed in order to make expenditures from the fee account. That view was supported by a 2013 Attorney General Opinion which ruled that nonpublic funds used to pay University of Nebraska employee medical expenses did not need to be in the state bank account, did not have to be in the state accounting system, and did not have to be invested by the Nebraska Investment Council. In an Opinion dated July 18, 2018, which the State Auditor and I jointly requested, the Attorney General said that the administrative fees charged to plan participants in the Nebraska Educational Savings Trust had to be placed in the Nebraska, excuse me, in the Nebraska Educational Savings Trust expense account even if they were not public funds. While I found that Opinion surprising because it was contrary to the 2013 Opinion of the Attorney General, I promptly transferred all of those funds from the account at First National Bank to the Nebraska Educational Savings Trust expense fund. The Attorney General in that Opinion did not opine on whether the funds were public or nonpublic funds. A copy of that Opinion is included in your materials as Exhibit C. In Opinion 18-007, which was requested by both Senator Stinner and me, the Attorney General agreed with me that the fees charged to the participants in the Nebraska Educational Savings Trust were not public funds. Please see Exhibit D in your materials for that Opinion. In his September 24, 2018, letter to the Attorney General, Senator Stinner said, quote: Of primary concern to the committee is, one, the definition of public funds and, two, the statutory obligation of state entities to operate public funds under the state's accounting system. I agree that all state agency public funds should be in the state's accounting system and I have been actively involved in trying to make that happen for several years. I will discuss some of those efforts a little later in my testimony. The Nebraska Supreme Court has provided the test to be used to determine whether funds held by a public official are public funds or nonpublic funds. I've outlined those tests in two letters to the Attorney General. They are included as Exhibits E and F in your materials. Hopefully, the committee will find that information helpful in considering what are public and nonpublic funds. The basic test for public or nonpublic funds was stated by the Nebraska Supreme Court in the case of Allen versus City of Omaha, 136 Nebraska 620, a 1939 case. The court there stated as follows. Quote: The term "public funds" does not apply to special funds which are collected or voluntarily contributed for the sole benefit of the contributors and of which the state is merely the custodian. Later, in the case of Sherard versus State of Nebraska, 244 Nebraska 743, a 1993 case, Nebraska Supreme Court described the test it was using to determine whether money belongs to the state of Nebraska. The court stated, in part, as follows. Quote: The Second Injury Fund shares all of the relevant characteristics with the police fund at issue in Allen. The Second Injury Fund is not raised by taxation; rather, the Director of Insurance collects annual assessments from each insurance company transacting business in Nebraska. The Second Injury Fund is statutorily segregated in a special trust fund and can only be drawn on for a particular purpose. The Second Injury Fund is held by its custodian, the State Treasurer. Under the reasoning of Allen, the court continues, the Second Injury Fund does not belong to the state and is not state property, unquote. You will note that the Nebraska Educational Savings Trust Fund has each and every one of these characteristics which the state identified in that case. It is not raised by taxation. It is raised by fees levied on the program participants. It is statutorily segregated as a trust fund. And it is held by the State Treasurer as a custodian. Before I turn to my efforts over the years to get public funds into the state accounting system, I want to first take issue with the State Auditor's claim that the NEST Financial Scholars Program does not support the College Savings Program. National polls show an awareness that citizens do not have a great awareness of their state's tax-advantaged college savings plan. So our entire advertising and promotional activity is designed to make Nebraskans aware that we have a College Savings Program and what those benefits are. To do that we have had various scholarship contests; outreach events, like the State Fair, advertising at Husker sports, and the unclaimed property tabloid. All of these activities raise awareness of our College Savings Program but do not effectively communicate the benefits. In 2013, I decided that a great way to communicate both the existence of our College Savings Program and its benefits was for the Nebraska Educational Savings Trust to sponsor a financial literacy program in Nebraska high schools. That program was announced on May 23, 2013, at a news conference in the State Treasurer's Office. Two members of the Nebraska Department of Education staff, Bonnie Sibert and

Harris Payne, attended that news conference and spoke favorably to the news media about the program. The Nebraska NEST Financial Scholars for high school-- for high school students is an on-line, interactive, financial literacy program made up of nine modules. The modules are: financing higher education with college savings plans, savings, banking, payment types, credit scores, renting versus owning, insurance and taxes, consumer protection, and investing. In the 2017-18 school year alone, the Nebraska NEST Financial Scholars Program served over 14,000 students in 244 Nebraska schools. And if you'll refer to your handout, your three-page handout, that's an illustration of the number of hours that students committed to studying financial literacy and the number of schools and students that were involved. To date, under the program, which is now in its sixth year, we have served over 41,000 Nebraska students. And the program has grown tremendously. And if you look on page 2 of your handout, you will see the growth in the number of students that have benefited from the program each year, and there has been very substantial growth. Now as part of this program, each state student is required to take a pretest and a posttest to measure knowledge gained as a result of the financial literacy course. Overall, knowledge gained for high school students as measured by the pre- and posttest was 60 percent, and knowledge gained from the college savings module, which is of most importance here, was also 60 percent. And page 3 of that handout has that information and shows the knowledge gained on each of those modules. In my opinion, the Nebraska NEST Financial Scholars Program is the single most effective way of promoting Nebraska's College Savings Program to high school and grade school students and their families. The facts clearly show that the State Auditor's opinion that the Nebraska NEST Financial Scholars Program does not promote our College Savings Program is simply wrong. During my nearly eight years as State Treasurer, our College Savings Program has grown tremendously. In early 2018, the trust held less than $2.4 billion. Today, nearly eight years later, the trust has grown to over $5 billion and we have added over 20,000 new accounts each and every year for the last six years. Recently, the Nebraska NEST Advisor and NEST 25-- 529 Direct Plan were both ranked in the top five in the nation for investment results by CollegeSavings.com. The NEST 529 Advisor

Plan was ranked among the top five advisor plans for one-, three-, and five-year investment performance. The NEST 529 Direct Plan was ranked third for one-year performance and fifth for three-year performance. The State Auditor and his staff have no experience or expertise into how to successfully market a College Savings Program. Their opinion about it should be disregarded for that reason and because the expression of that opinion constitutes unauthorized performance auditing by the Auditor and his staff. The Legislature has reserved that function to itself. Now I would like to discuss some of my efforts to get funds into the state accounting system, which, as I understand it, is the goal of the Appropriations Committee. In an audit dated March 29, 2012, State Auditor Foley found that the University of Nebraska had established a Group Health Trust Fund outside of the state accounting system in a bank account not authorized by the State Treasurer, and that the funds, then totaling over $100 million as of June 30, 2011, were not invested by the Nebraska Investment Council. The university did this despite the fact that for more than 100 years Nebraska statute 85-129 has provided that the State Treasurer shall be the treasurer of the University of Nebraska, and also for more than 100 years statute 85-128 has provided that the State Treasurer shall be the custodian of all of the funds of the university. Relevant pages of that audit are included in your packet as Exhibit H. I believe it's H. Yes. As a result of that audit, I worked with Senator Krist on a bill, LB138, which would have created a Group Health Trust Fund in the state accounting system and transferred all of the funds from Wells Fargo Bank, which was acting as the trustee, and put the money in a state bank account for investment by the Nebraska Investment Council. A copy of the introducer's statement of intent and a copy of LB138 is included in your materials as Exhibit I. The State Auditor's report issued February 9, 2016, noted that as of June 30, 2015, the University of Nebraska Health Trust Fund had a balance of over $145 million. As a result of LB138, Senator Nordquist, then-Chairman of the Retirement Committee of the Legislature, asked for an Attorney General Opinion. A copy of that Opinion is included as Exhibit J in your materials. The Attorney General Opinion said that the money in the University Health Trust was not public funds and, therefore, did not have to be in a state bank account, did not have to be in the state accounting system, and did not have to be invested by the Nebraska Investment Council. We now know, from a more recent July 18, 2018, Attorney General Opinion involving the Nebraska Educational Savings Trust, that the current Attorney General is of the opinion that the Legislature can require nonpublic funds to be placed in a state bank account, in the state accounting system, and be invested by the Nebraska Investment Council. Therefore, I strongly recommend that the Legislature reintroduce and pass LB138, which will bring well over $100 million into the state bank account, into the state accounting system, and for investment by the Nebraska Investment Council. As I noted earlier, several Attorney General's Opinions make it clear that only the State Treasurer has the authority to open bank accounts for public funds for the state of Nebraska. State Auditor and Jan-- State Auditor Janssen and I were both concerned with the possibility that state agencies were opening bank accounts without the knowledge and approval of the State Treasurer. This would be in violation of both the State Treasurer's constitutional and statutory authority. In July 2015, I signed a form addressed to every bank in the state of Nebraska to confirm any and all accounts in their banks using the state's federal tax identification number. The State Auditor's Office sent out a cover letter making that same request. The result was a November 2, 2015, audit letter that identified dozens of state agencies, let me repeat that, dozens of state agency bank accounts that had been opened without the approval or authorization of the State Treasurer. Following that disclosure, my staff spent literally hundreds of hours working with those state agencies to either close the bank accounts, obtain the Treasurer's approval for the bank accounts, or, if the bank accounts had no public funds, to remove the federal tax ID number from the account. A copy of the letter which was sent, dated July 15, 2015, the audit letter dated November 2, 2015, and some documents showing follow-up by the State Treasurer's Office are in-- are all included as Exhibit K in your materials. In my opinion, the Legislature could require nonpublic funds in the hands of state officials to be invested by the Nebraska Investment Council but could not appropriate those funds for other uses because they are not state funds. My opinion, the Legislature could also require nonpublic funds in the hands of state officials to be in the state accounting system, but that may not be desirable in all circumstances. For example, the Nebraska Educational Savings Trust has over 260,000 accounts. Over two-thirds of those accounts are owned by residents of other states. Over $5 billion is invested in Nebraska Educational Savings Trusts and tens of thousands of contributions are made by plan participants each year. Currently, the recordkeeping for all of that activity is performed by a company by the name of Ascensus under a subcontract, the First National Bank of Omaha, which is the current program manager for the Nebraska Educational Savings Trust. The program fund containing those 260,000 accounts is audited each year by an independent accounting firm, and those reports are filed each year with the Nebraska Legislature. Since all of the money in the program fund is held in trust for individuals for college expenses and is, therefore, not state funds, no real purpose would be served by including those millions of records in the state accounting system. Finally, but very importantly, I want to point out that contrary to the State Auditor's report everything that Treasurer Osborn and I did concerning the Nebraska Educational Savings Trust and the fee account was done in accordance with Nebraska Supreme Court Opinions and an Attorney General Opinion. The Attorney General Opinion and Opinion 18-007, Exhibit D, has confirmed that none of the money in the Nebraska Educational Savings Trust is a public fund. Attorney General Opinion I-13015, Exhibit J, said that nonpublic funds do not have to be in a state bank account, do not have to be in the state accounting system, and do not have to be invested by the Nebraska Investment Council. The fee account outside of the state accounting system are not being invested by the Nebraska Investment-- Investment Council was, therefore, consistent with court decisions and Attorney General Opinion 13015. In July 2018, Attorney General Opinion 18-003 effectively overruled Opinion 13015 and ruled that nonpublic funds in the fee account had to be in the state accounting system and invested by the Nebraska Investment Council. In response to that Opinion, I promptly made those changes. Therefore, in my opinion, the State Auditor should prepare a revised audit report that clearly states that the handling of the fee account by Treasurer Stenberg and Treasurer Osborn was at all times in legal compliance with Nebraska Supreme Court decisions and the Attorney General Opinion that was in effect at the time. Be happy to answer your questions.

STINNER: [00:41:25] OK. I want to, first of all, start the hearing from our side of things in noting your long tenure with the state of Nebraska: 1979 you came in as legal counsel; from '79 to 1983, director of the Governor's Policy Research, or PRO; assistant to the Governor; director of Administrative Services; then from '91 to 2003 you were the Nebraska Attorney General; and now 2011 to current, Treasurer. So we thank you for your service. You've been around a long time.

DON STENBERG: [00:41:40] I have, Senator. I'm starting to feel it, too.

STINNER: [00:41:43] Just for the committee's purpose, and I got-- I've got the legislation out and the legislation basically directs you, State Treasurer, to deposit money received by the Nebraska Educational Savings Trust into three funds. The first one is the College Savings Plan Fund, which I believe is the trust fund that is deposited with Omaha.

DON STENBERG: [00:41:59] The pro-- that's the program fund, yes.

STINNER: [00:41:59] Yeah, that's the program. That's for participants and beneficiaries. That's-- if I send in $1,000, for an example, and you take a fee of 25 basis points out, which we could quarrel about that fee, but in any event we take that 25 base, the rest goes into this fund to be directed by-- by myself as a participant and I'd have to disclose that I have three NEST Funds so--

DON STENBERG: [00:42:16] Right.

STINNER: [00:42:16] -- for grandchildren. The second one is the College Savings Plan Expense Fund and the College Savings Plan Administrative Funds. And it was contemplated in the legislation that these be set up because everybody acknowledges there's-- there's costs associated with that. And those were set up. Is that correct?

DON STENBERG: [00:42:28] Yes.

STINNER: [00:42:28] And actually the administrative fund in an amount authorized by an appropriations from the Legislature shall be utilized to pay administrative operating and maintaining the trust to the extent permitted by 529. Any money in the administrative funds available for investment shall be invested by the State Investment Officer. That's by statute. Was that account set up? Is that the one that's off the balance sheet--

DON STENBERG: [00:42:48] No, the three--

STINNER: [00:42:49] -- or how does this work?

DON STENBERG: [00:42:49] The three statutory funds, one is program fund, which you've already described as being basically the money invested by--

STINNER: [00:42:52] Right.

DON STENBERG: [00:42:52] -- the participants. There is the expense fund, and under the statute that you're referring to is used for two purposes: one, it pays the investment oversight fees to the Nebraska Investment Council, which is now over half a million dollars per year and the Legislature appropriates some amount of funds out of the expense fund into the administrative fund for expenses within the State Treasurer's Office related to the administration of the trust. The fee account was set up by-- as part of the contract that my predecessor signed with First National Bank, the program manager. The-- until this summer that-- the amount of the fee was three basis points, or three one-hundredths of 1 percent. We've reduced that now to two one-hundredths of 1 percent effective this summer. And so money was, as needed, moved from the fee account to the expense account in the state accounting system in amounts large enough to pay the investment fees to the Nebraska Investment Council and to cover the appropriation by the Legislature. Some other portion of that was used to pay other promotional activities for the trust.

STINNER: [00:43:44] OK. How much-- how many dollars was that transfer then?

DON STENBERG: [00:43:46] You mean when we transferred in, in July?

STINNER: [00:43:47] Yes.

DON STENBERG: [00:43:47] Oh, I believe it was about $2.6, $2.7 million.

STINNER: [00:43:48] $2.7 million.

DON STENBERG: [00:43:48] [INAUDIBLE], yeah.

STINNER: [00:43:48] And that, according to the State Auditors, was never invested with the Nebraska Investment Officer.

DON STENBERG: [00:43:50] That's correct. And again, that account was set up in 2010 as part of the agreement that my predecessor had and that I inherited with First National Bank. And the reason it was, I'm told, the reason that it was a noninterest-bearing account, because at the time the contract was entered into federal law prohibited those banks from paying interest on those types of accounts.

STINNER: [00:44:09] OK. So, but you have the duty as Treasurer or he had the duty as Treasurer to deposit excess funds with the State Investment Officer, from what I understand.

DON STENBERG: [00:44:17] Well, yes and no. Let me-- let me-- I don't want to get too far into the legal weeds, Senator, but I would point out that the program management agreement was signed by the then State Investment Officer on behalf of the Nebraska Investment Council. By signing that agreement, the Nebraska Investment Council was agreeing to a no-interest-bearing checking account. It was part of the agreement. It was signed by the legal representative of the Nebraska Investment Council. So, basically, they did approve that account and the way it was handled by signing the agreement that provided for it.

