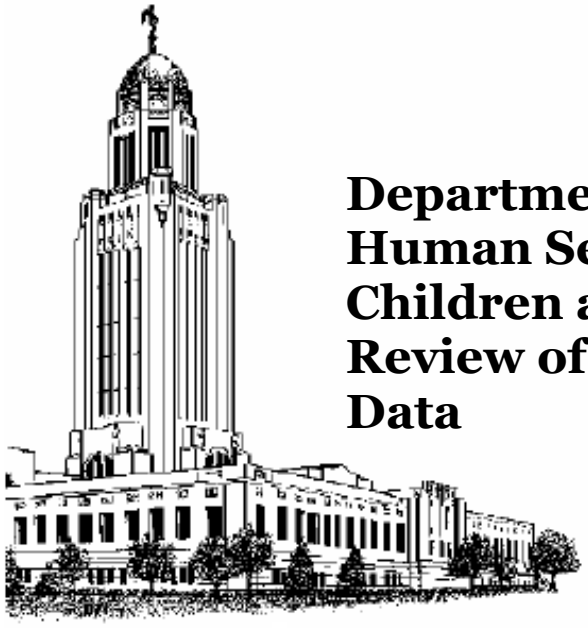

Department of Health and Human Services Division of Children and Family Services: A Review of Hotline and Non-court Data

Performance Audit Committee
Nebraska Legislature

July 2020

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I. Committee Recommendations

Audit Summary and Committee Recommendations

This audit examined selected aspects of the child welfare system, including:

- how reports of potential abuse or neglect are made to, and evaluated by, the Department of Health and Human Services (DHHS) Division of Children and Family Services (CFS);
- different options for how reports are handled once CFS has made a determination about whether to accept them for further investigation;
- the number of abuse and neglect reports going up between FY2015 and FY2019 while the percentage of reports accepted for further investigation went down during a part of that time period; and
- for cases of children whose abuse or neglect report does not lead to court involvement (non-court cases), the available oversight and data on how long those cases are open and how often children have more than one non-court case.

The report contains two types of outcomes: findings and results. A finding explains the difference between an established standard and an action taken by DHHS. A result describes the product of an analysis but there is no standard to which to compare the result. Following are the audit findings, results, and the Legislative Performance Audit Committee's recommendations.

Section I: Division of Children and Family Services' Abuse and Neglect Report Process

Finding: The Department of Health and Human Services is required by the Administrative Procedure Act to promulgate as a regulation any standard that applies generally or is used to bind the public. The Administrative Procedure Act presumes that any document that impacts the public or procedures available to them is relied upon to bind the public, regardless of its procedural label. DHHS is not promulgating many child welfare policies and is likely in violation of the APA.

Recommendation: The Department of Health and Human Services should report to the Performance Audit Committee by January 1, 2021 on which policies were reviewed and which were determined to need to be promulgated as regulations and, for those the Department believes do not need to be regulations, the reasons for that decision.

Section II: Division of Children and Family Services' Abuse and Neglect Report Data Process

Results: In three of the four areas we reviewed to identify reasons for the increase in report numbers while the acceptance rate was decreasing—number of overrides, types of allegations, and reasons reports were not accepted—there was little change. The most notable change we identified was in the breakdown by service areas. The Eastern service area, the state's largest service area, was the only one in which reports increased steadily between FY2015 and FY2019. The Eastern service area also had the lowest proportion of

accepted reports during the period we reviewed. Additionally, the largest decrease in accepted reports occurred between FY2017 and FY2018.

Discussion: Our analysis shows that growth in abuse and neglect reports was mostly the result of the increase in the Eastern service area. However, the factors we thought might be contributing to the decrease in accepted reports seem to have had little, if any, effect.

Recommendation: Were it not for the current pandemic, which has put considerable additional responsibilities on DHHS, it could be useful to do additional research into the causes of the steady increase in reports in the Eastern service area and to explore what actions or factors could have played a role in the decrease in accepted reports between FY2017 and FY2018. However, the Audit Committee will not recommend additional review until the impact of the pandemic on DHHS has decreased significantly.

Section III: Discussion of Non-court Cases

Results: Neither the 1184 teams nor the Nebraska Foster Care Review Office reviews all non-court involved youth in the child welfare system. The 1184 teams review some, but not all, non-court cases. The Foster Care Review Office does not review non-court cases but is able to track one type of non-court case through its access to the Department of Health and Human Services case tracking system.

Discussion: Our analysis shows that not all non-court cases are being regularly reviewed. However, because we did not delve into details involving these cases, we cannot say whether they all need regular review.

Recommendation: The Performance Audit Committee will consult with the Health and Human Services Committee on the possibility of an interim study to consider whether additional oversight of non-cases is needed. If a study is introduced, it should include soliciting input from representatives of the CFS service areas, the Foster Care Review Office, 1184 teams, and other interested parties.

Result: During the period we reviewed, more than 60% of non-court cases closed within four months of being opened, regardless of Alternative Response or Traditional Response status. Alternative Response cases, though, were more likely to be closed in two months.

Recommendation: None.

Result: The majority of children with multiple non-court cases had only two total cases but more than 10% had more than two cases during the period we reviewed. More than half of the children had a case open within six months of the previous case being closed.

Recommendation: None.

II. Legislative Audit Office Report

Legislative Audit Office Report

Department of Health and Human Services Division of Children and Family Services: A Review of Hotline and Non-court Data

July 2020

Prepared by
Franceska Cassell
Katelyn Abraham
Clarence Mabin

Compliance Statement

We conducted this performance audit in accordance with generally accepted government auditing standards, with two statutory exceptions regarding continuing education hours and peer review frequency.[*] As required by auditing standards, we assessed the significance of noncompliance on the objectives for this audit and determined there was no impact. The exceptions do not change the standards requiring that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. The methodologies used are described briefly in each section of the report.

[*] Neb. Rev. Stat. § 50-1205.01.

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INTRODUCTION

On September 13, 2019, the Legislative Performance Audit Committee (Committee) directed the Legislative Audit Office (Office) to conduct an audit of the Department of Health and Human Services' (DHHS) Child Abuse and Neglect hotline and child welfare cases where there is no court involvement. The Committee approved the audit as a follow up to the child welfare pre-audit inquiry initiated in March 2019.

The Committee was interested in understanding more about the processes surrounding the Child Abuse and Neglect hotline. Specifically, for fiscal years 2015, 2016, 2017, and 2018,[1] this audit:

1. Describes the criteria, intake process, and ongoing oversight for reports to the Child Abuse and Neglect hotline.

2. Describes the categories of placements, the initial assessment process, and ongoing oversight mechanisms for child welfare non-court cases.

3. Provides data about the placement and closure decisions for child welfare non-court cases from FY2017 to FY2019.

Section I describes the process DHHS's Division of Children and Family Services (CFS) uses to assess reports of child abuse and neglect. In Section II, we present data from reports made to the Child Abuse and Neglect hotline from FY2015 through FY2019. In Section III, we present data on CFS decisions in cases accepted for assessment from FY2017 through FY2019. Auditors had planned to look into several areas that are not contained in this report. Because of the global pandemic the decision was made to cease the audit before information could be requested or examined on those issues.

We appreciate the cooperation of Children and Family Services and Department of Health and Human Services administrators and staff, as well as external stakeholders during the audit.

[1] Nebraska state fiscal years run from July to June, so FY2015 refers to July 1, 2014 to June 30, 2015.

SECTION I: Division of Children and Family Services' Abuse and Neglect Report Process

In this section, we describe the process the Department of Health and Human Services' (DHHS) Division of Children and Family Services (CFS) uses to assess reports of child abuse and neglect. Stakeholders were concerned that the process itself was not well understood, and so this section briefly describes what happens from intake at the Child Abuse and Neglect hotline through case assessment. The section also briefly describes the different kinds of cases, including Traditional Response, Alternative Response, and how non-court cases differ from court-involved cases. Section I concludes with a discussion of DHHS policy memos and the Administrative Procedure Act.

Child Abuse and Neglect Reports: Screening Decisions

Child abuse and neglect reports are made to CFS through the Child Abuse and Neglect hotline. Intake workers at the hotline receive the reports and, in certain circumstances, make calls to collect additional information. The process that intake workers use to determine whether to accept a report for initial assessment is governed by the Intake Screening Policy and Procedures manual. The manual includes a screening tool that guides the intake worker through the decision-making process.

Broadly speaking, the tool screens for four types of child maltreatment: abuse, neglect, sexual concerns, and dependency. Intake workers determine whether the allegations made during the call meet the definition of any of the maltreatment types. If one or more of the definitions are met, a preliminary determination is made to accept the report for initial assessment.

Workers are then required to assess whether any aspect of the report suggests they should override the initial screening decision. While DHHS policy requires an override in specific circumstances (discussed in more detail in Section II), the intake worker can also issue a discretionary override with supervisor approval. If not overridden, the report is accepted for initial assessment. As will be discussed in Section II, overrides occur in 11% cases or less during the time period we examined.

Child Abuse and Neglect Hotline: After Screening

If a report is accepted for initial assessment, the intake worker uses the screening tool to determine a priority level to assign to the report. The priority level determines how much time the initial assessment worker has to make contact with the child and family. The most urgent cases require contact within 24 hours, while in less serious cases the worker has up to 10 days to meet with the family.

After a report is accepted for initial assessment, there are two pathways the case can take. The first is Traditional Response (TR). A TR case involves an investigation by DHHS and law enforcement into whether maltreatment has occurred. If substantiated, the investigation leads to a finding entered into the child protection Central Registry, which

is a centralized list of child maltreatment records available to the public. Traditional Response cases include both court-involved cases and non-court cases. Court cases involve a filing with a court by a county attorney and, in many cases, traditional out-of-home foster care. In non-court cases, children remain at home and services are provided there.

