



*Committee Report, Vol. 15 , No. 1*

**Personal Services Contracts:  
An Examination of Compliance and  
Oversight**

**Performance Audit Section**

Legislative Audit and Research Office

*October 2008*

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### **PERFORMANCE AUDIT SECTION**

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*Prepared by*  
**Don Arp, Jr.**  
**Abby DeBuse**



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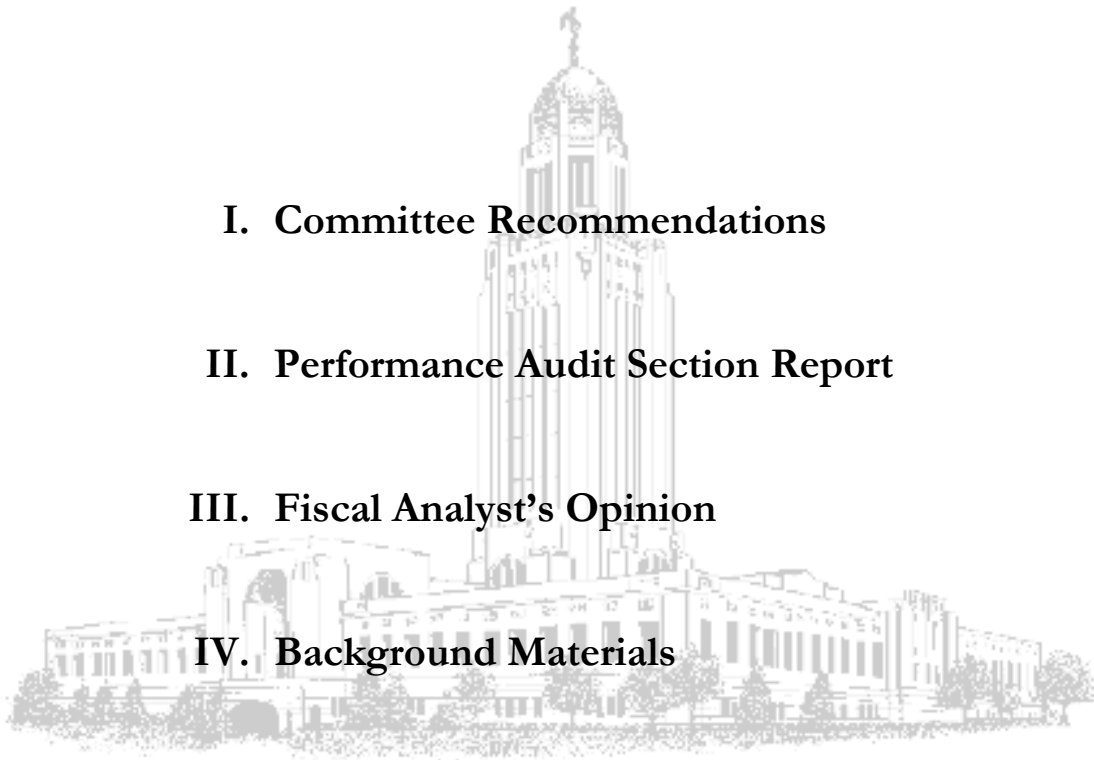
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*I. Committee Recommendations*





## Committee Recommendations

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On September 19, 2008, the Legislative Performance Audit Committee conducted a public hearing on the draft report for this audit. The Committee greatly appreciated the testimony of all parties at the hearing. The testimony gave the Committee added perspective as it sought to understand the issues in the audit and in its consideration of audit recommendations.

However, the Committee remains very concerned by the serious nature of the findings of this report. If the Department of Health and Human Services (DHHS) is going to contract with providers for transportation services it must do more to ensure that the transportation provided is safe and reliable. The Committee appreciates the efforts DHHS has initiated to begin to provide additional oversight of these services; however, it will be conducting rigorous follow-up to be sure those efforts are successful. In addition, the Committee believes that the Department of Administrative Services (DAS) needs to do more to ensure that policymakers and the public may easily access information on the state's personal services contracts by, at a minimum, giving all interested senators full, read-only access to Nebraska Information System (NIS) contract information and providing the public with a report of contract locations.

The Committee's specific recommendations follow.

### **Section I: Personal Services Contracts in Nebraska**

**Finding 1:** The information on personal services contracts available from NIS, the state accounting system, has improved but notable limitations remain.

**Discussion:** In 2003, prior to the enactment of LB 626, which created many of the requirements being reviewed in this audit, policymakers were frustrated by their inability to determine the number and dollar value of personal services contracts. Through NIS, it is now possible to calculate the estimated dollar value for the entire duration of all open services contracts; however, there is no oversight of whether agencies do, in fact, enter this information or, when they do, of how they estimate the total cost. NIS also contains the actual amount spent through purchase orders, which can be used to estimate the amount the state paid on these contracts in a given fiscal year. However, that amount is underestimated by at least the amount of the DHHS transportation contracts that this audit showed had not been entered into NIS. It is also possible that other types of contracts (within DHHS or other agencies) are not being included.

Consequently, the personal services contract information that is available in 2008 that was not available in 2003 remains of questionable value because no one has the authority to ensure that agencies are entering all of the information they should be or that they are entering it in a consistent manner from agency to agency.

**Recommendation:** DAS should ensure that the Nebraska Information System (NIS) is set up to allow collection of the following data items for each personal services contract:

- Name of the contractor;
- Description of service;
- Number of FTEs used to provide service;
- Beginning and end date of the of the contract;
- Amount spent to date and total contract value;
- Whether it is a new contract or a renewal;
- Physical location of the contract; and
- An agency contact person for the contract.

The Committee is also concerned the personal services contract information entered by individual state agencies may not be complete and accurate and will request that the Auditor of Public Accounts verify NIS contract information in any audit conducted by that office that includes personal services contracts.

## **Section II: DAS' and DHHS' Compliance with §§ 73-301 to 73-307**

**Finding 2:** We could not determine DAS' or DHHS' compliance with most of the requirements of sections 73-301 to 73-309 because we found no evidence that the event that would trigger the requirements of these sections—the replacement of a full-time equivalent employee with a contract worker—has ever occurred.

**Recommendation:** None.

**Finding 3:** DAS is compliant with the statutory requirement that it promulgate rules and regulations to carry out requirements of sections 73-301 to 73-309.

**Recommendation:** None.

## **Section III: DAS' Compliance with §§ 73-501 to 73-509**

**Finding 4:** DAS is compliant with many of the requirements of sections 73-501 to 73-509, but is only partially compliant with a re-

quirement that it maintain a “complete record” of personal service contracts processed using emergency procedures. Most of the records for these contracts did not contain the final, signed contract and therefore were not complete.

**Discussion:** At the public hearing on this audit, DAS agreed to request from agencies the final, signed version of emergency contracts.

**Recommendation:** None; DAS has already agreed to request final, signed contracts.

**Finding 5:** DAS is compliant with the requirement that it determine the pre-process for the replacement of a state worker with a contractor.

**Recommendation:** None

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#### Technical Issue

**Finding 6:** We identified two technical issues with the language of Neb. Rev. Stat. § 73-508 but DAS’ implementation of this section relies on a reasonable interpretation. (These issues are discussed in detail in Appendix I.)

**Recommendation:** The Committee does not intend to introduce legislation during the next legislative session, but will continue to monitor this issue.

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**Finding 7:** DAS is in compliance with the statutory requirement that it identify a database that contains the physical location of each personal services contact. DAS has identified NIS as that database; however, the Legislature’s goal that contract location information be readily accessible to policymakers and the public has not been met.

**Discussion:** The legislative history clearly reflects the Legislature’s expectations that the contract location information be widely accessible but issues identified in this report—including access level required to view it in NIS and the accuracy of the report itself—raise questions about whether NIS can, in fact meet these expectations.

At its public hearing on this audit, Committee members reiterated their desire to have contract location information, as well as other information regarding personal services contracts, easily available to

policymakers and the public as they believe this is fundamental to one of the goals of LB 626 (2003), namely increased oversight of personal services contracts

**Recommendation:** The Committee encourages DAS to (1) revise the field used to enter the location information to either make it unique to service contracts or to clarify the contents of the field by changing its name, and to ensure that a service contract cannot be processed unless the field is completed; and (2) at a minimum, DAS should also develop a process to give all interested senators complete, read-only access to the portions of Nebraska Information System (NIS) that contain the personal services contract information and, at the very least, make a contract location report (not NIS itself) publicly available annually or at some other regular interval.

#### **Section IV: DHHS' Compliance with §§ 73-501 to 73-509**

**Finding 8:** DHHS is not in compliance with some substantive statutory requirements as they relate to transportation contracts. DHHS' argument that these requirements do not apply to transportation services contracts is incorrect.

**Discussion:** DHHS is not compliant with requirements to document:

- transportation contracts in NIS;
- the reason it selected a specific contractor; and
- efforts to assess contractor compliance with contract terms.

DHHS has agreed to document the reason it selected a specific transportation contractor and, through its new Comprehensive Quality Unit, will examine contractor compliance with contract terms. Regarding entering contracts into NIS, DHHS, at the public hearing for this audit, said that two of the three types of transportation contracts would be entered into NIS. DHHS said that the third type, known as "friends and family" contracts, are so numerous that entering them in both NIS and N-FOCUS would be too costly. DHHS plans to ask the director of DAS for an exemption from this requirement and noted that a statutory change may be needed to address the issue.

**Recommendation:** The Committee will follow-up with DHHS in regards to these sections of statute and statements made regarding compliance efforts by DHHS representatives in the public hearing on this audit report. The Committee also strongly encourages DHHS to

determine whether it has any other contracts that should be meeting these requirements but currently are not.

\*\*\*

**Finding 9:** DHHS is in full or partial compliance with most of the statutory requirements relating to the processing of sole source personal services contracts. DHHS is in partial compliance with a requirement that it document contractor compliance with contract terms.

**Recommendation:** DHHS should take additional steps to ensure that it maintains documentation of contractor compliance.

## Section V: Contract Oversight and Monitoring

**Finding 10:** DHHS has no comprehensive method for determining compliance with many of requirements for transportation contractors.

**Finding 11:** Prospective foster parents undergo a more rigorous criminal background check than do potential drivers under contract to transport state wards.

**Discussion:** At the public hearing for this report, DHHS said that it is looking at several possible new requirements for transportation providers, including 50-state criminal background checks, mandatory drug testing, completion of a defensive driving course, and implementation of a certification training course. DHHS is currently exploring the cost impacts of these options.

**Finding 12:** As mentioned in Section III, we found that DHHS does not comply with the statutory requirement that it document the reasons for selecting a specific transportation contractor, although it has agreed to start doing so in the future.

**Discussion:** DHHS plans to begin such a practice for contracts entered into after July 2008.

**Finding 13:** DHHS does not have a comprehensive system for reviewing contract performance. Specific problems with DHHS' process include that:

- the level of payment review varies depending on if the transportation is paid for with Medicaid or non-Medicaid funds;
- DHHS conducts no random sampling of non-Medicaid invoices to look for discrepancy patterns;

- DHHS does not have a written policy or procedure for determining mileage, which is a critical element of its internal control for billing; and
- DHHS has no systematic way to determine compliance with contract terms or detect other potential problems.

**Discussion:** DHHS plans to conduct such activities with its recently founded Comprehensive Quality Improvement Unit.

**Recommendation:** DHHS should provide the Committee, starting January 2009, with quarterly status reports on pursuit of the possible policy changes discussed at the public hearing, including 50-state background checks and driver training.

DHHS should ensure that its newly developed CQIU addresses the concerns raised in this report, especially that all statutory requirements are met. To this end, DHHS should consider requiring all issues/problems with contractors be reported directly to the CQIU, either by foster parents, concerned citizens, or DHHS personnel. DHHS should also:

- Provide the Committee with a copy of CQIU policies and procedures by January 2009 and whenever they are updated after that;
- Provide the Committee with quarterly reports, beginning in March 2009, listing oversight activities conducted, results of these activities, and what action was taken for violations (contractor responses should also be included);
- Have performance auditors shadow some oversight activities like spot checking, conducted by the CQIU; and
- Consult with performance auditors during CQIU policy/procedure development.

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**Finding 14:** DHHS has no system-wide policy on how to handle complaints against contractors.

**Recommendation:** None; DHHS created a policy to handle this issue during the audit.

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**Finding 15:** DHHS has an adequate system of sanctions in place for addressing problems with transportation contractors. However, in at least one regard—the sanction for transporting state wards without

proper child safety restraints—there are more severe penalties for foster parents than for transportation contractors.

**Recommendation:** DHHS should review its sanctions for transportation contractors and bring them into closer comparability with sanctions for foster parents.

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**Finding 16:** The efforts taken by DHHS leadership to establish the CQIU and define the relationship between the service areas and the Central Office are positive steps to addressing the issues of contracting and contract oversight.

**Recommendation:** The Committee will follow-up as these efforts get underway.







*II. Performance Audit Section Report*



*Performance Audit Section Report*

**Personal Services Contracts: An Examination of  
Compliance and Oversight**

*October 2008*

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*Prepared by*  
**Don Arp, Jr.**  
**Abby DeBuse**



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# INTRODUCTION

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The legislative and executive branches of Nebraska government have been concerned with personal services contracts since the mid-1990s. In 2003, the Legislature passed, and the Governor signed, LB 626, which created new requirements for the processing of such contracts.

In September 2007, the Legislative Performance Audit Committee (Committee) directed the Legislative Performance Audit Section (Section) to conduct a performance audit of personal services contracts, focusing on statutory requirements for Department of Administrative Services (DAS) and using Department of Health and Human Services' (DHHS) transportation contracts for wards of the state to test agency-specific requirements. The Committee directed the Section to assess each agency's compliance with requirements enacted in 2003 (codified at Neb. Rev. Stat. §§ 73-501 to 73-509) and with previously existing requirements codified at §§ 73-301 to 73-307. Specifically, the Committee directed the Section to answer the following questions:

- 1) Is DAS compliant with the relevant portions of Neb. Rev. Stat. §§ 73-301 to 73-307 and §§ 73-501 to 73-509?
- 2) Is DHHS compliant with the relevant portions of Neb. Rev. Stat. §§ 73-301 to 73-307 and §§ 73-501 to 73-509 with, at a minimum, its contracts regarding transporting wards of the state and what mechanisms exist to ensure compliance with the terms of these contracts?

Section I of this report provides an overview of personal services contracts. Sections II through V answer the specific questions posed for this audit. Section VI contains our findings and recommendations.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. The methodologies used are described briefly at the beginning of each section, with further detail included in the appendix.

We appreciate the cooperation and assistance of DAS and DHHS personnel during the audit.





## **SECTION I: Personal Services Contracts in Nebraska**

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Personal services contracts are agreements between an agency and a vendor primarily for labor. State agencies enter into personal services contracts for a variety of activities such as transportation, security, janitorial work, consulting, and other professional services.

Through executive orders, interim studies, legislative bills, and a previous performance audit, policymakers have sought to address concerns surrounding personal services contracts. Major concerns included identifying the number and dollar value of such contracts and improving the processes used to contract for services. Current statutory provisions place requirements on both the Department of Administrative Services (DAS) and the specific agency that is contracting for services.