STINNER: [00:44:46] Was there a cap on how much money? For an example, I won't charge you any fees if you keep a minimum balance of $50,000? That's how it normally was put together. But you tell me. Is that the way the contract was put together?

DON STENBERG: [00:44:57] Well, there's no-- that issue is not addressed in-- in the contract. The administrative fee of three basis points at the time that it was set, when we had $2.4 billion in assets, basically just barely covered the fees that were due the Investment Council and the appropriation by the Legislature. As the funds grew, more than doubled, of course that 3 basis points brought in twice as much money, which was more than was needed. Which is why we reduced the fee this summer.

STINNER: [00:45:29] There is a section in this that-- that you've referred to legally. It says the report submitted to the legislative office, transfers may be made from the expense fund to the General Fund at the direction of the Legislature. Do you believe that's-- that is not the case or is it--

DON STENBERG: [00:45:41] I believe that is unconstitutional, Senator, and I-- and the Attorney General declined to address that because the Legislature has not attempted to do that under that, under that statute. But what the Attorney General did say in the most recent Opinion is, is that these are nonpublic funds and that the Attorney General does not believe they could be expended for purposes other than support of the trust.

STINNER: [00:45:57] Let-- for the committee's purpose, public funds, define that.

DON STENBERG: [00:45:59] Well, as I said, I went through a couple of legal--

STINNER: [00:46:01] Right.

DON STENBERG: [00:46:02] -- decisions of the Nebraska Supreme-- Supreme Court that define, that define that.

STINNER: [00:46:05] Now just for my purpose, I define it as funds that normally would go into the General Fund for the-- for the workings or-- or to provide all the agencies with General Funds. Is that predominately it?

DON STENBERG: [00:46:12] I think certainly-- well, it-- it's-- it's-- it's really the source of the funds. If it's for-- clearly taxes, any tax is public funds. Some fees charged by a state agency are not public funds. That's that Second Injury Fund case.

STINNER: [00:46:19] Right.

DON STENBERG: [00:46:19] If you want to do business as an insurance company in Nebraska, you have to pay this fee. It's not considered a tax. Under legislation adopted by the State Legislature, it's there for providing basically insurance to a certain person.

STINNER: [00:46:28] So we have-- we have a section actually in the revenue side the costs-- that says miscellaneous fees and those are all put into the General Fund. Now a special fund, in my estimation, is something along the lines of certainly the NEST Program but say there is a set off program for crops. It's deposited to the commission and then the commission uses it specifically for those purposes.

DON STENBERG: [00:46:46] Uh-huh.

STINNER: [00:46:46] Is that what you define as a special fund as well or--

DON STENBERG: [00:46:48] Well, it could be.

STINNER: [00:46:49] -- the non--

DON STENBERG: [00:46:49] I mean it could be, Senator. The-- you kind of have to look at all the facts: what's the source; you know, what-- the legislation that creates it. In this case the Nebraska Educational Savings Trust is clearly set up as a trust. The-- I guess the point I would make, a couple of points I would make is, one, not all of the money in a state bank account are public funds. From a lay-- without getting into all the legal stuff, although I'll be happy to do, just from a layman's standpoint, you can only spend money that belongs to you. As an individual, you can only spend money that belongs to you. And so the same, in my view, is true of the Legislature. The Legislature can only spend money that belongs to the state of Nebraska. If it belongs to a trust, if it belongs to someone else, the Legislature cannot spend that money. Let me give you one example from the State Treasurer's Office. The State Treasurer collects and distributes child support for the state of Nebraska. It's about $300 million a year and there are about 70-some persons receiving child support. That money is received by the State Treasurer and paid out, in most cases, within 48 hours. It goes into a state bank account. It is clearly not state property. It's clearly not public funds. It is money owed by one parent to another parent. And basically all we do is the bookkeeping to make sure it's been received and transmitted. And so those are clearly nonpublic funds, even though they do go in to a state bank account. So you can't just look at is the money in a state bank account and say, well, that means they're public funds, because there are various types of money in state bank accounts that are not public funds.

STINNER: [00:48:06] But this committee has offset lots and lots of dollars out of commission that were considered nonstate funds for specific purpose, i.e., tourism. We've offset a million dollars, but it took action by the Legislature to do it. And we do that as a matter of due course. One would suggest that if we would have known the $2.6 million was sitting there, first of all, we would ask the question, what's-- what's the purpose of it? You may have contended that it was trust funds and can't be touched.

DON STENBERG: [00:48:30] That's what the Attorney General said.

STINNER: [00:48:30] I-- I-- I might have a different conclusion than that, but-- but I'm not going to even get into that fight. But the fact of the matter is, is we also would have probably asked, if it's a fee, are we charging too much? Because we've obviously covered all of our costs for, what, four, five, six years associated with that. So are we charging too much? Should we pare that back? You've said, yes, because you've already pared it back to 2. I'm concerned about the 200 or the accounts from 2010 that currently that were basically overcharged during that process because we didn't have oversight. The other thing, I thought it was interesting in your confirmation process, that

that's really what this committee meeting is about. We don't have a deterrent at-- in our laws that says everything has to be accounted for. As you believe in the rule of law, I believe in the disciplines of accounting. If I don't know it's there, I can't account for it. I don't know it. I don't-- I don't have all the facts. I can't do a budget. So that's really what this is about. And, you know, when I look at, and you have indicated, that even though the Attorney General says we previously opined that in-- in the order of any state agency to utilize funds, state or nonstate, the Legislature must first make an appropriation. And you're saying that's a new revelation.

DON STENBERG: [00:49:33] I don't agree with that.

STINNER: [00:49:34] OK. The Legislature must appropriate all funds before actual payment can be disbursed. Do you agree with that statement?

DON STENBERG: [00:49:40] Not if they're-- well, if they are public funds, yes. If they are not public funds, no.

STINNER: [00:49:42] OK. Well, I'll set that aside. But we still have to figure out where we go with this, how we have some level of deterrent or something that says everything that a state agency has is reported to you as funds so that you can invest them, and we don't have off balance sheet funds going on. And I think that's really what I'm concerned about. I think the Attorney General has issued several Opinions on the appropriations process and the fact that it should have gone through this committee. As far as public funds, I asked the wrong question. That-- I recognize the fact that it was a fee account and nonstate funds. You were maintaining trust, but I'm suggesting, based on statute, it says that we possibly could have offset those funds. So that would be a matter of, I suppose, judicial proceedings. But in any event, I'll open it up for the committee. I just wanted to make sure that the committee understood how the accounts work and some of the issues that you and I have discussed--

DON STENBERG: [00:50:28] Well, let--

STINNER: [00:50:28] -- and certainly have discussed from the audit side.

DON STENBERG: [00:50:30] Yeah. Let me, if I could just respond [INAUDIBLE]--

STINNER: [00:50:31] Sure.

DON STENBERG: [00:50:31] -- then I'll be happy to take questions. The-- again, it gets back to, yes, the Legislature has complete authority to expend public funds, because they belong to the state of Nebraska. The Legislature can't take money, I mean other than through tax and so on. If I got money in my personal bank account, the Legislature can't direct how I spend that and I don't need an appropriation to spend it. So it gets back to the basic concept that you can spend money that belongs to you. You can't spend money that doesn't belong to you. And the constitutional provision, Article III, Section 22, each Legislature shall make appropriations for the expense of the government. Well, yes, but is the child-- is the money that we receive from parents paying child support and transferring it to the parents who are the recipients of that child support, is that an expense of state government? No. Is the money that we spend within the Treasurer's Office, the administrative expense, is that a government operation? Yes, and we receive appropriation for that. And I think it may be the practice of the Legislature to do appropriations for some of those funds that are nonpublic funds and that does no harm, but that doesn't establish the legal principle of whether it's necessary or not.

STINNER: [00:51:23] I'm not going to argue legal points with you, but thank you. Questions?

Senator Bolz.

BOLZ: [00:51:26] I appreciate that you-- you have a different legal analysis than the Attorney General. I appreciate and understand the two different perspectives. I do have a question though about the practical implications of this account. The Treasurer's report states the State Treasurer's Treasury Management Program director is in charge of ensuring that adequate pledged collateral exists for all state bank accounts. However, she was unaware of the outside bank accounts' existence and was unable to ensure sufficient pledged collateral had been obtained. Since the outside bank account was not listed under the state's federal tax identification number, it is unknown whether FNBO obtained the necessary collateral. So I think as an appropriator, it's-- it's a question that's important for me to raise that-- that funds utilized for any and all kinds of purposes that are under our broad umbrella have appropriate collateral. So I think not being aware and then not being aware leads us to-- to concern about whether or not there was appropriate collateral. So awareness is important. My question is, was the necessary collateral obtained?

DON STENBERG: [00:52:21] Well, we have substantial collateral at First National Bank. They're one of our three banks. Was it taken into account by the Treasury Management?. No, but likely it was covered most of the time. But I would respond, Senator, that I believe that applies to the public funds and not to nonpublic funds.

BOLZ: [00:52:36] So were these funds in the outside bank account at any risk?

DON STENBERG: [00:52:39] Well, if you think First National Bank might go bankrupt, I guess you could say so. But I've never had much concern about that, Senator.

BOLZ: [00:52:44] But it's not unprecedented that a bank has gone bankrupt. I mean it's-- it's a check and balance, right?

DON STENBERG: [00:52:49] Unless they're too big to fail.

BOLZ: [00:52:50] OK. My other comment is I-- I appreciate that in your perspective this work was being done under the umbrella of executing the 529 accounts, but I guess I do want to point out that the way that I read the Treasurer's comments isn't necessarily questioning the management of the account or management of the dollars or how a 529 program runs in a best-case scenario, but rather they seem to be pointing-- well, they are pointing out that the statutes governing-- governing the program make no mention of the financial literacy program. And so I guess I think there's a distinction to be made in regards to the Treasurer's role. I don't know that they're questioning the management. I think they are more questioning the interpretation of the statute. So I guess I want to say that on behalf of what I understand the information from the Treasurer's office to be--

________________________: [00:53:35] From the Auditor's Office?

BOLZ: [00:53:35] Sorry. From the Auditor's Office to be. Thank you. So is it your interpretation of the statute that a financial literacy program falls under the existing statute? You have a difference of opinion from the Auditor about the mention of the financial literacy program in statute?

DON STENBERG: [00:53:40] Yeah, very definitely, Senator. There's a statute, part of the-- part of the College Savings Trust statutes that specifically provides for advertising and promotional expenses. Same statute says you can't use the Treasurer's name when you're doing that. And my view is that the financial literacy program is very clearly advertising and promotion. Anybody that logs on to that program, all 41,000 students and their teachers, have seen the NEST logo. The high school students that have taken the program have been educated on what College Savings Program is, how it works, and their knowledge has increased 60 percent. In some earlier years, it was as much as 67 percent increase in knowledge of College Savings Program. So to me it very clearly fits under advertising and promotion every bit as much as our scholarship program or advertising in the Husker whatever or advertising in our unclaimed property tabloid. So, yes, I think it's very clearly part of what's authorized. It's very clearly, in my opinion, advertising and promotion.

BOLZ: [00:54:29] Uh-huh. Yeah, and I think that very question of the statutory interpretation is one of the reasons that it's really helpful to have the oversight of the Appropriations Committee of accounts like this. The example that comes to my mind, because I've worked on it closely, is we had a marketing line item for the Aging and Disability Resource Centers, to promote that program. If they had also used that for a financial literacy program for seniors, I would have questioned whether or not that was in line with the underlying intent of the program in statute and we would have wanted to look at the statute and the intent of the legislation and the hearing and the debate on the floor. So I guess I wanted to raise it in part because I think I see it a little bit differently and because I think that the Auditor's Office was appropriate in bringing a question of statutory compliance. That's all I have. .

STINNER: [00:55:10] Additional questions? Senator Bolz-- Senator Clements.

CLEMENTS: [00:55:11] Thank you, Mr. Chairman. Thank you, Treasurer Stenberg. You said that the fee account had been transferred and I didn't catch where it was transferred to and what it's used for now.

DON STENBERG: [00:55:18] Well, it went into a different state bank account and was entered into the accounting system. It would-- it-- it's all in the expense fund, which is one of the funds created by the state statute that created the College Savings Plan.

CLEMENTS: [00:55:27] And it will be used for expenses of the NEST Program?

DON STENBERG: [00:55:30] Yes. And according to an Attorney General's Opinion, that's the only thing that it can be used for.

CLEMENTS: [00:55:32] All right. Thank you. One comment: In my bank we have sponsored this EVERFI program--

DON STENBERG: [00:55:34] Yeah.

CLEMENTS: [00:55:34] -- with our local school district.

DON STENBERG: [00:55:35] I remember being at your local school district, and maybe it was your brother that was there representing the bank, but I recall we did a ceremony there.

CLEMENTS: [00:55:41] Yes. Yeah, I was there and we found it successful. Had a grandson that took the program and had good comments about what he learned financially. So I do support the use of this education program in schools.

DON STENBERG: [00:55:52] Thank you, Senator.

STINNER: [00:55:53] Senator Bolz covered a couple of my points, but I do want to go back to the fact that a pledging certificate should have been obtained to secure this, these accounts. It's your duty as fiduciary to make sure that you have safety. Part of the safety aspect is the pledging of securities against these funds. Who knows if the bank was solid? Who knows if they're going to fail? But if it failed it would have been very difficult for you to come to the Appropriations Committee and say, I'm out $2.6 million because I failed to get pledging. So I just wanted to put that on the record. That is, I think, in my estimation, your duty as fiduciary. But that said--

DON STENBERG: [00:56:24] Well, [INAUDIBLE].

STINNER: [00:56:24] Yep.

DON STENBERG: [00:56:24] Fine, but let me respond. So we do every day, we look at collateral, and we have our main bank. U.S. Bank is the largest, has the largest amount of collateral. The other two main banks are Wells Fargo and First National. And then we also have, because state agencies want a local bank and in some of the rural parts of the state we don't have any of the state's major banks, so to the extent those exceed $250,000 insured by the FDIC, we have to have collateral for those. So we do spend a lot of time on that, Senator, and all public funds have been fully collateralized.

STINNER: [00:56:44] Thank you for that. Any additional questions? Senator Wishart.

WISHART: [00:56:46] Well, thank you so much for being here today and explaining this to us. I guess that I'd be interested in knowing if, you know, knowing what you know now in terms of some of the concern that has come about because of this audit, if you were in the shoes of your predecessor in determining whether to make this decision or not, would you in terms of this separate account that's-- ?

DON STENBERG: [00:57:00] Yeah. You know, if I was the Treasurer at the time--

WISHART: [00:57:00] Yeah.

DON STENBERG: [00:57:00] -- when we did the program.

WISHART: [00:57:01] Yeah.

DON STENBERG: [00:57:01] That-- that, I mean that's a good question, Senator. It's kind of hard to answer because it's hard to put yourself in that position.

WISHART: [00:57:04] Yeah.

DON STENBERG: [00:57:04] The closest I can come to that was the creation of the ABLE account.

WISHART: [00:57:07] Uh-huh.

DON STENBERG: [00:57:07] We did not set up a separate outside bank account for the ABLE account and that program management agreement, also with First National Bank. So all I can say is the analogous situation, I did not do that.

WISHART: [00:57:14] OK.

STINNER: [00:57:14] Additional questions? Thank you for your testimony.

DON STENBERG: [00:57:16] You're welcome, Senator. I guess I'll hang around.

STINNER: [00:57:17] Please do. State Auditor, please.