The only time a child will leave the home during a non-court case is through an informal living arrangement, or ILA, which is when a child temporarily resides with an individual who agrees to participate in DHHS safety interventions. DHHS considers this temporary placement a safety intervention and not out-of-home or foster care. We intended to examine informal living arrangements in this audit, but the Covid-19 pandemic necessitated a shift in priorities before auditors were able to request the data. This report also does not provide analysis of court-involved TR cases, only non-court cases.

The other path a case can take is Alternative Response (AR). DHHS considers AR a collaborative process that does not include an official CFS or law enforcement investigation and does not require inclusion in the child protection Central Registry. Instead, CFS workers conduct an assessment of the family's safety situation, working with the family to identify needs, supports, and services. Alternative Response is only available to low-risk families.

The intake worker is the first step in determining whether a family will be assigned to AR. The intake worker uses a checklist to determine whether the family meets exclusionary criteria that would make them ineligible for AR. If none of the initial exclusionary criteria are met the worker reviews a second checklist to determine whether additional review is necessary. If a review is needed the information is sent to the Review, Evaluate, Decide (RED) Team. If the RED Team unanimously decides that a family should be eligible for AR, they can override the checklist determination. Currently, some otherwise eligible families are not categorized for AR because DHHS is conducting a study of AR and TR families. For the study, eligible families are randomly assigned to AR or TR.

Initial Assessment of Accepted Reports

Accepted reports are assigned to a DHHS service office in the county where the incident was alleged to have occurred. The initial assessment (IA) worker reviews the intake information and any existing case record on the family or any non-custodial parent. The IA worker coordinates with law enforcement to conduct the investigation.

For the initial assessment, the worker completes two separate documents: the Safety Assessment and the Initial Risk Assessment. The Safety Assessment is completed when the worker makes initial contact with the family. It reviews any threats to the safety of children in the household. If the Safety Assessment identifies safety threats, the IA worker must establish agreement with the family about the threats and create a short-term Safety Plan to immediately control or manage those threats. In addition to immediately managing safety threats, the Safety Plan must be accessible to the family and to any person participating to assist the family and must contain contingency plans. It must be agreed upon by all parties including the participants and is monitored by the CFS worker.

If the worker cannot establish agreement about the Safety Assessment and Plan, they will consult with their supervisor and may contact the county attorney to discuss a court ordered out-of-home placement.

Whether or not there are immediate safety threats, the worker will conduct the initial Risk Assessment. The initial Risk Assessment estimates the probability a caregiver will abuse or neglect their children on a scale from low to very high risk. The goal of the Risk Assessment is to determine the likelihood that the children in a household will experience maltreatment within the next 12 to 18 months, should DHHS not intervene.

If the risk level is high or very high, the worker must consult with a supervisor about contacting the county attorney to discuss court-ordered interventions if the situation involves domestic violence, a previous termination of parental rights, serious physical abuse, or sexual abuse by a parent.

After the Safety Assessment and Risk Assessment are completed, the worker determines whether to recommend ongoing services as a non-court case or to close the case. A case can only close after initial assessment if there is no active safety threat and the family is low or moderate risk. In the case of high or very high risk families, the case can only be closed after initial assessment if the child was found safe and the family is engaging in services or the county attorney has determined the court should not intervene. A high or very high risk family with an unsafe child will only be closed if the family refuses to engage with services and the county attorney will not file a petition with the court.

If ongoing services are recommended, the Safety Plan will be in effect for no longer than a month, with regular caseworker reassessments. During that month the caseworker must also complete the Family Strengths Needs Assessment (FSNA) to adjust the safety plan by matching needs to resources and to develop a long-term ongoing case plan. The worker regularly conducts ongoing assessments during the life of the case, including reassessing safety and risk any time the situation changes. The FSNA is completed every six months. Before a case is closed, the worker again conducts the Risk Assessment to determine whether aftercare services are necessary. If a family receives services after case closure, the FSNA is also conducted during the aftercare process.

Reports Not Accepted

Calls that do not meet the definition of child maltreatment will not be accepted for initial assessment.[2] In some instances, however, the call will identify a child or family who has a need that does not rise to the level of neglect or abuse. There is no formal policy on when service referrals occur, but intake workers are trained to identify when they can connect a family with community (or state) resources that can provide assistance for unmet needs. Some examples of service referrals include ACCESS Nebraska phone numbers (for economic assistance and Medicaid), local domestic violence assistance, local food pantries or homeless shelters, and legal assistance organizations.

[2] Other reasons a call would not result in an initial assessment are detailed on page 15 in Section II.

Preventative services referrals are usually made to the person making the report but according to CFS, DHHS has no formal way of knowing whether the caller provided the information to the family and no mechanism for determining whether the family received any but also things like of the recommended services. To address this gap, DHHS created a Family Action Support Team (FAST) pilot program in 2018. The FAST program is a group of social service workers who, in addition to their normal duties, directly contact families with specific needs to offer preventative service referrals. The program operates in 10 counties.[3] Each of these counties has one social service worker assigned to FAST.

According to DHHS, the FAST program is not particularly successful because it is a quick referral, no follow up is done, and families may feel intimidated by referrals coming from the hotline. In some cases, FAST workers will provide referrals to another program called Families First Case Management (FFCM). A family can be referred to FFCM for any poverty-related circumstance that could lead to future child welfare involvement.

FFCM is a program where workers engage directly with families to assist with not just the immediate needs, budgeting and engaging with community resources. Unlike FAST, which is a quick referral, FFCM participation can last for more than a month. However, this program's impact is also limited because there are only two FFCM workers for the whole state. They operate out of North Platte and Norfolk and only provide FFCM to those communities and the surrounding counties.

Auditors intended to provide analysis of preventative services data in this report but DHHS collects no data on the majority of preventative service referrals. DHHS does collect some information on FAST and FFCM participation. However, the Audit Office determined that the information collected during the period we were examining was not sufficiently reliable for the purposes of the audit.[4]

DHHS Policy and the Administrative Procedure Act

It is typical in our audits for the Audit Office to request references for regulations and statutes and copies of any internal procedural documents that guide agency workers. When auditors requested documents for this audit, we were referred to a substantial number of administrative and policy memos on the DHHS website. The policies govern the hotline intake and initial assessment processes as well as a number of other child welfare areas. As we began asking questions about how the intake and initial assessment processes worked, we found that the references in regulations were sometimes years out of date but that the policy memos were during the audit period. For example, the Intake Screening Policy and Procedure Manual was modified at least three times.[5] Auditors were concerned that if the majority of child welfare policy was made through policy memo, that this would potentially violate provisions of the Administrative Procedure Act (APA).

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[3] FAST program: Sarpy, Gage, Otoe, Cherry, Dodge, Hall, Madison, Buffalo, Lincoln, and Scottsbluff counties.

[4] Early data for the FFCM had some inconsistencies in the way it was recorded that made it not sufficiently reliable for audit purposes. DHHS told auditors that they have done more training to increase consistency.

[5] The policy was updated in June 2019, August 2019, and October 2019.

A 2015 performance audit of APA issues that included DHHS raised concerns about the agency's policy memo practices. After that audit, legislative changes to the Administrative Procedure Act were made, at least in part, to more clearly spell out when it is acceptable for agencies to create documents that contain policy but are not regulations.

Regulatory vs. Non-regulatory Documents

The Administrative Procedure Act allows for three kinds of documents to be issued by an agency: rules and regulations (hereafter called regulations), internal procedural documents which provide guidance to staff, and guidance documents which provide information and explanations about statutes and regulations to the public. What the APA requires an agency to do to create a document depends on the purpose of the document and its effect on the public.

Regulations are documents issued by an agency used to implement statutory provisions. The APA defines a regulation as any document that applies broadly to a group of people. These documents must be promulgated through the formal regulations process that involves public notice and comment among other requirements. Regulations include any document that has an effect on the interests of the public or procedures available to them. This is because the law assumes that any standard affecting the private rights, private interests, or procedures available to the public is relied upon "to bind the public", which makes it a regulation.[6] The law also specifies that every standard that prescribes a penalty is assumed to fall under this definition.

Not all documents issued by an agency are regulations, though. The APA exempts forms and their instructions, guidance documents, and internal procedural documents. However, just calling a document internal is not enough to satisfy the exception to the promulgation requirement. Whether or not an agency labels a document as an internal procedural document, if it is used to tell the public what to do or not do, it must be promulgated.

DHHS Child Welfare Policies and Procedures

DHHS has two types of non-regulatory documents: policy memos which are sometimes also called protection and safety procedures and standard work instructions (SWI). It appears that the difference between policy memos and standard work instructions is that SWIs are day-to-day instructions on how to complete a task and policy memos are more global policy that has the potential to impact the public.

Because this was not an APA compliance audit, auditors did not examine each policy memo and SWI to see whether each of their provisions ought to be promulgated. In general though, it appears that SWIs are likely to be the kinds of documents that fit the internal procedural document exception.

[6] Neb. Rev. Stat. § 84-901.

We have a concern about the use of policy memos. The likelihood that these policies (which govern child abuse and neglect reports, as well as how workers will make decisions about families who voluntarily participate in the child welfare system), will impact the public is very high. While DHHS does make these policies available on their website in recognition that their contents will be of public concern, publishing a policy on an agency's website does not satisfy the APA's procedural promulgation requirements.

Finding: The Department of Health and Human Services is required by the Administrative Procedure Act to promulgate as a regulation any standard that applies generally or is used to bind the public. The Administrative Procedure Act presumes that any document that impacts the public or procedures available to them is relied upon to bind the public, regardless of its procedural label. DHHS is not promulgating many child welfare policies and is likely in violation of the APA.