### **Prevalence of Personal Services Contracts**

One of the significant statutory changes relating to personal services contracts made in 2003 was the addition of a requirement that information about most personal services contracts be entered into the Nebraska Information System (NIS), the state's accounting system. This requirement has improved the quality of available information on the number and dollar value of such contracts entered into by the state, although there are still some limitations to the data as discussed below.

According to DAS, state agencies entered into 3,978 personal services contracts during FY2005-06.<sup>1</sup> Also according to DAS, in FY2005-06, 4,249 contracts had \$326,104,465 drawn against them.<sup>2</sup> More contracts have payments than were entered into in FY2005-06 because some contracts were already in place at the beginning of the fiscal year.

However, these figures do not include all service contracts. For example, as we discuss later in this report, contracts for transporting state wards are not reflected in these figures because they are not entered in the NIS. For the most recent fiscal year, FY2006-07, expenditures for transportation-only contracts for wards of the state totaled \$2,204,540.<sup>3</sup> It is possible that other types of contracts are not entered into NIS and therefore excluded from these figures.

In addition to annual figures, NIS can calculate the total estimated value for these contracts over the life of the contracts. For contracts entered into in FY2005-06, that figure is \$658,712,645.95.<sup>4</sup> This figure is not an annual cost estimation for each contract; it is an estimate of the total cost of each contract, from start to finish, which may be over the course of several years. The reliability of this figure primarily

rests on the personnel in each agency who develop an estimate for each contract and enter the information into NIS. As discussed later in this report, DAS has no authority to oversee whether agencies do, in fact, enter this information or whether they enter it correctly.

**FINDING:** The information on personal services contracts available from NIS, the state accounting system, has improved but notable limitations remain.

### **Statutes Governing Personal Services Contracts**

Two sections of statute govern personal services contracts and place requirements on DAS and the agency contracting for services. The definitions of personal services contracts vary slightly in the two sections of statute reviewed, however this difference is not significant for the purpose of this audit.

*Neb. Rev. Stat. §§ 73-301 to 73-307*

These sections apply to any state agency that seeks to engage in a personal services contract with a private entity where, on the effective date of the contract, the services to be performed by the private entity replaces services currently being provided by permanent state employees. This portion of statute also places requirements on DAS and its Director. Further, it provides for certain exemptions to these requirements.

*Neb. Rev. Stat. §§ 73-501 to 73-509*

These sections apply to state agencies that enter into services contracts, with specific requirements for the agencies, agency directors, the Director of Administrative Services (DAS), and DAS Materiel Division on entering into personal services contracts greater than \$50,000. In general terms, the requirements are intended to increase accountability for service contracts by requiring, among other things, that agencies use a competitive bidding process except in certain identified circumstances, document the contractor selection process, record the contracts in NIS, and maintain documentation of any exemptions to the required processes.

Additionally, this section of statute includes provisions for sole source contracts (contracts that can only be made with one entity because of the uniqueness of the service) and emergency contracts (contracts that must be entered into quickly because an unforeseen event does not allow for normal processing).<sup>5</sup> In addition, this section of statute provides provisions for replacing a state employee with a service contract employee. Statute also provides several exemptions to these requirements.

We discuss the requirements of these sections, as well as DAS and DHHS compliance with them, in Section II through IV.

## Notes

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<sup>1</sup> Information received from DAS on November 16, 2007.

<sup>2</sup> Information received from DAS on November 16, 2007.

<sup>3</sup> Slideshow presented to Health and Human Services Committee by DHHS on February 22, 2008; telephone conversation with DHHS staff on May 9, 2008.

<sup>4</sup> Information received from DAS on November 16, 2007.

<sup>5</sup> Neb. Rev. Stat. § 73-502(2) and § 73-502(4).



## SECTION II: Department of Administrative Services' and Department of Health and Human Services' Compliance with Sections 73-301 to 73-307

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In this section, we report the results of our evaluation of whether Department of Administrative Services (DAS) and Department of Health and Human Services (DHHS) are compliant with Neb. Rev. Stat. §§ 73-301 to 73-307. In conducting this analysis, the Section reviewed relevant statutes, DAS' and DHHS' guidelines and policies, and other documentation. The Section also interviewed DAS and DHHS personnel.

### **Neb. Rev. Stat. §§ 73-301 to 73-307 Requirements**

Sections 73-301 to 73-307 establish requirements for DAS and an agency entering into personal services contracts that, on the starting date of the contract, would replace a permanent state employee with a contracted worker.<sup>1</sup> These sections apply to most state agencies, but exempt some, namely: the University of Nebraska; the state colleges; and the boards, commissions, agencies, and offices established by the state constitution. Other exceptions are provided for specific types of contracts, such as those under the Nebraska Consultants' Competitive Negotiation Act and renewals of contracts previously approved or excluded under these statute sections.

A state agency seeking to contract for personal services that would replace one or more permanent state employees must submit various materials to the Director of Administrative Services (Director of DAS), including the proposed contract, a review of long-term actual cost-savings (12-month and 60-month projections), the measurable goals for improving the quality of service, and an examination of the possibility of alternatives within the agency to contracting the service. The agency must also develop an assistance plan for the displaced worker(s) and submit this to the Director of DAS.

After reviewing the required materials from the contracting agency, the Director of DAS may approve the contract if it meets certain conditions, including:

- there is an economic advantage to contracting over using a state employee;
- the state's affirmative action efforts are not adversely affected;
- there are adequate control mechanisms to ensure contract performance; and
- the contracted employees are fairly compensated.<sup>2</sup>

Within 45 days of receiving the materials, the Director of DAS must submit a report to the chairperson of the Legislative Appropriations Committee and the Legislative Fiscal Analyst explaining why a contract was approved or disapproved.<sup>3</sup>

### Compliance

The Section could not determine DAS' or DHHS' compliance with most of the requirements of sections 73-301 to 73-309 because we found no evidence that the event that would trigger the requirements of these sections—the replacement of a full-time equivalent employee with a contract worker—has ever occurred. According to DAS representatives, no agency has requested that it review the required materials to be submitted under these sections.<sup>4</sup> In addition, according to the Legislative Fiscal Office, DAS has never submitted the report required should such a contract be sought.<sup>5</sup> Finally, a representative of the state employees' union, a party likely to be aware of situations in which state employees are affected by state contracts, indicated that the union has not received a complaint of a service contract replacing a state employee.<sup>6</sup>

**FINDING:** We could not determine DAS' or DHHS' compliance with most of the requirements of sections 73-301 to 73-309 because we found no evidence that the event that would trigger the requirements of these sections—the replacement of a full-time equivalent employee with a contract worker—has ever occurred.

The one section of statute that we could assess for compliance requires that DAS promulgate rules and regulations to carry out the processes described in statute.<sup>7</sup> We found that DAS has promulgated the required rules and regulations, is therefore compliant.<sup>8</sup>

**FINDING:** DAS is compliant with the statutory requirement that it promulgate rules and regulations to carry out requirements of sections 73-301 to 73-309.

### Notes

<sup>1</sup> Neb. Rev. Stat. § 73-301 defines a personal services contract as “. . . an agreement by a contractor to provide human labor but does not mean a contract to supply only goods or personal property.”

<sup>2</sup> Neb. Rev. Stat. § 73-304(1)-(4).

<sup>3</sup> Neb. Rev. Stat. § 73-305.

<sup>4</sup> Letter from DAS – Legal Counsel, November 16, 2007; meeting with DAS – Materiel Acting Administrator and staff, January 9, 2008 and February 5, 2008.

<sup>5</sup> Meeting with Legislative Fiscal Analyst, January 9, 2008; E-mail from Legislative Fiscal Analyst received February 7, 2008.

<sup>6</sup> Meeting with Director of Nebraska Association of Public Employees, November 19, 2007.

<sup>7</sup> Neb. Rev. Stat. § 73-306.

<sup>8</sup> Nebraska Administrative Code, Title 12, Chapter 1, filed August 5, 1998.

## **SECTION III: Department of Administrative Services’ Compliance with Sections 73-501 to 73-509**

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In this section, we report the results of our evaluation of whether the Department of Administrative Services (DAS) is compliant with Neb. Rev. Stat. §§ 73-501 to 73-509. In conducting this analysis, the Section reviewed relevant statutes, DAS’ guidelines and policies, and other documentation. The Section also interviewed DAS personnel.

We began this analysis by examining the six transportation contracts for wards of the state that were over \$50,000 for FY2004-05 and FY2005-06. However, none of the transportation contracts were processed under the statutory requirements for sole source or emergency contracts. Consequently, to assess DAS and DHHS compliance with those requirements, we reviewed the 42 DHHS contracts that were entered into under the sole source or emergency provisions during FY2004-05 and FY2005-06.

Following is our analysis of DAS’ compliance with the relevant requirements. DHHS compliance with the agency-specific requirements is discussed in Section IV.

### **Neb. Rev. Stat. §§ 73-501 to 73-509 Requirements**

Sections 73-501 to 73-509 establish requirements for DAS and the contracting agency for processing personal services contracts valued at more than \$50,000. Under these sections, DAS has two types of requirements: initial requirements that need to be met in order for contracting agencies to meet their requirements, and on-going requirements, which require DAS’ more active involvement in the contracting process. An example of an initial requirement, DAS was required to specify the format and type of information agencies have to maintain regarding service contracts valued at more than \$50,000, establish a database that identifies the physical location of each such contract, and develop procedures for exceptions to some statutory requirements. On an ongoing basis, DAS must pre-approve sole source service contracts valued at more than \$50,000 and maintain a record of such contracts.

### **Compliance**

We found that DAS complies with many of the requirements of section 73-501 to 73-509, including those to:

- specify the format and type of information state agencies must maintain in NIS regarding personal services contracts;
- provide procedures to grant limited exceptions from statutory processes and maintain justifications for these exceptions;
- pre-approve sole source contracts; and
- provide guidelines for processing contracts that seek contractors to provide services that have been performed within the last 12 months by a state employee.<sup>1</sup>

We also found that DAS complied with the requirement to establish a centralized database (currently NIS) that identifies the physical location of a copy of each personal services contract, but we identified some problems with this database, which are discussed at the end of this section.

**FINDING:** DAS is compliant with many of the requirements of sections 73-501 to 73-509.

#### *Emergency Contracts*

We found that DAS is partially compliant with a requirement that it maintain a “complete record” of personal services contracts processed under procedures for emergency contracts. DHHS had only four emergency contracts in FY2004-2005 and FY2005-2006. We found that the files for these contracts contained the statutorily required documentation of the justification for following the emergency procedures and checklists of the agency and DAS approvals. However, three of the four files did not contain the final, signed contract. Because the statute requires a complete record of sole source *contracts* (not just the process used for entering into those contracts) DAS files are not complete without the final contract.<sup>2</sup>

**FINDING:** DAS is partially compliant with a requirement that it maintain a “complete record” of personal service contracts processed using emergency procedures. Most of the records for these contracts did not contain the final, signed contract and therefore were not complete.

#### *Replacement of State Workers*

We found that, under the section of statute addressing the replacement of state worker with a contractor, DAS’ only requirement is to determine the pre-process to be used for such an action. Through its



People Resource Management Guide, which provides a process for agencies to use if the situation arises, DAS has met this requirement.<sup>3</sup>

**FINDING:** DAS is compliant with the requirement that it determine the pre-process for the replacement of a state worker with a contractor.

#### *Technical Issues*

We found two small technical problems relating to § 73-508. First, a provision of § 73-508 relating to the documentation DAS must maintain on sole source contracts is somewhat ambiguous. The requirement—which states that DAS must maintain documentation on “such sole source contracts for services”—may be read as referring to only emergency sole source contracts, which are discussed in the two sentences immediately preceding the requirement. However, the requirement may also be read as referring to all sole source contracts, which are referenced earlier in the section. DAS has implemented the requirement by maintaining documentation on *all* sole source contracts,<sup>4</sup> an interpretation supported by a statement of the introducer during debate on the bill that contained this provision.<sup>5</sup>

Second, when § 73-508 is read in conjunction with § 73-507, it is possible that some procedural exemptions could be allowed that may not have been intended by the Legislature. For example, DAS could allow exemptions from the requirements that a contracting agency’s director (or designee) approve emergency contracts, that the agency maintain justification for the emergency contract, or that DAS retain documentation of a sole source contract. However, we found that DAS has not included any of the potentially unintended exemptions in its exemption policy. (See Appendix I for a more detailed explanation of this potential problem.)

We found that for both of these potential problems, DAS’ implementation relies on a reasonable interpretation of the statutes but that implementation could possibly change at any time.

**FINDING:** We identified two technical issues with the language of Neb. Rev. Stat. § 73-508 but DAS’ implementation of this section relies on a reasonable interpretation.

#### **Contract Location Information in NIS**

In addition to the statutory requirement that the database selected by DAS for personal service contract information identify where a copy of each contract may be found, the legislative history for the bill con-

taining that requirement indicates the Legislature's intention to ensure that government officials and the public could examine the state's use of personal services contracts by reviewing copies of the actual contracts.<sup>6</sup> We found that the results of the implementation of this requirement have interfered with this goal.

First, DAS limits access to the database itself. According to a DAS representative, in order for a user to run the contract location report, the user must have a NIS basic procurement-type access that encompasses all agencies.<sup>7</sup> Most state employees, including most legislative staff, do not have this level of access and cannot review the location report.<sup>8</sup> The public may view some contracts on the DAS Materiel Division's Web site or, through a public information request to DAS, receive a copy of the location report from NIS.

Second, our review of a contract location report provided by DAS contained inaccuracies including contracts with blank location fields or location fields that contained other (non-location) data.<sup>9</sup> While some inaccuracies are to be expected in any database, we believe that in this case, the risk of inaccuracies is increased unnecessarily by the configuration of the NIS contract information entry screen. The field used to enter the contract location, labeled *Description* on the NIS entry screen, is not unique to personal services contracts; it is used for a different purpose for another type of contract.<sup>10</sup> The ambiguous labeling and multiple uses of the location field increase the likelihood of error. In addition, the location data may easily be omitted, because unlike some data fields, which will not allow the user to advance unless the field is filled, the contract entry will continue to process even if the location information is not provided.<sup>11</sup>

Third, improving the database accuracy is hampered by DAS' lack of enforcement authority over state agencies, which are responsible for entering the contract information into NIS. While DAS may recognize an error or an omission in NIS, it does not have any statutory authority to require agencies to enter the correct information or compel agencies to correct the information if the entry is inaccurate.<sup>12</sup>

<p><b>FINDING:</b> DAS is in compliance with the statutory requirement that it identify a database that contains the physical location of each personal services contact. DAS has identified NIS as that database; however, the Legislature's goal that contract location information be readily accessible to policymakers and the public has not been met.</p>
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## Notes

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<sup>1</sup> Neb. Rev. Stat. § 73-503(4); E-mail from DAS – State Procurement Manager received March 17, 2008; Procurement Manual accessed on January 14, 2008 and located at [www.das.state.ne.us/materiel/purchasing/rfpmanual.htm](http://www.das.state.ne.us/materiel/purchasing/rfpmanual.htm); information received from DAS on November 16, 2007 contains the *People Resource Management Guide*; meeting with DAS – Materiel Acting Administrator and staff, February 5, 2008.

