

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 821

Final Reading

(Second)

Introduced by Health and Human Services Committee: Campbell, 25,
Chairperson; Bloomfield, 17; Cook, 13; Gloor, 35;
Howard, 9; Krist, 10; Lambert, 2; McGill, 26;
Nordquist, 7; Pirsch, 4.

Read first time January 05, 2012

Committee: Health and Human Services

A BILL

1 FOR AN ACT relating to health and human services; to amend sections
2 28-711, 73-401, 81-8,240, 81-8,241, 81-8,244, and
3 81-8,245, Reissue Revised Statutes of Nebraska; to state
4 intent; to create the Nebraska Children's Commission; to
5 provide powers and duties; to adopt the Office of
6 Inspector General of Nebraska Child Welfare Act; to
7 change provisions relating to the Public Counsel; to
8 harmonize provisions; to repeal the original sections;
9 and to declare an emergency.

10 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) The Legislature finds and declares that:

2 (a) The Health and Human Services Committee of the

3 Legislature documented serious problems with the child welfare system

4 in its 2011 report of the study that was conducted under Legislative

5 Resolution 37, One Hundred Second Legislature, First Session, 2011;

6 (b) Improving the safety and well-being of Nebraska's

7 children and families is a critical priority which must guide policy

8 decisions in a variety of areas;

9 (c) To improve the safety and well-being of children and

10 families in Nebraska, the legislative, judicial, and executive

11 branches of government must work together to ensure:

12 (i) The integration, coordination, and accessibility of

13 all services provided by the state, whether directly or pursuant to

14 contract;

15 (ii) Reasonable access to appropriate services statewide

16 and efficiency in service delivery; and

17 (iii) The availability of accurate and complete data as

18 well as ongoing data analysis to identify important trends and

19 problems as they arise; and

20 (d) As the primary state agency serving children and

21 families, the Department of Health and Human Services must exemplify

22 leadership, responsiveness, transparency, and efficiency and program

23 managers within the agency must strive cooperatively to ensure that

24 their programs view the needs of children and families

25 comprehensively as a system rather than individually in isolation,

1 including pooling funding when possible and appropriate.

2 (2) It is the intent of the Legislature in creating the
3 Nebraska Children's Commission to provide for the needs identified in
4 subsection (1) of this section, to provide a broad restructuring of
5 the goals of the child welfare system, and to provide a structure to
6 the commission that maintains the framework of the three branches of
7 government and their respective powers and duties.

8 Sec. 2. (1) The Nebraska Children's Commission is created
9 as a high-level leadership body to (a) create a statewide strategic
10 plan for reform of the child welfare system programs and services in
11 the State of Nebraska and (b) review the operations of the Department
12 of Health and Human Services regarding child welfare programs and
13 services and recommend, as a part of the statewide strategic plan,
14 options for attaining the legislative intent stated in section 1 of
15 this act, either by the establishment of a new division within the
16 department or the establishment of a new state agency to provide all
17 child welfare programs and services which are the responsibility of
18 the state. The commission shall provide a permanent forum for
19 collaboration among state, local, community, public, and private
20 stakeholders in child welfare programs and services.

21 (2) The commission shall include the following voting
22 members:

23 (a) The chief executive officer of the Department of
24 Health and Human Services or his or her designee;

25 (b) The Director of Children and Family Services or his

1 or her designee; and

2 (c) Sixteen members appointed by the Governor within
3 thirty days after the effective date of this act. The members
4 appointed pursuant to this subdivision shall represent stakeholders
5 in the child welfare system and shall include: (i) A director of a
6 child advocacy center; (ii) an administrator of a behavioral health
7 region established pursuant to section 71-807; (iii) a community
8 representative from each of the service areas designated pursuant to
9 section 81-3116. In the eastern service area designated pursuant to
10 such section, the representative may be from a lead agency of a pilot
11 project established under Legislative Bill 961, One Hundred Second
12 Legislature, Second Session, 2012, or a collaborative member; (iv) a
13 prosecuting attorney who practices in juvenile court; (v) a guardian
14 ad litem; (vi) a biological parent currently or previously involved
15 in the child welfare system; (vii) a foster parent; (viii) a court-
16 appointed special advocate volunteer; (ix) a member of the State
17 Foster Care Review Board or any entity that succeeds to the powers
18 and duties of the board or a member of a local foster care review
19 board; (x) a child welfare service agency that directly provides a
20 wide range of child welfare services and is not a member of a lead
21 agency collaborative; (xi) a young adult previously in foster care;
22 and (xii) a representative of a child advocacy organization that
23 deals with legal and policy issues that include child welfare.