CHARLIE JANSSEN: [00:57:19] Thank you, Senator Stinner,--

STINNER: [00:57:20] Good morning.

CHARLIE JANSSEN: [00:57:20] -- members of the Appropriations Committee. My name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n, of Fremont. I'm the Auditor of Public Accounts. It was my intention only to introduce the people from our office: assistant deputy Phil Olsen, who will be coming up here after me to go through the audit with you, line by line if you like. But we had to kind of pare it down a little bit for your timeliness. And I know several of you have read it already, but for any questions you might have. I would like to say a few things. Certainly, I've worked, in my time in the Auditor's Office, I've worked very well with the Treasurer's Office. We've worked together on multiple issues, not just this one, for clarity in the past. Even back when I was a senator, I worked with, speaking of the ABLE program, I think I put legislation forward at the State Treasurer's request on that. So we've been working together for a long-- a long time and I think I have actually voted for Mr. Stenberg more than I voted for myself over the years in elections, and had many more opportunities to do so. I would like to clarify, and I appreciate Senator Bolz's comments. It was not our opinion that the education program was a bad program that they were doing. We, in fact I think we even noted in the audit that we thought it, while worthy, it should probably be clarified statutorily. Still my opinion I think that program should move forward, if it takes a statutory fix or interpretation, however that is, but I think it's an outstanding program, personally, and I think our auditors had noted that as well. I would agree with the Treasurer that we have no-- "we" being the auditors-- have no idea how to promote a NEST Program. We also have no idea how to build a road; brand cattle, that I'm aware of, some of you may; run a university; or promote tourism across the state of Nebraska. And although it's, for me, it's not for our office to do that, it's for our office to look into programs, seek clarification, and give the information. That's our only goal in doing this. That was our only goal with that. And what we were seeking and this is we saw $2.6 million and we wanted to make sure there was awareness to the Appropriations Committee. And if that's OK, that's OK with us. From an auditing standpoint, we like to have that money. We actually have to see that money to disclose that money for our auditing practices. So that's where we've came to today. I've worked well with Auditor Stenberg on the decisions that-- or the opinions that he's put forward and I think we have teamed up before on opinions in the past, some good, some bad for us. So that's really all I wanted to say. I wanted to introduce deputy auditor Phil Olsen, who was in charge of the audit of the Treasurer's Office. And if you have questions I'll answer them, but certainly-- oh, I would also like to note we do have legal counsel here today, Lance Lambdin, if you have any questions about the Attorney General's Opinions. We also have Mary Avery from our office here today. And in the subsequent hearing we'll have additional people here. Thank you.

STINNER: [00:59:35] Thank you.

BOLZ: [00:59:35] Mr. Auditor,--

CHARLIE JANSSEN: [00:59:35] Oh, I'm sorry.

BOLZ: [00:59:35] -- I do you just--

CHARLIE JANSSEN: [00:59:35] Sorry.

BOLZ: [00:59:35] Thank you for your testimony. I-- I want to raise an issue because this is-- this is the public record for this conversation.

CHARLIE JANSSEN: [00:59:42] Uh-huh.

BOLZ: [00:59:42] And so it is perhaps just a little bit redundant. I ask your patience. But we are creating a public record for future conversations about these kinds of issues. And so I want to put on the record that together, according to your report, the State Auditor and the State Treasurer agreed to seek the Attorney General's Opinion. Correct?

CHARLIE JANSSEN: [00:59:56] That is correct.

BOLZ: [00:59:56] And the Attorney General's Opinion number 18-003 concluded, in part, the State Treasurer does not have the requisite legal authority to establish, maintain, and use the fee account to hold a portion of assessed administrative fees outside the State Treasury and the state of Nebraska's official accounting system. That's your understanding of what the Attorney General is communicating. Correct?

CHARLIE JANSSEN: [01:00:12] Yes, and I believe the Opinion you have in front of you and the Attorney General did not opine about public funds in that Opinion.

BOLZ: [01:00:16] Right. And so I don't need to belabor the conversation but I think, as a state senator, typically we do defer to the Opinion of the Attorney General when one is requested regarding a specific set of circumstances. And I think it's important to say that in this set of circumstances an Opinion was requested and, for the record, that is the conclusion.

CHARLIE JANSSEN: [01:09:56] And from our office's standpoint, we had no rooting interest one way or the other. We just wanted clarity either way.

BOLZ: [01:10:00] Sure. Very good. That's all. Thank you.

CHARLIE JANSSEN: [01:10:01] Thank you, Senator. Is there additional questions? I didn't mean to run off.

STINNER: [01:10:02] Any additional questions? Seeing none, thank you.

CHARLIE JANSSEN: [01:10:03] Thank you.

STINNER: [01:10:03] Morning.

PHILIP OLSEN: [01:10:03] Good morning, Chairman Stinner, members of the Appropriations Committee. My name is Philip Olsen, P-h-i-l-i-p O-l-s-e-n, and as mentioned, I'm the assistant deputy auditor to the Auditor of Public Accounts. This morning I'd like to present you with a brief overview of a few findings from the attestation examination performed by our office of the Nebraska State Treasurer for the period July 1, 2016, through December 31, 2017. The report contains the results of that attestation. It was issued on August 14, 2018. The first issue addressed in the report pertained to an outside bank account maintained by the Treasurer's Office. In 2010, the former State Treasurer, Shane Osborn, entered into an agreement with First National Bank of Omaha for management of the Nebraska Educational Savings Trust. The trust is part of a program created by statute to allow individuals to make tax-deferred contributions to an investment account for the future education of designated beneficiaries. One of the provisions of the program management agreement provided for a fee account at the bank into which administrative fees collected for the trust were deposited. Our report noted a number of concerns with the outside bank account. To start, the account had $2.6 million balance at December 2017 and was under the control of the State Treasurer's Office; however, it was not recorded in the state's accounting system. As a result, the account was not reflected in the state budget or the state comprehensive annual financial report. During the period covered by our attestation, the State Treasurer instructed the bank to pay approximately $173,000 in expenditures from the outside bank account via e-mail requests. None of these expenditures were processed through the state accounting system. The outside bank account was not listed under the state's federal tax identification number, so we were unable to determine whether those funds have the proper amount of collateral as required by statute. Consequently, it is possible that over $2 million in the account may have been undercollateralized and unprotected from potential loss. The outside bank account was also a noninterest-bearing account. During calendar year 2017, had the $2.6 million been deposited instead through the state's accounting system, the money would have been invested by the Nebraska Investment Council and earned an estimated $51,500 in interest in that one year. As mentioned already, the administrative fees deposited into the outside bank account had been collected for the statutorily required purpose of paying costs associated with the trust. However, that money was used in part to fund a separate financial literacy program. The financial literacy program is no doubt a worthy endeavor that stands to benefit numerous Nebraska youth. Nonetheless, we question the use of the administrative fees. We noted that as trust assets increased over the years, so did revenues from the administrative fees that were charged, while annual program costs remained relatively stable. Consequently, we estimated that the State Treasurer had an available surplus of over four years' worth of expenditures. All things being equal, the State Treasurer could reduce dramatically the administrative fees and still have enough money to cover all program expenses for the next four years. Finally, the formal rules and regulations promulgated for the trust were issued on November 19, 2001, and do not appear to have been updated since and, therefore, are outdated. In discussing this matter with the State Treasurer, we found there to be a very legitimate, though quite fundamental, difference of opinion regarding the underlying permissibility of the outside bank account. The Auditor's Office doubted the ste-- the authority of the State Treasurer to open the account and the State Treasurer disagreed, believing that such authority existed. To resolve this disagreement, our offices jointly requested an Opinion from the Attorney General. On July 18, 2018, the Attorney General issued Opinion 18-003 concluding that the Treasurer lacked the authority to have the outside account. The Treasurer took immediate action in response to that Opinion. On July 23, 2018, he transferred approximately $2.7 million, the total amount of funds remaining in the outside bank account, to the Nebraska Educational Savings Trust expense account, not only bringing that money into state accounting system but also ensuring it would be reflected in the state budget and the state comprehensive annual financial report. After doing this, the State Treasurer sought further clarification regarding the status of the Educational Trust administrative fees at issue. Along with Senator Stinner, he requested a second Attorney General's Opinion regarding, among other things, the nature of those administrative fees. On October 11, 2018, the Attorney General responded with Opinion 18-007. Though not revisiting the prior conclusion regarding the lack of authority to maintain the outside bank account, the Attorney General stated that the fees are not clearly public funds. Based upon this information, our report contained a number of recommendations. Since it is our understanding that the administrative fees charged have been reduced in an effort to stop increasing the fund balance, we recommended monitoring the effectiveness of this reduction and implementing further reductions if needed. We also recommended determining whether the administrative fees collected should be used to pay for a separate financial literacy program. Lastly, we recommended that the State Treasurer update the rules and regulations pertaining to the trust and its operations. I had a couple of other findings from the report I was going to go over. If you'd like, at this time I'll continue.

STINNER: [01:14:02] Yes.

PHILIP OLSEN: [01:14:02] Another issue addressed by our attestation report had to do with the late reporting of unclaimed property funds. And this was repor-- was reported as a significant deficiency.

STINNER: [01:14:10] Oh, I would like to--

PHILIP OLSEN: [01:14:10] Yes.

STINNER: [01:14:10] -- just stay with the attest--

PHILIP OLSEN: [01:14:11] OK. OK. Then that concludes my prepared testimony for the bank account. Be happy to take any questions.

STINNER: [01:14:16] Thank you. Senator Wishart.

WISHART: [01:14:17] So the recent-- the most recent Attorney General Opinion, and when was that? When did that just come out?

PHILIP OLSEN: [01:14:20] 18-007?

WISHART: [01:14:20] Yes.

PHILIP OLSEN: [01:14:21] I'm not certain of the date that it was issued.

WISHART: [01:14:23] But this year.

PHILIP OLSEN: [01:14:23] It was this year.

WISHART: [01:14:23] This year.

PHILIP OLSEN: [01:14:23] Yes.

WISHART: [01:14:23] So if the Attorney General's Opinion is that it is not clear that these are public funds, how can the Appropriations Committee have access or have the responsibility of reducing those fees if they're not clearly public funds?

PHILIP OLSEN: [01:14:35] I think, per statute, the Treasurer is authorized to set and establish that fee. There are-- there are over 650 cash funds in the state accounting system, all of which are self-funded through some sort of mechanism such as a fee. Sometimes in statute there is a range given that allows the agency to charge a restricted fee, you know, a minimum and a maximum, or there's is a direct, set, fixed fee. I think in this case it's at the discretion of the Treasurer to set the-- what he feels is appropriate.

WISHART: [01:14:55] So-- so what I'm hearing is we, as members of the Appropriations Committee or the Legislature, it is not at-- under our control to be able to-- to increase or reduce those fees. It is-- it is-- but it can-- the Treasurer can do that.

PHILIP OLSEN: [01:15:05] As the statutes are written, that's correct.

WISHART: [01:15:06] OK.

STINNER: [01:15:06] Additional questions?

BOLZ: [01:15:06] I--

STINNER: [01:15:06] Yes.

BOLZ: [01:15:06] -- just-- just a brief follow-up.

STINNER: [01:15:07] Senator Bolz.

PHILIP OLSEN: [01:15:07] Sure.

BOLZ: [01:15:07] Even if the Treasurer had the authority to set the fee, in this and other circumstances when we're talking about fees for government-related purposes, it would be appropriate for the Appropriations Committee to serve in an oversight capacity. I guess that's a statement. Do you agree or disagree?

PHILIP OLSEN: [01:15:21] I would agree.

BOLZ: [01:15:22] Thank you.

STINNER: [01:15:22] I do have some questions. Noninterest-bearing nature, Treasurer Stenberg said that there was a contract that was entered into that said you keep all this money in a noninterest-bearing account. I would think it was for deferment of fees or passing of fees or whatever. Did you review that contract?

PHILIP OLSEN: [01:15:37] We did receive a copy of it. Yes.

STINNER: [01:15:39] And what does it say? Does it say all monies will be deposited here, left here un-- uninvested? Or is there a cap or is there--

PHILIP OLSEN: [01:15:45] So as the-- as Treasurer Stenberg mentioned, there's a three basis point fee charged for those particular accounts and done so on a monthly basis, a fee was assessed. And all of that three basis point fee went into this outside account.

STINNER: [01:15:54] OK. And--

PHILIP OLSEN: [01:15:55] And then--

STINNER: [01:15:55] -- did the contract-- I think that the Treasurer, if I remember him saying that there was a contract entered into by his predecessor that governs how-- how much or what was going to happen in that account. Was there a conclusion that all the money would be certainly deposited there but was there an amount that they had to keep in the account in order not to be assessed fees?

PHILIP OLSEN: [01:16:15] There-- there was no minimum amount.

STINNER: [01:16:16] No minimum amount,--

PHILIP OLSEN: [01:16:17] For any--

STINNER: [01:16:18] -- no real understanding that if we keep the money we'll defer fees or we'll pass over fees or anything along those lines.

PHILIP OLSEN: [01:16:24] Not that I recall.

STINNER: [01:16:24] OK. So everything that I read in the statute, that the State's Treasurer is responsible to take all excess money and invest it with the State Investment Officer. Would that be a conclusion that you would reach also?

PHILIP OLSEN: [01:16:34] Yes.

STINNER: [01:16:35] OK. And do you have any idea what the rate of return on investments by the State Investment Officer has been since 2010 till now?

PHILIP OLSEN: [01:16:40] I could get that information. It typically runs, I would say, 2 to 3.5 percent.

STINNER: [01:16:42] I think that based on what I-- and I sit on the Retirement Committee, as does Senator Bolz, and they always put out if you invest with us it's about a 6.4 percent return. And the reason I'm asking that is you guys-- you guys-- the State Auditor's Office said that we passed on about $52,000 of investment income. I would say over a period from 2010 to 2018, today, it would have been a lot more if invested with the State Treasurer.

PHILIP OLSEN: [01:16:59] Correct. Yeah.

STINNER: [01:16:59] OK. I don't want to get too far in the weeds with that. Attestation reports: There is a report that you have issued-- "you" meaning the State Auditor's Office-- attesting to the fairness of the financial statements. Do you want to talk a little bit about what an attestation report is supposed to be, how frequently you do it?

PHILIP OLSEN: [01:17:10] Sure. It's a-- it's a type of audit that we perform. It's on a basis of-- more on a cash basis, meaning we take the information directly out of the state's accounting system. We prepare the financial schedule involving all of the funds that are under the purview of the Treasurer. And it is regulated by attestation standards promulgated by the AICPA. We follow those standards along with governmental accounting standards. It is at the discretion of the Auditor as to how frequently those attestations are done.

STINNER: [01:17:29] OK.

PHILIP OLSEN: [01:17:29] It's--

STINNER: [01:17:30] So when was the last time, other than this 2017 report or '18 report?

PHILIP OLSEN: [01:17:34] It was-- it was some number of years ago. I'd have to get the exact date, somewhere around 2012 perhaps.

STINNER: [01:17:38] Is the $2.6 million in this report, is it reflected in the balances?

PHILIP OLSEN: [01:17:41] Correct. So if we find something out of the ordinary and it is above a materiality, a certain threshold, where if it was left out it would misrepresent the financial schedule, we propose an adjustment to be made to the financial so that a reader such as yourselves would have accurate information. And so that was done and that proposed adjustment was accepted by the Treasurer. And so that money is reflected in the report.

STINNER: [01:18:00] OK. Thank you. Senator Wishart.

WISHART: [01:18:01] Yeah. Just following up on that, can you walk me through the process through which you found that there was this fund?

PHILIP OLSEN: [01:18:07] Uh-huh.