<sup>2</sup> In FY2004-05 and FY2005-06, DHHS requested emergency processing for only four personal services contracts, and we reviewed the documentation DAS maintains on these four contracts.

<sup>3</sup> Information received from DAS on November 16, 2007 contains the *People Resource Management Guide*; meeting with DAS – Materiel Acting Administrator and staff, February 5, 2008.

<sup>4</sup> E-mail from DAS – State Procurement Manager, May 29, 2008.

<sup>5</sup> Senator Don Preister stated, “The DAS director shall maintain a complete record of all sole source contracts for services—good accountability again,” Legislative History, LB 626, 2003, May 20, 2003, p. 7440.

<sup>6</sup> The Legislature’s intent is illustrated in several statements in legislative history. Legislative History, LB 626, 2003, May 20, 2003, pgs. 7439-7440; February 13, 2003, pg. 9; March 31, 2003, pg. 3154; March 31, 2003, pg. 3156; April 25, 2003, pg. 5138; April 25, 2003, pgs. 5148-5149; May 20, 2003, pgs. 7439-7440.

<sup>7</sup> NIS training provided by DAS to Section, March 13, 2008; NIS Security Training Manual accessed on May 2, 2008 and located at <http://www.das.state.ne.us/nis/security/>.

<sup>8</sup> Meeting with DAS – Materiel Acting Administrator and staff, February 14, 2008.

<sup>9</sup> An examination of the report revealed 20,527 contracts listed; of those contracts: 808 listed no location, 138 had a location entered in the wrong field, 1,167 had other data in the location field that was not the actual location, and 204 stated the contract was cancelled or voided.

<sup>10</sup> NIS training provided by DAS to Section, March 13, 2008.

<sup>11</sup> Meeting with DAS staff, February 27, 2008; NIS training provided by DAS to Section, March 13, 2008.

<sup>12</sup> Meeting with DAS staff, February 27, 2008; NIS training provided by DAS to Section, March 13, 2008.



## **SECTION IV: Department of Health and Human Services’ Compliance with Sections 73-501 to 73-509**

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In this section, we report the results of our evaluation of whether the Department of Health and Human Services (DHHS) is compliant with Neb. Rev. Stat. §§ 73-501 to 73-509. As explained at the beginning of Section III, we assessed DHHS’ compliance with these provisions primarily using transportation contracts for state wards. However, for requirements relating to emergency and other sole source contracts, we used all DHHS contracts that were entered into under the sole source or emergency provisions during FY2004-05 and FY2005-06. In addition, the Section reviewed DHHS guidelines, policies, and other documentation. The section also interviewed DHHS personnel.

### **Neb. Rev. Stat. §§ 73-501 to 73-509 Requirements**

As stated in Section III, these sections establish requirements for state agencies that wish to enter into contracts for personal services valued at more than \$50,000. As stated in Section I, the requirements are generally intended to increase accountability for service contracts by requiring, among other things, that agencies use a competitive bidding process except in certain identified circumstances, document the contractor selection process, record the contracts in NIS, and maintain documentation of any exemptions to the required processes.

The requirements that apply to the contracting agency apply to most state agencies; however, the University of Nebraska is exempted entirely, even from the requirement to enter contracts into NIS, and some agencies and types of contracts are exempt from certain provisions.<sup>1</sup> Following is our analysis of DHHS’ compliance with those requirements.

### **Compliance**

#### *Contracts for the Transportation of State Wards*

Neb. Rev. Stat. § 73-507(2)(e) exempts contracts for direct services to individuals from some requirements of §§ 73-501 to 73-509. By law, “transportation” is a social service provided by DHHS;<sup>2</sup> consequently, contracts for the transportation of state wards are exempt from requirements relating to competitive bidding, emergency processing, and procedures for replacing a state employee with a contract employee.

We found that DHHS is not in compliance with requirements to document the transportation contracts in NIS and to maintain documentation of both the selection process and the agency's efforts to assess contract compliance.<sup>3</sup> None of the transportation contracts we reviewed had been entered into NIS, and the contract files contained no documentation of the reasons a specific person or company had been granted the contract.<sup>4</sup> In addition, most of the files contained little evidence that the contractor was in compliance with the contract.<sup>5</sup>

In explaining these omissions, particularly why transportation contracts had not been entered into NIS, DHHS staff contended that the legal agreements between DHHS and transportation vendors are "service provider agreements," not contracts, and therefore were not subject to the statutory requirements placed on service contracts.<sup>6</sup> This interpretation does not explain why DHHS is in compliance with other sections of statute, namely those relating to contracts having a specified duration, not be structured in ways that would avoid statutory provisions, and not being paid before the work is delivered.

The Section disagreed with DHHS' interpretation that transportation service provider agreements are not contracts. In a follow up communication on this issue, however, DHHS staff said that the department *does* consider these agreements to be contracts, but cited a statutory provision that permits alternate systems to be used to process contracts, in this case, the DHHS system called N-FOCUS.<sup>7</sup> The Section also disagreed with this statutory application because the provision cited does not apply to the requirement in question.

<p><b>FINDING:</b> DHHS is not in compliance with some substantive statutory requirements as they relate to transportation contracts. DHHS' argument that these requirements do not apply to transportation services contracts is incorrect.</p>
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#### *Sole Source and Emergency Contracts*

As stated in Section I, §§ 73-501 to 73-509 contain exemptions from certain requirements for contracts that either can only be made with one entity because of the uniqueness of the service (sole source) or must be entered into quickly because an unforeseen event does not allow normal processing (emergency).<sup>8</sup> We reviewed the 42 emergency and sole source contracts DHHS had entered into for any reason during FY2004-05 and FY2005-06.

We found that DHHS complies with a requirement to document contractor selection and does not structure the contracts to avoid statutory provisions.<sup>9</sup> Further, we found that DHHS is in full com-

pliance with the statutory requirements relating to the processing of sole source personal services contracts.<sup>10</sup>

We found that both systems used by DHHS to pay claims, NIS and N-FOCUS, contain controls that prohibit the advanced payment of a service contract. Therefore, DHHS is in compliance with the requirement not to pay for services before they are delivered.<sup>11</sup>

**FINDING:** DHHS is in full compliance with the statutory requirements relating to the processing of sole source personal services contracts.

We also found that DHHS has partially complied with a requirement that it document contractor compliance with contract terms. Although some sole source and emergency contract files contained documentation of the contractors' compliance with the contract provisions, 17 (or 40 percent) did not contain such documentation.<sup>12</sup>

**FINDING:** DHHS has partially complied with a requirement that it document contractor compliance with contract terms.

## Notes

<sup>1</sup> Neb. Rev. Stat. § 73-502(5) and § 73-503(2)(3). The state colleges, the courts, the Legislature, and any officer or agency created in the state constitution must enter all contracts for services into the state accounting system (Nebraska Information System – NIS) but are excluded from all other requirements. Several types of contracts are also exempt from all requirements in these sections, including those for legal services, Department of Roads contracts for all road and bridge projects, and for services provided by one state agency to another.

<sup>2</sup> Neb. Rev. Stat. § 68-1202. E-mail from DHHS – Legal Services received March 19, 2008, states that transportation contracts of wards of the state fall under exemption Neb. Rev. Stat. § 75-507(2)(e).

<sup>3</sup> On April 7, 2008, the Section found that no transportation contract was found in NIS; meeting with DHHS – Division of Children and Family Services (CFS) Policy Section Administrator and DHHS staff, April, 8, 2008; letter from DHHS, dated April 21, 2008.

<sup>4</sup> A review on April 3, 2008, found that the transportation contract files contained no documentation on vendor selection.

<sup>5</sup> A review on April 3, 2008, found that four of the six files contained limited evidence that the contractor was compliant with terms of the contract.

<sup>6</sup> Meeting with DHHS – Division of Children and Family Services (CFS) Policy Section Administrator and DHHS staff, April, 8, 2008.

<sup>7</sup> Letter from DHHS, April 21, 2008.

<sup>8</sup> Neb. Rev. Stat. § 73-502(2) and § 73-502(4).

<sup>9</sup> A review on May 5, 2008, found that the sole source and emergency contract files contained documentation on vendor selection and the contracts were not structured in a way to avoid the provisions of statute.

<sup>10</sup> On May 5, 2008, the Section found that sole source and emergency contracts were in NIS.

<sup>11</sup> Test of N-FOCUS payment system by DHHS N-FOCUS staff, May 22, 2008; E-mail from DAS – NIS Administrator, May 30, 2008.

<sup>12</sup> A review on May 5, 2008, found that 17 sole source and emergency contract files contained no documented evidence that the contractors were in compliance with the terms of the contracts.





## **SECTION V: Contract Oversight and Monitoring**

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In this section, we report the results of our evaluation of what mechanisms exist to ensure compliance with the terms of Department of Health and Human Services' (DHHS) contracts for transporting state wards. In conducting this analysis of contract oversight, we reviewed relevant statutes, DHHS' guidelines and policies, industry standards, and other documentation. We also interviewed DHHS personnel.

### **The Risks in Transportation Contracts**

Oversight of transportation contracts is a paramount concern. These contracts present the economic risk to the state that any contract presents—the potential for overpaying for a service or paying for a service that has not, in fact, been delivered. In addition, transportation of state wards under these contracts places those children at risk of car accidents or other travel-related incidents as well as the possibility of victimization by adult drivers.

Two cases reported in the Nebraska media during one week in February 2008 illustrate the risks associated with transportation contracts. In one case, a contracted driver was allegedly under the influence of alcohol while transporting a state ward.<sup>1</sup> In the other case, a contracted driver allegedly sexually assaulted a state ward.<sup>2</sup>

There is no formal mechanism for reporting and tracking such problems, so it is impossible to know how often such problems occur. However, anecdotal information provided to us by the State Foster Care Review Board suggests that less extreme risks, including missed trips and improper safety seats, are more common.<sup>3</sup> Although such complaints are less extreme, they remain serious since children in the state's care are at the center of these events.-

### **Oversight Responsibility**

Oversight of transportation contracts for state wards is primarily the responsibility of DHHS, which is responsible for determining the suitability of contractors and ensuring that contractors perform in accordance with the terms of the contracts. As discussed in more detail below, the Public Service Commission (PSC) plays a minimal role, through inspecting vehicles and setting rates.

DHHS contracts with three types of providers to transport state wards: transportation-only contractors, such as van companies and taxicabs,<sup>4</sup> so-called “friends and family” contractors, who are drivers known to the individual receiving the transportation service,<sup>5</sup> and

contractors that transport children in conjunction with another service.<sup>6</sup>

### **The Public Service Commission**

By law, PSC regulates and certifies motor carriers that provide intrastate transportation of passengers.<sup>7</sup> Although transportation contracts for state wards are exempted from this certification requirement,<sup>8</sup> it is DHHS practice to use only PSC certified carriers when contracting with a transportation-only contractor.<sup>9</sup>

However, even for the carriers it certifies, PSC's oversight is limited to issues directly related to the certification process; it has no authority to oversee provisions of a contract between DHHS and a transportation provider. For example, PSC could impound a contractor's vehicle if it failed a safety inspection, but the inspection would have been conducted under the auspices of the certification process, not as oversight of a contract between the provider and DHHS.<sup>10</sup> In addition, the only way PSC can directly impact DHHS transportation contracts relates to cost: PSC sets the reimbursement rates for most state transportation providers.<sup>11</sup>

Although PSC has little direct impact on the transportation of state wards, representatives from PSC and DHHS told the Section that PSC is interested in increasing its involvement in oversight of carriers providing transportation for state wards and working with DHHS representatives to see how the two agencies can work together on this effort.<sup>12</sup>

### **The Department of Health and Human Services**

The following discussion of DHHS oversight of transportation contracts focuses on two steps: review of contractor qualifications and review of contract performance.

#### **Contractor Qualification Review**

Contractor qualification review encompasses DHHS' process for determining whether a contractor meets basic eligibility requirements and for ensuring that the contract itself meets DHHS' basic contract standards.

##### *Eligibility*

To be eligible to transport state wards, drivers must:<sup>13</sup>

- be 19 years of age or older;

- possess a current and valid driver’s license and have no more than three points assessed against license;
- have no limitations that would interfere with safe driving; and
- maintain the minimum automobile liability and medical insurance as required by law.<sup>14</sup>

DHHS reviews a driver’s qualifications before he or she is allowed to transport state wards. DHHS subsequently conducts biennial licensing reviews for providers that transport state wards as part of a larger service and annual reviews for transportation-only providers. During these reviews, contractor requirements are reexamined to determine if any requirement has lapsed.<sup>15</sup>

DHHS contractor requirements are very similar to PSC’s requirements for drivers employed by certified transporters. This consistency in driver qualifications helps ensure that drivers exempted from PSC requirements are as qualified as drivers covered by those requirements.<sup>16</sup>

By regulation, DHHS also requires that its transportation contractors:

- use seat belts and passenger restraints as required by law;
- neither smoke during transport nor be under the influence of alcohol or drugs during transport;
- not have any communicable diseases which may pose a threat to the health and well-being of the ward; and
- report any disqualification to DHHS.<sup>17</sup>

However, DHHS has no comprehensive method to determine compliance with these requirements prior to a contractor transporting a ward of the state.<sup>18</sup>

**FINDING:** DHHS has no comprehensive method for determining compliance with many of requirements for transportation contractors.

### *Background Checks*

In addition to the above requirements, DHHS also requires criminal background checks of potential transportation drivers to ensure that they do not have a record in Nebraska. DHHS conducts a broader check if the potential contractor does not currently reside in Nebraska or has resided in Nebraska for less than one year, although this procedure relies on the contracted driver to faithfully list all states of previous residence.<sup>19</sup> DHHS does not routinely conduct a

national criminal history check on potential transportation contractors.

Section staff found that potential foster parents undergo a more rigorous national criminal history check completed by the Federal Bureau of Investigation.<sup>20</sup>

**FINDING:** Prospective foster parents undergo a more rigorous criminal background check than do potential drivers under contract to transport state wards.

#### *Documentation*

Finally, as noted in Section III of this report, the contract files we reviewed did not contain the statutorily required documentation of the reasons a particular contractor was selected to provide transportation services.<sup>21</sup> After we brought this issue to the attention of DHHS representatives, they agreed to include such documentation in files for new contracts entered into beginning in July 2008.<sup>22</sup>

**FINDING:** As mentioned in Section III, we found that DHHS does not comply with the statutory requirement that it document the reasons for selecting a specific transportation contractor, although it has agreed to start doing so in the future.