24 (3) The commission shall have the following nonvoting, ex
25 officio members: (a) The chairperson of the Health and Human Services

1 Committee of the Legislature or a committee member designated by the
2 chairperson; (b) the chairperson of the Judiciary Committee of the
3 Legislature or a committee member designated by the chairperson; (c)
4 the chairperson of the Appropriations Committee of the Legislature or
5 a committee member designated by the chairperson; and (d) three
6 persons appointed by the State Court Administrator. The nonvoting, ex
7 officio members may attend commission meetings and participate in the
8 discussions of the commission, provide information to the commission
9 on the policies, programs, and processes of each of their respective
10 bodies, gather information for the commission, and provide
11 information back to their respective bodies from the commission. The
12 nonvoting, ex officio members shall not vote on decisions by the
13 commission or on the direction or development of the statewide
14 strategic plan pursuant to section 4 of this act.

15 (4) The commission shall meet within sixty days after the
16 effective date of this act and shall select from among its members a
17 chairperson and vice-chairperson and conduct any other business
18 necessary to the organization of the commission. The commission shall
19 meet not less often than once every three months, and meetings of the
20 commission may be held at any time on the call of the chairperson.
21 The commission shall be within the office of the chief executive
22 officer of the Department of Health and Human Services. The
23 commission may hire staff to carry out the responsibilities of the
24 commission. The commission shall hire a consultant with experience in
25 facilitating strategic planning to provide neutral, independent

1 assistance in developing the statewide strategic plan. The commission
2 shall terminate on June 30, 2014, unless continued by the
3 Legislature.

4 (5) Members of the commission shall be reimbursed for
5 their actual and necessary expenses as members of such commission as
6 provided in sections 81-1174 to 81-1177.

7 Sec. 3. (1) The Nebraska Children's Commission shall work
8 with administrators from each of the service areas designated
9 pursuant to section 81-3116, the teams created pursuant to section
10 28-728, local foster care review boards, child advocacy centers, the
11 teams created pursuant to the Supreme Court's Through the Eyes of the
12 Child Initiative, community stakeholders, and advocates for child
13 welfare programs and services to establish networks in each of such
14 service areas. Such networks shall permit collaboration to strengthen
15 the continuum of services available to child welfare agencies and to
16 provide resources for children and juveniles outside the child
17 protection system. Each service area shall develop its own unique
18 strategies to be included in the statewide strategic plan. The
19 Department of Health and Human Services shall assist in identifying
20 the needs of each service area.

21 (2)(a) The commission shall create a committee to examine
22 state policy regarding the prescription of psychotropic drugs for
23 children who are wards of the state and the administration of such
24 drugs to such children. Such committee shall review the policy and
25 procedures for prescribing and administering such drugs and make

1 recommendations to the commission for changes in such policy and
2 procedures.

3 (b) The commission shall create a committee to examine
4 the structure and responsibilities of the Office of Juvenile Services
5 as they exist on the effective date of this act. Such committee shall
6 review the role and effectiveness of the youth rehabilitation and
7 treatment centers in the juvenile justice system and make
8 recommendations to the commission on the future role of the youth
9 rehabilitation and treatment centers in the juvenile justice
10 continuum of care. Such committee shall also review the
11 responsibilities of the Administrator of the Office of Juvenile
12 Services, including oversight of the youth rehabilitation and
13 treatment centers and juvenile parole, and make recommendations to
14 the commission relating to the future responsibilities of the
15 administrator.

16 (c) The commission may organize committees as it deems
17 necessary. Members of the committees may be members of the commission
18 or may be appointed, with the approval of the majority of the
19 commission, from individuals with knowledge of the committee's
20 subject matter, professional expertise to assist the committee in
21 completing its assigned responsibilities, and the ability to
22 collaborate within the committee and with the commission to carry out
23 the powers and duties of the commission.