WISHART: [01:18:07] And-- and then I'd be also interested in knowing, you know, are there other funds with other agencies that potentially are out there that we don't know about? And what is the process that we should be supporting you on in terms of finding-- finding that out?

PHILIP OLSEN: [01:18:20] Certainly. We are aware that the assessed fee was three basis points. And so just doing a simple calculation on, I think it was about $4.3 billion at the time, we knew approximately how much in fees should be collected and deposited in the accounting system. However, we saw that only $150,000 every quarter was actually deposited, a static $150,000, which we would expect it to change as the-- as the fees are assessed. And so we questioned why only the $150,000, which was much lower than we expected, was deposited and that when it was disclosed that the money first goes into a separate account that's not flowing through the state's accounting system. And so from there we began looking into it.

WISHART: [01:18:46] And then in the second part--

PHILIP OLSEN: [01:18:47] Your second part of your question, are there other accounts, I-- I believe there-- there may be, yes, certainly other accounts. I know, I think there was an attestation recently issued that actually identified one. And so really it's, you know, we'd like to get into these agencies more often. It's a matter of staffing really. And it's a risk-- risk-- we take a risk-based approach in terms of who we go in and audit. We try to get in there every so many years. Or if there's a concern brought by a citizen or by a senator, we could certainly elevate when we would go in and do an audit. And so being in there more routinely I think would certainly allow us to identify possible accounts. And certainly it's on our radar to ask the question: Are you, you know, depositing money that is not flowing through the state's accounting system?

WISHART: [01:19:20] And then lastly, following up on that, I mean from the Treasurer's introduction, I mean it is clear that there was a contract signed; the Investment Council was informed on this. So in 2010 there was a process through which several agencies agreed to this fund being sort of held where it is and separate from our accounting system. Is that correct?

PHILIP OLSEN: [01:19:39] It is--

WISHART: [01:19:39] There is even an Attorney General Opinion.

PHILIP OLSEN: [01:19:39] It is correct that the-- the previous invest-- the State Investment Officer was party to that agreement and signed it. I think there's a one-paragraph statement in the agreement on this, the creation of the account.

WISHART: [01:19:46] OK. So for some of these other accounts that-- that may be out there that are not accounted for with what we see, as Appropriations Committee members, are there similar agreements that we can look to?

PHILIP OLSEN: [01:19:55] That's a good question and I'm not sure how you'd be aware of them other than getting in there and doing an audit or an attestation and asking the question and digging through the records.

WISHART: [01:20:01] OK. Because how would we not, in 2010, with an Attorney General

Opinion, been made aware that this account was-- had been created?

PHILIP OLSEN: [01:20:06] I'm not certain, cannot--

WISHART: [01:20:06] OK.

PHILIP OLSEN: [01:20:06] -- answer that question.

WISHART: [01:20:07] OK.

STINNER: [01:20:07] Additional questions? Seeing none, thank you.

PHILIP OLSEN: [01:20:07] Thank you.

STINNER: [01:20:07] Just as a-- Senator Hilkemann.

HILKEMANN: [01:20:08] I just noted during the-- during the testimony here, I heard the Treasurer had a couple of com-- or I saw him shaking his head a couple of times. I'm wondering if-- if-- if there's a-- do we want to give him a chance to clarify some of these issues?

STINNER: [01:20:17] Mr. Treasurer, please.

DON STENBERG: [01:20:17] Yeah, there's a few things. Number one, concerning investment returns, Senator, the Investment Council invest two different ways. There's the operating investment pool, which is largely invested short term. And the Cash Reserve Fund, the General Fund, most cash funds are invested that way. And the return, as the State Auditor's representative said, it's about

2 to 3 percent in recent years. The 6-something percent you referred to are investments of retirement funds: teachers retirement, State Patrol retirement, the cash balance fund. Those are invested more aggressively, more equities, and the return there is, I thought, a little more than 6 but that may be the right-- the right number. The last time the State Treasurer's Office was in 2010. Had they audited sooner, we would have told them about the account sooner. And I believe it was Senator Wishart who asked about, you know, how do you find out about these other things. That's a great-- a great question. But there are certainly state expenses that get paid that don't go through the Appropriations Committee. One is the Records Board, on which the Attorney General of the state of Nebraska, the State Auditor of the state of Nebraska, the DAS director of the state of Nebraska, the Lieutenant Governor who is a former Auditor of the state of Nebraska. And Nebraska Interactive is paid basically by a fee that they charge for processing transactions. As far as I know, that money never gets into the state bank account, or at least didn't until it was a change in the contract, and simply they deduct that. And my guess is that there are other state contracts that generate revenue that may be similar to that. But as I said, the Attorney General, the State Auditor, former State-- State Auditor are all on that committee and all voted in favor of that contract.

STINNER: [01:21:31] Well, I appreciate your testimony. I appreciate the State Auditor coming in to clarify a lot of this stuff and to educate the committee on just what-- what the-- and I-- I do appreciate all the information. The suggestions or recommendations that you've made to improve our state certainly will be looked at. We'll try to figure out just where we go with-- with this hearing and testimony. So thank you very much. Any additional questions? Thank you.

DON STENBERG: [01:21:48] OK. Thank you.

STINNER: [01:21:48] This concludes the hearing on Agency 12. We have to wait till 10:30 in order to start the next hearing. So, will give us a chance to stretch our legs.

[01:21:54] [BREAK]

STINNER: [01:21:54] To the second half of the Appropriations hearings, Agency 25, Department of Health and Human Services. We have testimony. Director, do you want to start us out? Thank you.

MATTHEW WALLEN: [01:29:49] Good morning, Chairman Stinner and members of the Appropriations Committee. My name is Matthew Wallen, M-a-t-t-h-e-w W-a-l-l-e-n, and I serve as the director of the Division of Children and Family Services within the Nebraska Department of Health and Human Services. Thank you, Mr. Chairman, for inviting me here today to provide information related to the Program 354 attestation which was published by the Auditor of Public Accounts on August 3 of this year. As you know, Program 354, Child Welfare Aid, includes the following subprograms: postadoption guardianship, protection and safety, IV-E foster care, IV-E adoption assistance, IV-E guardianship, subsidized adoption, domestic violence program, education assistance for state wards, and child welfare. Before I address the attestation, I would like to provide the committee with a brief update on progress in our division. In his State of the State Address, the Governor identified an increase in out-of-home placements as a top concern. This committee and the body agreed and invested $55.7 million in additional dollars to address this need. I'm happy to report that the out-of-home placements are down 357 children year over year, which is a 9.9 percent decrease. Keeping children safe is my team's top priority. When delivering services, we first try to serve kids and families in their homes but only if it is safe to do so. Last week I traveled across the state to meet with CFS team members and community partners to roll out a new practice model, Safety Organized Practice, to further enhance child safety. Other agencies that have used this model have improved family engagement and collaboration, allowing them to keep more families together safely. Thank you for your continued support of our work. CFS is committed to serving families and doing so in an effective and fiscally responsible way. The audit reviewed Program 354 from July 1, 2016, to December 31, 2017. While the Program 354 audit identifies some areas in which we can improve, we have actively been addressing issues and have been good stewards of the funds appropriated for the program. This morning I will provide a brief overview, since our responses to each finding are published in the attestation. There are three main points I would like to make today. First, the audit projection-- projects errors and does not identify $26 million of misspending. Second, the APA used the DHHS internal audit team's work product related to PromiseShip, meaning we had already identified the issues and had addressed the issues as the attest-- attestation was released. Finally, the division strives to be fiscally responsible and draw down federal dollars when we can. The APA is an important partner in our work in helping us identify areas for improvement. But I want to be clear that-- to this committee and to taxpayers that the agency has not misspent $26 million. The audit examined payments to child welfare service providers. Of more than 416,000 payments, the audit examined 113, or .027 percent, and handpicked 10 high-utilization cases. The audit questions approximately $45,000, and from that projects an error of $26 million. This projection based on the small sample is not an inventory or finding of actual misspent dollars. In our response to the audit the agency made clear that we disagreed with the editorial decision and methodology used to extrapolate and magnify the audit findings based on a small sample size. Again, to be clear, the audit questions $45,000 in expenditures, not $26 million, as has been widely reported in the media. There are a variety of comments related to PromiseShip in the audit. We've addressed the APA's findings. In fact, our internal audit team had been auditing PromiseShip and we identified issues and worked on remedies. Furthermore, the APA used our findings for their audit, but the attestation does not reflect our efforts. We have reconciled the contract and excluded unallowable and unreasonable expenses. Last session the Governor proposed, and the Legislature approved, an appropriation increase for the child welfare program. The audit shows a misunderstanding of the rationale for the appropriation. The audit claims that the Legislature overappropriated the program based on the increase of children in the state's care. Services are provided based upon the unique needs of the children and families served, and the cost of services has increased. The appropriation also eliminated the-- eliminated the need for annual deficit spending. All these factors must be considered to determine the level of appropriation needed for the child welfare program. The audit does not consider all these factors. The division and the department strive for fiscal responsibility through the effective management of resources and drawing down resources when possible. The APA commented that we didn't fully utilized federal funds for adoption assistance. We aggressively try to draw down every dollar we can, but our federal partner, the ACF, did not provide clear and definitive guidance on Title IV-E funds. In order to not risk other federal funds, we chose to forgo and avoid a potential penalty. Overall, the division-- the division concurred with four of the Auditor's ten findings, and because we are committed to fiscal responsibility and effectively managing resources, we are taking steps to address the findings. We disagreed with the audit findings in some areas due to the assumptions and lack of information the audit team had and made findings on. We have addressed several findings and have ongoing efforts to do so, including comprehensive internal reviews; training; updating policies, procedures, and internal controls; further monitoring and more. The Division of Children and Family Services is committed to serving families and to doing so in an effective and fiscally responsible way with a focus on safety. While the Program 354 audit identifies some areas in which we can improve, we have been actively addressing issues and have been good stewards of the funds appropriated to us. Thank you for the opportunity to testify today and I will answer any questions you may have.

STINNER: [01:36:12] Thank you. Questions? Senator Bolz.

BOLZ: [01:36:17] I've got a few. The first is, do you want to describe some of the steps that you're taking related to the comments about overpayments and errors? And-- and focus, is it a technology and systems issue? Is it a training issue? If it's a training issue, is it on behalf of the state employers or the providers? If it's the providers, how are we getting at that? I just want to make sure that we first address what we can address in terms of the overpayments and errors.

MATTHEW WALLEN: [01:36:51] Sure. We are-- we're doing a combination of those. First of all, we're working with our team on better following the guidance that's already provided to them. But we're also working with some technology side of it as well. For example, on the overpayment side, we now have a-- a system that runs and identifies parameters for particular payments for certain programs. And If any payments fall outside of those parameters, a flag is-- is identified and that report is provided to the people responsible. And then they'll address it and identify what the cause and why-- why it was flagged within our system as being outside of those parameters. So I think that's a-- that's a big component of the overpayment side of it.

BOLZ: [01:37:40] OK. My next question is related to the adequate support for rates. The Auditor identifies that that-- that the justification for the rates being paid is not sufficient. And I know that you're beginning some of that work.

MATTHEW WALLEN: [01:37:57] Uh-huh.

BOLZ: [01:37:57] Can you tell me about your-- your plans to address some of that? But can you also tell me if there's anything that can be done in the short term to get a better handle on what rates should be appropriately paid?

MATTHEW WALLEN: [01:38:08] Well, in-- in the short term what we're-- what we're planning to do for many of these contracts is issue an RFP and the market will respond to us with what rates the market will bear to provide such services. So I think that will be helpful more in the short run. In the longer run, we are planning to do a rate study so we can get a good understanding of where we--

where our rates sit and whether we need to make any increases or decreases to our rates based on the rates study.

BOLZ: [01:38:35] So the rate study is in process now?

MATTHEW WALLEN: [01:38:37] We intend to issue an RFP in January for the rate study.

BOLZ: [01:38:41] When do you-- what is the timeframe for the rate study? How-- how soon will that get completed? What are the-- what's the timeframe that you'll put into the RFP for completion?

MATTHEW WALLEN: [01:38:51] What I anticipate is-- is getting the RFP out on the street at the start of the year and then allowing probably 60 days or so for a response to that, that then going through the contracting process. Ideally, I'd like to have something by early summer.

BOLZ: [01:39:11] OK. I-- I hope so. Those are-- those are complicated--

MATTHEW WALLEN: [01:39:14] Right.

BOLZ: [01:39:15] -- rate analyses. And it-- my limited experience with these sorts of things is that it can take time. And so--

MATTHEW WALLEN: [01:39:23] Uh-huh.

BOLZ: [01:39:24] -- it is of interest to me that we're implementing both short-term and those longer term strategies. So I think maybe there's more conversation to be had about the short term and the market responding. I-- I-- I think that there are-- there's an intersection with the rate adequacy and the Auditor's observation about the financial stability of providers.

MATTHEW WALLEN: [01:39:50] Uh-huh.

BOLZ: [01:39:50] If we have providers with less financial stability who are willing to take greater risks with those rates, I think the market is going to tell an unfair picture about what is really appropriate and what we really want from our child welfare providers. If we-- if we want anything from a child welfare provider, those of us who remember some of the challenges we've had with the-- the nonstate providers, we want stability. And so--

MATTHEW WALLEN: [01:40:15] Yes.

BOLZ: [01:40:15] -- what are we doing in the short term in terms of addressing some of the concerns related to the financial stability of contracted providers?

MATTHEW WALLEN: [01:40:25] You know, I would say we're-- we're working within-- within our budget and we're-- we're looking to identify the appropriate services for the families. We've taken an approach where we're-- we're trying to do much more of an intensive front end approach to families to preserve them and strengthen families on the front end, which generally involves a higher-- higher caliber of service, if you will, opposed to some of the more cheaper services that we have that can go on for a longer period of time. And oftentimes, multiple "cheaple"-- cheaper services that go on for a longer period of time aren't any cheaper in the long run. So-- so really we're working with our-- our provider community to look at having the capacity to provide those much more intensive services on the front end, and I'm referring to the Intensive Family Preservation and the Intensive Family Reunification Services.

BOLZ: [01:41:20] I appreciate that. It's not actually answering my question. My-- my question relates to the financial stability of the contractors and how we're assessing that; what-- what expectations we're setting of the financial stability of those providers rather than what is expected of service provision by those providers.

MATTHEW WALLEN: [01:41:40] I am working with the service providers on really an individual basis and they have been fairly open with me about sharing where their financials are, what their concerns are, working with the department on what our expenditures are and what our forecasts look like and how that compares with how their financial health looks.

BOLZ: [01:41:57] OK. Thank you.

STINNER: [01:42:01] Additional questions? Senator Wishart.

WISHART: [01:42:02] I have a question more about timing in terms of when the audit occurred and-- and whether this snapshot of time was true to actually what you were going to consider as a state expense and what you consider unreasonable expenses. So you have, you note here, we reconciled the contract and excluded unallowable and unreasonable expenses. So can you walk me through just the timing when you were audited and how that worked out with the reconciliation process that you go through?

MATTHEW WALLEN: [01:42:38] We-- we-- we started the reconciliation process with PromiseShip, NFC PromiseShip a few months after that contract had ended, and-- and it took longer than expected to go through the total reconciliation process with that contract. We went in and tested about 800 lines of PromiseShip's expenditure data and went-- really had a collaborative back-and-forth exchange about what we felt was reasonable and what they felt was reasonable; what the federal guidance said. And it was, I would call it, a collaborative exchange back and forth to better understand what the expectation is, what's within the scope of the contract, what's reasonable and what's not reasonable, and what we would expect to pay.

WISHART: [01:43:28] So then-- so walk me through then when you find an expense that's unreasonable. Who then-- what-- where do you-- where does that money come from that pays for expenses from PromiseShip that are not expenses that-- that will be paid for by public dollars, state dollars?