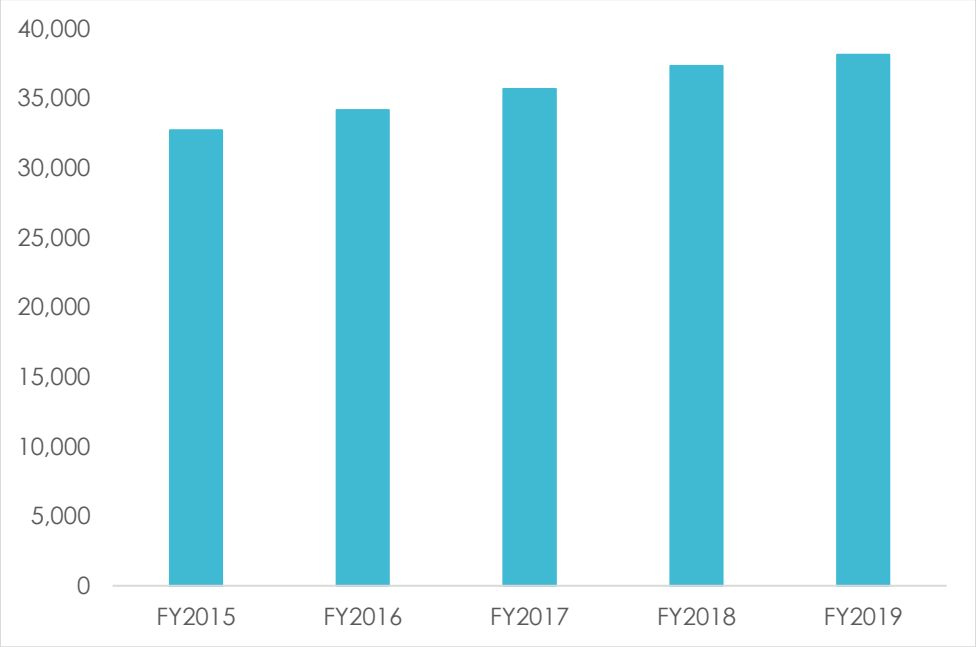
SECTION II: Division of Children and Family Services' Abuse and Neglect Report Data Analysis

In this section, we present the results of our analysis of Child Abuse and Neglect hotline report data from FY2015 through FY2019.[7] The Department of Health and Human Services (DHHS) provided auditors with Excel spreadsheet extractions of intake data from which we drew our analysis.

Abuse and Neglect Reports, Generally

During our research for the audit, stakeholders raised concerns that the number of reports made to the hotline was increasing but the number of reports accepted for initial assessment was decreasing. The intake data the A udit Office (Office) analyzed confirmed a steady increase in reports, from almost 33,000 in FY2015 to just over 38,000 in FY2019, as shown in Figure 2.1.

Figure 2.1. The number of reports made to the hotline has increased each year.

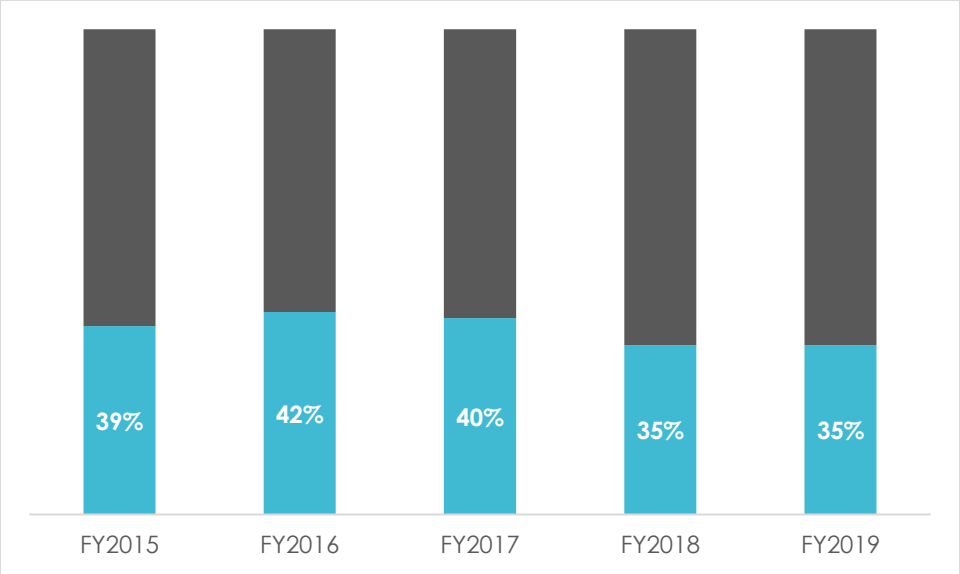


Source: Audit Office analysis of Department of Health and Human Services data.

The Office also found that the percentage of reports accepted for initial assessment decreased from a high point of 42% accepted in FY2016 to a low of 35% in both FY2018 and FY2019, as shown in Figure 2.2.

[7] Auditors initially requested data for three fiscal years beginning in FY2017, but found three years insufficient to establish whether a trend was occurring.

Figure 2.2. The percentage of reports accepted for initial assessment decreased after FY2016, compared to not accepted reports.



Source: Audit Office analysis of Department of Health and Human Services data.

As part of our review for this audit, we asked DHHS whether it had participated in other evaluations relevant to the audit. In 2016, DHHS contracted with the Children's Research Center (CRC), a division of the National Council on Crime and Deliquency, to conduct an evaluation of whether or not Children and Family Services (CFS) was using the screening tool appropriately. The CRC found that the intake workers had correctly accepted reports in 97% of the cases they reviewed. It is important to note, however, that this study only found a high degree of fidelity in the accepted, or screened in, cases. DHHS commisioned the study because they were concerned that too many cases were being accepted and overwhelming private providers. Because of the narrow parameters of the study, evaluators did not examine cases that were not accepted.

In our evaluation, we analyzed the intake data to see if we could identify reasons for the increase in report numbers while the acceptance rate was decreasing. Specifically, we looked at the number of overrides, the types of allegations made, the reasons reports were not accepted, as well as the number of reports and proportion of those accepted in each CFS service area.

Results: In three of the four areas we reviewed to identify reasons for the increase in report numbers while the acceptance rate was decreasing—number of overrides, types of allegations, and reasons reports were not accepted—there was little change. The most notable change we identified was in the breakdown by service areas. The Eastern service area, the state's largest service area, was the only one in which reports increased steadily between FY2015 and FY2019. The Eastern service area also had the lowest proportion of accepted reports during the period we reviewed. Additionally, the largest decrease in accepted reports occurred between FY2017 and FY2018.

Overrides

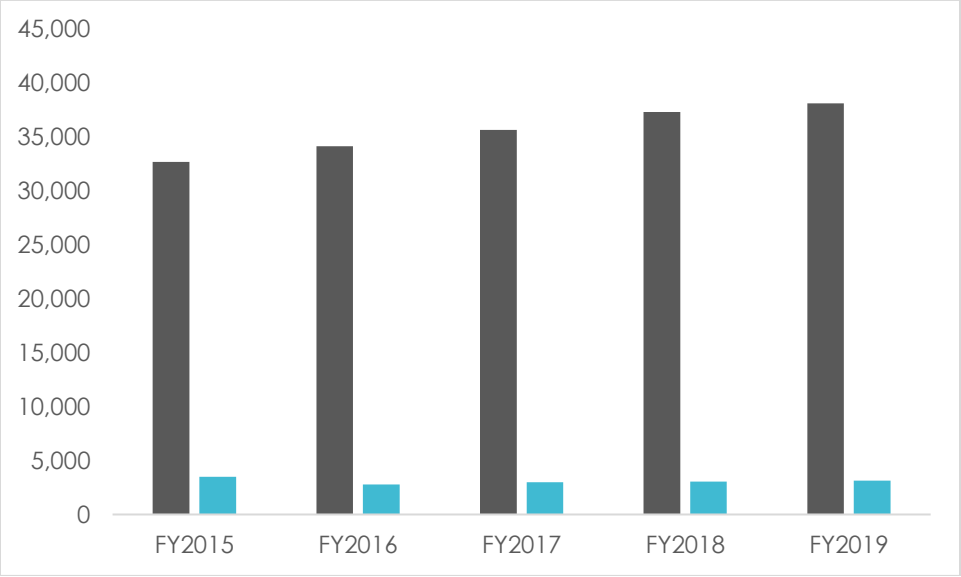
We first looked at the intake data to see if there was any meaningful change in the number or percentage of cases where the screening tool's initial decision was overridden. As mentioned in Section I, there are a number of policy reasons why an intake worker would be required to override the preliminary determination about accepting a report for initial assessment.

If the preliminary decision is not to accept a report for initial assessment, the worker will be required to override if the report involves a new baby with siblings that are in out-of-home care or if the report is made by a medical provider about a child younger than six. The tool will also be overridden if the county attorney, a court, or law enforcement requests initial assessment.

If the preliminary decision is to accept the report, an override will occur when it is impossible or not appropriate for DHHS to respond. This may involve a report that does not include enough information to find a family or an incidents that occurred in Nebraska but the family and alleged perpetrator both live outside Nebraska. It also may involve a victim who was a child at the time of the incident but who is now legally an adult. In these cases, a report will be made to law enforcement when appropriate. An override will also occur if the report is a repeat allegation. If the report is identical to a previous report, it will not be accepted but will be forwarded to the caseworker. If it is identical or very similar to a report that has previously been found not credible and the reporter has a pattern of making the same report, the intake worker will reach out to other contacts like the child's school or doctor, and will override the decision if they indicate the child is safe.

For the years we looked at, the data showed no meaningful change in the number or percentage of reports where the preliminary determination was overridden. As shown in Figure 2.3, the total number of overrides (the blue bars) remained near 3,000 reports for the entire period. In FY2015, the year with the most overrides, 11% of preliminary screening decisions were overridden. Every subsequent year had an 8% override rate.