24 (d) If the One Hundred Second Legislature, Second
25 Session, 2012, creates the Title IV-E Demonstration Project Committee

1 or the Foster Care Reimbursement Rate Committee, or both, such
2 committees shall be under the jurisdiction of the commission.

3 (3) The commission shall work with the office of the
4 State Court Administrator, as appropriate, and entities which
5 coordinate facilitated conferencing as described in section
6 43-247.01. Facilitated conferencing shall be included in statewide
7 strategic plan discussions by the commission. Facilitated
8 conferencing shall continue to be utilized and maximized, as
9 determined by the court of jurisdiction, during the development of
10 the statewide strategic plan. Funding and contracting of facilitated
11 conferencing entities shall continue to be provided by the Department
12 of Health and Human Services to at least the same extent as such
13 funding and contracting are being provided on the effective date of
14 this act.

15 (4) The commission shall gather information and
16 communicate with juvenile justice specialists of the Office of
17 Probation Administration and county officials with respect to any
18 county-operated practice model participating in the Crossover Youth
19 Program of the Center for Juvenile Justice Reform at Georgetown
20 University.

21 (5) If the Nebraska Juvenile Service Delivery Project is
22 enacted by the One Hundred Second Legislature, Second Session, 2012,
23 the commission shall coordinate and gather information about the
24 progress and outcomes of the project.

25 Sec. 4. (1) The Nebraska Children's Commission shall

1 create a statewide strategic plan to carry out the legislative intent
2 stated in section 1 of this act for child welfare program and service
3 reform in Nebraska. In developing the statewide strategic plan, the
4 commission shall consider, but not be limited to:

5 (a) The potential of contracting with private nonprofit
6 entities as a lead agency, subject to the requirements of subsection
7 (2) of this section. Such lead-agency utilization shall be in a
8 manner that maximizes the strengths, experience, skills, and
9 continuum of care of the lead agencies. Any lead-agency contracts
10 entered into or amended after the effective date of this act shall
11 detail how qualified licensed agencies as part of efforts to develop
12 the local capacity for a community-based system of coordinated care
13 will implement community-based care through competitively procuring
14 either (i) the specific components of foster care and related
15 services or (ii) comprehensive services for defined eligible
16 populations of children and families;

17 (b) Provision of leadership for strategies to support
18 high-quality evidence-based prevention and early intervention
19 services that reduce risk and enhance protection for children;

20 (c) Realignment of service areas designated pursuant to
21 section 81-3116 to be coterminous with the judicial districts
22 described in section 24-301.02;

23 (d) Identification of the type of information needed for
24 a clear and thorough analysis of progress on child welfare
25 indicators; and

1 (e) Such other elements as the commission deems necessary
2 and appropriate.

3 (2) A lead agency used after the effective date of this
4 act shall:

5 (a) Have a board of directors of which at least fifty-one
6 percent of the membership is comprised of Nebraska residents who are
7 not employed by the lead agency or by a subcontractor of the lead
8 agency;

9 (b) Complete a readiness assessment as developed by the
10 Department of Health and Human Services to determine the lead
11 agency's viability. The readiness assessment shall evaluate
12 organizational, operational, and programmatic capabilities and
13 performance, including review of: The strength of the board of
14 directors; compliance and oversight; financial risk management;
15 financial liquidity and performance; infrastructure maintenance;
16 funding sources, including state, federal, and external private
17 funding; and operations, including reporting, staffing, evaluation,
18 training, supervision, contract monitoring, and program performance
19 tracking capabilities;

20 (c) Have the ability to provide directly or by contract
21 through a local network of providers the services required of a lead
22 agency. A lead agency shall not directly provide more than thirty-
23 five percent of direct services required under the contract; and

24 (d) Provide accountability for meeting the outcomes and
25 performance standards related to child welfare services established

1 by Nebraska child welfare policy and the federal government.

2 (3) The commission shall review the operations of the
3 department regarding child welfare programs and services and
4 recommend, as a part of the statewide strategic plan, options for
5 attaining the legislative intent stated in section 1 of this act,
6 either by the establishment of a new division within the department
7 or the establishment of a new state agency to provide all child
8 welfare programs and services which are the responsibility of the
9 state.