MATTHEW WALLEN: [01:43:49] Those expenses that we identified as not reasonable expenses, PromiseShip worked to-- to pay for those expenses either through other funding sources, other revenue sources, through private fund-raising, through other-- other avenues other than state or federal funds.

WISHART: [01:44:11] OK.

STINNER: [01:44:11] Questions? I have some questions. Number two, now page number two on the audit report caught my eye. Fiscal year 2008 we had 2,683 wards in the Eastern bloc; other DHHS wards, which means everybody outside the Eastern bloc, I presume. Is that correct?

MATTHEW WALLEN: [01:44:34] The Eastern Service Area is Douglas and Sarpy County, and then the other service areas are-- are the rest of the state.

STINNER: [01:44:42] And then there's the rest of us in the rest of the state.

MATTHEW WALLEN: [01:44:42] Yes.

STINNER: [01:44:42] Interestingly, at that time it was $15,586 versus $15,377 that we were spending per ward. That's just taking the number of dollars that you have allocated to Eastern and the number of dollars that you have divided by the number of the wards. OK? So the difference was about 200-and-some bucks. Interestingly, fiscal year 2017 we're spending $63,311,000 in the eastern side, in the two counties, and $61 million in the rest, with 1,960. Now we did show, good news is, we went down from 2,683 to 1,960. We went from 42,600 [SIC-- 4,260] to 2,438. But our spend has gone in the eastern side to $32,301 and, interestingly, the rest of the state gets $25,213. That disparity is huge. Now are you telling me that it costs way more for a ward in the state in two counties in our state and the rest of the state is that much cheaper to run wards? Or why-- why do we have that disparity, period?

MATTHEW WALLEN: [01:46:03] I-- I think that there's-- there's a couple of things going on in these numbers. I think one thing to note when you look at from '08 to '13 to '17, that was a time where we had juvenile justice youth in our system in '08 and in 2013-2014 time frame those juvenile justice youth went over to Probation. So those-- those numbers are no longer in our numbers.

STINNER: [01:46:28] So that-- that was the reason, the decrease of number of wards is--

MATTHEW WALLEN: [01:46:32] That was. That was part, yeah.

STINNER: [01:46:32] OK.

MATTHEW WALLEN: [01:46:33] That was. That was part of it. When you look at the Eastern Service/NFC spend for fiscal year '17, that's including services and administrative expenses and--

because it's all paid for out of Program 354. When you look at other DHHS service areas, that's just services.

STINNER: [01:46:55] Sitting in Scotts Bluff County, knowing the services that are available or the lack of services available, is that the difference, that you have more services, therefore, you have to pay for more money? I-- I don't get. I mean that's a whopping difference: $7,000 is huge.

MATTHEW WALLEN: [01:47:15] No, but what I'm saying is it's not, because one includes administrative expenses and one does not include administrative expenses.

STINNER: [01:47:21] Wouldn't you pro rata the administrative expenses across the border? I'm-- I don't understand what you're talking about, administrative expenses. Is it your administrative expenses or who?

MATTHEW WALLEN: [01:47:30] No. Our-- our-- our contractual payments to NFC coming out--

STINNER: [01:47:37] OK.

MATTHEW WALLEN: [01:47:37] -- of budget 354. So we don't-- we make that payment out of 350-- 354 and it comes out as all service/aid payments. What they use, that that covers their administrative and service provision. So there-- there's a-- there's a little bit more in there because it includes administrative and service in the Eastern Service Area.

STINNER: [01:47:59] But we as a state have increased dollar commitments to this program, substantially increased it, with less people in it because, I mean, when we moved it over, believe me, when we moved it over to judiciary we didn't lose any money. We end up throwing a lot more money, if Appropriations remembers the dollars appropriated to JUSTICE. That number and the increase from $106 million to where we're at today shows a commitment by us. But then when I look at your quality statement, ACF report, seven child-- child and family outcomes were found, excuse me, seven, excuse me, none of the seven child and family outcomes were found to be in substantial conformity. And they go through this list. Actually, I think it's on page 4, not substantially in conformity almost straight down the page. I'm pretty sensitive to this fines idea that we, if we can't comply, we get to give the money back.

MATTHEW WALLEN: [01:49:06] Uh-huh.

STINNER: [01:49:06] Tell me about this and tell me what this all means and how I can quantify because we've thrown enough money at it. The quality should be there, right, and the conformity to whatever is out there should be there.

MATTHEW WALLEN: [01:49:18] Yes.

STINNER: [01:49:19] And it says substantially not in compliance. And to me, that means that we're failing from a quality standpoint.

MATTHEW WALLEN: [01:49:28] We're not-- we're not failing as a-- as a quality standpoint. We have some areas in which we can improve. This is the Children and Family Services Review. This is our round three results. No states pass and no states score much-- much differently or much higher than what the state of Nebraska has scored here. What this means is that we're developing a Program Improvement Plan to address these and increase-- increase our conformity. The CFSR basically involves the ACF coming in and looking at 65 cases and doing a deep dive on those 65 cases and then they come up with their performance measures based on the look at those 65 cases. So it's not different than what the state did in round one. And it's actually better than they did in round two. And we are working towards, you know, we-- we've-- we've-- we've met our requirements for round two and that's what our federal indicators look like when we look at it each month. And we are developing a Program Improvement Plan to address the CFSRs and we will also get into compliance and meet that requirement as well in the future.

STINNER: [01:50:43] So there's a statute out there that addresses each one of these bullet points on here. It's prescribed certain procedures to be done. And we have complied to whatever percentage that it shows there. Is that--

MATTHEW WALLEN: [01:50:57] It's a-- it's a federal requirement and it's-- what the federal government does is they-- they look at 65 cases in every state and see how they're doing. And when you look across, so they have kind of a national-- you're not supposed to compare yourself to other states-- but they have kind of a national benchmark by the 65 cases they look at in every state to see how the different states are doing.

STINNER: [01:51:22] This has been an area of interest. Your back room has been an area of interest of mine since I started as a senator four years ago. And when I look at this report, the volume, the type of errors, it just tells me that, first of all, we don't have adequate staff, secondarily, probably our technology needs to be improved a long way. Because some of these errors, if you're inputting it into a system that basically has all of the rates and you would have an exception, it should bounce out on an exception report and, therefore, you should-- you could either override it or not override it. But you wouldn't have these types of errors. And I would presume that you're going to pursue this $226,000 that you overpaid. And shame on that person for accepting $226,000 and not giving it back, but that's besides the point. Workflows, quality of people, internal controls, technology, this is just shouts of an inadequacy. Tell me what's-- tell me your perspective.

MATTHEW WALLEN: [01:52:31] I would say that we're-- we're making improvements every single day in our system and our processes. The $226,000--

STINNER: [01:52:38] Have you hired anybody? Do you got a CFO? Is the CFO a CPA? Have you hired other quality people? Have you looked at your workflows and the number of people that are handling transactions? Have you flow charted anything out in terms of seeing where you need some internal controls or, you know, somewhere along the line this thing should just send up a-- if I got this in my business, I guarantee you that day my board, I'd be out the door, because this tells me it's-- it's a mess.

MATTHEW WALLEN: [01:53:14] Well,--

STINNER: [01:53:14] So anyhow, that's my statement. It's not a question. I'm sorry.

MATTHEW WALLEN: [01:53:17] OK.

STINNER: [01:53:18] But you can--

MATTHEW WALLEN: [01:53:19] Well, I'd like to address where-- the overpayment that you referenced. That-- that is something. We did turn that over to fraud investigations and they have investigated it. They-- it now goes over to the Douglas County Attorney for prosecution and we've started to-- to collect payment on that and they intend to prosecute, was my understanding. So we are working to-- to recoup back, recoup that. But that is the, then, the additional or the new report that I mentioned earlier where that was a-- that was a rate that was outside of those parameters for a daily rate. And now we get-- we get a read in a printout of, you know, a flagging of if anything is outside of those parameters it's flagged and it's immediately addressed so it doesn't go on at all.

STINNER: [01:54:05] Something else caught my attention: spending authority exceeded. As of June 30, 2017, DHHS had exceeded its appropriate-- appropriated spending authority by at least $8,744,997. DHHS calculated $10,257,000 in the N-FOCUS claims payable needed, but the program only has a million five. In addition, DHHS moved $3,139,000 from Program 34 [SIC-- 354]. So we are moving some funds around to try and pay. Do you want to comment on that or-- ?

MATTHEW WALLEN: [01:54:45] Absolutely. This is where we recognized that there is a structural or historical deficit essentially in this budget and this is where we requested the additional $15 million to have an appropriate amount to encumber at the end of the fiscal year so we wouldn't be paying prior fiscal year expenses in a current fiscal year. So--

STINNER: [01:55:07] Now you say historical. Historical tells me how far back?

MATTHEW WALLEN: [01:55:09] It goes--

STINNER: [01:55:12] How far back have we been lagging payables?

MATTHEW WALLEN: [01:55:14] It goes--

STINNER: [01:55:14] Obviously, before your time but--

MATTHEW WALLEN: [01:55:15] It goes back to, I believe it was, fiscal year '13 when Program 354 was split out from Program 347. When Program 354 was split out or the two programs were divided, it would appear that in the first year of 354 encumbrances were paid out of 347 and, therefore, 354 never had the appropriate encumbrance amount. And we've, as a department, managed through that year over year over year. When we really started getting into the request for last year, we identified that this has been something that's been around for a long time and it's something that we need to address. We requested the $15 million to address it and that was something that the body did not choose to-- to appropriate that amount. What was appropriated was the $24 million for-- for the base for fiscal year '18 to get us through that year, and then the increase of $31 million for fiscal year '19. So we can stay fluent this year, but it did not address that structural or historical shortfall that was identified and requested.

STINNER: [01:56:29] However, we have incru-- increased the appropriations; 2016 we were 144 million, now we're at 197. So we have provided resources for you at least to manage and catch up. What are we doing so much different that causes that increase, because the numbers are about the same, aren't they?

MATTHEW WALLEN: [01:56:53] Well, our-- our-- we-- we've seen historically when you look at '15, '16, '17, we-- we saw some pretty significant increases in the number of people we were serving, the number of children and families that we were serving. And that's where it goes where we have looked really closely at the number of services and what services they were-- they were receiving. During that same time not only were the number of children coming into the system increasing but the number of services each family was receiving was increasing. And that's why we've-- we've-- we've said that we're trying to work on the front end, a much more intensive front end intervention where we're not just going to throw multiple different services at a problem and hope it fixes the problem. We're doing a much better job at mapping what is the underlying root, the-- the risk or the safety concern and identifying what is the appropriate service to address that and-- and matching that service up and providing that service to that family.

STINNER: [01:57:50] OK. Additional questions? Seeing none, thank you.

MATTHEW WALLEN: [01:57:56] All right. Thank you for the opportunity today.

STINNER: [01:57:57] Absolutely. Yeah, I'd ask you to stick around just in case--

MATTHEW WALLEN: [01:58:01] Sure.

STINNER: [01:58:01] -- we need to ask some more questions.

MATTHEW WALLEN: [01:58:02] I'd be happy to do that.

STINNER: [01:58:16] Morning.

CHARLIE JANSSEN: [01:58:17] Morning again. Thank you, Chairman Stinner, members the Appropriations Committee. My name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n, the Auditor of Public Accounts, state of Nebraska. Once again I didn't plan on getting up and doing much more than introducing Krista Davis and Pat Reding, the audit managers for 354. But I'd be remiss to not thank Senator Bolz for bringing this to our attention in the first place. Like we had noted in the previous hearing, we really rely not only on the citizens but also the various senators for your insight that you gain, you glean from your various committees and work that you do which led to this. And-- and the reality: the Auditor's Office, it's not us versus them. We're not against an agency. We just go in, and I think it was brought up by the previous testifier, to ensure people are good stewards of taxpayers' money. And the outcomes are the outcomes. But we want to give them a roadmap, at least when it leads to finances, that, hey, here's some waste here, here's something here that just-- just so you're aware. And I really appreciate, especially through the enactment of LB151, this committee having these hearings. As you've heard me say many times, the frustration in the Auditor's Office is we'll find stuff and then we'll yell stop, and the only other hammer we have is to yell stop louder again. And nothing comes of it. The audit goes away. There might be a headline; it goes away. And we see these practices go over and over again. I don't want to discredit what the agency has to say, but we do share the goal with them as we do with all of our agencies, but especially in this case with child welfare, that they have positive outcomes and the taxpayers are getting their money's worth. So with that, I'll introduce Krista Davis and Pat Reding if it's OK. I'll-- I'll stay and answer questions. I don't want to run off this time.

STINNER: [02:00:11] Senator Wishart. We-- we do have some questions. Senator Wishart.

WISHART: [02:00:17] Well, thank you, Auditor Janssen, and for your team, for your work on this and your due diligence. Do you recommend that because of the extensiveness of issues that you found that-- that you go back in, you know, for a few years to review and audit?. And do you have enough in your budget to do that?

CHARLIE JANSSEN: [02:00:40] Unfortunately, it always comes back to that, in order to do that. It's obviously a very elaborate program. It's certainly something that once we see something we monitor it more often. But there's really-- we've really got to kind of appropriate our funds so we get around. I think it was just noted we haven't been in the State Treasurer's Office since 2010. That predates myself being there. There's several villages that have been-- that we have not been audited in a number of years. So we try to spread our resources while doing also our constitutional duty. So certainly it's on our radar.

WISHART: [02:01:16] So would you recommend that-- that you come in, in the next few years and check back up with this organization?

CHARLIE JANSSEN: [02:01:25] Senator, yes, I would.

WISHART: [02:01:26] OK. And so will you be bringing a budget request if you-- if need be to increase the funds you have so that your staff can do that?

CHARLIE JANSSEN: [02:01:33] I hope to be.

WISHART: [02:01:36] OK.

STINNER: [02:01:37] Questions? I do have a question. On sampling, you talk about random sampling. Is there-- and people always have a problem with taking a sample and then extrapolating that sample. Do you have a methodology for this? Is there a plus or a minus error rate, for an example, in this?

CHARLIE JANSSEN: [02:02:01] Sure. Sure. It's standardized with all of our audits. It's a standard practice. The auditors will go more into that because that's part of their testimony.

STINNER: [02:02:09] OK.

CHARLIE JANSSEN: [02:02:10] I had them explain it to me. I said, wow, that seems like a lot of money. We only look-- that was out of 45. I'd note they weren't handpicked, which has been said over and over. We don't do that. But it was 45 errors out of 113 selected, so the error rate alone is alarming. And from that, it's extrapolated out, which I'll let the auditors go in. Though you're probably aware of it, I'll let the auditors go into it in greater detail.

STINNER: [02:02:33] What would cause you to expand your sample?

CHARLIE JANSSEN: [02:02:37] More funding certainly. When we see something we'll go down. But that, that certainly was the number of the standards that we needed to have to basically back up our findings.

STINNER: [02:02:48] OK.

CHARLIE JANSSEN: [02:02:50] The best way I explain that to people in our business, if you will, it's-- and it's that time of year where you do political polling. You kind of take a look at a sample. There's a plus or minus error in that. Generally they're fairly close within that error rate and that's, that's what we-- so it could have been less than that and it could have been more than that.

STINNER: [02:03:09] So if I take this and say that it could be plus or minus 5 percent and apply that to the 25, 26 million, I could be-- that's a number?

CHARLIE JANSSEN: [02:03:18] You go either way in that. That's what we do.

STINNER: [02:03:23] OK. Thank you. Any additional questions? Seeing none, thank you.

CHARLIE JANSSEN: [02:03:27] Thank you. Thank you again for the hearing.

STINNER: [02:03:46] Good afternoon.