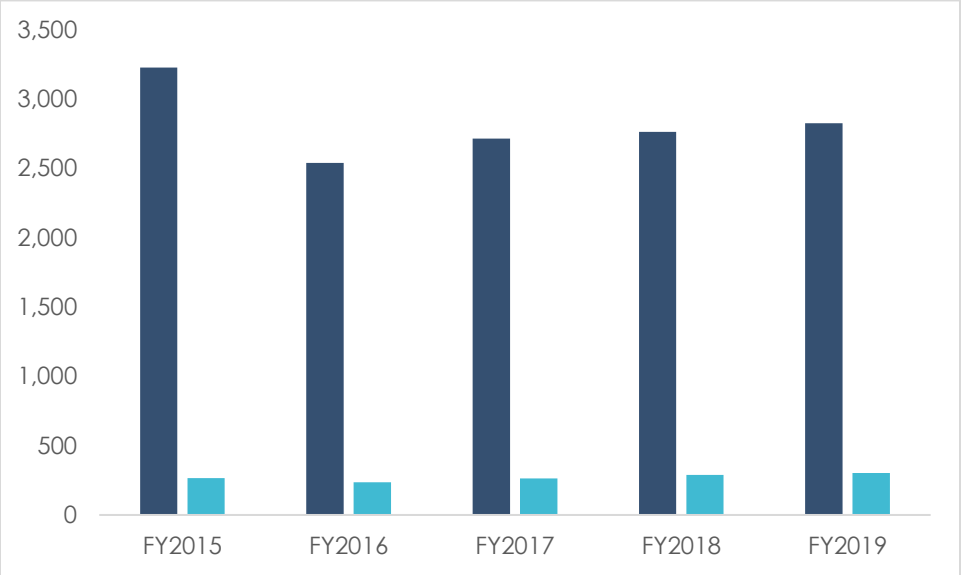
Figure 2.3. The total number of overrides did not vary in a meaningful way from year to year as compared to reports.



Source: Audit Office analysis of Department of Health and Human Services data.

In most cases, the override was from a preliminary decision of accept to a final decision of not accepted. These overrides numbered in the low thousands compared to overrides from not accepted to accept which were between 200 and 300 each year, as shown in Figure 2.4.

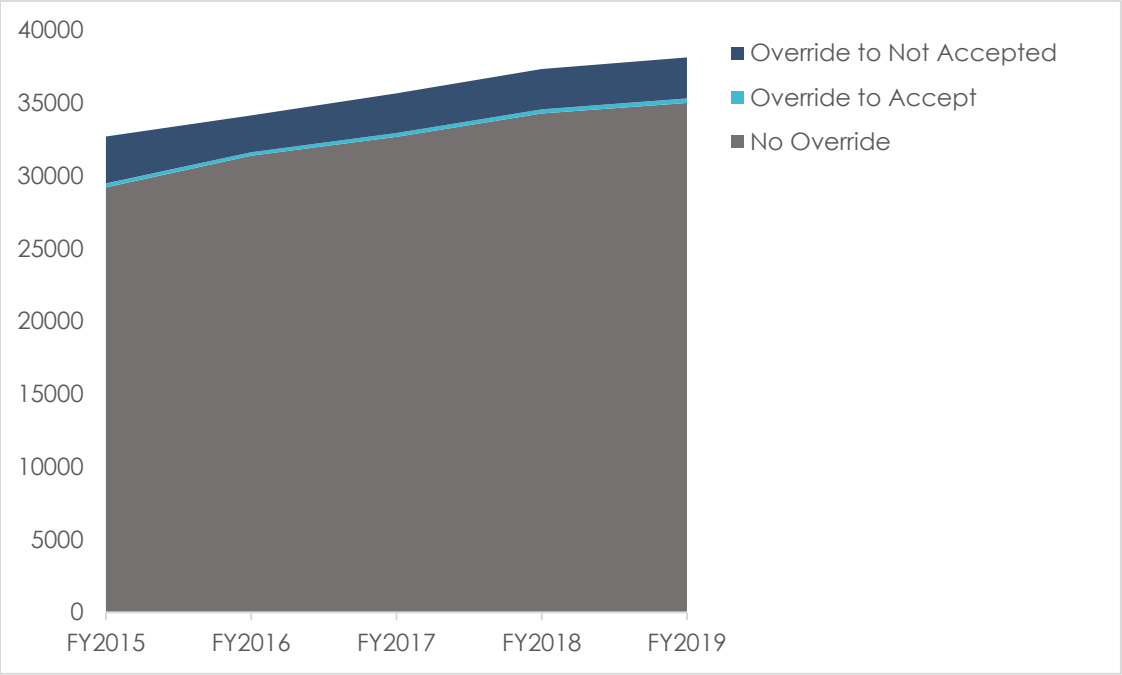
Figure 2.4. The number of overrides to not accept far exceeded the overrides to accept each year.



Source: Audit Office analysis of Department of Health and Human Services data.

As a percentage of the total reports, as shown in Figure 2.5, 1% of reports each year were overrides to accept. In FY2015, 10% of reports were overrides to not accepted. The years following varied between 7% and 8% of total reports.

Figure 2.5. Reports accepted because of an override are 1% of total reports, each year. Reports not accepted because of an override are 10% or less of total reports.



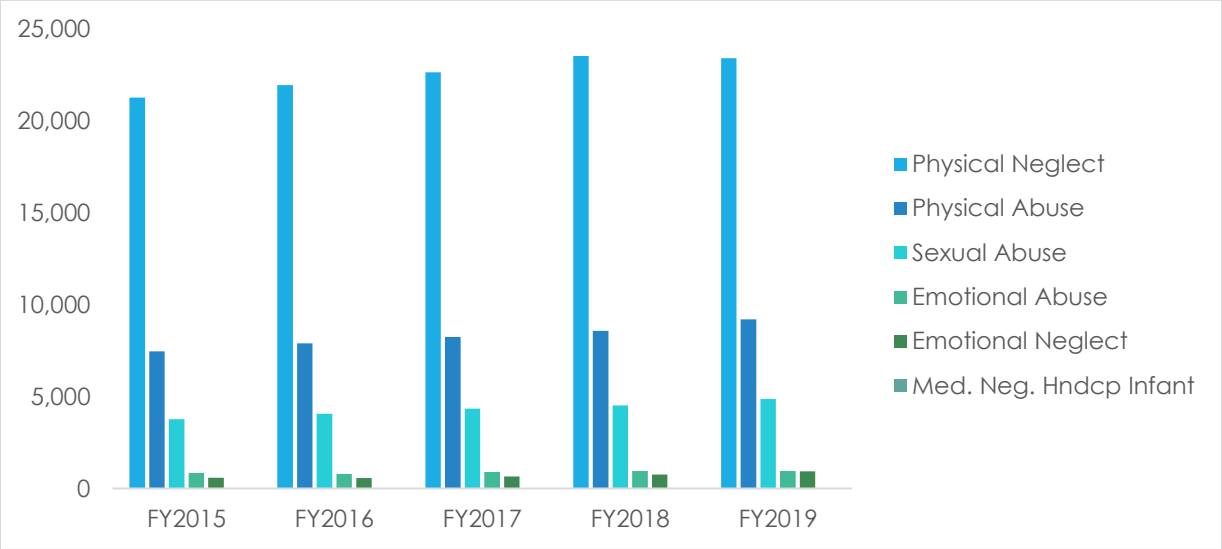
Source: Audit Office analysis of Department of Health and Human Services data.

Allegation Categories

We also reviewed the types of allegations made in the reports to the hotline. For the period we examined, reports fell into six categories.

As shown in Figure 2.6, between FY2015 and FY2019, by far the majority of allegations were for physical neglect, ranging from just over 21,000 to almost 23,500. Physical abuse followed with nearly 7,500 reports to over 9,000. Sexual abuse allegations grew steadily from almost 3,800 to nearly 5,000. Emotional abuse allegations remained just under 1,000 cases. Emotional neglect grew from nearly 600 allegations to just over 900. Fewer than 20 allegations of medical neglect of a handicapped infant were made each year.

Figure 2.6. Reports were far more likely to allege physical neglect than any other maltreatment category.



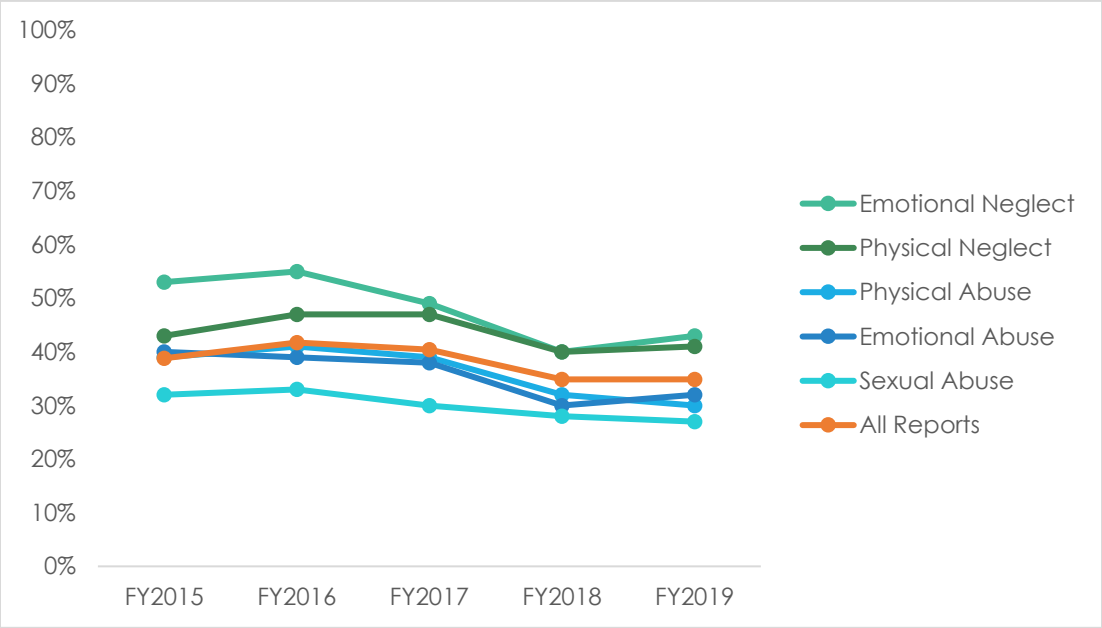
Source: Audit Office analysis of Department of Health and Human Services data.