#### **Contract Performance**

Oversight of contract performance is a critical facet of contracting for services as it aims to ascertain compliance with contract terms and to safeguard the public funds that are expended for the service. A best practices guide published by the National Association of State Auditors, Comptrollers and Treasurers states that, “Monitoring should ensure that contactors comply with contract terms, performance expectations are achieved, and any problems are identified and resolved. Without a sound monitoring process, the contracting agency does not have adequate assurance it receives what it contracts for.”<sup>23</sup>

We found that DHHS does not have a comprehensive system in place to review transportation contract performance. DHHS has some components of such a system—it establishes mileage range limitations for trips and provides for sanctions if problems arise.<sup>24</sup> However, we identified four elements that either should be present in DHHS’ contract review system but are not, or are present but should be improved. Specifically, DHHS:

- does not audit payments for all transportation contracts;
- has not identified a uniform system for determining mileage ranges for reimbursements;
- does not systematically spot check provider compliance with statutory or contract requirements; and
- has no uniform policy for handling reports of problems with providers.

Following is a detailed discussion of these concerns, as well as a description of the sanction process and a new initiative by DHHS to improve contract performance oversight.

**FINDING:** DHHS does not have a comprehensive system for reviewing contract performance.

#### *Payment Review*

DHHS oversight of transportation contract payments varies depending on the type of funds used to pay for the transportation. When the Medicaid program pays for transportation, those payments are subject to oversight requirements in federal regulations and are overseen by DHHS’ Program Integrity Unit, part of the Division of Medicaid and Long Term Care.<sup>25</sup> This Unit routinely reviews Medicaid claims and performs what is called a “post pay review,” in which staff randomly sample claims and examine the appropriateness of the bill. If an issue is discovered, other claims from that company are also examined to determine if more discrepancies have occurred.<sup>26</sup>

However, there is no parallel unit to oversee the non-Medicaid payments handled by the Division of Children and Family Services (CFS).<sup>27</sup> CFS’ Resource Development staff sign off on each invoice before it is paid but conduct no random sampling of the invoices after payment to look for discrepancy patterns.<sup>28</sup>

**FINDING:** Oversight of transportation contract payments is more extensive when the payment are made through the Medicaid program than when the payment is made through other programs.

#### *Mileage Range*

A significant internal control used by DHHS for both Medicaid and non-Medicaid transportation involves pre-authorizing a mileage range for each state ward’s transportation. These ranges are entered into either MMIS computer system (for Medicaid payments) or N-FOCUS (for non-Medicaid payments) computer system for each authorized transport or series of transports. When DHHS receives a bill for the

service, the billed mileage is compared against the range in the computer system. If the mileage falls within the range, the invoice is paid.<sup>29</sup> If not, the invoice is flagged and returned to the contractor.

However, this process has a significant weakness in that there is no written policy or standard for calculating mileage. Instead, individual DHHS staff determine the mileage range<sup>30</sup> using methods ranging from a map and a ruler to a computer program.<sup>31</sup> Further, there is no uniform mileage calculation method for contractors to use.<sup>32</sup> Consequently, a contractor may expect payment based on his or her method of mileage calculation, which could differ significantly from how DHHS calculates the mileage.

This lack of uniformity can have cost implications. In one case we reviewed, there were three possible mileage calculations, two of which represented possible overcharging: one was two miles over the actual distance, the other was seven miles over.<sup>33</sup> If this situation had occurred today, using the current reimbursement rate of \$1.26 per mile, the mileage difference in this case would have increased this trip cost by \$2.52 (two miles over) or \$8.82 (seven miles over). While this may not be a significant amount for one trip, this type of overage could have a significant impact considering that, according to DHHS, there were over 100,000 trips made in FY2006-07.<sup>34</sup>

**FINDING:** DHHS pre-authorizes the number of miles that it will reimburse for state ward travel, which provides a good internal control on these reimbursements. However, it does not have written policy or standard for calculating the mileage to be reimbursed for state ward transportation.

#### *Spot Checking*

Although DHHS has an internal control on being overcharged for mileage rates, it has no systematic way to determine compliance with other contract requirements or detect other potential problems, such as: the ward was not transported to the appropriate destination, the driver was smoking, the vehicle was in poor condition, child safety restraints were not used, or an unauthorized person was in the vehicle during the transport.<sup>35</sup> Instead, DHHS staff have relied on people close to the situation, such as foster parents, teachers, doctors, and contracted escorts, to notify them if any problems occur.<sup>36</sup> Although these reporting avenues may produce results, they are anecdotal and cannot ensure that DHHS staff are getting complete and accurate information.

Spot checking a random sample of transportations could test these compliance issues. Currently, DHHS does not conduct such checks

but acknowledges they could be useful. DHHS plans to conduct such activities through the recently founded Comprehensive Quality Improvement Unit, which is described at the end of this section.<sup>37</sup>

**FINDING:** DHHS has no systematic way of determining compliance with many transportation contract requirements.

#### *Reporting Structure*

According to a DHHS representative, issues regarding transportation providers are generally first reported to the local DHHS service area in which the problem occurred.<sup>38</sup> Each service area has its own policies for handling complaints against contractors, including when to refer a complaint to the DHHS Central Office.<sup>39</sup>

Having different policies could cause a disparity in how issues are handled. DHHS representatives believe that if an issue reported to a local office was significant enough, the service area would notify the Central Office, which would make a determination on what to do with the situation and then communicate its decision across the agency.<sup>40</sup> Nevertheless, DHHS representatives acknowledged the need for a uniform policy and stated it will be addressed in changes made in establishing the new Comprehensive Quality Improvement Unit.<sup>41</sup>

**FINDING:** DHHS has no system-wide policy on how to handle complaints against contractors.

#### *Sanctions*

If a situation arises with a transportation contractor, DHHS uses various forms of sanctioning to address the issue. DHHS may simply educate the contractor about an issue. If the situation is more severe or is an abuse or neglect allegation, the contract can be put on hold and the contractor is notified both verbally and in writing. While the contract is on hold, DHHS investigates and reviews records, conducts interviews, and examines the contractor's accreditation reports when applicable.<sup>42</sup>

If the sanctions are not sufficient, DHHS may cancel the contract, whole or in part. A 30-day written notification is required to cancel the contract unless an emergency situation presents itself.<sup>43</sup> If the situation is an emergency, DHHS said that it can also place a hold on the contract for the 30-day notification period, thus stopping the contractor from transporting state wards immediately.

We found that this system of sanctions is, in at least one regard, more lenient than sanctions that apply to foster parents. By law, foster parents who are transporting a child that is required to be in a child restraint may have their license revoked or suspended if they do not use appropriate child restraints.<sup>44</sup> This is not the case for transportation contractors. Instead, the contractor may be sanctioned or required to complete a corrective action plan.<sup>45</sup>

The State Foster Care Review Board reports that many contractors have arrived to transport wards of the state without proper child safety restraints.<sup>46</sup> Section staff have heard similar complaints from foster parents and family members approved for visitation.<sup>47</sup>

To-date, DHHS has rarely used the severest sanction, contract cancellation, for transportation contracts. A DHHS representative told us most problems are resolved through education, however one contract has been cancelled due to a billing issue and another contractor had a portion of a contract revoked relating to secure transportation.<sup>48</sup>

**FINDING:** DHHS has an adequate system of sanctions in place for addressing problems with transportation contractors. However, in at least one regard—the sanction for transporting state wards without proper child safety restraints—there are more severe penalties for foster parents than for transportation contractors.

### Comprehensive Quality Improvement Unit

According to DHHS representatives, organizational and leadership changes undertaken recently at DHHS have had ramifications related to contract oversight.<sup>49</sup> The Division of Child and Family Services (CFS), recognizing the need to improve contract processing and oversight, has established the Comprehensive Quality Improvement Unit (CQIU).<sup>50</sup> According to a CFS administrator, the unit, led by an administrator and staffed by 15 employees, will be tasked with examining all CFS contracts, including those for transporting state wards.<sup>51</sup> This effort directly relates to the DHHS Central Office goal of performing random samples and systematic monitoring of contracts.<sup>52</sup>

The existing CFS Quality Assurance Unit will become part of the CQIU. DHHS leadership is currently developing policies and procedures for the new unit, including consulting entities like the National Resource Center for Organizational Improvement.<sup>53</sup>

As stated previously in this section, a major goal of the changes surrounding the CQIU will be to more clearly define the relationship be-



tween the service areas and the DHHS Central Office in regards to contract issues.<sup>54</sup>

**FINDING:** The efforts taken by DHHS leadership to establish the CQIU and define the relationship between the service areas and the Central Office are positive steps to addressing the issues of contracting and contract oversight.

## Notes

<sup>1</sup> “Agency Draws Fire for Hired Drivers,” *Omaha World-Herald*, February 16, 2008; “Nebraska Woman Arrested After Brief Chase, Blood-Alcohol Level Five Times Legal Limit,” accessed on February 8, 2008 at: <http://www.omaha.com>.

<sup>2</sup> “Agency Draws Fire for Hired Drivers,” *Omaha World-Herald*, February 16, 2008.

<sup>3</sup> Meeting with Foster Care Review Board (FCRB) Executive Director and staff, April 23, 2008; *Report on Transportation/Supervision Issues and Concerns* provided by FCRB on April 23, 2008.

<sup>4</sup> Transportation-only contractors are contractors whose sole function is transportation, examples are: busses and taxi cabs. These groups are certified by PSC, but this certification plays no role during the transport of a state ward. According to DHHS, it has 78 contracts with transportation-only contractors.

<sup>5</sup> In 2006, “friends and family” legislation was passed that allowed DHHS to contract with individuals to transport wards of the state if the individual, or primary caregiver, chooses the transporter. According to DHHS, since July 1, 2007, 51 “friends and family” contractors have signed a service agreement.

<sup>6</sup> Some contractors provide transportation for wards of the state as part of another service contract; these other service contracts may be for foster care services or in-home therapy. According to DHHS, it contracts with 127 contractors that fall into this category.

<sup>7</sup> Neb. Rev. Stat. § 75-301(2); Nebraska Administrative Code, Title 291, Chapter 3.

<sup>8</sup> Neb. Rev. Stat. § 75-302 and § 75-303(11).

<sup>9</sup> Meeting with DHHS – Division of Children and Family Services (CFS) Policy Section Administrator and DHHS staff, March 7, 2008; slideshow presented to Health and Human Services Committee by DHHS on February 22, 2008; meeting with Public Service Commission (PSC) – Transportation Director, March 6, 2008. According to PSC – Transportation Director, many contractors are already certified because they provide another form of transportation that requires certification.

<sup>10</sup> Meeting with PSC – Transportation Director, March 6, 2008.

<sup>11</sup> An exception to this is when a contractor transports as part of a larger service contract, as transportation would be included as part of the other services for which DHHS is contracting. Neb. Rev. Stat. § 75-304.01; meeting with PSC – Transportation Director, March 6, 2008.

<sup>12</sup> Meeting with PSC – Transportation Director, March 6, 2008; meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.

<sup>13</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008.

<sup>14</sup> Nebraska Administrative Code, Title 471, Chapter 27.

<sup>15</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008; telephone conversation with DHHS staff, May 28, 2008.

<sup>16</sup> Nebraska Administrative Code, Title 291, Chapter 3; Nebraska Administrative Code, Title 471, Chapter 27.

<sup>17</sup> Nebraska Administrative Code, Title 471, Chapter 27.

<sup>18</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.

<sup>19</sup> Nebraska Administrative Code, Title 471, Chapter 27; meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008.

<sup>20</sup> Neb. Rev. Stat. § 71-1903(3).

<sup>21</sup> A review of transportation contracts, April 3, 2008.

<sup>22</sup> Letter from DHHS, April 21, 2008.

<sup>23</sup> *Contracting for Services: A National State Auditors Association Best Practices Document*, June 2003

<sup>24</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008.

<sup>25</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.

<sup>26</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.

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- <sup>27</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>28</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>29</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>30</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>31</sup> A review of transportation contracts on April 3, 2008 revealed a letter to a contractor from DHHS dated November 22, 2000, that illustrated a mileage discrepancy where DHHS utilized the map and ruler method of determining the correct mileage, while the contractor had used a computer program; meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>32</sup> A review of transportation contracts on April 3, 2008 revealed a letter to a contractor from DHHS dated November 22, 2000, that illustrated a mileage discrepancy where DHHS utilized the map and ruler method of determining the correct mileage, while the contractor had used a computer program; meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>33</sup> A review of transportation contracts on April 3, 2008 revealed the mileage discrepancy.
- <sup>34</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008; slideshow presented to Health and Human Services Committee by DHHS on February 22, 2008.
- <sup>35</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008; a review of transportation files on April 3, 2008.
- <sup>36</sup> Meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>37</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>38</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>39</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>40</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>41</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>42</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008.
- <sup>43</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008.
- <sup>44</sup> Neb. Rev. Stat. § 71-1907.
- <sup>45</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008.
- <sup>46</sup> Meeting with FCRB Executive Director and staff, April 23, 2008; *Report on Transportation/Supervision Issues and Concerns* provided by FCRB on April 23, 2008.
- <sup>47</sup> Attendance at local FCRB meeting on March 27, 2007; meeting with a local FCRB member, March 4, 2008; telephone conversations with citizens dated April 29, 2008 and May 5, 2008.
- <sup>48</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008.
- <sup>49</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>50</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>51</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008.
- <sup>52</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, March 7, 2008 and April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.
- <sup>53</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008.
- <sup>54</sup> Meeting with DHHS – CFS Policy Section Administrator and DHHS staff, April 8, 2008; meeting with DHHS – CFS Director and Policy Section Administrator, April 10, 2008.



***III. Fiscal Analyst's Opinion***



# State of Nebraska

## LEGISLATIVE COUNCIL

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

June 4, 2008

Martha Carter  
Legislative Audit and Research  
Room 1201, State Capitol  
Lincoln, NE 68509

Dear Martha:

Regarding the draft report on the audit of Personal Services Contracts, our comments as required under Neb. Rev. Stat. section 50-1210(2) are as follows:

Sections I through III of the report contain recommendations pertaining to the Department of Administrative Services (DAS). It is our belief that of these recommendations the last recommendation in section III has the greatest potential to encompass costs beyond what the agencies' current appropriation could support. However, we cannot estimate a precise cost—the recommendation calls for DAS to change a NIS data field—such changes could be quite expensive or relatively low cost. We are not sufficiently familiar with programming requirements of NIS to make an estimate.

Regarding resources that may be required for the Department of Health and Human Services to address issues raised in sections IV and V of the report, we understand that the department is establishing a Comprehensive Quality Improvement Unit with an administrator and 15 staff. It seems through this planned reallocation of resources, the agency should be able to respond to the report findings and take steps to improve contract compliance and oversight. At this time, no additional appropriations appear to be needed.

If you have any questions, please do not hesitate to contact me at 471-0059.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Calvert".

Michael Calvert  
Legislative Fiscal Analyst

**RECEIVED**

**JUN 5 2008**

**LEGISLATIVE RESEARCH**





*IV. Background Materials*





## **BACKGROUND MATERIALS**

The “background materials” provided here are materials (in addition to the Section’s report) that were available to the Committee when it issued the findings and recommendations contained in Part III of this report. They include:

- the Section’s draft findings and recommendations (provided for context);
- the agency’s response to a draft of the Section’s report;
- the Legislative Auditor’s summary of the agencies’ response;
- the summary of testimony given at the public hearing; and
- Appendix I: Possible Unintended Effects of Neb. Rev. Stat. § 73-507 and § 73-508
- Appendix II: Methodology



These are the Section’s draft recommendations on which the Committee’s final recommendations (in Part I) are based.