10 Sec. 5. Within three months after the effective date of
11 this act, the Department of Health and Human Services, with direction
12 from the Nebraska Children's Commission, shall contract with an
13 independent entity specializing in medicaid analysis to conduct a
14 cross-system analysis of current prevention and intervention programs
15 and services provided by the department for the safety, health, and
16 well-being of children and funding sources to (1) identify state
17 General Funds being used, in order to better utilize federal funds,
18 (2) identify resources that could be better allocated to more
19 effective services to at-risk children and juveniles transitioning to
20 home-based and school-based interventions, and (3) provide
21 information which will allow the replacement of state General Funds
22 for services to at-risk children and juveniles with federal funds,
23 with the goal of expanding the funding base for such services while
24 reducing overall state General Fund expenditures on such services.

25 Sec. 6. The Department of Health and Human Services shall

1 fully cooperate with the activities of the Nebraska Children's
2 Commission. The department shall provide to the commission all
3 requested information on children and juveniles in Nebraska,
4 including, but not limited to, departmental reports, data, programs,
5 processes, finances, and policies. The department shall collaborate
6 with the commission regarding the development of a plan for a
7 statewide automated child welfare information system to integrate
8 child welfare information into one system if the One Hundred Second
9 Legislature, Second Session, 2012, enacts legislation to require the
10 development of such a plan. The department shall coordinate and
11 collaborate with the commission regarding engagement of an evaluator
12 to provide an evaluation of the child welfare system if the One
13 Hundred Second Legislature, Second Session, 2012, enacts legislation
14 to require such evaluation.

15 Sec. 7. The Nebraska Children's Commission shall provide
16 a written report to the Health and Human Services Committee of the
17 Legislature on the status of its activities on or before August 1,
18 2012, September 15, 2012, and November 1, 2012. The commission shall
19 complete the statewide strategic plan required pursuant to section 4
20 of this act and provide a written report to the Health and Human
21 Services Committee of the Legislature and the Governor on or before
22 December 15, 2012.

23 Sec. 8. Sections 8 to 38 of this act shall be known and
24 may be cited as the Office of Inspector General of Nebraska Child
25 Welfare Act.

1 Sec. 9. (1) It is the intent of the Legislature to:

2 (a) Establish a full-time program of investigation and
3 performance review to provide increased accountability and oversight
4 of the Nebraska child welfare system;

5 (b) Assist in improving operations of the department and
6 the Nebraska child welfare system;

7 (c) Provide an independent form of inquiry for concerns
8 regarding the actions of individuals and agencies responsible for the
9 care and protection of children in the Nebraska child welfare system.
10 Confusion of the roles, responsibilities, and accountability
11 structures between individuals, private contractors, and agencies in
12 the current system make it difficult to monitor and oversee the
13 Nebraska child welfare system; and

14 (d) Provide a process for investigation and review to
15 determine if individual complaints and issues of investigation and
16 inquiry reveal a problem in the child welfare system, not just
17 individual cases, that necessitates legislative action for improved
18 policies and restructuring of the child welfare system.

19 (2) It is not the intent of the Legislature in enacting
20 the Office of Inspector General of Nebraska Child Welfare Act to
21 interfere with the duties of the Legislative Performance Audit
22 Section of the Legislative Performance Audit Committee or the
23 Legislative Fiscal Analyst or to interfere with the statutorily
24 defined investigative responsibilities or prerogatives of any
25 officer, agency, board, bureau, commission, association, society, or

1 institution of the executive branch of state government, except that
2 the act does not preclude an inquiry on the sole basis that another
3 agency has the same responsibility. The act shall not be construed to
4 interfere with or supplant the responsibilities or prerogatives of
5 the Governor to investigate, monitor, and report on the activities of
6 the agencies, boards, bureaus, commissions, associations, societies,
7 and institutions of the executive branch under his or her
8 administrative direction.

9 Sec. 10. For purposes of the Office of Inspector General
10 of Nebraska Child Welfare Act, the definitions found in sections 11
11 to 23 of this act apply.