As with all accepted reports, each of the maltreatment categories had a decrease in the proportion of accepted reports between FY2015 to FY2019. The change ranged from -2% for physical neglect allegations to -10% for emotional neglect allegations.

As shown in Figure 2.7, the largest decreases occurred between FY2017 and FY2018. Four of the five allegation types dropped between 7% and 9%, while the fifth (sexual abuse) decreased 2%. In FY2019, accepted reports in two allegation types (physical abuse and sexual abuse) continued to decrease slightly, while the other three (emotional abuse, emotional neglect, and physical neglect) showed slight increases in accepted reports.

This analysis shows that the overall decrease in the proportion of accepted reports is not the result of the decrease in any single allegation type. The proportion of emotional neglect reports accepted dropped noticeably (10%). However, because the number of emotional neglect allegations is small, the decrease had only a slight impact on the proportion of all reports that were accepted.

Figure 2.7. The percentage of accepted reports fell for all categories between FY2015 and FY2019, though some categories increased slightly between FY2018 and FY2019.



Source: Audit Office analysis of Department of Health and Human Services data.
Note: Medical neglect of handicapped infant was removed from this figure because there are too few reports to provide a meaningful analysis.

Reasons to Not Accept a Report

We also examined the justifications DHHS had for a report not being accepted for initial assessment. As discussed in Section I, the majority of reports are not accepted because the allegations made by the reporter do not meet the definition of the maltreatment types in the screening tool.

Each year, around 15% of reports were not accepted for reasons other than failing to meet a maltreatment definition. These reports fell in to four categories:

1. Law Enforcement: reports where the situation meets the definition of child maltreatment but the perpetrator is not a caregiver and is no longer a safety risk to the child. Law enforcement may investigate, but DHHS does not.
2. Multiple Reporter Calls: reports of incidents already under investigation by DHHS that have been reported by a prior caller in the last 30 days. If the caller alleges a subsequent incident, another victim, or provides information that suggests a type of abuse/neglect that was not previously alleged, the report will generally be accepted.
3. Placement Concerns: reports that also do not meet the definition of child maltreatment but involve a foster home. DHHS will check to make sure the child's needs are being met but will not accept the report.
4. Unable to Identify: reports in which the caller did not provide enough information to identify or locate the family.

Figure 2.8 shows the breakdown of reasons reports were not accepted for each year.

Figure 2.8. Approximately 85% of reports were not accepted for initial assessment because the report did not meet the definition of child maltreatment.

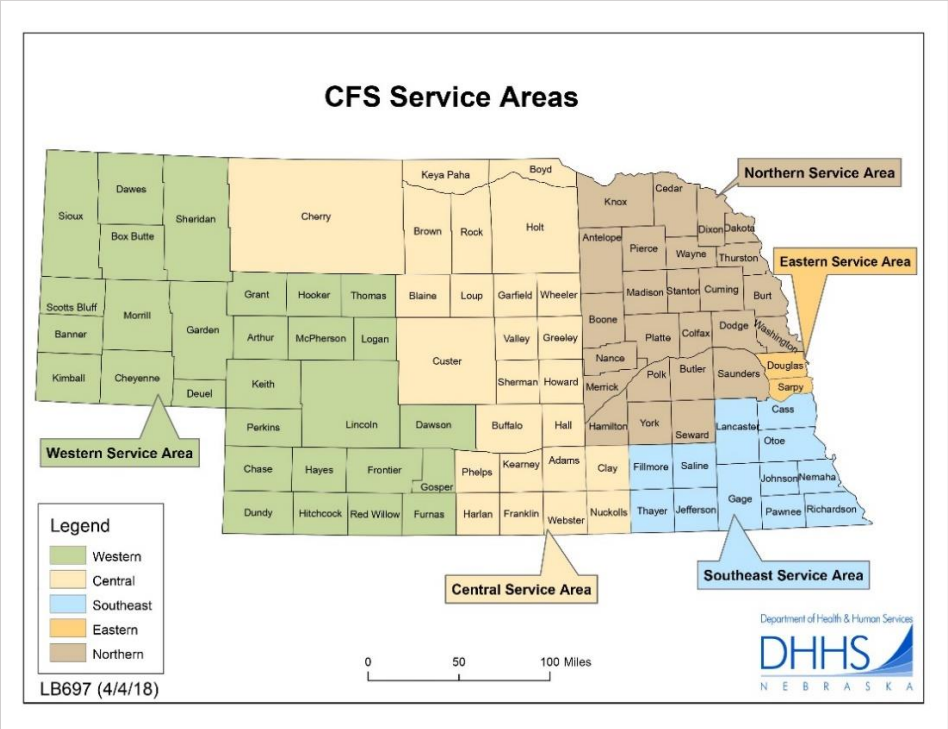
	FY2015	FY2016	FY2017	FY2018	FY2019
Does Not Meet Definition	85%	86%	86%	85%	84%
Law Enforcement	4%	5%	6%	6%	7%
Unable to Identify	4%	4%	4%	4%	3%
Placement Concerns	2%	3%	3%	3%	3%
Multiple Reporter	6%	2%	1%	1%	2%

Source: Audit Office analysis of Department of Health and Human Services data.

Service Areas

Finally, we looked at whether each of the five CFS service areas saw the same trends in reports received and reports accepted. Figure 2.9 shows the counties contained in each service area.

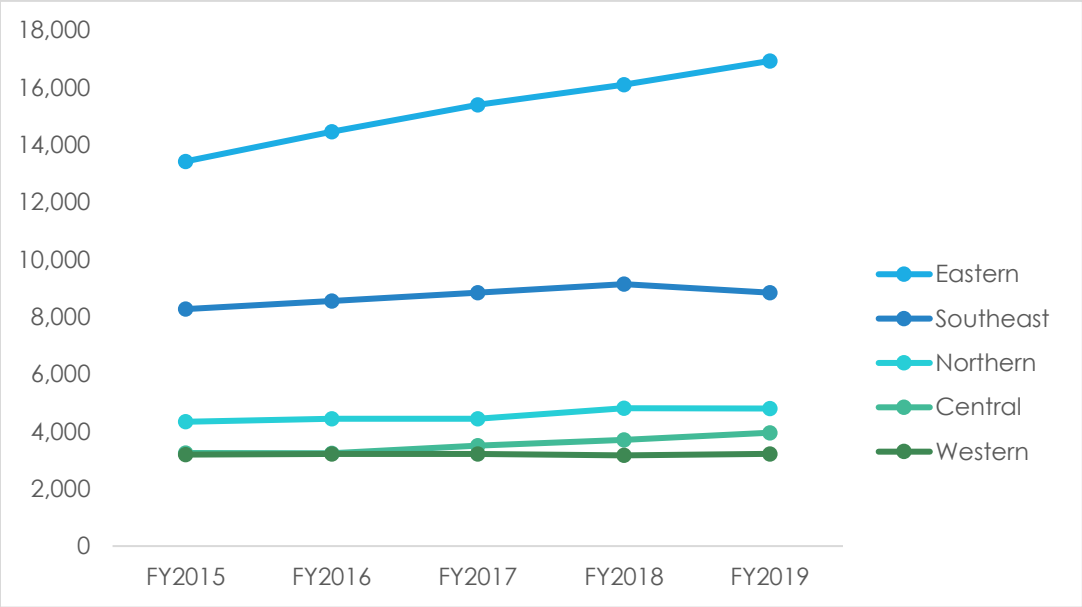
Figure 2.9. Children and Family Services Regional Service Areas



Source: The Nebraska Foster Care Review Office Quarterly Report, March 1, 2017.

As shown in Figure 2.10, all services areas showed a general increase in the number of reports. However, the Eastern service area showed a more notable increase during the period we examined. The Eastern service area was also the only service area to see continuous increases in the number of reports.

Figure 2.10. All service areas saw an increase in reports received between FY2015 and FY2019, with the Eastern service area being the most notable and continuous increase.

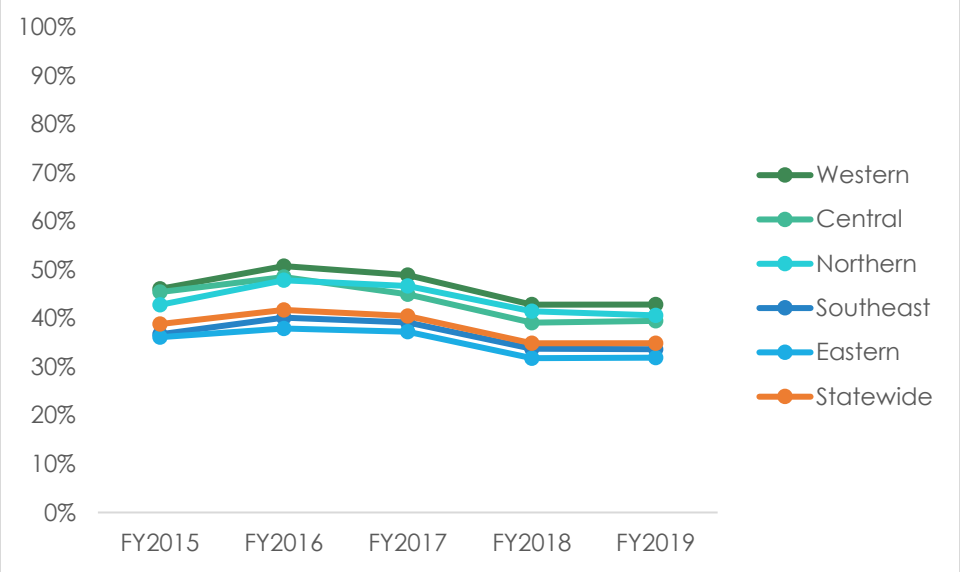


Source: Audit Office analysis of Department of Health and Human Services data.