KRISTA DAVIS: [02:03:51] OK. As introduced, I'm Krista Davis, K-r-i-s-t-a D-a-v-i-s. I'm with the Auditor of Public Accounts.

PAT REDING: [02:03:57] And I'm Pat Reding, P-a-t R-e-d-i-n-g.

KRISTA DAVIS: [02:04:01] We put together just a brief summary. We'll just go through that and then any questions we can attempt to address for you. The Auditor of Public Accounts performed an examination of Program 354, Child Welfare Aid, for the period July 1, 2016, through December 31, 2017. A report containing the results of that examination was issued on August 3, 2018, and noted several issues. Upon request by the committee, we have prepared this brief summary of those findings, along with suggestions for improvement. Nebraska Families Collaborative, or NFC, provides case management and services for families and children in the Eastern Service Area encompassing Douglas and Sarpy Counties. In December 2014, a legislative report assessed the privatization of Child Welfare Services in Nebraska. That report concluded that the only real argument for maintaining the privatized structure in Douglas and Sarpy Counties is the need to avoid further disruption to the system. Despite such an observation, no restructuring of the Eastern Service Area occurred. In addition, neither the fiscal year 2017 contract nor the 2017 through 2019 contract with NFC was competitively bid. We noted also that DHHS did not perform adequate monitoring of NFC to ensure expenditures were reasonable and necessary, or that NFC complied with requirements of the contractual agreements. A contract amendment for the fiscal year 2017 period contained a provision requiring DHHS to reimburse NFC's losses above $400,000. Our review of NFC operating costs and expenses noted questioned costs, including payments for fund-raising, lobbying, gifts, entertainment, and meals. In assessing the reasonableness of those charges, we considered whether similar charges would be allowable for state employees. We also tested claims for services and found duplicate claims, overpayments, services not in accordance with contract requirements, and inadequate supporting documentation. Furthermore, services were not entered in N-FOCUS, a subsystem of the state's accounting system as required by the contract between DHHS and NFC. In order for DHHS to be aware of the services provided for a case, NFC must record all services performed. Questioned costs totaled over $12 million for fiscal year-end June 30, 2017. At the conclusion of our field work, DHHS and NFC were still working together to determine an acceptable final payment for that fiscal year '17 contract. Our suggestions for improvement considered the suitability of restructuring the Eastern Service Area as encouraged by the December 2014 legislative report assessing the privatization of child welfare services; issue a request for proposal and creditably bid the Eastern Service Area contract; and increase monitoring procedures to ensure payments were reasonable, proper, and comply with contractual requirements.

PAT REDING: [02:06:55] A second item that we have is on N-FOCUS claims and contract payments for contractors other than NFC. We performed a statistical random sample of 113 N-FOCUS claims. Testing noted 45 of 113 claim lines tested with errors. The projected error to the population was over 25 million. In addition, we selected ten individuals with significant or unusual services, and noted errors in questioned costs totaling nearly $680,000. We also tested contract aid payments to contractors other than NFC and several issues were noted, including the following: Adequate documentation was not available to support payments for services; DHHS did not have adequate procedures to ensure services billed were actually received; payments did not agree to contract terms; payments exceeded service authorizations and referrals; staff providing services did not meet qualifications required in contracts; state funds paid for services provided to children that were eligible for federal programs; federal programs paid for services provided to children that were ineligible for federal programs; DHHS made payments for Eastern Service Area cases that should have been paid instead by NFC; 129 claims were paid more than two years after the services were provided; the rates charged for various child welfare services were not adequately supported; contractors' financial stability and liquidity was not adequately verified prior to entering into a service agreement in accordance with state law; subrecipient and contractual aid payments were not adequately monitored to ensure costs were allowable and contract provisions were met. And our suggestions: improve procedures to ensure payments are accurate and in accordance with contract provisions prior to payment; consider in-housing postpayment review, such as periodic internal audit reviews of significant and unusual transactions; and provide training to DHHS workers and provide-- providers to ensure they understand the documentation required and eligible services and rates allowed.

KRISTA DAVIS: [02:09:07] And lastly, as of June 30, 2017, DHHS had exceeded its appropriated spending authority by over $8.7 million. DHHS calculated over $10 million in claims payable needed; however, the program only had $1.5 million available. In addition, DHHS moved $3 million from Program 354, Child Welfare Aid, to Program to 265, Protection and Safety, without adequate documentation to support the amount moved. General Fund appropriations increased over $31 million from FY '17 to '18, and over $40 million from '17 to 2019. If the fiscal year 2018 increased appropriation was intended in part to fund the $10 million in claims payable, then the funding needed for fiscal year 2019 should be less than fiscal year 2018. Furthermore, using DHHS reports, we noted an increase of only 5.8 percent in the number of state awards from July 2015 to December 2017. Yet DHHS received 34 percent increase in General Fund appropriations for fiscal year 2016 to '18. Need for such a large funding increase appears doubtful in light of not only the comparatively small growth in the number of state awards but also the many examples provided of unsupported and questionable expenditures of program funds. Our suggestions for improvement are to improve procedures to ensure payments are accurate; improve data analytics and consider seeking the assistance of Legislative Performance Audit Committee to better evaluate the reasons for increased program costs in determining how efficiencies and effectiveness could be improved; performing a comparison of costs and wards in the Eastern Service Area to those of other service areas of the state to determine if successful strategies in one area could be applied to other areas to increase cost efficiencies and effectiveness of services; and consulting with other states to explore service delivery strategies to reduce costs and promote better outcomes. That is the end of our testimony.

STINNER: [02:11:09] Thank you. Questions? Senator Bolz.

BOLZ: [02:11:11] Thanks for your hard work on this audit. Could you describe what you would have liked to see in terms of the justification for rate adequacy? What-- what-- what would have met the standards that you were looking for?

PAT REDING: [02:11:24] Well, I would say there would be a broad spectrum of what they could have had. But, basically, for what we are looking at there wasn't really anything other than provider's recommendations or discussions. So we asked for what the rate was or what the documentation was, and we didn't have anything that we could verify those numbers to.

BOLZ: [02:11:53] I see. So you were looking for a justification beyond just the recommendation of the entities providing the services.

PAT REDING: [02:11:59] Contractors, yes. Uh-huh.

BOLZ: [02:12:02] OK.

PAT REDING: [02:12:02] And-- and also then if-- if they were based on those contractors' recommendations, then what was the basis behind that. And again, there was no support.

WISHART: [02:12:12] Can you give a specific example? I'm having trouble kind of following what that would look like. Can you give a specific example, say a child is being-- and family are being provided, you know, therapist services. What would you need to see?

PAT REDING: [02:12:38] OK. Therapists services wasn't--

WISHART: [02:12:40] Oh.

PAT REDING: [02:12:40] -- one of the issues that we had. And--

WISHART: [02:12:42] Yeah.

PAT REDING: [02:12:42] -- you would expect that there could be used, like, Medicaid rates for those,--

WISHART: [02:12:46] Right.

PAT REDING: [02:12:47] -- which that would have been support that we would have been OK with. For example, one of the items was the agency supported foster care, which is the administrative piece of the child-care placing agency. So the amount that goes to the foster care parent wasn't what we were questioning. It was the administrative piece that goes to the agency. So if you have administrative cost to pay the foster parents and assist the foster parents, then what are those administrative costs? And do you have general ledger records or payroll records or something that shows me, yes, these are what your costs are to take care of assisting and paying the foster care parents, not for the payment to the foster care parent because that's a different rate and we didn't have an issue with that.

WISHART: [02:13:49] OK.

BOLZ: [02:13:49] So to sort of-- to sort of elaborate a little bit more, when we've-- when we have other rate methodologies in front of us-- in fact, we just invested money for a whole contractor to do a rate buildup in the developmental disability system. They're looking at Bureau of Labor Statistics data regarding wages. They're looking at administrative cost, General Fund costs, transportation costs, mileage costs. All of those things should be a part of the justification. And so when we're-- even if we're talking about the market driving an appropriate cost, it's one thing to have a lowest bidder, it's another thing to have a justified--

PAT REDING: [02:14:27] Right.

BOLZ: [02:14:29] -- market-based--

PAT REDING: [02:14:29] Yes, that these are what the--

BOLZ: [02:14:32] -- cost.

PAT REDING: [02:14:32] -- market is and these are, like you said, wage index and that type of information.

BOLZ: [02:14:37] My-- my only other question is, could you say a little bit more about your expectations regarding contractor financial stability? And you specifically referenced intersection with statute. Could you just tell me more about what you saw and learned?

PAT REDING: [02:14:52] OK. For contractor stability, the department was sometimes just getting information from the contractor. So hypothetically, if a contractor is not financially stable, if they have problems, you have a bigger risk that the information they're going to give you is not accurate.

And so we would prefer to see outside sources that you can verify, bank statements, independent accountant's report, something that, yes, these are accurate numbers that you are looking at to determine if they're financially stable. Does that answer your question?

BOLZ: [02:15:40] That's-- that's really helpful. Forgive me. I said one last question and I--

PAT REDING: [02:15:44] That's all right.

BOLZ: [02:15:45] -- I do have one more. I-- I-- I think it's-- I think it's our responsibility to recognize that in your report, even-- even though you're serving in an auditing function, there is a note in your official report regarding questioning the safety of children. And I just-- I-- I feel like it's my moral obligation to ask why you put that in there and what you learned.

PAT REDING: [02:16:10] I-- I don't think that I can talk about the specifics of that, but there are compliance Issues, federal requirements, state requirements. And as part of our financial audit we also look at compliance with statutes and federal requirements and those type of issues. And so when we did see that, then that was a compliance issue that we brought forward.

BOLZ: [02:16:41] So your observation about concern for safety of children relates to your understanding of the department's compliance with existing safety-related statutes. And the reason that you can make that observation is because it's related to who is and isn't getting paid for specific safety-related services. Is that-- is that a fair--

PAT REDING: [02:17:03] Yes.

BOLZ: [02:17:04] -- understanding of what you're saying? Thank you.

STINNER: [02:17:09] Questions? I have quite a few. I noticed, and I'm-- I'm fairly kind of fixated on this $25.7 million. You'll just have to excuse me for this. But in your comments here you-- you say that between 7/1 and 12/31/17, 7/1/2016, through N-FOCUS there was 416,000 lines of claims. And of that, you randomly selected 113 claims so that you could audit those. How did you come up with 113?

PAT REDING: [02:17:48] We used a statistical software. I'm not a statistician--

STINNER: [02:17:53] OK.

PAT REDING: [02:17:54] -- but, so we used a software program.

STINNER: [02:17:55] But it's a statistical--

PAT REDING: [02:17:58] It's--

STINNER: [02:17:59] -- statistically valid sample--

PAT REDING: [02:17:59] Yes.

STINNER: [02:18:00] -- technique.

PAT REDING: [02:18:00] Yes. It's a statistical software program developed by HHS OIG. And you put in these are how many items there are, and then it will tell you how many you need to test based on if you like 90 percent confidence, 80 percent confidence, etcetera. So we used 90 percent confidence level to do our 113. And then, as you say, they were random, so we did not select them. We again put them into the program and it tells you these random numbers. Those are the ones you're going to select.

STINNER: [02:18:35] OK. So 90 percent confidence statistically valid model that you are using to make-- to make your assertions.

PAT REDING: [02:18:44] Yes. Yes.

STINNER: [02:18:45] Forty-five of the hundred and thirteen claims tested with errors. That's 40 percent. Obviously, that's way over reasonableness. But let's-- there are critical errors and then there's not so critical errors. I'd say not so critical errors may lack some documentation but the ones-- let's just walk down through. And I'm going to set this 226,000 adoption aside. OK? But expenses paid by DHHS were the responsibility of the service provider which included a hundred-- $1,376,000 for child-care services that the service provider paid for. And then you note $91,552 in home modifications. Are you saying that that's unreasonable? Is that an error? Or just what-- what-- I-- I don't know what you're trying to get to out of that.

PAT REDING: [02:19:40] OK. So for-- for-- for the childcare, the contract with PromiseShip has some things that it's excluding. For example, physical healthcare cost, the contract doesn't pay. If there's a child in the Eastern Service Area that has those, then HHS is going to pay it. But childcare was not one of those items that was specifically excluded. So, therefore, if there was childcare for this child that was in the Eastern Service Area it, should have been part of the NFC contract. And that is where it should have been picked up.

STINNER: [02:20:16] OK. So they just picked it up wrong? I mean what, did we pay it--

PAT REDING: [02:20:20] Well,--

STINNER: [02:20:20] -- wrong or did we--

PAT REDING: [02:20:20] OK.

STINNER: [02:20:20] -- not reimburse it or just-- ?

PAT REDING: [02:20:20] Well, NFC, the contract is-- is not based on-- OK, it's--

KRISTA DAVIS: [02:20:31] Basically, HHS paid the expenses for childcare--

STINNER: [02:20:35] OK.

KRISTA DAVIS: [02:20:35] -- when, according to the contract, because it was not excluded, NFC should have paid for it. It should have been the amount already contracted for. It should not have been an extra expenditure of DHHS.

STINNER: [02:20:48] OK.

PAT REDING: [02:20:49] The NFC contract is a little different with the amendment because they were,--

KRISTA DAVIS: [02:20:53] Right.

PAT REDING: [02:20:53] -- for that period, getting their actual costs. But generally for years before--

KRISTA DAVIS: [02:21:00] Right.

PAT REDING: [02:21:00] -- and current, they're just getting a set amount. So it's not these-- these children have these costs and you're getting these costs reimbursed.

STINNER: [02:21:10] So when DHHS settles with-- settles up at the end of the year, was this a discounted expense? I mean was it subtracted out because it should have been covered under the contract? Or did we actually pay a million three to them that they shouldn't have gotten, or a million two or three--

KRISTA DAVIS: [02:21:27] We--

STINNER: [02:21:27] -- for a service that they--

KRISTA DAVIS: [02:21:28] Yes.

STINNER: [02:21:28] --should have paid for?

KRISTA DAVIS: [02:21:31] HHS paid for that service. We're saying it should have been a service provided by NFC,--

STINNER: [02:21:35] OK.

KRISTA DAVIS: [02:21:35] -- paid for by NFC. It was, to my knowledge, it was not in their final contract reconciliation [INAUDIBLE].

STINNER: [02:21:40] OK. And then on $91,552 should have been covered where?

PAT REDING: [02:21:47] The--

STINNER: [02:21:48] In contract not paid?

PAT REDING: [02:21:49] -- [INAUDIBLE] modification.

KRISTA DAVIS: [02:21:50] Yeah, that's [INAUDIBLE] modification.

PAT REDING: [02:21:50] Right. Those, again, they were paid by HHS and should have been covered by--

KRISTA DAVIS: [02:21:58] NFC.

PAT REDING: [02:22:03] -- NFC.

STINNER: [02:22:03] OK. DHHS paid for unreasonable services, often at unreasonable rates, including a child moved from a higher level of care, $370 per day, to a lower level of care for $902 per day. Tell-- tell me about that. And is-- is-- is this prevalent practice that they have or is this-- ?

PAT REDING: [02:22:27] I-- I don't think that on this one that we can talk about how prevalent it was because this is one of the items we did select, those ten, that we just went these dollars and these rates look unusual; let's take a look at that one closer.

STINNER: [02:22:41] What should have the rate have been then on the lower level of care?

PAT REDING: [02:22:45] We would have expected the lower level of care to be--

STINNER: [02:22:49] Less.

PAT REDING: [02:22:49] -- lower than--

KRISTA DAVIS: [02:22:49] Right.

PAT REDING: [02:22:49] -- where they had been previously.

STINNER: [02:22:52] OK. I'd put all of those in a critical part of this thing. The boyfriend, I, you know, I have no idea about. DHHS authorized and paid 4,600 miles of transportation at $3 per mile, should have been at $1.61. Should there be a program out there that says something should have caught this? I mean it should have bounced out on an exception list or something along those lines, shouldn't it?