## SECTION VI: Findings and Recommendations

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The following are the Section’s findings and recommendations for each section of this report.

### Section I: Personal Services Contracts in Nebraska

**Finding 1:** The information on personal services contracts available from NIS, the state accounting system, has improved but notable limitations remain.

**Discussion:** In 2003, prior to the enactment of LB 626, which created many of the requirements being reviewed in this audit, policy-makers were frustrated by their inability to determine the number and dollar value of personal services contracts. Through NIS, it is now possible to calculate the estimated dollar value for the entire duration of all open services contracts; however, there is no oversight of whether agencies do, in fact, enter this information and if they do, how they estimate the total cost. NIS also contains the actual amount spent through purchase orders, which can be used to estimate the amount the state paid on these contracts in a given fiscal year. However, this audit showed that DHHS transportation contracts are not in NIS, and it is possible that other types of contracts (within DHHS and other agencies) are also not being included. Consequently, even the annual payment amount has known weaknesses.

The primary reason that this information is not as good as it could be is that no one has the authority to ensure that agencies are entering all of the information they should be or that they are entering it a consistent manner from agency to agency.

**Recommendation:** The Committee should consider whether additional oversight of personal services contract data is needed and if so, consider the appropriateness of giving DAS additional authority.

### Section II: DAS’ and DHHS’ Compliance with §§ 73-301 to 73-307

**Finding 2:** We could not determine DAS’ or DHHS’ compliance with most of the requirements of sections 73-301 to 73-309 because we found no evidence that the event that would trigger the requirements of these sections—the replacement of a full-time equivalent employee with a contract worker—has ever occurred.

**Recommendation:** None.

**Finding 3:** We found that DAS is compliant with the statutory requirement that it promulgate rules and regulations to carry out requirements of sections 73-301 to 73-309.

**Recommendation:** None.

### **Section III: DAS' Compliance with §§ 73-501 to 73-509**

**Finding 4:** DAS is compliant with many of the requirements of sections 73-501 to 73-509.

**Recommendation:** None.

\*\*\*

**Finding 5:** DAS is partially compliant with a requirement that it maintain a “complete record” of personal service contracts processed using emergency procedures. Most of the records for these contracts did not contain the final, signed contract and therefore were not complete.

**Recommendation:** DAS should include the final contracts in its records, and, if the Committee agrees that DAS should maintain a final copy of the contract, it should consider clarifying section 73-508 to require that it do so.

\*\*\*

~~**Finding 6:** We were unable to determine whether DAS is in compliance with statutory requirements relating to contracts that would replace state workers because we found no evidence that such a contract exists.~~ [After reviewing DAS' response (pgs. 1-3) to the draft report, the language stating that we were unable to determine DAS' compliance will be eliminated in the final report because DAS' only requirement is to determine the pre-process for the replacement of a state worker – which it did.]

**Recommendation:** None.

\*\*\*

## Technical Issue

**Finding 7:** We identified two technical issues with the language of Neb. Rev. Stat. § 73-508 but DAS' implementation of this section relies on a reasonable interpretation.

**Recommendation:** The Committee may wish to consider introducing legislation to clarify these provisions to avoid future problems.

**Finding 8:** DAS is in compliance with the statutory requirement that it create a contract location database; however, several aspects of the implementation of this requirement have interfered with the Legislature's goal that contract location information be readily accessible to policymakers and the public.

**Discussion:** The legislative history clearly reflects the Legislature's expectations that the contract location information be widely accessible and issues identified in this report—including access level required to view it in NIS and the accuracy of the report itself—raise questions about the report's ability to meet its intended purpose.

**Recommendation:** The Committee should consider directing DAS to (1) revise the field used to enter the location information to either make it unique to service contracts or to clarify the contents of the field by changing its name, and to ensure that a service contract cannot be processed unless the field is completed; and (2) make a contract location report (not NIS itself) publicly available annually or at some other regular interval. If the Committee believes that DAS should have additional oversight of service contract data, as discussed earlier, it should consider whether that oversight should extend to the contract location information as well.

## Section IV: DHHS' Compliance with §§ 73-501 to 73-509

**Finding 9:** We found that DHHS is not in compliance with some substantive statutory requirements as they relate to transportation contracts. DHHS' argument that these requirements do not apply to transportation services contracts is incorrect.

**Discussion:** DHHS is not compliant with requirements to document:

- transportation contracts in NIS;
- the reason it selected a specific contractor; and

- efforts to assess contractor compliance with contract terms.

~~However, DHHS representatives have agreed to bring transportation contracts into compliance with these requirements. [After reviewing DHHS' response (pg. 11) to the draft report, this language will be modified in the final report to state that DHHS has agreed to document the reason it selected a specific transportation contractor.]~~

**Recommendation:** If DHHS commits to following these sections of statute for transportation contracts, the Committee may want to consider following-up in six months to confirm that it is doing so. The Committee may also want to consider directing DHHS to determine whether it has any other contracts that should be meeting these requirements but currently are not.

\*\*\*

**Finding 10:** DHHS is in full or partial compliance with most of the statutory requirements relating to the processing of sole source personal services contracts.

~~**Recommendation:** DHHS should take additional steps to ensure that all emergency contracts are entered into NIS. [This recommendation will be combined with the recommendation below that DHHS ensure all files contain documentation that the contractor is in compliance with the terms of the contract.]~~

\*\*\*

~~**Finding 11:** DHHS has not complied with a requirement that it document contractor compliance with contract terms. [After reviewing DHHS' response (pgs. 8-9) to the draft report, this language will be modified in the final report to state that DHHS should take additional steps to ensure all files contain documentation that the contractor is in compliance with the terms of the contract.]~~

**Recommendation:** DHHS should begin compliance immediately.

## Section V: Contract Oversight and Monitoring

**Finding 12:** DHHS has no comprehensive method for determining compliance with many of requirements for transportation contractors.

**Finding 13:** Prospective foster parents undergo a more rigorous criminal background check than do potential drivers under contract to transport state wards.

**Finding 14:** ~~We found that DHHS has not subjected proposed transportation contracts to the same levels of review as other service contracts.~~ [After reviewing DHHS' response (pgs. 9-11) to the draft report, this finding will be eliminated from the final report because the form used for transportation contracts has been reviewed by DHHS legal, the form is a fill-in-the-blank form, and the Director of Children and Family Services has granted local authority to review and approve provider service agreements for direct services for an amount not to exceed \$50,000.]

**Finding 15:** As mentioned in Section III, we found that DHHS does not comply with the statutory requirement that it document the reasons for selecting a specific transportation contractor, although it has agreed to start doing so in the future.

**Discussion:** DHHS plans to begin such a practice for contracts entered into after July 2008.

**Finding 16:** DHHS does not have a comprehensive system for reviewing contract performance. Specific problems with DHHS' process include that:

- the level of payment review varies depending on if the transportation is paid for with Medicaid or non-Medicaid funds;
- DHHS conducts no random sampling of non-Medicaid invoices to look for discrepancy patterns;
- DHHS does not have a written policy or procedure for determining mileage, which is a critical element of its internal control for billing; and
- DHHS has no systematic way to determine compliance with contract terms or detect other potential problems.

**Discussion:** DHHS plans to conduct such activities with its recently founded Comprehensive Quality Improvement Unit.

**Recommendation:** DHHS should ensure that its newly developed CQIU addresses the concerns raised in this report, especially that all statutory requirements are met. The Committee may wish to follow-up on the progress of this unit in the near future.

\*\*\*

**Finding 17:** DHHS has no system-wide policy on how to handle complaints against contractors.

**Recommendation:** DHHS should establish such a policy. It should also begin tracking such complaints, any actions taken to resolve them, and the outcomes.

\*\*\*

**Finding 18:** DHHS has an adequate system of sanctions in place for addressing problems with transportation contractors. However, in at least one regard—the sanction for transporting state wards without proper child safety restraints—there are more severe penalties for foster parents than for transportation contractors.

**Recommendation:** DHHS should review its sanctions for transportation contractors and bring them into closer comparability with sanctions for foster parents.

\*\*\*

**Finding 19:** The efforts taken by DHHS leadership to establish the CQIU and define the relationship between the service areas and the Central Office are positive steps to addressing the issues of contracting and contract oversight.

**Recommendation:** The Committee should follow-up as these efforts get underway.





**Dave Heineman**  
Governor

# STATE OF NEBRASKA

**DEPARTMENT OF ADMINISTRATIVE SERVICES**  
**Carlos Castillo**  
Director  
Suite 1315, State Capitol  
Lincoln, Nebraska 68509-4664  
Phone (402) 471-2331

June 30, 2008

**RECEIVED**

Martha Carter  
Legislative Performance Audit Committee  
P.O. Box 94945, State Capitol  
Lincoln, NE 68509-4945

**JUN 30 2008**

**LEGISLATIVE RESEARCH**

Ms. Carter:

I want to compliment your office for the time taken to understand our processes while you conducted a performance audit of personal services contracts. I know I speak for everyone in my agency who was involved in the process in saying we enjoyed working with you and the way you conducted the audit.

Please accept this letter as the Department of Administrative Services' formal response to the draft report provided to me on June 2, 2008 regarding your office's review of personal services contracts. I have attached the completed agency response worksheet as requested in addition to the written detailed responses below.

***Finding 1.*** The Department agrees with the statement, contained within pages 1 and 2 of the report, that the reliability of the data on personal service contracts "rests on the personnel in each agency who develop...and enter the information into NIS..." and with the statement that "DAS has no authority to oversee whether agencies do, in fact, enter this information or whether they enter it correctly." The recommendation in the report regarding this finding is that "The Committee should consider whether additional oversight of personal services contract data is needed and if so, consider the appropriateness of giving DAS additional authority." To assist with this, the Department of Administrative Services provides various reports that agencies can run to check the quality of their data and we provide periodic training and user group meetings to remind agency staff regarding the proper information to be included on the system. As they consider the recommendation, I want to be sure the Committee understands that any additional responsibility for oversight or enforcement of agency compliance with the statutory provisions governing personal service contracts will require additional resources by my Department and will, therefore, come at a financial cost which would need to be weighed against the benefit of such oversight and enforcement.

***Finding 5*** The Department disagrees with the characterization that it is "partially compliant with a requirement that it maintain a 'complete record' of personal service

contracts processed using emergency procedures.” Neb. Rev. Stat. §73-508 states the following:

“Except as provided in section 73-507, all proposals for sole source contracts for services in excess of fifty thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.”

It is the Department’s opinion that as it applies to emergency contracts, the requirement to “maintain a complete record of such sole source contracts for services,” requires the Director to maintain all information provided by the agency. The statute places the burden on the agency to provide a copy of the contract and justification; the statute does not state that it needs to be a final signed copy. Therefore, the Department disagrees with the statement that it is only “partially compliant” with this requirement. However, we do understand a recommendation to maintain a final signed copy of the contract as part of a “complete record” and as a result we will now recommend to agencies that they supply a final signed copy of the contract. While we will make this recommendation to agencies, the burden to comply and to submit a complete record statutorily rests with the contracting agency and, in the Department’s opinion, we have complied with the law if we maintain the records provided by the agency.

**Finding 6** The Department disagrees with this finding. The finding states “we were unable to determine whether DAS is in compliance with statutory provisions relating to contracts that would replace state workers because we found no evidence that such a contract exists.” However, this finding cites the provisions of Neb. Rev. Stat. §73-509 which states the following:

“Each proposed contract for services in excess of fifty thousand dollars which requests services that are now performed or have, within the year immediately preceding the date of the proposed contract, been performed by a state employee covered by the classified personnel system or by any labor contract shall use a pre-process prescribed by the materiel division. The pre-process shall include evaluation of the displacement of the employee of the state agency or position held by the employee of the state agency within the preceding year and of the disadvantages of such a contract for services against the expected advantages, whether economic or otherwise. Documentation of each evaluation shall be maintained in the contract file by the state agency.”

The only requirement for the Department of Administrative Services under §73-509 is to prescribe a pre-process for agencies to use and to include in that pre-process an evaluation of the displacement of employees and the disadvantages and advantages of

such a contract. As stated on pages 8 and 9 of the draft report, "we did find that DAS has developed the People Resource Management Guide, which provides a process for agencies to use if the situation arises." By providing the People Resource Management Guide, the Department of Administrative Services has fulfilled its entire responsibility under §73-509 and is, therefore, in compliance.

**Finding 7** The Department does not disagree with the finding that there are ambiguities or multiple ways to possibly interpret provisions of §73-508. I do want to caution the Committee with regard to how it might address the second technical issue found on page 9 of the report which states, "when §73-508 is read in conjunction with §73-507, it is possible that some procedural exemptions could be allowed that may not have been intended by the Legislature. For example, DAS could allow exemptions from the requirements that a contracting agency's director (or designee) approve emergency contracts, that the agency maintain justification for the emergency contract, or that DAS retain documentation of a sole source contract." As stated in this section of the report and elsewhere, the Department of Administrative Services' approach to implementation of the personal service contract provisions has been reasonable. I want to caution legislating too specifically and thereby taking away flexibility for the State in the case of unforeseen circumstances. Often times the Legislature leaves an executive branch agency the authority to grant exceptions with the understanding that they will do so only when necessary for efficient government operations in the best interest of the State. One of the examples you provide is that Administrative Services would be able to grant exemptions from the requirements that a contracting agency's director or designee approve emergency contracts. While it is unlikely, there might be a situation where an emergency occurs, a central command structure is set up for the State, and Administrative Services might provide authority for the head of the central command to authorize emergency contracts on behalf of other state agencies rather than take the time to contact each individual director or designee prior to approving a contract. Again, this may be unlikely but I want to point out why we do want to retain some level of flexibility to ensure the State can appropriately handle any requirements as quickly and efficiently as possible.

**Finding 8** The Department agrees with the portion of this finding that states "DAS is in compliance with the statutory requirement that it create a contract location database." However, the Department disagrees that "several aspects of this requirement have interfered with the Legislature's goal that contract location information be readily accessible to policymakers and the public." On page 10 of the draft report it states, "there is no avenue for the public to access the report" on the location of contracts. The DAS Materiel Division website allows the public to directly access current service contracts. While it is not a complete list of all service contracts entered by the State, anyone may obtain this information in the format they prefer (electronic or paper) within 4 days by making a request to the Department of Administrative Services Materiel Division.

The Department is willing to investigate a way to improve clarity regarding the contract location field in NIS. Staff who work with NIS have agreed to consider the recommendations in the report such as changing the title of the field and to look at any

other options that may be available and most efficient to accomplish the stated goal of clarity for the user..

In accordance with your instructions, we have not completed the worksheet or responded to any findings regarding the review of DHHS, particularly findings 9 through 19 and pages 13 through 17 of the draft report.

Please feel free to contact me or Laura Peterson if you have any questions regarding this information.

Sincerely,

A handwritten signature in black ink, appearing to read 'CCJ', with a small dot at the end of the final stroke.