12 Sec. 11. Administrator means a person charged with
13 administration of a program, an office, or a division of the
14 department or administration of a private agency or licensed child
15 care facility.

16 Sec. 12. Department means the Department of Health and
17 Human Services.

18 Sec. 13. Director means the chief executive officer of
19 the department.

20 Sec. 14. Inspector General means the Inspector General of
21 Nebraska Child Welfare appointed under section 24 of this act.

22 Sec. 15. Licensed child care facility means a facility or
23 program licensed under the Child Care Licensing Act or sections
24 71-1901 to 71-1906.01.

25 Sec. 16. Malfeasance means a wrongful act that the actor

1 has no legal right to do or any wrongful conduct that affects,
2 interrupts, or interferes with performance of an official duty.

3 Sec. 17. Management means supervision of subordinate
4 employees.

5 Sec. 18. Misfeasance means the improper performance of
6 some act that a person may lawfully do.

7 Sec. 19. Obstruction means hindering an investigation,
8 preventing an investigation from progressing, stopping or delaying
9 the progress of an investigation, or making the progress of an
10 investigation difficult or slow.

11 Sec. 20. Office means the office of Inspector General of
12 Nebraska Child Welfare and includes the Inspector General and other
13 employees of the office.

14 Sec. 21. Private agency means a child welfare agency that
15 contracts with the department or contracts to provide services to
16 another child welfare agency that contracts with the department.

17 Sec. 22. Record means any recording, in written, audio,
18 electronic transmission, or computer storage form, including, but not
19 limited to, a draft, memorandum, note, report, computer printout,
20 notation, or message, and includes, but is not limited to, medical
21 records, mental health records, case files, clinical records,
22 financial records, and administrative records.

23 Sec. 23. Responsible individual means a foster parent, a
24 relative provider of foster care, or an employee of the department, a
25 foster home, a private agency, a licensed child care facility, or

1 another provider of child welfare programs and services responsible
2 for the care or custody of records, documents, and files.

3 Sec. 24. (1) The office of Inspector General of Nebraska
4 Child Welfare is created within the office of Public Counsel for the
5 purpose of conducting investigations, audits, inspections, and other
6 reviews of the Nebraska child welfare system. The Inspector General
7 shall be appointed by the Public Counsel with approval from the
8 chairperson of the Executive Board of the Legislative Council and the
9 chairperson of the Health and Human Services Committee of the
10 Legislature.

11 (2) The Inspector General shall be appointed for a term
12 of five years and may be reappointed. The Inspector General shall be
13 selected without regard to political affiliation and on the basis of
14 integrity, capability for strong leadership, and demonstrated ability
15 in accounting, auditing, financial analysis, law, management
16 analysis, public administration, investigation, or criminal justice
17 administration or other closely related fields. No former or current
18 executive or manager of the department may be appointed Inspector
19 General within five years after such former or current executive's or
20 manager's period of service with the department. Not later than two
21 years after the date of appointment, the Inspector General shall
22 obtain certification as a Certified Inspector General by the
23 Association of Inspectors General, its successor, or another
24 nationally recognized organization that provides and sponsors
25 educational programs and establishes professional qualifications,

1 certifications, and licensing for inspectors general. During his or
2 her employment, the Inspector General shall not be actively involved
3 in partisan affairs.

4 (3) The Inspector General shall employ such investigators
5 and support staff as he or she deems necessary to carry out the
6 duties of the office within the amount available by appropriation
7 through the office of Public Counsel for the office of Inspector
8 General of Nebraska Child Welfare. The Inspector General shall be
9 subject to the control and supervision of the Public Counsel, except
10 that removal of the Inspector General shall require approval of the
11 chairperson of the Executive Board of the Legislative Council and the
12 chairperson of the Health and Human Services Committee of the
13 Legislature.