PAT REDING: [02:23:28] It-- it-- for the period that we were looking at it would not have. I don't know if the procedures that Matt Wallen talked about that they've implemented since, if that would or not. We haven't looked at anything that they have done since--

STINNER: [02:23:40] OK.

PAT REDING: [02:23:41] -- our report.

STINNER: [02:23:46] Do you think this is a pattern and practice, this paying $3 instead of a $1.61?

PAT REDING: [02:23:55] I think we need-- again, I think we probably need to get back to you on that.

KRISTA DAVIS: [02:24:06] Yeah, I don't know if we-- I mean we just had an instance where we saw--

STINNER: [02:24:07] So this-- this was-- this was one invoice that you pulled,--

KRISTA DAVIS: [02:24:09] Right.

STINNER: [02:24:10] Right?

PAT REDING: [02:24:10] Right.

KRISTA DAVIS: [02:24:10] Right.

STINNER: [02:24:10] And you looked at it. One person, one service provider turned in 4,600 miles, got $3 for it, should have had [INAUDIBLE]--

KRISTA DAVIS: [02:24:17] Right.

STINNER: [02:24:17] -- $1.61. So do we assume then that--

KRISTA DAVIS: [02:24:23] It's unknown to [INAUDIBLE].

STINNER: [02:24:24] -- everybody that submitted mileage was paid at $3 instead of a $1.61?

PAT REDING: [02:24:31] I-- I wouldn't say that.

KRISTA DAVIS: [02:24:32] We tested several transportation costs so this is, you know, one finding that we had out of those. So I-- I don't think we can tell you for sure--

PAT REDING: [02:24:37] Right.

KRISTA DAVIS: [02:24:38] -- on the big spectrum what that would mean--

STINNER: [02:24:41] OK.

PAT REDING: [02:24:41] I would say--

KRISTA DAVIS: [02:24:41] -- for all transportation.

PAT REDING: [02:24:41] -- that-- that I believe this was probably a worker error and that we did see other worker errors. So that would be an issue with again--

STINNER: [02:24:54] But based on what I'm seeing, it is a pattern and practice. So I'll hold off on my conclusions. Contract language allowing rounding up travel times to 15 minutes: the one invoice you looked at, the actual time of travel was 3 hours and 55; however, the provider billed and was paid 11 hours and 45 minutes. You know, I have no idea what the numbers associated with that are, but obviously we overpaid them once again. And how many of these have you looked at and was this a pattern and practice where this was just out of the random sample?

PAT REDING: [02:25:33] I would say that there were several of this type for the travel that we looked at.

STINNER: [02:25:40] OK.

WISHART: [02:25:40] Senator Stinner, can I add something?

STINNER: [02:25:42] Yes.

WISHART: [02:25:46] I mean obviously again there are some significant errors and overpayments. Who-- who is also-- I understand as a Legislature we are ultimately responsible and, you know, we come back and have these hearings and try to address these issues. But we can't wait for an audit to happen when we have-- we're talking about some significant amounts of money that have been misspent. So is DHHS ultimately responsible for overseeing that these expenses were made correctly or not?

PAT REDING: [02:26:32] Yes.

KRISTA DAVIS: [02:26:32] Yes.

WISHART: [02:26:33] Yes. OK.

STINNER: [02:26:35] What I'm trying to do is add credence or credibility to your assertion that, based on your statistically valid sample and extrapolating from that sample, that there is indeed plus or minus 5 percent or whatever the error of statistical error is, even 10 percent, that $26 million is a number that can be supported by statistics.

KRISTA DAVIS: [02:27:00] Yes.

STINNER: [02:27:00] And based on your finding, there are critical errors that are actual dollars and you can add and subtract those up. Now whether they are a pattern and practice, that probably has to go to further review. But your suggestion of Performance Audit coming, taking a look is probably a good suggestion as it relates to procedures and processes. Twenty-six million dollars, we can afford a whole lot of folks. Now that's-- that's one of the things we're trying to discover as a committee. As you start to come back in and ask us again for additional dollars, this will be an area of emphasis I will almost guarantee you. So anyhow, additional questions? Seeing none, thank you.

PAT REDING: [02:27:48] Thank you.

STINNER: [02:28:27] Good morning.

PEG HARRIOTT: [02:28:27] I'm very short here. Good morning. I feel like a little kid sitting down here, and I know I'm not. Good morning, Chairman Stinner and members of the Appropriations Committee. My name is Peg Harriott, P-e-g H-a-r-r-i-o-t-t. I'm speaking this morning on behalf of CAFCON, the Children and Family Coalition of Nebraska. We appreciate the invitation to bring a provider's perspective on the audit performed by the Nebraska State Auditor of DHHS Program 354. The 13 members-- member agencies of CAFCON serve children and families in every legislative district in Nebraska and collectively represent a significant portion of the service provider network-- network in our state. Our members have hundreds of years of collective experience developing and implementing a wide range of prevention and intervention services. CAFCON members hold some of the contracts referred in the audit. As a CAFCON spokesperson, I cannot address specific items where providers were mentioned, nor do I have the facts pertaining to specific cases identified, but I can address four global experiences as they relate to the audit. I also would add that I have a few comments, if you're interested, regarding questions that have been asked that I might have a perspective on. So of the four, first, audits, both external and internal, along with contract monitoring is necessary and important. Providers and DHHS use findings to make program improvements and corrections. The mission statement of the Nebraska Auditor of Public Accounts is reported as the independent, accurate, and timely audit reviews or investigations of the financial operations of Nebraska state and local governments. CAFCON members see regular audits and contract monitoring as necessary but not sufficient to systematically evaluate Nebraska's child welfare system. For example, service expenditures are an end result of input and decision-making authority from a wide range of professionals, including, but not limited to, judges, caseworkers, and case managers. In the absence of a more detailed and complete understanding of these decisions and the unique needs of each child and family, conclusions drawn from the audit may be incomplete. Second, many current rates do not reimburse providers at the full cost of providing the service. Historically, there have not been rate studies conducted by the state to determine how rates should be adjusted to cover the costs required by child welfare contracts. In addition, unfunded mandates have been passed on to providers. In 2008, so that was ten years ago, several provider associations, including CAFCON, commissioned an independent auditor, Seim Johnson, to conduct such a rate study that determined in the previous five years rate increases equaled 4.49 percent, had not kept up with the rising costs of 25.92 percent. As discussed in the CAFCON testimony provided during the LR430 interim study hearing on October 19, a child welfare provider rate study is needed and has been identified by Director Wallen as a priority. This study is a short-term strategy toward developing methodology to ensure rates are fair, reasonable, and accurate. A long-term strategy would be to review the rates each biennium to ensure that they continue to be fair and account for changes that may drive higher costs for services. Thanks to Senator Dubas and the legislative body, LB530 has rates for foster care set by the Foster Care Rate Committee. Rate development includes active participation by foster parents, providers, DHHS, PromiseShip, Probation, and child advocacy organizations. There was a methodology used and available for both foster parents and the agency rate. This resulted in funding being prioritized for foster care in our state. By statute, the committee reviews the rates every four years and advances recommendations. The next rate report will come to the Legislature in 2020. This same committee structure was used to look at shelter and group home rates in 2016, at the request of DHHS and the Children's Commission. A significant discrepancy was found between current rates and the cost of providing service. However, at that time, rates were not addressed or increased. Rate increases have not kept up with inflation, especially in the areas of salaries and health insurance, and do not support the current challenges providers have to recruit and retain skilled work force in Nebraska. Just like in any business, paying a substandard rate for what you need can affect the quality and quantity of what's received and what's available for the state. Third, CAFCON believes that unsupported and unquestionable expenses should be questioned and addressed. Accuracy in billing and payments should be monitored. However, CAFCON advocates for systems and policies that ensure that children and families have access to the right services at the right time for the right duration. At times, this may result in higher than anticipated costs at the earlier stages in the case when a child or family is in crisis, as the more costly intense services is needed rather than less, trying the less costly service first to see if it works. Therefore, more case-level analysis is needed beyond concluding that an increase in the general funding appropriations outpacing state ward population growth is driven by unsupported and questionable expenses. And our fourth comment, safety of children is the primary focus of DHHS, PromiseShip, and every provider agency serving state wards, whether in their family home or in a placement. CAFCON members provide foster care and kinship care, and understand that one of the keys to maintaining safety is to ensure that foster parents and kinship families have timely, effective, 24/7, 365 day-a-year support; that agency staff are well-trained and have reasonable caseloads to provide the support; and that agency supervisors maintain effective oversight of staff provide-- supporting the families. During 2017 and '18, a shift in kinship support from provider agencies to DHHS occurred as part of a strategy to reduce DHHS contract expenses. While no systematic review has been completed, the audit implies this shift may have affected the safety of children in kinship homes. CAFCON would support a comprehensive examination of this issue. So I would invite questions but I have just a couple of comments,--

STINNER: [02:35:24] Please do.

PEG HARRIOTT: [02:35:25] -- if I could,--

STINNER: [02:35:25] Yes.

PEG HARRIOTT: [02:35:25] -- regarding some of the questions that have been asked. As you can tell by my white hair, I've been around for a while. And I would ask that when you're making comparisons, make sure you're making them apples to apples and not apples to oranges. So when you're comparing the eastern region with the rest of the state, make sure, for instance, that you're including service and administrative costs for the eastern region and service and administrative costs for the rest of the region. Or that when you're looking at the outcomes of the-- CSFR rounds, it's a little unfair to say there's been no improvements if you just look at round three, which is the higher level standard, and you don't look at what happened with round two, which was that all the regions made great improvements towards meeting round two. And as any good organization would do, we're going to up those standards constantly to make them better. More recently round three has come out and so, yeah, I know we're not making it but we're going to make them, just like we did make round two. So time comparison is important. The other thing that I would like to share is using the competitive market to set rates causes me some heartburn when I know that, as Senator Bolz mentioned, some organizations that may be close to going under could take some pretty significant risks to get those contracts. So looking at the financial stability of providers before issuing contracts is important. But the state needs to understand what part they might have played in causing some pretty risky organizations that are struggling when the rates haven't been sufficient to cover the costs. And we have lost some good providers over time who went under because of rates that they just couldn't sustain and they didn't have enough fund-raising on the side to make up the difference.

STINNER: [02:37:35] Thank you. Senator Bolz, I know you see has questions.

BOLZ: [02:37:45] I'll do two and-- and leave it at that. The first is I appreciate all of your observations. I particularly appreciate your commentary about the rates and the broader context around those conversations. Can you-- the two questions I want to ask are, first, when-- when the kinship care services were brought in-house and the related budgetary cost savings were incorporated into our budget, some of us had some concerns about that. You reflect some current concerns about that. Can you elaborate a little bit more? Can you give us any further suggestions about what you think needs to be analyzed so that we can appropriately monitor those kinship care services?

PEG HARRIOTT: [02:38:41] Probably the best that I can say is a conversation that happened at CAFCON and that was watching the safety measures that are monitored regularly per each region and seeing if those safety measures had changed any. During the time we had, clearly, one member who identified that safety had gone down in their region after the kinship care provider changes had occurred. That's probably the best that I can, on the fly, provide. CAFCON I'm sure could provide more--

BOLZ: [02:39:17] Uh-huh.

PEG HARRIOTT: [02:39:18] -- if requested.

BOLZ: [02:39:19] My-- my other question relates to-- to your observations about different providers being able to provide different services at different rates based on their-- their structure and organization. I guess, first, the list of CAFCON members, you seem to be all nonprofits. Is that correct or is that incorrect?

PEG HARRIOTT: [02:39:43] That's correct.

BOLZ: [02:39:44] But there-- there is a mix of nonprofit and for profit. There is a mix of providers that maybe have a regional basis to draw from that will--

PEG HARRIOTT: [02:39:56] Yes.

BOLZ: [02:39:57] -- impact their financial stability. There may even be providers that have businesses in other fields and areas that impact their financial stability. And so I'm having a hard time figuring out, without a full and comprehensive kind of rate methodology and look, how-- how we appropriately establish rates in a way that's both fair and gets you where you need to go.

PEG HARRIOTT: [02:40:28] Uh-huh.

BOLZ: [02:40:28] The challenge there is that I don't-- I don't know if we can wait for a full-blown rate methodology. I think we need to figure out how to both appropriately fund in the short term and look to the long-term best practices, rate methodology development. And I-- I will say for context, in my day job that's part of what we're working on in the disability field. It's taken us 18 months and we're not done yet.

PEG HARRIOTT: [02:40:57] Uh-huh.

BOLZ: [02:40:57] So I guess my question-- I promise I have a question in here. My question is how do we set a rate level in the short term that protects best practices services in a fair way and makes sure that we maintain sustainability in our network without the full set of information? What can we do in the short term?

PEG HARRIOTT: [02:41:15] The Foster Care Rate Committee was able to do things more quickly because of having DHHS at the table, Probation at the table, PromiseShip at the table, providers at the table, and bringing quickly information about coming to some agreement regarding how many hours should this take, how many staff should this take, what's the-- the staff-to-client ratio, what's the supervisor-to-staff ratio, what's a fair and equitable indirect cost that needs to be applied? A full, in-depth, long rate study will be wonderful and will significantly help the quality and quantity of availability of services, but in more short term can be done with folks at the table overseeing it that are not just all providers or just not all state. And I think and the Rate Committee has demonstrated the ability to do that when needed, not that I'm volunteering them.

BOLZ: [02:42:23] OK. I appreciate that.

PEG HARRIOTT: [02:42:24] But-- but you can come to some agreement about what should reasonably be expected to be included in rates.

BOLZ: [02:42:33] And maybe there's an off-line conversation to be had to identify those services that are the most out of-- out of balance.

PEG HARRIOTT: [02:42:42] Uh-huh.

BOLZ: [02:42:44] OK. Thank you.

STINNER: [02:42:46] Senator Clements.

CLEMENTS: [02:42:48] Thank you for coming. You mentioned the Foster Care Rate Committee recommendations every four years. Has DHHS adopted the rate-- the recommendations that have been proposed?

PEG HARRIOTT: [02:43:02] DHHS and PromiseShip adopted the rates that were proposed with one small exception, and it's a minor exception, regarding the assessment payment for the first cut-- first couple weeks of service for foster care. But that's a minor detail. The bigger detail is, yes, DHHS adopted those rates. And there was an appropriation by the Legislature to help support the adoption of those rates.

CLEMENTS: [02:43:29] Thank you.

STINNER: [02:43:33] I'm a connect-the-dot type of person. And I'm still looking at the Eastern NFC contract going from $41.8 million and 2,600 participants to $63.3 million, which is $15,686 to $32,000. In other words, a $16,700 increase. And, of course, then I look at the other ones. When you're saying services and administration, of course administration immediately brings bells and whistles to my mind because it--

PEG HARRIOTT: [02:44:12] Right.

STINNER: [02:44:13] -- generally relates to a lot of fat. But anyhow, we're not going to pay for administrative, we're going to pay for services, that-- that type of rhetoric, don't want to get into that. But help me understand what has happened. Because, I mean, we're going to have to bring a budget to the floor. We're going to have to take a look at this. And you're saying we still need provider rate improvements.

PEG HARRIOTT: [02:44:35] Uh-huh.

STINNER: [02:44:35] And so help me understand what happened there. Help me understand the disparity between what your contract is and what we have outside of Douglas and Sarpy County.

PEG HARRIOTT: [02:44:45] That's a lot of-- those are a lot of questions.

STINNER: [02:44:49] Yes, they are and, you know, it might take additional information--

PEG HARRIOTT: [02:44:53] Sure.