During the period we examined, all service areas also had a general decrease in the percentage of reports that were accepted. The decrease from FY2015 to FY2019 ranged from 2% to 6% in each service area.

As shown in Figure 2.11, the largest decrease occurred between FY2017 and FY2018, when accepted reports in all five service areas dropped between 5% and 7%. There was no change in the percent of reports accepted between FY2018 and FY2019 in any service area. This analysis shows that the overall decrease in accepted reports is not explained by a decrease in any single service area.

Figure 2.11. Decreases in the percentage of accepted reports began in FY2016, but steadied after FY2018.



Source: Audit Office analysis of Department of Health and Human Services data.

SECTION III: Discussion of Non-court Cases

In this section, we present information about non-court cases. First, we explain the oversight provided by the 1184 multidisciplinary teams and the Foster Care Review Office for non-court cases. Then we report our analysis of non-court case data examining the length of both Alternative Response and Traditional Response cases. We also provide data about children who have multiple consecutive cases. The section also contains a brief discussion of the Department of Health and Human Services' (DHHS) position on services and a description of the areas where auditors were not able to access or use data for services and safety assessments due to matching issues, data quality concerns, and time constraints.

Oversight of Non-court Cases

We reviewed the role of the regional multidisciplinary teams (or 1184 teams) and the Nebraska Foster Care Review Office (FCRO) in the Nebraska child welfare system to assess what oversight role, if any, they have in non-court child welfare cases.

> **Results:** Neither the 1184 teams nor the Nebraska Foster Care Review Office reviews all non-court involved youth in the child welfare system. The 1184 teams review some, but not all, non-court cases. The Foster Care Review Office does not review non-court cases but is able to track one type of non-court case through its access to the Department of Health and Human Services case tracking system.

1184 Teams

In 1992, the Nebraska Legislature, through LB 1184, established a statewide network of child abuse and neglect investigation and treatment teams to enhance coordination of the state response to reports of child maltreatment. Specifically, the legislation required entities with statutory responsibilities in abuse and neglect cases—including law enforcement, courts, and DHHS—to coordinate their responses to cases through multidisciplinary teams. The 1184 teams, which may operate within counties or groups of adjoining counties served by one of seven regional Child Advocacy Centers, review child maltreatment reports received by the Children and Family Services (CFS) hotline or other sources.

The two types of teams—investigative and treatment—review cases for different purposes. The investigative teams are generally concerned with abuse and neglect cases that are at the "front-end" of the child welfare system. For example, these teams may consider whether families have already been offered services or they may review the county attorneys' decisions about whether to file charges. The treatment teams consider the services needed in the cases reviewed and whether members of the team may be able to provide them. The treatment teams may make recommendations to DHHS about appropriate services and, thereafter, monitor the progress of families receiving services.

State law requires investigation and treatment teams to establish protocols for, among other things, how reports are shared between law enforcement and DHHS and for coordinating cases, including the identification of services in the area. State law does not require the 1184 teams to review abuse and neglect reports in their regions. The teams may review non-court and court-involved cases.

The number of non-court cases reviewed varies substantially between densely-populated areas and more rural regions of the state. Rural teams may be able to review more non-court cases because of the smaller total number of abuse and neglect cases in their regions. Urban 1184 teams generally review only reports of serious maltreatment. The volume of reports is too large for urban teams to review every case.

Foster Care Review Office

The FCRO was established in 1982 and is an independent agency not affiliated with DHHS, the courts, or any child welfare entity. FCRO has general oversight responsibilities for children in the state foster care system. Those responsibilities include oversight of children placed outside the home by court order and children removed from the home by court order but who have been returned to the homes as state wards.

The FCRO does not have oversight authority in cases of children who are receiving non-court services but who have not been placed outside the home. However, FCRO has access to DHHS's online files on children placed outside the home in approved informal living arrangements (ILA). FCRO staff track these children for, among other things, youths' length of stay, whether the youth later become state wards, and why, and whether a youth experiences multiple ILAs.

Non-court Case Data

DHHS provided auditors with spreadsheets of case status information for non-court cases for FY2017, FY2018, and FY2019. Auditors did not independently verify the information in the spreadsheets against the DHHS database. The data were divided between Alternative Response (AR) cases and non-court Traditional Response (TR) cases. We examined the data to see what it could explain about the length of cases and the number of children in consecutive cases.

Result: During the period we reviewed, more than 60% of non-court cases closed within four months of being opened, regardless of Alternative Response or Traditional Response status. Alternative Response cases, though, were more likely to be closed in two months.

Result: The majority of children with multiple non-court cases had only two total cases but more than 10% had more than two cases during the period we reviewed. More than half of the children had a case open within six months of the previous case being closed.

Case Length

For the fiscal years we examined, there were just over 5,000 entries for AR cases and just over 10,000 entries for TR cases. Each entry was for an individual child in an individual case. That means that for this analysis, a family with multiple children involved in a case will be counted multiple times, once for each child. It also means that a child in consecutive cases will also be counted multiple times, once for each open case.

Of the cases in this analysis, 241 TR cases opened and closed on the same day. Because they were opened and closed on the same day, we have removed those cases from our analysis below. DHHS told us that some cases listed for a single day may be cases opened before a county attorney files a court case. They also told us that short lived cases may be because a family originally decides to receive services and then decides against it. Additionally, because the data is in calendar days, it is possible that a case appearing to be open for a few days would be closed under similar circumstances if the case was opened before a day when a county attorney could not file due to a weekend or holiday. However, we cannot report reasons for same-day closing in the cases we reviewed because the data we examined did not provide the rationales for case closure.

For each year we examined, the minimum length of a TR case was one day. The minimum length for AR cases was two days in FY2017 and one day in the years following. The maximum length of TR cases was well over two years in FY2017 and FY2018, and well over one year in FY2019, as shown in Figure 3.1. AR cases maximum length were considerably shorter: well over one year in FY2017, almost a year and a half in FY2018, and just over one year in FY2019.

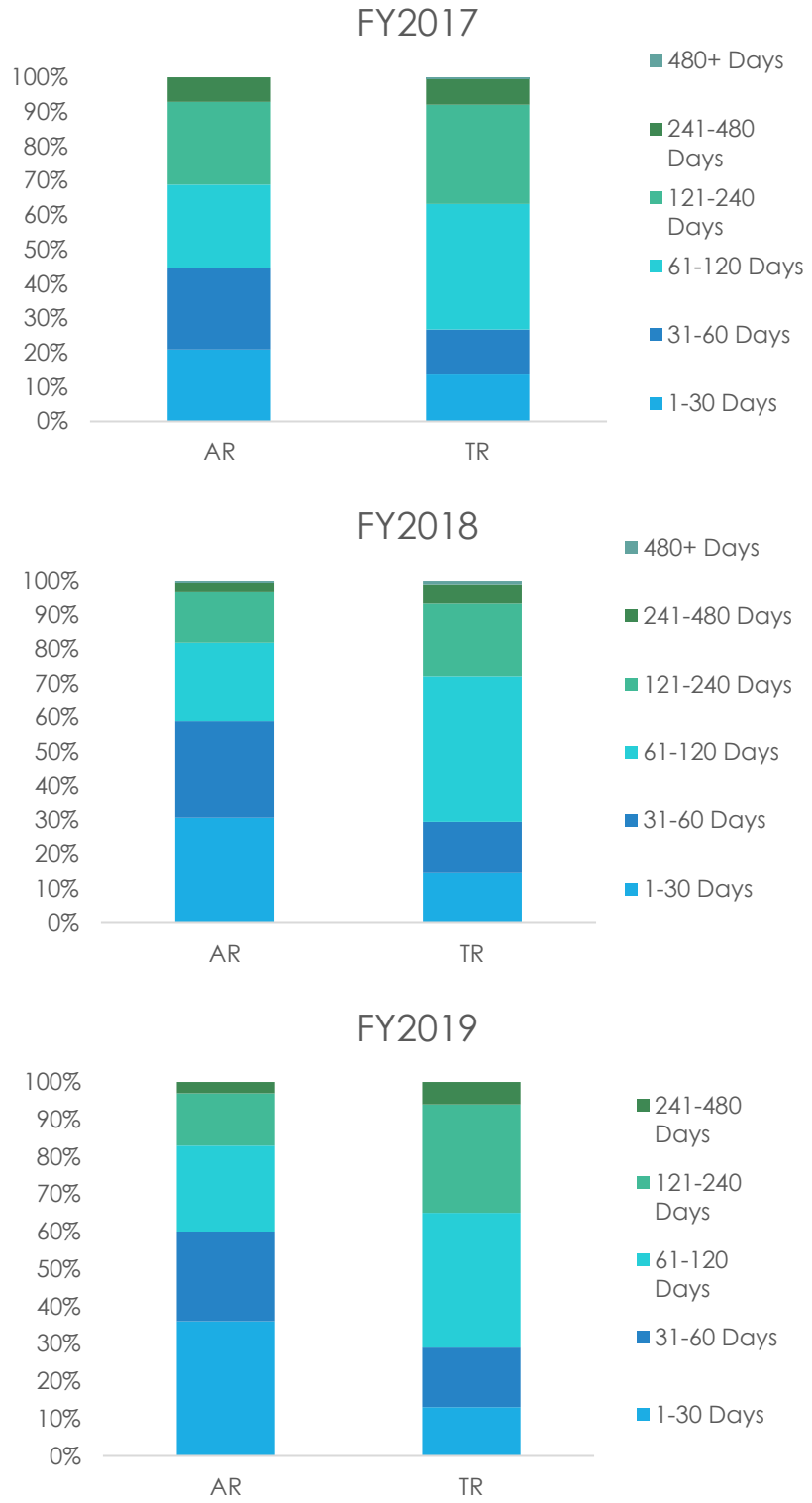
Figure 3.1. The longest Traditional Response cases were considerably longer than the longest Alternative Response cases

	FY2017	FY2018	FY2019
Longest TR Case (Days)	881	849	474
Longest AR Case (Days)	470	507	380

Source: Audit Office analysis of Department of Health and Human Services data.