Carlos Castillo, Jr., Director  
Administrative Services

cc: Laura Peterson  
ccj:lp  
Enclosures



Division of Children and Family Services

State of Nebraska

Dave Heineman, Governor

June 30, 2008

**RECEIVED**

**JUN 30 2008**

**LEGISLATIVE RESEARCH**

To: Martha Carter, Legislative Auditor  
Performance Audit Section, Legislative Performance Audit and Research Office

From: Todd A. Landry, Director  
Division of Children and Family Services  
Nebraska Department of Health and Human Services

Dear Ms. Carter,

Enclosed please find the Department of Health and Human Services response to the Personal Services Contracts compliance audit. The Department has reviewed the report and identified areas in which we agree need improvement, as well as areas in which we disagree with the finding. We enjoyed working with your staff and found them to be very helpful during this process. We appreciate all efforts to assist the Department in making changes that provide for improved services and efficiencies regarding the provision of services to children and families served by the Department.

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Nebraska Department of Health and Human Services  
Agency Response to:

*Personal Services Contracts: An Examination of Compliance and Oversight*

#	Findings	Audit Recommendations	Agency Response
1	The information on personal services contracts available from NIS, the state accounting system, has improved but notable limitations remain.	The Committee should consider whether additional oversight of personal services contract data is needed and if so, consider the appropriateness of giving DAS additional authority.	Not Applicable
2	We could not determine DAS' or DHHS' compliance with most of the requirements of sections 73-301 to 73-309 because we found no evidence that the event that would trigger the requirements of these sections- the replacement of a full-time equivalent employee with a contract worker – has ever occurred.	No recommendation.	Not Applicable
3	We found that DAS is compliant with the statutory requirement that it promulgate rules and regulations to carry out requirements of sections 73-301 to 73-309.	No recommendation	Not Applicable

#	Findings	Audit Recommendations	Agency Response
4	DAS is compliant with many of the requirements of sections 73-501 to 73-509.	No recommendation	Not Applicable
5	DAS is partially compliant with a requirement that it maintain a "complete record" of personal service contracts processed using emergency procedures. Most of the records for these contracts did not contain the final, signed contract and therefore were not complete.	DAS should include the final contracts in its records, and, if the Committee agrees that DAS should maintain a final copy of the contract, it should consider clarifying section 73-508 to require that it do so.	Not Applicable.
6	We were unable to determine whether DAS is in compliance with statutory requirements relating to contracts that would replace state workers because we found no evidence that such a contract exists.	No recommendations	Not Applicable.
7	We identified to technical issues with the language of Neb. Rev. Stat. §73-508 but DAS' implementation of this section relies on a reasonable interpretation.	The Committee may wish to consider introducing legislation to clarify these provisions to avoid future problems	Not Applicable.
8	DAS is in compliance with the statutory requirement that it create a contract location database; however, several aspects of the implementation of	The Committee should consider directing DAS to (1) revise the field used to enter the location information to either make it unique to service contracts or to clarify the contents of	Not Applicable.

#	Findings	Audit Recommendations	Agency Response
	<p>this requirement have interfered with the Legislature’s goal that contract location information be readily accessible to policy makers and the public.</p>	<p>the field by changing its name, and to ensure that a service contract cannot be processed unless the field is completed; and (2) make a contract location report (not NIS itself) publicly available annually or at some other regular interval. If the Committee believes that DAS should have additional oversight of service contract data, as discussed earlier, it should consider whether that oversight should extend to the contract location information as well.</p>	
9	<p>We found that DHHS is not in compliance with some substantive statutory requirements as they relate to transportation contracts. DHHS’ argument that these requirements do not apply to transportation services contracts is incorrect.</p>	<p>If DHHS commits to following these sections of statute for transportation contracts, the Committee may want to consider following-up in six months to confirm that it is doing so. The Committee may also want to consider directing DHHS to determine whether it has any other contracts that should be meeting these requirements but currently are not.</p>	<p>DHHS’ position is that the exceptions in Neb. Rev. Stat. § 73-507(e) from provisions of the State Contracts for Services requirements apply to these transportation contracts, because they are contracts with direct providers of child welfare services to an individual child. Transportation for child welfare recipients is an integral part of the services provided to them, and the timeliness and quality concerns that led to the enactment of these exceptions applies to these contracts.</p> <p>While DHHS understands the Performance Audit Section interprets Neb. Rev. Stat. § 73-501 to require</p>



#	Findings	Audit Recommendations	Agency Response
			<p>DHHS to process all of its direct provider contracts through the Nebraska Information System ("NIS"), DHHS respectfully requests that consideration be given to the significant resources that are going to be required to accomplish this. These are resources that could better be utilized serving those that are entrusted to our care. DHHS has always understood from the legislative history of LB626 (2003), that the direct provider contracts were to be exempt from this process (the rationale for which is provided below). We would first ask the Legislature to review LB 626 (2003) and consider amending the State Contracts for Services statutes to clarify this exception.</p> <p>Not only is N-FOCUS the contract and payment processing system that has been in use since 1997-98 fiscal year, but N-FOCUS also serves as Nebraska's federally authorized Statewide Automated Child Welfare Information System (SACWIS). It provides integrated reports that are required for Nebraska to receive child welfare program funding and those reports include much more than the contract information contained in N-</p>

#	Findings	Audit Recommendations	Agency Response
			<p>FOCUS that is the subject of this audit. In order to transfer the DHHS contracts from N-FOCUS to NIS, without a significant interruption in federal reporting and related funding, DHHS will either need to 1) run two separate, but identical systems for contracting/procurement, or 2) purchase or develop a new comprehensive Child Welfare Information System that is integrated with NIS. Both of these options will require significant fiscal commitments from DHHS.</p> <p>The purpose of the statutes that apply to state contracts for services, Neb. Rev. Stat. §73-501 <i>et seq.</i>, is twofold: First, these statutes create a requirement of Department of Administrative Services (“DAS”) approval for certain contracts, namely those in excess of \$50,000 which do not fit within certain excepted contract categories found at Neb. Rev. Stat. §73-507. Second, they operate to increase the centralization of state service contracts. Neb. Rev. Stat. §73-503 requires DAS to “process and document” service contracts. The term “process” refers to the procedure under which DAS grants approval for those contracts requiring DAS approval. The term</p>

#	Findings	Audit Recommendations	Agency Response
			<p>"document" refers to DAS' obligation to maintain copies of the contracts, whether or not they require DAS approval.</p> <p>73-503(4) directs DAS to establish a "centralized data base" either through the state accounting system or through an alternative system, to "specifically identify where a copy of each contract for services may be found". 73-503(4) does not specifically require DAS maintain a copy of every contract. Rather, it provides that the data base established by DAS, whether it be the state accounting system or an "alternative system", specifically identify the location of each contract for services. The term system may be read to mean a single location or multiple locations and may also be read to allow contracts to be located outside of DAS.</p> <p>The legislative history of these statutes reveals an acknowledgement that requiring all state service contracts of every type to be contained in the DAS database is not practical: "That's an issue that (DAS Director) Lori McClurg has a concern with, and we agreed we could change, that all of those contracts</p>

#	Findings	Audit Recommendations	Agency Response
			<p>didn't necessarily need to be housed in her office. But it was important we know where those actual contracts are, so that if we wanted to look at them, we know how to access them; rather than the way it is now, where we don't know and don't necessarily even know that they exist." Laws 2003; LB 626; Floor Debate; March 31, 2003; Sen. Priester.</p> <p>The housing of DHHS service contracts which are exempt from DAS approval under § 73-507, in the DHHS N-FOCUS database is consistent with the intent of the statutes. The location of these contracts is well known to DAS and to the Legislature, and they can be readily accessed upon request. A simple advisement on the DAS database that DHHS maintains a copy of its direct care service contracts on N-FOCUS would achieve compliance with § 73-504's requirement that it specifically identify the location of such contracts.</p> <p>To clarify, it is not the intent of DHHS to avoid proper review for these contracts. We want to provide transparent access to all parties that need access to the direct provider contracts. Our sole concerns,</p>

#	Findings	Audit Recommendations	Agency Response
			<p>however, are that we retain the ability to process payments timely and submit the required federal reports in a manner that does not unduly utilize resources that are better spent providing services to those entrusted to our care.</p> <p>The Department can add any additional data fields to N-FOCUS that may be necessary to ensure that all the required information is available. The addition of data fields will not have a significant financial impact to the Department.</p>
10	DHHS is in full or partial compliance with most of the statutory requirements relating to the processing of sole source personal services contracts.	DHHS should take additional steps to ensure that all emergency contracts are entered into NIS.	The Department disagrees with this finding. All sole source and emergency contracts were loaded into the NIS system. A phone call to the Legislative Audit and Research Office confirmed this to be true after a subsequent check. The Legislative Audit and Research Office reported that the final report would be modified removing this finding.
11	DHHS has not complied with a requirement that it document contractor compliance with contract terms.	DHHS should begin compliance immediately.	<p>The Department disagrees with this finding. The auditors did not review any Sole Source or Emergency Contract files. The auditors only reviewed the deviation and the contract; they did not review any sole source or emergency contract files.</p> <p>The only contract files reviewed were</p>

#	Findings	Audit Recommendations	Agency Response
			Provider Files (located in the field) related to transportation. None of these were sole source or emergency.
12	DHHS has no comprehensive method for determining compliance with many of the requirements for transportation contractors.	DHHS should ensure that it's newly developed CQIU addresses the concerns raised in this report, especially that all statutory requirements are met. The Committee may wish to follow-up on the process of this unit in the near future.	The Department agrees with this finding and will be integrating methods to conduct reviews of contract compliance related to items deemed safety issues and priority areas for safe transportation of state wards. Not all areas of compliance as suggested by the auditors can be monitored.
13	Prospective foster parents undergo a more rigorous criminal background check than do potential drivers under contract to transport state wards.	See #12	The Department agrees with the finding. Foster Parenting is a service where the state ward lives in the home of a family 24/7 and requires constant supervision, whereas transportation services provide for a state ward to be transported for a short duration from one destination to another. The Department requires complete background checks of friends and family transporting state wards. Currently, Public Service Commission rules and regulations do not permit additional background checks of PSC Certified transportation providers. Past Legislative proposals have been made to modify these regulations.
14	We found that DHHS has not subjected proposed transportation contracts to the same levels of	See #12	The Department agrees with this finding. The Department currently has Regulations related to contracting with

#	Findings	Audit Recommendations	Agency Response
	review as other service contracts.		<p>transportation providers, as well as for other types of services provided directly to children and families. Other services include Child Care, Chore, Congregate Meals, and Homemaker etc. Department policies allow for the approval and authorization of individual and agency provider agreements to be entered into by front line staff for the services specified within Department Regulations. Department Regulation allows for front line staff to enter into a Service Provider Agreement which is a legally binding document describing the service(s) to be provided, the agreed-upon unit(s), and the unit rate(s) for each provider. The responsibilities of the Provider and of DHHS are stated in the agreement. These local Service Provider Agreements are standardized templates approved by the legal division for use for a wide variety of direct care providers, including transportation providers. Authority has been granted to the local areas to enter into these agreements so as not to hinder the necessary provision of services to children and families.</p> <p>Additionally, the Director of Children and Family Services has granted local</p>

#	Findings	Audit Recommendations	Agency Response
			<p>authority to review and approve provider service agreements for direct services for an amount not to exceed \$50,000.</p> <p>Contracts for Services that have previously undergone a Request for Proposal or were developed as a specific new service not addressed within existing DHHS Regulation, are contracts that require more scrutiny from Legal, HR and Support Services.</p>
15	As mentioned in Section III, we found that DHHS does not comply with the statutory requirement that it document the reasons for selecting a specific transportation contractor, although it has agreed to start doing so in the future.	See #12	<p>The Department partially disagrees with this finding. The Department signs up willing family and friend providers for direct and specific services to children and families, unless otherwise specified in regulation. The Department selects the transportation provider based on the need of the family and locates a provider that can meet the needs of the family.</p> <p>With commercial transportation, the Department is in agreement that it will start documenting the rationale for selecting a provider.</p>
16	DHHS does not have a comprehensive system for reviewing contract performance.	See #12	The Department agrees with this finding and will implement procedures to review contract performance.
17	We found that oversight of transportation contract payments is more extensive when the	See #12	The Department agrees with this finding and will implement procedures to monitor the payments for the provision of



#	Findings	Audit Recommendations	Agency Response
	payments are made through the Medicaid program than when the payment is made through other programs.		transportation provided to state wards.
18	DHHS pre-authorizes the number of miles that it will reimburse for state ward travel, which provides a good internal control on these reimbursements. However, it does not have written policy or standard for calculating the mileage to be reimbursed for state ward transportation.	See #12	The Department agrees with this finding and will issue an Administrative Policy that will guide all staff in calculating mileage for state ward transportation.
19	DHHS has no systematic way of determining compliance with many transportation contract requirements.	See #12	See response to #12.
20	DHHS has no system-wide policy on how to handle complaints against contractors.	DHHS should establish such a policy. It should also begin tracking such complaints, any actions taken to resolve them and the outcomes.	The Department agrees with the finding that we had no system-wide policy, but need to be clear that there is complaint tracking in place, but the process varies in the 5 Service Areas. We will implement policy for the tracking of provider complaints in a standardized manner. An Administrative Memo regarding this issue was issued to staff on June 17, 2008 and will later be incorporated into regulation. (see attached)
21	DHHS has an adequate system of	DHHS should review its sanctions for	The Department disagrees with the

#	Findings	Audit Recommendations	Agency Response
	sanctions in place for addressing problems with transportation contractors. However, in at least one regard-the sanction for transporting state wards without proper child safety restraints-there are more severe penalties for foster parents than for transportation contractors.	transportation contractors and bring them into closer comparability with sanctions for foster parents.	comparison of sanctions for foster parents, who provide care 24/7 to children and transportation providers who have much more limited contact with children, but we will certainly review the sanctions for transportation providers and make any adjustments deemed necessary to make sure there are adequate sanctions for transportation providers.
22	The efforts taken by DHHS leadership to establish the CQIU and define the relationship between the service areas and the Central Office are positive steps to addressing the issues of contracting and contract oversight.	The Committee should follow-up as these efforts get underway.	The Department appreciates this comment/compliment and is more than willing to share information about the implementation of the CQI/Operation initiatives as those efforts move forward.

# LEGISLATIVE AUDITOR'S SUMMARY OF AGENCY RESPONSE

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*Neb. Rev. Stat. § 50-1210 requires the Legislative Auditor to “prepare a brief written summary of the response, including a description of any significant disagreements the agency has with the section’s report or recommendations.” On June 30, 2008, the Director of Administrative Services and the Director of the Department of Health and Human Services Division of Children and Family Services submitted separate responses to a draft of the Performance Audit Section’s audit report. The Legislative Auditor’s summary of those responses follows.*

Some of the findings and recommendations in the Section’s draft report applied only to the Department of Administrative Services (DAS) and others applied only to the Department of Health and Human Services (DHHS). Each agency responded only to the questions related to it.