14 Sec. 25. (1) The office shall investigate:

15 (a) Allegations or incidents of possible misconduct,
16 misfeasance, malfeasance, or violations of statutes or of rules or
17 regulations of the department by an employee of or person under
18 contract with the department, a private agency, a licensed child care
19 facility, a foster parent, or any other provider of child welfare
20 services or which may provide a basis for discipline pursuant to the
21 Uniform Credentialing Act; and

22 (b) Death or serious injury in foster homes, private
23 agencies, child care facilities, and other programs and facilities
24 licensed by or under contract with the department and death or
25 serious injury in any case in which services are provided by the

1 department to a child or his or her parents or any case involving an
2 investigation under the Child Protection Act, which case has been
3 open for one year or less. The department shall report all cases of
4 death or serious injury of a child in a foster home, private agency,
5 child care facility or program, or other program or facility licensed
6 by the department to the Inspector General as soon as reasonably
7 possible after the department learns of such death or serious injury.
8 For purposes of this subdivision, serious injury means an injury or
9 illness caused by suspected abuse, neglect, or maltreatment which
10 leaves a child in critical or serious condition.

11 (2) Any investigation conducted by the Inspector General
12 shall be independent of and separate from an investigation pursuant
13 to the Child Protection Act. The Inspector General and his or her
14 staff are subject to the reporting requirements of the Child
15 Protection Act.

16 (3) Notwithstanding the fact that a criminal
17 investigation, a criminal prosecution, or both are in progress, all
18 law enforcement agencies and prosecuting attorneys shall cooperate
19 with any investigation conducted by the Inspector General and shall,
20 immediately upon request by the Inspector General, provide the
21 Inspector General with copies of all law enforcement reports which
22 are relevant to the Inspector General's investigation. All law
23 enforcement reports which have been provided to the Inspector General
24 pursuant to this section are not public records for purposes of
25 sections 84-712 to 84-712.09 and shall not be subject to discovery by

1 any other person or entity. Except to the extent that disclosure of
2 information is otherwise provided for in the Office of Inspector
3 General of Nebraska Child Welfare Act, the Inspector General shall
4 maintain the confidentiality of all law enforcement reports received
5 pursuant to its request under this section. Law enforcement agencies
6 and prosecuting attorneys shall, when requested by the Inspector
7 General, collaborate with the Inspector General regarding all other
8 information relevant to the Inspector General's investigation. If the
9 Inspector General in conjunction with the Public Counsel determines
10 it appropriate, the Inspector General may, when requested to do so by
11 a law enforcement agency or prosecuting attorney, suspend an
12 investigation by the office until a criminal investigation or
13 prosecution is completed or has proceeded to a point that, in the
14 judgment of the Inspector General, reinstatement of the Inspector
15 General's investigation will not impede or infringe upon the criminal
16 investigation or prosecution. Under no circumstance shall the
17 Inspector General interview any minor who has already been
18 interviewed by a law enforcement agency, personnel of the Division of
19 Children and Family Services of the department, or staff of a child
20 advocacy center in connection with a relevant ongoing investigation
21 of a law enforcement agency.

22 Sec. 26. (1) The office shall have access to all
23 information and personnel necessary to perform the duties of the
24 office.

25 (2) A full investigation conducted by the office shall

1 consist of retrieval of relevant records through subpoena, request,
2 or voluntary production, review of all relevant records, and
3 interviews of all relevant persons.

4 Sec. 27. (1) Complaints to the office may be made in
5 writing. The office shall also maintain a toll-free telephone line
6 for complaints. A complaint shall be evaluated to determine if it
7 alleges possible misconduct, misfeasance, malfeasance, or violation
8 of a statute or of rules and regulations of the department by an
9 employee of or a person under contract with the department, a private
10 agency, or a licensed child care facility, a foster parent, or any
11 other provider of child welfare services or alleges a basis for
12 discipline pursuant to the Uniform Credentialing Act. All complaints
13 shall be evaluated to determine whether a full investigation is
14 warranted.

15 (2) The office shall not conduct a full investigation of
16 a complaint unless:

17 (a) The complaint alleges misconduct, misfeasance,
18 malfeasance, violation of a statute or of rules and regulations of
19 the department, or a basis for discipline pursuant to the Uniform
20 Credentialing Act;

21 (b) The complaint is against a person within the
22 jurisdiction of the office; and

23 (c) The allegations can be independently verified through
24 investigation.