As shown in Figure 3.2, TR cases as a whole tend to be longer than AR cases. For example, in FY2019, 36% of AR cases closed within 1 to 30 days of opening the case. Only 13% of TR cases were closed during that period. While 24% of AR cases closed in the 31 to 60 day range, only 16% of TR cases did (see the Appendix for the breakdown by fiscal year for AR and TR cases).

Figure 3.2. Traditional Response cases tended to be longer than Alternative Response cases.



Source: Audit Office analysis of Department of Health and Human Services data.

However, as shown in Figure 3.3, more than 60% of cases closed within four months of being opened, regardless of AR or TR status. AR cases, though, were more likely to be closed in the first month, and an even larger proportion were likely to be closed within the first two months, as compared to TR cases.

Figure 3.3. AR cases were more likely to be closed within 2 months than TR cases, but most cases closed within 4 months regardless of case type.

Amount of time before cases are closed (cumulative)	FY2017		FY2018		FY2019	
	AR	TR	AR	TR	AR	TR
In a week or less	2%	5%	4%	4%	7%	4%
In first month (30 days)	21%	14%	31%	15%	36%	13%
In first two months (60 days)	45%	27%	59%	29%	60%	29%
In first four months (120 days)	69%	63%	82%	72%	83%	65%

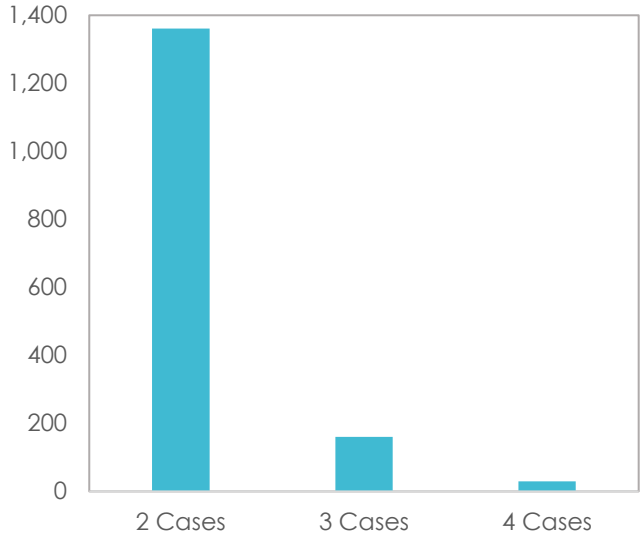
Source: Audit Office analysis of Department of Health and Human Services data.

Multiple Cases

We also examined the data to see how many children had another case opened after their initial case closed. For the purposes of this analysis, when we say a child had multiple cases, that means multiple consecutive cases in one household. A child with a case in two different households at the same time is not counted in this analysis. This analysis also counts each child individually, so a family with multiple children involved in multiple cases will be counted multiple times, once for each child in the case.

From FY2017 to FY2019, 1,551 children had multiple cases in the same household. As shown in Figure 3.4, the majority of children had only two total cases, but more than 10% had more than two cases. It is important to note that these are children with non-court cases during the years we examined. Some children may have had a court-involved case or a non-court case prior to FY2017 or after FY2019 and those cases would not appear in our analysis.

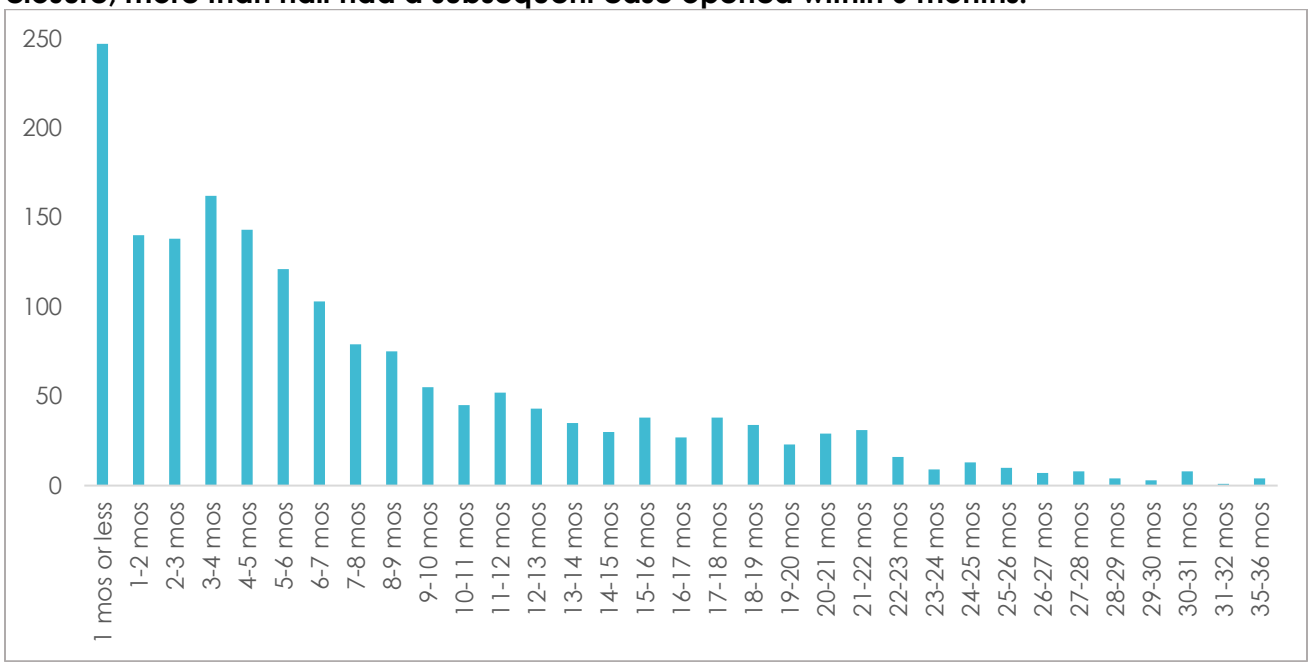
Figure 3.4. The majority of children with multiple non-court cases only had two cases.



Source: Audit Office analysis of Department of Health and Human Services data.

We also examined the number of calendar days between the cases. The minimum amount of time was zero days—that is, a new case opened the same day as the first case closed. The most time between cases was almost three years. As shown in Figure 3.5, 247 children had a case opened within one month of the previous case closure. More than half (951 children, or 54%) had a case opened within six months of the previous case being closed.

Figure 3.5. 247 children had a case opened within one month of the previous case closure, more than half had a subsequent case opened within 6 months.



Source: Audit Office analysis of Department of Health and Human Services data.

Safety Assessments

DHHS provided auditors with spreadsheets listing Safety Assessments, Risk Assessments, and Family Strengths Needs Assessments for non-court families. However, auditors were not able to match the information in the spreadsheets to unique identifiers to make the data useable for the audit.

Services

According to DHHS, there are no limitations on the kinds of services that can be made available to non-court families. There is, however, a hierarchy of services. Children and Family Services will look to services provided by other programs, like private insurance or Medicaid, first. Additionally, CFS emphasizes engaging families with community programs because they may be able to establish a connection between the family and community supports that can exist after CFS is no longer involved with the family.

DHHS provided auditors with a spreadsheet of payments CFS made for services provided to families who had a non-court case. However, the data included hundreds of service types provided in both non-court and court involved cases. We were not able to match the data with identifiers that would isolate non-court case services before priorities shifted due to the pandemic

APPENDIX: Length of Alternative Response and Traditional Response Cases, FY2017 to FY2019

Figure A.1 shows the breakdown for length of cases for both Alternative Response (AR) cases and Traditional Response (TR) cases for FY2017, FY2018, and FY2019.

Figure A.1. Traditional Response cases tended to be longer than Alternative Response cases, particularly in FY2017 and FY2018.

Length of Case	FY2017		FY2018		FY2019	
	AR	TR	AR	TR	AR	TR
1-3 Days	1%	2%	1%	2%	2%	2%
4-7 Days	2%	3%	3%	2%	5%	2%
8-14 Days	4%	3%	5%	3%	7%	3%
15-30 Days	15%	6%	22%	7%	22%	6%
31-60 Days	24%	13%	28%	15%	24%	16%
61-120 Days	24%	36%	23%	43%	23%	36%
121-240 Days	24%	29%	15%	21%	14%	29%
241-480 Days	7%	7%	3%	6%	3%	6%
480+ Days	--	1%	1%	1%	--	--

Source: Audit Office analysis of Department of Health and Human Services data.

III. Agency Response and Fiscal Analyst's Opinion

NEBRASKA

Good Life. Great Mission.

DEPT. OF HEALTH AND HUMAN SERVICES

Pete Ricketts, Governor

June 24, 2020

Martha Carter
Legislative Auditor
P.O. Box 94604, State Capitol
Lincoln, NE 68509

Dear Ms. Carter,

Thank you for the opportunity to review and respond to the Legislative Audit. Attached is the written response from the Division of Childen and Family Services, dated May 2020. Please let me know if you have any questions.

Sincerely,

Stephanie L. Beasley, Director
Division of Children and Family Services
Department of Health and Human Services

Section 1: Division of Children and Family Service's Abuse and Neglect Report Process:

Finding: The Department of Health and Human Services is required by the Administrative Procedure Act to promulgate as a regulation any standard that applies generally or is used to bind the public. The Administrative Procedure Act presumes that any document that impacts the public or procedures available to them is relied upon to bind the public, regardless of its procedural label. DHHS is not promulgating many child welfare policies and is likely in violation of the APA.