The Director of Administrative Services agreed with most of the findings relating to DAS. For the two he disagreed with (numbers 6 and 8), the Section agrees to modify the findings to address his concerns.

The Director of the DHHS Division of Children and Family Services agreed with most of the Section’s major findings related to DHHS. Of the five findings with which the Director disagreed in whole or in part (numbers 9, 10, 11, 14, and 15), the Section agrees to modify two (numbers 10 and 14), and the Director agreed to implement the Section’s recommendation despite some disagreement with number 15. However, we continue to disagree with DHHS on the remaining two, in which our position is that:

- (1) Neb. Rev. Stat. § 73-503 requires DHHS to enter **all** personal service contracts, including transportation service provider contracts, into NIS (Finding 9); and
- (2) DHHS does not fully comply with the statutory requirement that it document contractor compliance as it relates to transportation contracts (Finding 11).

A more detailed discussion of our review of the agencies’ responses begins on page 2, and a copy of the findings and recommendations is attached to this summary for reference.

We also note that DHHS disagreed with the Section’s comparison of certain requirements for foster parents with requirements for transportation providers. The Director argued that such a comparison is inappropriate because transportation providers have “much more limited contact with children” than do foster parents.

The two areas in which we made this comparison are (1) the sanctions applied for failure to have appropriate child safety seats and (2) the extent of the background check required: foster parents are statutorily required to undergo a 50-state background check, while transportation providers must only undergo a background check within Nebraska, unless the provider him or herself discloses a reason to check with other states.

We do not believe that the Director's distinction about the relative amount of time spent with the child should influence the penalties relating to the requirement to have the appropriate child safety seat. The offense is the same and the penalties should also be the same.

Regarding the issue of criminal background checks, the Section acknowledges that requiring 50-state checks for transportation providers would require a policy change by the Legislature and would have a financial cost, and there may be legitimate reasons not to make such a change. Nevertheless, we do not believe that DHHS' argument sufficiently acknowledges the risks to children being transported under the contracts in question. It is not unreasonable to imagine that an individual with a criminal history in another state could provide transportation under one of these contracts. If such a person had ill intentions, he or she would not have to have 24/7 custody to have sufficient opportunity to harm the child.

## **Department of Administrative Services (DAS)**

### **Finding 1**

The Director of Administrative Services (Director) agreed with the Section's statement that DAS has no authority to oversee whether state agencies enter the required information about personal services contracts into the Nebraska Information System (NIS) or whether that information is entered correctly. He also noted that any statutory changes giving DAS more authority to oversee and enforce the accurate input of data into NIS would require additional resources.

### **Finding 5**

The Director disagreed with the finding that DAS is only partially compliant with the statutory requirement that it maintain a "complete record" of personal services contracts processed using emergency procedures. He believes that DAS is required only to maintain information provided to it by the agency that entered into the contract and that the statute does not explicitly require an agency to provide DAS with a copy of the final contract. Nevertheless, he agreed that DAS will, in the future, ask agencies to provide a copy of the final contract.

### **Finding 6**

The Director disagreed with this finding, which relates to a pre-process requirement in Neb. Rev. Stat. § 73-509, arguing that DAS had met the only requirement of the statutory section in question that does, in fact, apply to DAS. We agree and will modify the finding accordingly.

### **Finding 7**

The Director did not disagree with the finding, which relates to the possibility of unintended exceptions to certain contracting requirements. However, he cautions against removing all flexibility suggesting that DAS could need some flexibility in the unlikely event that an emergency circumstance arises. The Section believes that if the Legislature wants to allow the flexibility suggested by DAS, it should amend the statute to clearly reflect that intention.

### **Finding 8**

The Director agreed with the portion of the finding that states DAS is in compliance with creating a contract location data base; however, he disagrees with the portion of the finding that states several aspects of the implementation of that requirement have interfered with the Legislature's goal that the contract location information be readily accessible to policymakers and the public. Specifically, he took issue with the statement that "there is no avenue for the public to access the [contract location] report." He argued that some service contract information is available on the DAS Web site and anyone who asks DAS for the complete information would be provided it.

We agree that the statement in the draft report was overly broad and will modify it. However, we believe that the Legislature's intention was that complete information be relatively easily available without an individual having to contact DAS to obtain it. The recommendation that DAS make a contract location report available annually or more frequently would meet that intention without being overly burdensome for DAS.

### **Department of Health and Human Services (DHHS)**

The Director of the DHHS Division of Children and Family Services (Director) agreed with several findings and, in particular, already addressed the finding that DHHS has no system-wide policy on how to handle complaints against contractors through an Administrative Memorandum issued June 17, 2008.

### **Finding 9**

The Director disagreed with the Section's finding that DHHS is required to enter transportation contracts into NIS, which was a point of disagreement throughout the audit. The Director's response does not explicitly state the belief that the relevant statute does not apply to transportation contracts, but it contains a statutory analysis attempting to dispute it. In addition, he argued that it would be inefficient to enter the transportation contracts into NIS. The Section believes that DHHS' statutory analysis contains a number of clear errors that make the analysis itself, as well as DHHS' conclusion, incorrect. Those errors are summarized below and explained in more detail in the attached table.

In terms of DHHS' argument that entering the transportation contracts into NIS would be inefficient, the Section does not dispute that documenting transportation service contracts in NIS would be a major undertaking. Nevertheless, the statutory requirement for DHHS to do so is clear and unambiguous. The Director asked that the Committee consider legislation to "clarify" that transportation requirements are not subject to this requirement. However, to our knowledge, this is the first time in the five years that the requirement has been in effect that such a change has been requested.

#### *Errors in Statutory Analysis*

Error 1: The DHHS response states that: "Neb. Rev. Stat. § 73-503 requires DAS to 'process and document' service contracts."

Section Response: § 73-503(1) applies to *state agencies*, not DAS. The exact language states that: “All state agencies shall process and document all contracts for services through the state accounting system.”

Error 2: The DHHS response argued that the term “document” in § 73-503(1) “refers to DAS’ obligation to maintain copies of the contracts, whether or not they require DAS approval.”

Section Response: This definition of the term “document” is incorrect. As stated above, the sentence in question does not apply to DAS, it applies to state agencies, so it cannot refer to any obligation of DAS’. Although the term “document” is not defined in the statute, the remainder of § 73-503(1) clarifies that the meaning of the term is that agencies must enter the relevant contract information into the data base selected by DAS. The remainder of § 73-503(1) states that:

The Director of Administrative Services shall specify the format and type of information for state agencies to provide and approve any alternatives to such formats. *All state agencies shall enter the information on new contracts for services and amendments to existing contracts for services. No later than September 15, 2003, all state agencies shall have entered such information about all contracts for services made prior to April 1, 2003, that are still in effect. State agency directors shall ensure that contracts for services are coded appropriately into the state accounting system.* (Emphasis added.)

Error 3: The DHHS response suggested that transportation contracts are exempt from the requirement that service contracts be documented through the state accounting system under § 73-507(e) [*sic*].

Section Response: As we stated in the draft report, we agree that the exemptions provided in § 73-507(2)(e) apply to the DHHS transportation contracts. However, those exemptions do not include the requirement of § 73-503(1) that service contracts be documented in the state accounting system. The Legislature provided only one exemption from the requirement that state agencies document their service contracts in the state accounting system: the University of Nebraska is exempt under Neb. Rev. Stat. § 73-503(2).

Error 4: Section 73-503(4) states that “The Director of Administrative Services shall establish a centralized data base, either through the state accounting system or through an alternative system, which specifically identifies where a copy of each contract for services may be found.” DHHS argued that “The term system may be read to mean a single location or multiple locations. . . .”

Section Response: DHHS’ understanding of the term “system” is incorrect. The plain language of the sentence indicates that “system” refers to a computer data base, not to a physical location or web of physical locations. The sentence requires the Director of Administrative Services to choose between “either” the state accounting system or an alternate system. DAS designated the state accounting system (Nebraska Information System, or NIS) as that system.

### **Finding 10**

The Director disagreed with the Section's finding that DHHS had not entered all sole source contracts into NIS and therefore was in only in partial compliance with requirements related to the processing of sole source personal services contracts. After additional discussion with DHHS representatives, the Section agreed to delete this finding.

### **Finding 11**

The Director disagreed with this finding relating to a requirement that DHHS document contractor compliance with contract terms. He stated that the audit staff did not review the actual *contract* files, only related documentation.

The Section acknowledges that we miscommunicated what we wanted to review. Following receipt of the DHHS response, we requested the appropriate files and reviewed them. However, that review confirmed the original finding that DHHS does not fully comply with the requirement to document compliance with contract terms. Of the 42 files reviewed, 17 had no evidence of contractor compliance with the contract provisions in the files; 24 did have evidence; and one contract was cancelled before completion.

### **Finding 14**

The Director agreed with this finding that transportation contracts do not receive the same level of review as other department contracts but argues that a higher level of review is unnecessary. He states that there is no need for further review because (1) the form used for the contract has already been reviewed by DHHS Legal; (2) it is a fill-in-the-blank form; and (3) "the Director of Children and Family Services has granted local authority to review and approve provider service agreements for direct services for an amount not to exceed \$50,000." The Section agrees to eliminate this finding.

### **Finding 15**

The Director partially disagreed with this finding that DHHS does not comply with the requirement that it document the reasons for selecting a specific transportation contractor. However, he agrees that DHHS will start documenting the rationale for specific providers in commercial transportation contracts.

## Appendix to the Legislative Auditor's Summary

Additional Analysis of the DHHS response to audit Finding #9.

Agency Response	Section Response/Explanation
<p>“DHHS’ position is that the exceptions in Neb. Rev. Stat. § 73-507(e) from provisions of the State Contracts for Services requirements apply to these transportation contracts, because they are contracts with direct providers of child welfare services to an individual child. Transportation for child welfare recipients is an integral part of the services provided to them, and the timeliness and quality concerns that led to the enactment of these exceptions applies to these contracts.” (DHHS Agency Response, pg. 3.)</p>	<p>As stated in the draft report, we agree with this statement. (See page 13.) However, § 73-507(2)(e), to which we assume DHHS is referring, does not provide for an exception to § 73-503, which, among other requirements, requires state agencies to process and document all contracts for services through the state accounting system. This subsection exempts certain types of contracts only from § 73-504, which requires competitive bidding, § 73-508, which requires contract preapproval by DAS in limited circumstances, and § 73-509, which requires a pre-process when contract employees would replace state employees.</p>
<p>“While DHHS understands the Performance Audit Section interprets Neb. Rev. Stat. § 73-501 to require DHHS to process all of its direct provider contracts through the Nebraska Information System (“NIS”), DHHS respectfully requests that consideration be given to the significant resources that are going to be required to accomplish this. These are resources that could better be utilized serving those that are entrusted to our care.” (Agency Response, pgs. 3 &amp; 4.)</p>	<p>The Section did not interpret Neb. Rev. Stat. § 73-501 in the draft report; we believe DHHS is referring here to § 73-503(1).</p> <p>Statutory interpretation holds that if the language of a statute is clear on its face, there is no need to go beyond the plain language of the statute. The Supreme Court has stated that "in interpreting a statute a court should always turn to one cardinal canon before all others. . . .courts must presume that a legislature says in a statute what it means and means in a statute what it says there." <i>Connecticut Nat'l Bank v. Germain</i>, 503 U.S. 249, 253-254 (1992) (internal citations omitted). Indeed, "when the words of a statute are unambiguous, then, this first canon is also the last: 'judicial inquiry is complete.'" <i>Id.</i></p> <p>Following this principle, § 73-503(1) did not require statutory interpretation, as the plain language of the text requires “[a]ll state agencies to process and document all contracts for services through the state accounting system.”</p>



Agency Response	Section Response/Explanation
	Our audit assessed whether DHHS was in compliance with the applicable statutes and found that in some instances, they were not. The Committee can consider the policy question of whether to exempt these contracts as requested by DHHS; however, the requirement itself is clear.
“DHHS has always understood from the legislative history of LB626 (2003), that the direct provider contracts were to be exempt from this process. . . .” (Agency Response, pg. 4.)	DHHS provides no citations for portions of the legislative history that support this view and the Section found nothing in the history to support it. In addition, even if the legislative history did reflect this intention, it cannot change the requirements of the statute, which are clear.
“Neb. Rev. Stat. §73-503 requires DAS to "process and document" service contracts.” (Agency Response, pg. 5.)	This is not what the plain language of the statute states.  Neb. Rev. Stat. § 73-503(1) states that: “All <b>state agencies</b> shall process and document all contracts for services through the state accounting system.” (emphasis added). It is clear from the plain language of the statute that the responsibility to process and document contracts for services falls on the individual state agencies, rather than on DAS. As the language is clear on its face, we do not have to go further in order to interpret what the Legislature meant by this language.
“The term "process" refers to the procedure under which DAS grants approval for those contracts requiring DAS approval.” (Agency Response, pg. 5.)	DHHS provides no evidence to support its definition of the term “process,” and we believe the definition is incorrect. The statutory sentence in which the term occurs makes no reference to DAS. Although the next sentence in the subsection requires the Director of DAS to specify the format and type of information required, there are no other requirements placed upon DAS in this subsection of § 73-503.
“The term "document" refers to DAS' obligation to maintain copies of the contracts, whether or not they require DAS approval.” (Agency Response, pgs. 5 & 6.)	DHHS provides no evidence to support its definition of the term “document” and we believe the definition is incorrect. The statutory sentence in which the term occurs makes no reference to DAS. Although the next sentence in the subsection requires the Director of DAS to specify the format and type of information re-

Agency Response	Section Response/Explanation
	quired, there are no other requirements placed upon DAS in this subsection of § 73-503.
<p>“73-503(4) directs DAS to establish a "centralized data base" either through the state accounting system or through an alternative system, to "specifically identify where a copy of each contract for services may be found".” (Agency Response, pg. 6.)</p> <p>“The term system may be read to mean a single location or multiple locations and may also be read to allow contracts to be located outside of DAS.” (Agency Response, pg. 6.)</p>	<p>DHHS’ interpretation of the term “system” is incorrect. Neb. Rev. Stat. § 73-503(4) states that a data base (singular) is to be used to identify where a copy of each contract may be located and that this data base may either be the state accounting system or an alternate system.</p> <p>The structure of the statute, using the term “either,” requires the Director of DAS to choose one data base; it does not authorize him or her to use more than one data base. DAS has designated NIS as that data base. Further, the term “system” in the sentence clearly refers to a computer system, not a web of locations.</p>
<p>“The legislative history of these statutes reveals an acknowledgement that requiring all state service contracts of every type to be contained in the DAS data base is not practical: "That's an issue that (DAS Director) Lori McClurg has a concern with, and we agreed we could change, that all of those contracts didn't necessarily need to be housed in her office. But it was important we know where those actual contracts are, so that if we wanted to look at them, we know how to access them; rather than the way it is now, where we don't know and don't necessarily even know that they exist." Laws 2003; LB 626; Floor Debate; March 31, 2003; Sen. Priester.” (Agency Response, pgs. 6 &amp; 7.)</p>	<p>DHHS’ use of this quote misrepresents the clear meaning of the quote itself and also takes the quote out of context.</p> <p>The quote from Senator Don Preister, the introducer of LB 626, is very clearly in reference to the physical housing of individual contracts, not the housing of the contract data. When Sen. Preister used the phrase “housed,” he is referring to actual, physical copies of contracts, not entries in a data base.</p> <p>The context in which the quote appears in the legislative history confirms this. The version of the bill being discussed did contain a requirement that DAS, in fact, maintain a physical copy of each contract in its office—referred to in the history as the “central repository for all contracts for services.” The Legislature decided that such a requirement was too burdensome and replaced it with the requirement that the location of each contract be contained in the data base identified by DAS.</p>
<p>“The housing of DHHS service contracts which are exempt from DAS approval under § 73-507, in the DHHS</p>	<p>The Section disagrees with these statements. The statutory requirements that all contracts be processed and documented in</p>