25 (3) The Inspector General shall determine within fourteen

1 days after receipt of a complaint whether it will conduct a full
2 investigation. A complaint alleging facts which, if verified, would
3 provide a basis for discipline under the Uniform Credentialing Act
4 shall be referred to the appropriate credentialing board under the
5 act.

6 Sec. 28. All employees of the department, all foster
7 parents, and all owners, operators, managers, supervisors, and
8 employees of private agencies, licensed child care facilities, and
9 other providers of child welfare services shall cooperate with the
10 office. Cooperation includes, but is not limited to, the following:

11 (1) Provision of full access to and production of records
12 and information. Providing access to and producing records and
13 information for the office is not a violation of confidentiality
14 provisions under any law, statute, rule, or regulation if done in
15 good faith for purposes of an investigation under the Office of
16 Inspector General of Nebraska Child Welfare Act;

17 (2) Fair and honest disclosure of records and information
18 reasonably requested by the office in the course of an investigation
19 under the act;

20 (3) Encouraging employees to fully comply with reasonable
21 requests of the office in the course of an investigation under the
22 act;

23 (4) Prohibition of retaliation by owners, operators, or
24 managers against employees for providing records or information or
25 filing or otherwise making a complaint to the office;

1 (5) Not requiring employees to gain supervisory approval
2 prior to filing a complaint with or providing records or information
3 to the office;

4 (6) Provision of complete and truthful answers to
5 questions posed by the office in the course of an investigation; and

6 (7) Not willfully interfering with or obstructing the
7 investigation.

8 Sec. 29. Failure to cooperate with an investigation by
9 the office may result in discipline or other sanctions.

10 Sec. 30. The Inspector General may issue a subpoena,
11 enforceable by action in an appropriate court, to compel any person
12 to appear, give sworn testimony, or produce documentary or other
13 evidence deemed relevant to a matter under his or her inquiry. A
14 person thus required to provide information shall be paid the same
15 fees and travel allowances and shall be accorded the same privileges
16 and immunities as are extended to witnesses in the district courts of
17 this state and shall also be entitled to have counsel present while
18 being questioned.

19 Sec. 31. (1) In conducting investigations, the office
20 shall access all relevant records through subpoena, compliance with a
21 request of the office, and voluntary production. The office may
22 request or subpoena any record necessary for the investigation from
23 the department, a foster parent, a licensed child care facility, or a
24 private agency that is pertinent to an investigation. All case files,
25 licensing files, medical records, financial and administrative

1 records, and records required to be maintained pursuant to applicable
2 licensing rules shall be produced for review by the office in the
3 course of an investigation.

4 (2) Compliance with a request of the office includes:

5 (a) Production of all records requested;

6 (b) A diligent search to ensure that all appropriate
7 records are included; and

8 (c) A continuing obligation to immediately forward to the
9 office any relevant records received, located, or generated after the
10 date of the request.

11 (3) The office shall seek access in a manner that
12 respects the dignity and human rights of all persons involved,
13 maintains the integrity of the investigation, and does not
14 unnecessarily disrupt child welfare programs or services. When
15 advance notice to a foster parent or to an administrator or his or
16 her designee is not provided, the office investigator shall, upon
17 arrival at the departmental office, bureau, or division, the private
18 agency, the licensed child care facility, or the location of another
19 provider of child welfare services, request that an onsite employee
20 notify the administrator or his or her designee of the investigator's
21 arrival.

22 (4) When circumstances of an investigation require, the
23 office may make an unannounced visit to a foster home, a departmental
24 office, bureau, or division, a licensed child care facility, a
25 private agency, or another provider to request records relevant to an

1 investigation.

2 (5) A responsible individual or an administrator may be
3 asked to sign a statement of record integrity and security when a
4 record is secured by request as the result of a visit by the office,
5 stating:

6 (a) That the responsible individual or the administrator
7 has made a diligent search of the office, bureau, division, private
8 agency, licensed child care facility, or other provider's location to
9 determine that all appropriate records in existence at the time of
10 the request were produced;

11 (b) That the responsible individual or the administrator
12 agrees to immediately forward to the office any relevant records
13 received, located, or generated after the visit;

14 (c) The persons who have had access to the records since
15 they were secured; and

16 (d) Whether, to the best of the knowledge of the
17 responsible individual or the administrator, any records were removed
18 from or added to the record since it was secured.