Draft Recommendation: the Department of Health and Human Services should initiation (sic) the rulemaking process for child welfare policies discussed in this report that can have a significant impact on children and their families, assess whether other policies should also be handled through the rulemaking process, and if so, initiate the process for those policies as well. Beginning January 1, 2021, the Department should report to the Legislative Audit Committee on the status of new regulations proposed based on this recommendation.

CFS Response: The Department agrees that any standard relied upon to bind the public requires the promulgation of regulations. Internal procedural documents which do not bind the public, however, are not considered regulations. While the Department contends some documents referenced in the audit report, such as the hotline screening procedures, are not required to be in regulation, the Department agrees policies should be assessed and any necessary regulations promulgated. It is the goal of the Department to be transparent. The Department worked with Senator Crawford on LB1061 (2020), and this bill will require the Department to promulgate regulations on some of the topics addressed in the legislative audit report. Further, the Department is in the process of reviewing polices and guidance to staff to determine which, if any, of these documents might serve as a public guidance document, to inform the public on how the Department interprets statute or regulation. It is expected that this review of our internal process will be complete in 2020.

Section II: Division of Children and Family Service's Abuse and Neglect Report Data Process:

Results: In three of the four areas we reviewed to identify reasons for the increase in report numbers while the acceptance rate was decreasing-number of overrides, types of allegations, and reasons reports were not accepted-there was little change. The most notable change we identified was in the breakdown by service areas. The Eastern service area, the state's largest service area, was the only one in which reports increased steadily between FY 2015 and FY 2019. The Eastern service area also had the lowest proportion of accepted reports during the period we reviewed. Additionally, the largest decrease in accepted reports occurred between FY 2017 and FY 2018.

Draft Recommendation: Were it not for the current pandemic, which has put considerable additional responsibilities on DHHS, it could be useful to do additional research into the causes of the steady increase in reports in Eastern service area and explore what actions or factors could have played a role in the decrease in accepted reports between FY 2017 and FY 2018. However, the Audit Committee will not recommend additional review until the impact of the pandemic on DHHS has decreased significantly.

CFS Response: CFS reviews trends in child protection, adult protection and child welfare services on a weekly, monthly and quarterly basis. At this time, CFS believes additional research into the reduction of accepted reports that initially occurred between FY 2017 and FY 2018 is not needed. There are factors that may affect the volume of reports of child abuse and neglect received, just as there are factors that may increase or decrease the

proportion of accepted intakes across the state. Some of these factors may be the result of CFS changes, and some may be externally influenced.

Policy changes by CFS may generally affect screening decisions. For example, during 2019 CFS modified the policy to accept intakes on children 0 – 5 years old when the reporter was a medical professional. This change would generally increase the proportion of accepted intakes. Previously, reports involving this combination of child and reporter may have been screened based on the information gathered through the Structured Decision Making screening tool. The intake process was changed to allow for an override of the decision to screen-out a report if the reporter is a medical professional and the alleged victim/identified child is age 5 and under. This change ensures young and vulnerable children were seen face to face by a Children and Family Services Specialist if a medical professional made the report. Medical professional is defined as a professional licensed to practice as a doctor, nurse, psychologist, psychiatrist, or therapist regardless of setting. Medical professionals also include hospital social workers.

CFS remains committed to ensuring intake and screening decisions are appropriate and focused on safety of children. Our efforts include a structure for continuous quality improvement. In June of 2019, CFS implemented a secondary screening for all reports that were initially designated as a does not meet definition. The re-screenings are completed by program specialists located in central office and focused on ensuring safety of children. In addition, 1184 teams are actively engaged across the state and have the authority to review all abuse/neglect reports received by CFS or Law Enforcement.

Section III: Discussion of Non-court Cases:

Results: Neither the 1184 teams nor the Nebraska Foster Care Review Office reviews all non-court involved youth in the child welfare system. The 1184 teams review some, but not all, non-court cases. The Foster Care Review Office does not review non-court cases but is able to track one type of non-court case through its access to the Department of Health and Human Services case tracking system.

Draft Recommendation: The Legislature should consider introducing an interim study to consider whether additional oversight of non-court cases is needed. The study should solicit input from Representatives of the CFS service regions, the Foster Care Review Office, 1184 teams, and other interested parties.

CFS Response: A review of CFS is provided by many entities and there are several means of oversight for the provision of child welfare services in Nebraska. Nebraska CFS receives federal oversight of child welfare services including, but not limited to, traditional response non-court cases and Alternative Response cases. The review and oversight is directed by the Federal Administration for Children and Families (ACF), Children's Bureau. Nebraska has undergone 3 separate federal Children and Family Services Reviews (CFSR) and non-court and Alternative Response in-home families were included in the formal case reviews that were part of the 2017 Child Family Services Review (CFSR). The non-court and Alternative Response cases continue to be reviewed quarterly in the ongoing Nebraska ACF Program Improvement Plan with ACF review.

Multidisciplinary teams such as 1184 team meetings provide a regular forum for cases to be reviewed by local teams which have direct knowledge of the services and supports needed for the family and child. It is also through collaboration that guidance and support are provided to CFS in work with families. Each month, CFS provides Child Advocacy Centers (CACs) with a report of children in the CAC's region with traditional response, active non-court involved cases during the preceding month. The report includes identified youth and case management information such as the CFS Specialist assigned, case begin date, safety and risk levels, case progression narrative,

services, and other case specific information. Case information is accessible to the CACs and specific cases from this list may be discussed at 1184 meetings attended by various legal, law enforcement, stakeholder, and CFS administration and staff.

In addition, the Office of Inspector General and the Foster Care Review Office provide oversight to CFS. CFS staff work closely with both entities to provide data and support to the reviews of CFS and response to recommendations provided. During calendar year 2019, CFS granted the Foster Care Review Office access to identified case information for all children involved in a non-court voluntary Informal Living Arrangement (ILA) case. The Foster Care Review Office is within their authority to perform in-depth case reviews of any and all ILA children. CFS provides the Foster Care Review Office with a daily report of ILA cases reported in NFOCUS including fully identified child information.

Section III: Discussion of Non-court Cases continued:

Result: During the review period we reviewed, more than 60% of non-court cases closed within four months of being opened, regardless of Alternative Response or Traditional Response status. Alternative Response cases, though, were more likely to be closed in two months.

Draft Recommendation: None

CFS Response: N/A

Result: The majority of children with multiple non-court cases had only two total cases but more than 10% had two cases during the period we reviewed. More than half of the children had a case open within six months of the previous case being closed.

Draft Recommendation: None

CFS Response: N/A

Legislative Auditor's Summary of Agency Response

This summary meets the requirement of Neb. Rev. Stat. § 50-1210 that the Legislative Auditor briefly summarize the agency's response to the draft performance audit report and describe any significant disagreements the agency has with the report or recommendations.

The Department of Health and Human Services (Department) disagreed with the one of the Audit Office's draft recommendations and made comments suggesting the others (or another) were unnecessary.

Promulgation of Regulations

The Department agreed, generally, that the Division of Children and Family Services should promulgate regulations and create guidance documents in compliance with the Administrative Procedure Act. They also indicated that a review of child welfare policies is underway, with the goal of ensuring that child welfare policies relied upon by the public that are not currently in regulations be put into regulations.

Based on the Department's comments, the Audit Office recommends that the draft recommendation be revised to require the Department to report to the Performance Audit Committee by January 1, 2021 on which policies were reviewed and which were determined to need to be promulgated as regulations and, for those the Department believes do not need to be regulations, the reasons for that decision.

However, the Department disagreed with the draft report recommendations for additional examination of abuse and neglect reports in the Eastern Service Area. While the Department didn't directly disagree with the recommendation for an interim study of oversight of non-court cases the response expressed the belief that they have sufficient oversight.

On the Eastern Service Area recommendation, the Department does not believe that further research into the FY2017 and FY2018 child abuse and neglect reports is necessary. The Department explained that there are many possible causes for a change in the volume of reports, including external factors and changes in CFS policy. The Department included in its response one such policy change that could impact the number of reports accepted going forward, but did not impact the report data examined during the audit. The Department also explained that they are doing an internal review of contemporary reports that were not accepted because they did not meet the definition of child abuse and neglect. DHHS suggested that the 1184 teams' authority to examine all child abuse and neglect reports is sufficient oversight of how reports are accepted or not accepted.

The response to the recommendation for an interim study on non-court case oversight listed the various state and federal entities that have the authority to review DHHS actions, including the 1184 teams and the Inspector General for Child Welfare. While it is true that there are several means of looking at pieces of the child welfare system, as the Audit Report indicated, oversight of non-court cases is not systematic or uniform across the state.

State of Nebraska

LEGISLATIVE COUNCIL

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

July 10, 2020

Martha Carter
Legislative Auditor
Performance Audit
11th Floor, State Capitol
Lincoln, NE 68509

Dear Martha;

Pursuant to Section 50-1210(2) Fiscal Office staff have reviewed the draft audit report, "Department of Health and Human Services Division of Children and Family Services: A Review of Hotline and Non-court Data" and offer the following assessment of the cost to implement the recommendations. The Draft Recommendation in Section I may have an impact.

Section I. Draft Recommendation:

The Department of Health and Human Services should initiate the rulemaking process for child and welfare polices discussed in this report that can have a significant impact on children and families, assess whether other policies should also be handled through the rulemaking process and, if so, initiate the process for those policies as well. Beginning January 1, 2021, the Department should report to the Legislative Audit Committee on the status of new regulations proposed based on this recommendation.

Legislative Fiscal Office Assessment:

The Department of Health and Human Services has a legal division which is staff to handle the rulemaking process. If the volume of work is manageable within the scope of their current staffing structure, the costs for promulgating the rules and regulations would be minimal. If this

recommendation envisions a lengthy, in-depth process, there likely would be the need for additional staff or a consulting contract.

Sincerely,

Tom Bergquist
Legislative Fiscal Analyst