Agency Response	Section Response/Explanation
<p>N-FOCUS data base is consistent with the intent of the statutes. The location of these contracts is well known to DAS and to the Legislature, and they can be readily accessed upon request.” (Agency Response, pg. 7.)</p>	<p>the state accounting system and appear on the contract location report are clear. If the contracts are not processed and documented in the system and do not appear on the location report, then such practices cannot be considered to be consistent with, much less in compliance with, statute.</p> <p>The plain language of § 73-503(4) states the Legislature’s requirement that DAS establish a “centralized data base.” Allowing each state agency to house its own list of contracts does not meet the requirement for a centralized data base.</p>
<p>“A simple advisement on the DAS data base that DHHS maintains a copy of its direct care service contracts on N-FOCUS would achieve compliance with § 73-504's requirement that it specifically identify the location of such contracts.” (Agency Response, pg. 7.)</p>	<p>We disagree that including a statement in NIS that all DHHS direct care service contracts can be found in its N-FOCUS data base would meet the existing requirement of § 73-503(4).</p> <p>Section 73-503(4) states that the data base established by DAS must “specifically identify where a copy of each contract for services may be found.” Correct interpretation of that requirement relies on understanding that, under § 73-503(1), all service contracts must be entered individually into the DAS centralized data base. Section 73-503(4) simply adds that the entries in the data base for each contract must include a reference to the location where the contract itself may be found. This section in no way envisions a blanket location-reference for a group of one type of contract.</p>



## SUMMARY OF PUBLIC HEARING TESTIMONY

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On September 19, 2008, the Performance Audit Committee (Committee) held a public hearing on the draft report entitled *Personal Services Contracts: An Examination of Compliance and Oversight*.

Don Arp, Jr., lead performance auditor on the audit, testified first. Mr. Arp said that at the Committee's direction, the Section conducted a performance audit that aimed to determine compliance with two sections of statute governing personal services contracts. Those sections contain general administrative requirements for DAS, as well as requirements for the agency that is actually entering into a contract. In order to examine the agency-specific portions of the statutes, the Section examined contracts held by the Department of Health and Human Services (DHHS), specifically those regarding transporting wards of the state.

Mr. Arp highlighted the major audit findings and recommendations. The Section found that Administrative Services generally complies with the statutory requirements relevant to its duties, whereas the examination of the Department of Health and Human Services showed that although DHHS is compliant with some sections of statute, there are several aspects of contract processing and oversight that raise concerns. The Section also found that DHHS has no comprehensive method for determining compliance with many of requirements for transportation contractors and that the agency does not have a comprehensive system for reviewing contract performance.

Laura Peterson, legal counsel for Administrative Services, testified next. Ms. Peterson said that DAS generally agreed with the Section's findings relating to DAS and that if the Committee decided to give DAS oversight responsibility for personal services contracts, DAS would need increased appropriations. Ms. Peterson said that DAS would begin asking agencies to submit final, signed copies of certain contracts, as recommended in the draft audit report. When asked about the difficulty in getting a report of contract locations from the state accounting system, NIS, and the possibility of having a report regularly made public, Ms. Peterson stated that this was possible, but that there was little public interest in the item, noting that DAS had never received a request for the report. Ms. Peterson also said that solutions were being examined to address the entry field issue in NIS that caused some of the concerns about the contract location list.

Todd Landry, director of the DHHS Division of Children and Family Services, testified next. Mr. Landry said that, prior to the audit, DHHS believed that some types of transportation contracts, which DHHS had referred to as "service provider agreements" did not have to be entered into NIS. He noted that DHHS will begin referring to these agreements and contracts and entering two of the three types contracts into NIS. For the third type, called "friends and family," DHHS will seek an exemption from DAS because the sheer number of contracts involved would be overwhelming to enter both in NIS and in DHHS' N-FOCUS system. In response to a question from the Committee, Mr. Landry acknowledged that a statutory change may be needed to address this issue. Mr. Landry concluded by speaking about the new Comprehensive Quality Improvement Unit (CQIU), which is expected to address many of the concerns raised in the audit report.

Next to testify were Carol Stitt, director of the Foster Care Review Board, along with FCRB review specialists Nicki Swope and Cheryl Johnson. Ms. Stitt, aided by Ms. Swope and Ms. Johnson, presented research they had conducted regarding transportation and visitation issues. Ms. Stitt gave several examples of problems she and her staff have received regarding transportation and visitation. Ms. Stitt also provided the Committee with a report detailing the research conducted by her staff on these issues. John Seyfarth, a long-time local review board member, testified after Ms. Stitt, noting his experience with issues such as the use of safety seats and the lack of a statewide identification system for drivers.

The next testifier was Sean Schroll, director of marketing and chief financial officer for Prince of the Road, a contracted transportation provider. Mr. Schroll said that his company has tried to conduct its business to meet the needs of state wards and DHHS. Mr. Schroll said that his company's policies are always under review and changed when needed. Mr. Schroll also pointed out the cost issues between the state using transportation contractors versus state employees to provide transportation. Mr. Schroll also responded to questions from the Committee about some Prince of the Road drivers and their alleged criminal conduct involving state wards.

After Mr. Schroll testified, Sen. Schimek recalled Mr. Landry to ask him questions about criminal background checks conducted on transportation providers. Mr. Landry said that DHHS is looking at several possible new requirements for transportation providers, including 50-state criminal background checks, mandatory drug testing, completion of a defensive driving course, and implementation of a certification training course. Mr. Landry said that DHHS is exploring the cost impacts of these issues with transportation providers.

No others testified.

## Appendix I: Possible Unintended Effects of Neb. Rev. Stat. § 73-507 and § 73-508

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In Section III, we discussed our concern that provisions of Neb. Rev. Stat. § 73-508 and § 73-507 could be interpreted in a way that might result in procedural exemptions unintended by the Legislature. In this Appendix, we explain our concern in more detail. For reference, the full text of the two statutory sections in question are included at the end of this Appendix.

Subsection 73-507(1) requires the DAS material division to develop procedures for granting “limited exceptions” to certain statutory sections, including § 73-508, which contains requirements for sole source and emergency contracts. We are concerned that the Legislature may not, in fact, have intended for DAS to permit exemptions to some of these requirements, specifically requirements that:

- the contract be approved by the state agency director or his or her designee;
- a copy of the contract and agency justification of the emergency be provided to the Director of Administrative Services within three business days after contract approval;
- the state agency retain a copy of the justification with the contract in the agency files; and
- the Director of Administrative Services maintain a complete record of the contract.

While it is possible to imagine circumstances in which it might be reasonable for DAS to allow an agency director a few extra days to submit paperwork regarding an emergency contract, it is harder to imagine circumstances in which it would be desirable to exempt an agency from the requirements that its director (or designee) approve such a contract and that it maintain justification for the emergency contract or to exempt DAS from the requirement that it retain a record of the contract.

The legislative history on the bill that contained no discussion of these requirements or whether the Legislature did, in fact, intend to allow exemptions from them. However, the overall context of the debate—which was to increase accountability over personal services contracts—and the fact that there is no apparent need for such exemptions leads us to question

whether the Legislature intended to exempt these requirements.

**Neb. Rev. Stat. sections 73-507 and 73-508**

**73-507. Exceptions.**

(1) Subject to review by the Director of Administrative Services, the materiel division shall provide procedures to grant limited exceptions from the provisions of sections 73-504, 73-508, and 73-509 for:

(a) Sole source and emergency contracts; and  
(b) Other circumstances or specific contracts when any of the requirements of sections 73-504, 73-508, and 73-509 are not appropriate for or are not compatible with the circumstances or contract. The materiel division shall provide a written rationale which shall be kept on file when granting an exception under this subdivision.

(2) The following types of contracts for services are not subject to sections 73-504, 73-508, and 73-509:

(a) Contracts for services subject to the Nebraska Consultants' Competitive Negotiation Act;

(b) Contracts for services subject to federal law, regulation, or policy or state statute, under which a state agency is required to use a different selection process or to contract with an identified contractor or type of contractor;

(c) Contracts for professional legal services and services of expert witnesses, hearing officers, or administrative law judges retained by state agencies for administrative or court proceedings;

(d) Contracts involving state or federal financial assistance passed through by a state agency to a political subdivision;

(e) Contracts with direct providers of medical, behavioral, or developmental health services, child care, or child welfare services to an individual;

(f) Agreements for services to be performed for a state agency by another state or local government agency or contracts made by a state agency with a local government agency for the direct provision of services to the public;

(g) Agreements for services between a state agency and the University of Nebraska, the Nebraska state colleges, the courts, the Legislature, or other officers or agencies established by the Constitution of Nebraska;

(h) Department of Insurance contracts for financial or actuarial examination, for rehabilitation, conservation, reorganization, or liquidation of licensees, and for professional services related to residual pools or excess funds under the agency's control;

(i) Department of Roads contracts for all road and bridge projects; and

(j) Nebraska Investment Council contracts.



**73-508. Preapproval; required; when.**

Except as provided in section 73-507, all proposals for sole source contracts for services in excess of fifty thousand dollars shall be preapproved by the materiel division except in emergencies. In case of an emergency, contract approval by the state agency director or his or her designee is required. A copy of the contract and agency justification of the emergency shall be provided to the Director of Administrative Services within three business days after contract approval. The state agency shall retain a copy of the justification with the contract in the agency files. The Director of Administrative Services shall maintain a complete record of such sole source contracts for services.



## **Appendix II: Methodology**

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This audit was conducted in accordance with generally accepted government auditing standards for performance audits. The methodologies we used to answer each of the scope statement questions are described briefly at the beginning of each section. This appendix provides additional details.

### **Contract File Review**

In conducting its review of the contract files for the transportation, sole source, and emergency contracts, Section staff used specialized checklists for each contract type that had questions regarding the relevant statutory requirements, critical contract data (i.e. contractor name, date signed), and best practices (i.e. Is the contract signed?). The results of these checklists were recorded in an Excel spreadsheet.

### **N-FOCUS Payments**

To determine if transportation contracts could be paid before service was provided, Section examined the internal controls of the N-FOCUS system. Section staff had DHHS staff, in the N-FOCUS development system (a test system that is an exact copy of the actual system), attempt to process a transportation invoice in three separate scenarios: 1) service date is before billing and bill received date; 2) Service date is after billing and bill received date; and 3) service date is not within the approved service period. In Scenario 1, the payment processed and was marked in the system as approved. In Scenarios 2 and 3, the payments did not process and the invoices were flagged as suspended until the error reports could be resolved. DHHS staff also demonstrated how there is no way to override the suspension until the date issues are addressed.

### **Foster Parent Requirements**

We compared the requirements for transportation drivers of state wards and foster parents and found only two significant differences. These two differences are: foster parents undergo a more rigorous background check conducted by the Federal Bureau of Investigation and foster parents who transport a child that is required to be in a child restraint may have their license revoked or suspended if they do not use appropriate child restraints. These requirements are discussed in Section V.



# Performance Audit Committee Reports: 1994 to 2008

## Performance Audit Reports

The Nebraska Information Technology Commission: An Examination of Statutory Compliance and the Project Review Process (November 2007)  
The Nebraska Lottery's Implementation of LB 1039 (February 2007)  
The State Department of Education's Student-based Teacher-led Assessment and Reporting System (February 2007)  
The Lincoln Regional Center's Sex Offender Services Program (August 2006)  
The Public Employees Retirement Board and the Nebraska Public Employees Retirement Systems: An Examination of Compliance, PIONEER, and Management (August 2006)  
The Nebraska Medicaid Program's Collection of Improper Payments (May 2005)  
The Lincoln Regional Center's Billing Process (December 2004)  
Nebraska Board of Parole (September 2003)  
Nebraska Department of Environmental Quality: Administering the Livestock Waste Management Act (May 2003)  
HHSS Personal-Services Contracts (January 2003)  
Nebraska Habitat Fund (January 2002)  
State Board of Agriculture (State Fair Board) (December 2001)  
Nebraska Environmental Trust Board (October 2001)  
Nebraska Department of Roads: Use of Consultants for Preconstruction Engineering (June 2001)  
Department of Correctional Services, Inmate Welfare Fund (November 2000)  
Bureau of Animal Industry: An Evaluation of the State Veterinarian's Office (March 2000)  
Nebraska Ethanol Board (December 1999)  
State Foster Care Review Board: Compliance with Federal Case-Review Requirements (January 1999)  
Programs Designed to Increase The Number of Providers In Medically Underserved Areas of Nebraska (July 1998)  
Nebraska Department of Agriculture (June 1997)  
Board of Educational Lands and Funds (February 1997)  
Public Service Commission: History of Structure, Workload and Budget (April 1996)  
Public Employees Retirement Board and Nebraska Public Employees Retirement Systems:  
Review of Compliance-Control Procedures (March 1996)  
Leaking Underground Storage Tank Program (December 1995)  
School Weatherization Fund (September 1995)  
The Training Academy of the Nebraska State Patrol and the Nebraska Law Enforcement Training Center (September 1995)  
Nebraska Equal Opportunity Commission (January 1995)  
The Interstate Agricultural Grain Marketing Commission (February 1994)

## Preaudit Inquiries

Implementation of the Nebraska Information System (NIS) (November 2005)  
The Lincoln Regional Center Psychiatrists' Work Commitments (September 2005)  
The Nebraska State Patrol's Record of its Investigation of State Treasurer Lorelee Byrd (November 2004)  
HHSS Public Assistance Subprograms' Collection of Overpayments (August 2004)  
NDEQ Recycling Grant Programs (October 2003)  
HHSS Reimbursement and Overpayment Collection (August 2003)  
Grain Warehouse Licensing in Nebraska (May 2003)  
HHSS Personal-Services Contracts (July 2002)  
Livestock Waste Management Act (May 2002)  
Nebraska Telecommunications Universal Service Fund (April 2001)  
State Board of Health (November 2001)  
State Board of Agriculture (State Fair Board) (August 2001)  
Game and Parks Commission Cash Funds (August 1999)  
Education Technology (January 1998)  
Nebraska Research and Development Authority (April 1997)  
Nebraska's Department of Agriculture (June 1996)  
Nebraska's Department of Correctional Services Cornhusker State Industries Program (April 1996)  
DAS Duplication of NU Financial Record-Keeping (February 1995)