STINNER: [02:44:53] -- that you can provide me. But I am really struggling, really struggling with these numbers.

PEG HARRIOTT: [02:44:58] I believe you need to look at-- to make sure that you're looking at the same numbers. Are you looking at before the juvenile justice kids were included or excluded?

You need to look at court and noncourt cases, and who is responsible. And you need to look at, when I say administration, services and PromiseShip's case management work cost and services and DHHS's cost management work. The case management work that's done, whether it's done at PromiseShip or it's done at DHHS, is a critical piece and you can't look at one and not the other. They just need to be apples and apples and then you should ha-- be able to have a fair comparison. But you also need to understand what years are you looking at, because there was a couple of years where numbers did explode and then they have now moderated and started to come back down. And so make sure you're comparing the same year with the same year and the same items with the same items, and then I think what you're trying to do is right on target. But I don't think right now you've got apples and apples.

STINNER: [02:46:16] OK. And I recognize we've moved a lot of kids out of the system to the judicial side. By the way, that exploded as well in terms of cost. So I'm trying to get my arms around what-- what is going on.

PEG HARRIOTT: [02:46:26] Uh-huh.

STINNER: [02:46:26] I need to understand the services, as you've suggested; the number of kids; what this looks like and why. I mean this is driving costs like crazy.

PEG HARRIOTT: [02:46:37] Absolutely.

STINNER: [02:46:37] And so we, somewhere along the line, we've got to get a handle on what we're doing as a state. Now you were inter-- you were saying go from round two to round three. Tell me what round two and three, or--

PEG HARRIOTT: [02:46:53] So those are--

STINNER: [02:46:53] -- that's a qualitative thing?

PEG HARRIOTT: [02:46:53] Well, they've made qualitative things quantitative things. They're federal numbers from the feds regarding what each state should be doing regarding safety, permanency, and well-being of children. Round two was during part of some of this time. And when you're-- you made the comment that what as a state we're doing, we're not meeting round three. Well, no, we're not meeting round three. They're the newest, latest, highest standards. But when we had round two, we weren't meeting those at the beginning either. But each region has made incremental steps to meeting round two. Now we have higher standards-- round three. Yeah, we've got a ways to go and we will go, Providers, DHHS, PromiseShip, Probation, all of us. But you just--

STINNER: [02:47:44] Is that what I'm looking--

PEG HARRIOTT: [02:47:44] -- there's some time there that needs to be--

STINNER: [02:47:47] Is that, when I'm looking at not substantial-- not in substantial conformity, is that what I'm looking at is round three?

PEG HARRIOTT: [02:47:53] You're probably looking at round three.

STINNER: [02:47:55] That's-- that is--

PEG HARRIOTT: [02:47:56] That's the newest standards.

STINNER: [02:47:57] OK. So I should not reach any conclusions--

PEG HARRIOTT: [02:48:02] That there hasn't been improvements.

STINNER: [02:48:02] -- that even though we're throwing a heck of a lot more money at this thing, we're still substandard.

PEG HARRIOTT: [02:48:06] Yeah. Well, the conclusion that we haven't made any-- that the state hasn't been making improvements I think does not recognize that there have been a lot of improvements made.

STINNER: [02:48:15] OK. That's all the questions I have. OK, seeing no--

PEG HARRIOTT: [02:48:21] Thank you.

STINNER: [02:48:21] -- no more questions, Director, would you like to come up and have--

MATTHEW WALLEN: [02:48:28] Certainly.

STINNER: [02:48:29] -- further chance to explain things?

MATTHEW WALLEN: [02:48:31] Sure. I-- guess the first thing-- thank you for the opportunity to come back up.

STINNER: [02:48:43] Yes.

MATTHEW WALLEN: [02:48:44] The first thing that I-- I would like to address, since it was the latest thing that you really discussed with-- with Peg, is when we look at, we talk about round two and round three. We have a dashboard and a scorecard that looks at round three and round two.

STINNER: [02:49:01] OK.

MATTHEW WALLEN: [02:49:01] I know it's really hard to see from there and I'll-- happy to provide these to the committee. Blue is good and red is not good is kind of what you need to know.

STINNER: [02:49:11] OK.

MATTHEW WALLEN: [02:49:12] And in the area, one is our round two and how we've made those improvements, and the other is round three and how we've made those improvements. The red line here on round three and on round two is timely, youth achieving permanency in 12 months. So it's our timeliness to permanency is the one area. But when you look at the recurrence of maltreatment, maltreatment in care, reentry, placement stability, those things, those are all areas in which we've-- we've made significant headway and made significant improvements from round two to round three, and we continue to improve upon that. I know it was addressed but there is a concern of an uptick in recurrence of maltreatment in a particular service area with regard to DHHS taking over and handling some of the relative and kinship homes. And what we've done is looked at, we have seen a slight uptick in occurrence of maltreatment, but it's not the homes that DHHS is managing. It's some of the homes that we-- we work with agencies to manage. And I've-- I've shared that list with those particular agencies and are working with them to address what's going on there. So I know there's that relation between agent, you know, what DHHS homes and those agency homes, but in-- and it would be a normal or an easy connection to say, well, now that you took those homes over you've seen an uptick. We have seen a little bit of an uptick but it's actually not the homes that-- that we're responsible for. So, and I have-- have the details on that. I know when that has occurred. And the challenge with that number is it's like a 12- and 6-month rolling occurrence. So-- so you're picking up things that happened 12 and 6 months ago as well so, which isn't fair to those agencies that-- that's supporting some of that.

STINNER: [02:51:03] Senator Wishart.

WISHART: [02:51:04] Can you follow up from the conversation that Senator Stinner had with our auditors about who is responsible for that child-care payment?

MATTHEW WALLEN: [02:51:14] Yes. And it was identified in the audit because it's not excluded in the PromiseShip contract. But children that are eligible for child-care subsidy pays for child-care, just like food stamps and other things. It's-- that exclusion is not-- all those public benefit exclusions are not written into the contract. But we certainly don't expect PromiseShip to pay when a child is child-care utilizing and child-care eligible for child-care subsidy payments, same with food stamps. We wouldn't expect PromiseShip to pay for, you know, food assistance when someone is eligible for food stamps to provide care to a child. So those are-- those are paid for by the public benefit, the public assistance side of our organization.

WISHART: [02:52:05] OK.

MATTHEW WALLEN: [02:52:10] And if-- we've talked a little bit about, and I know when-- when the auditors were up they talked a little bit about the structure of the contract for-- for the Eastern Service Area, not addressing that. I will say we have engaged a contractor to-- to review the current system involving the Eastern Service Area and the rest of the state to give us a better look and better handle on that system as a whole and the provision of services to the families in that service area, which will help inform us. We are getting ready to release an RFP. It was commented that the last two contracts were not competitively bid. We're getting ready to release a contract for the Eastern Service Area RFP and we are-- we are also-- have identified and dedicated a person at administrative level to oversee and work directly with PromiseShip on these things around N-FOCUS, timeliness of loading things into the system, some of these more complicated cases where you might have multiple placement changes, out of state PRTF, Medicaid-involved, different services. So we've got a dedicated resource now that's going to work directly with PromiseShip on these cases. I'll also say we're staffing these individual cases on a weekly call with the MCOs to make sure that the MCOs are being timely and responsive to-- to the Medicaid needs, of meeting the physical and behavioral health needs of these children in our care. And that's something that never happened before as well. So we've made pretty significant progress in some of those areas. I will say we-- when you talked and identified and kind of walked through some of the more specific findings, I will say, and I don't want to be criticized for saying we said they handpicked some cases and it's a random sample. In the report it says, in addition, we selected ten other individuals to review based on high-dollar or unusual rates.

STINNER: [02:54:26] Right.

MATTHEW WALLEN: [02:54:26] So there was a component of the 113 were a random sample, and then an additional 10 were selected for one reason or another.

STINNER: [02:54:38] I would have done the same thing if I was an auditor, believe me. And I started out my career in auditing, so.

MATTHEW WALLEN: [02:54:43] Sure. Sure. And I can-- I don't understand audit software maybe, but with a sample size of .27 percent and it's a valid sample size of things along those lines, I know when we went through our reconciliation process with PromiseShip at the end of the contract, we went in and tested 800 lines. So I mean that-- that's just a small piece of it. But we-- we-- we felt it was necessary to test 800 lines and had a fairly more valid sample size with 800 lines of just the PromiseShip transactions. So you did-- you had asked about the-- the transportation one where we had paid $3 instead of a $1.61. That is a unique situation where there is one provider with two companies. And it was a worker who thought they were selecting a particular provider, but the provider has two companies.

STINNER: [02:55:37] OK.

MATTHEW WALLEN: [02:55:38] So the higher rate was utilized at that time and that higher rate is usually utilized if they have someone that rides with them or if they need additional assistance while having someone in the car with them. But that was an error that the wrong company-- the wrong provider was selected. But it's an owner that has the two companies and they thought they were selecting the cheaper of the two. So we have, going forward, eliminated that additional option in the future so there wouldn't be anymore wrongly selecting the higher amount of the two, if you will.

WISHART: [02:56:17] And in terms of the increased amount of money then, that was obviously included as the state is not paying for that error, or are we?

MATTHEW WALLEN: [02:56:26] Paying for-- ?

WISHART: [02:56:28] For the additional dollars.

STINNER: [02:56:29] We have paid it.

WISHART: [02:56:30] We paid it. So will there be--

STINNER: [02:56:34] Reimbursement.

WISHART: [02:56:35] -- reimbursements?

MATTHEW WALLEN: [02:56:35] That-- that was-- that was an error that we selected the higher of the two--

WISHART: [02:56:40] Yes.

MATTHEW WALLEN: [02:56:40] -- and contracted with the higher. For that-- that particular payment, we have not gone back and tried to-- to recoup that funds because that was an error on our part, selecting the higher of the two.

WISHART: [02:56:51] OK.

MATTHEW WALLEN: [02:56:54] On a number of the other ones that were identified with regard to the rounding up in the travel time, we do, and you can ask any of our providers, we actively monitor and audit our providers on situations that involve things that look excessive, travel time and things like that, which has added expense to our providers to-- to be able to provide and produce reports and, you know, be responsive to our requests. And we have worked with a number of providers. We have issued collections, if you will, or disallowances to a number of the providers and asked for that payment back. And providers have actually provided checks back when there has been an error or when there is-- there is something that is-- that is beyond what was-- what was supposed to happen. I will say when we looked at our-- our contracts and we will take-- one of the major part of these findings is that the rounding to 15 minutes for travel time. I guess, if you will, that's a policy choice on the department's side to provide our providers that flexibility for rounding of 15 minutes. The way we calculate their travel time, it goes into Google Maps and there could be a little bit of a difference between the time of day something is entered into a Google Map. There's also, when we ask someone to go pick up a child, that child doesn't instantly appear in that car. Sometimes someone will put their shoes on or they spend additional time at the house to-- to get the child in the car, and that is time that is an expense to our providers and that-- that provides a little bit of flexibility. When we issued the current contracts that we're in now, we dialed it back on travel time to, to the minute per what the auditor, and I got all sorts of feedback from our providers about the amount of expense to change their systems from 15 minutes to 1 minute and then the loss in-- in their ability to provide those services because of the reduction. We did make changes in current contracts to reduce from an hour minimum to 30 minutes, and you bill in those segments. And again, I think that'll identify a number of things within when services are being provided, you can't round up to that hour any longer. You have to provide-- what's important is trying to provide that right incentive to spend the full 30 minutes with the family and not get to 31 and round up to 60. But again, I met with a number of providers and they all came in with me, sharing with me how much revenue they are going to lose because of changing certain things in the contract, like that one hour.

STINNER: [02:59:48] [INAUDIBLE] in an area where distance and time is--

MATTHEW WALLEN: [02:59:52] Right. So--

STINNER: [02:59:52] -- a big-- a big number.

MATTHEW WALLEN: [02:59:53] -- so again it comes back to trying to be prudent stewards of taxpayer dollars and-- but also some sort of reasonableness outside of the audit kind of framework. How do we-- how do we make sure we have a healthy provider panel to provide the necessary services?

STINNER: [03:00:12] I will say this, that I appreciate the hard work that you've put in. I appreciate the heavy lift that this is. Regulatory compliance is always difficult. I also look at my providers and they're doing pretty doggone good work as well and they all claim that they're underpaid, so nobody is getting rich in this deal.

MATTHEW WALLEN: [03:00:34] Right.

STINNER: [03:00:35] The one thing I will say, and we can quarrel with statistically valid samples or if it's not and if the extrapolation is the right thing, I happen to have a background in this and I have-- happen to believe that at a 90 percent confidence level this was a statistically valid sample. Whether it's $26 million extrapolated, whether it's $2.6 million, I still look at this report as totally unacceptable. And I don't hold you accountable. I don't. But I will say this. I expect you to raise your hand and say, I got a problem and it's in my back room and it's about financials and that's not my area of expertise; I need some help.

MATTHEW WALLEN: [03:01:20] Uh-huh.

STINNER: [03:01:20] That's what I look to you to do as the boss, because this stuff, you know, this is systems, this is accounting, this is technology. This is a whole lot of things that I don't expect you to know anything about, but I expect you to be able to say, hey, we've got a problem and it deals with money and a loss of money and a loss of state money. We can't have these errors. I mean nobody, nobody runs a business that way. So that's-- that's what I want to convey to you. I appreciate all the work. I appreciate all the provider works. We're not in here to quarrel with that. What I really wanted to get done is to-- to have a deeper understanding of what's going on. And apparently I still have a heck of a lot of work to do. Senator Wishart and Bolz always try to educate me and sometimes it works, sometimes it doesn't.

WISHART: [03:02:08] I do, I have one-- one more follow-up question on the-- are all children who are within the foster care system, is their childcare paid through a subsidy, through a public subsidy? Do they qualify for--

MATTHEW WALLEN: [03:02:25] Depends on IV-E eligibility.

WISHART: [03:02:27] It depends on IV-E. So there is-- there are some instances where your organization is paying for childcare.

MATTHEW WALLEN: [03:02:38] If-- I don't--

WISHART: [03:02:40] So-- because you were saying there, you were saying that million dollars or $1.2 million--

MATTHEW WALLEN: [03:02:47] One, yeah, one.

WISHART: [03:02:48] -- was these are kids that qualify for child-care subsidy.

MATTHEW WALLEN: [03:02:55] I haven't gone through and qualified every-- every one of those children.

WISHART: [03:02:59] I'm just-- I guess I'm wondering, if we include that as part of your-- why would we include that as part of your contract? Why would that be written in, that childcare is part of it, if the kiddos that-- that you're working with will qualify for a subsidy?

MATTHEW WALLEN: [03:03:17] It's not. It's not written in as part of the contract. It's not identified as an exclusion. It's not.

STINNER: [03:03:22] [INAUDIBLE] contract but they paid it.

WISHART: [03:03:24] It's not written in.

MATTHEW WALLEN: [03:03:26] Like-- like-- like the contract says-- the contract says it-- they're excluded from physical and behavioral health for Medicaid. So-- so we're thinking Medicaid will cover the physical and behavioral health of those, those children. It doesn't list a long laundry list of exclusions from the contract.

WISHART: [03:03:49] OK. So I just want to clarify,--

MATTHEW WALLEN: [03:03:51] And it doesn't--

WISHART: [03:03:51] -- we are not expecting your organization to be paying for childcare.

MATTHEW WALLEN: [03:03:58] No. We would-- we would utilize the child-care subsidy for these children.

WISHART: [03:04:08] OK. OK.

STINNER: [03:04:08] Again, I want to thank you, thank all the participants here. It's been educational, so thank you.

MATTHEW WALLEN: [03:04:14] Thank you.

STINNER: [03:04:15] That closes our hearing.