19 (6) The office shall permit a responsible individual, an
20 administrator, or an employee of a departmental office, bureau, or
21 division, a private agency, a licensed child care facility, or
22 another provider to make photocopies of the original records within a
23 reasonable time in the presence of the office for purposes of
24 creating a working record in a manner that assures confidentiality.

25 (7) The office shall present to the responsible

1 individual or the administrator or other employee of the departmental
2 office, bureau, or division, private agency, licensed child care
3 facility, or other service provider a copy of the request, stating
4 the date and the titles of the records received.

5 (8) If an original record is provided during an
6 investigation, the office shall return the original record as soon as
7 practical but no later than ten working days after the date of the
8 compliance request.

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

12 Sec. 32. (1) Reports of investigations conducted by the
13 office shall not be distributed beyond the entity that is the subject
14 of the report without the consent of the Inspector General.

15 (2) Except when a report is provided to a guardian ad
16 litem or an attorney in the juvenile court pursuant to subsection (2)
17 of section 34 of this act, the office shall redact confidential
18 information before distributing a report of an investigation. The
19 office may disclose confidential information to the chairperson of
20 the Health and Human Services Committee of the Legislature when such
21 disclosure is, in the judgment of the Public Counsel, desirable to
22 keep the chairperson informed of important events, issues, and
23 developments in the Nebraska child welfare system.

24 (3) Records and documents, regardless of physical form,
25 that are obtained or produced by the office in the course of an

1 investigation are not public records for purposes of sections 84-712
2 to 84-712.09. Reports of investigations conducted by the office are
3 not public records for purposes of sections 84-712 to 84-712.09.

4 (4) The office may withhold the identity of sources of
5 information to protect from retaliation any person who files a
6 complaint or provides information in good faith pursuant to the
7 Office of Inspector General of Nebraska Child Welfare Act.

8 Sec. 33. The department shall provide the Public Counsel
9 and the Inspector General with direct computer access to all
10 computerized records, reports, and documents maintained by the
11 department in connection with administration of the Nebraska child
12 welfare system.

13 Sec. 34. (1) The Inspector General's report of an
14 investigation shall be in writing to the Public Counsel and shall
15 contain recommendations. The report may recommend systemic reform or
16 case-specific action, including a recommendation for discharge or
17 discipline of employees or for sanctions against a foster parent,
18 private agency, licensed child care facility, or other provider of
19 child welfare services. All recommendations to pursue discipline
20 shall be in writing and signed by the Inspector General. A report of
21 an investigation shall be presented to the director within fifteen
22 days after the report is presented to the Public Counsel.

23 (2) Any person receiving a report under this section
24 shall not further distribute the report or any confidential
25 information contained in the report. The Inspector General, upon

1 notifying the Public Counsel and the director, may distribute the
2 report, to the extent that it is relevant to a child's welfare, to
3 the guardian ad litem and attorneys in the juvenile court in which a
4 case is pending involving the child or family who is the subject of
5 the report. The report shall not be distributed beyond the parties
6 except through the appropriate court procedures to the judge.

7 (3) A report that identifies misconduct, misfeasance,
8 malfeasance, or violation of statute, rules, or regulations by an
9 employee of the department, a private agency, a licensed child care
10 facility, or another provider that is relevant to providing
11 appropriate supervision of an employee may be shared with the
12 employer of such employee. The employer may not further distribute
13 the report or any confidential information contained in the report.

14 Sec. 35. (1) Within fifteen days after a report is
15 presented to the director under section 34 of this act, he or she
16 shall determine whether to accept, reject, or request in writing
17 modification of the recommendations contained in the report. The
18 Inspector General, with input from the Public Counsel, may consider
19 the director's request for modifications but is not obligated to
20 accept such request. Such report shall become final upon the decision
21 of the director to accept or reject the recommendations in the report
22 or, if the director requests modifications, within fifteen days after
23 such request or after the Inspector General incorporates such
24 modifications, whichever occurs earlier.

25 (2) Within fifteen days after the report is presented to

1 the director, the report shall be presented to the foster parent,
2 private agency, licensed child care facility, or other provider of
3 child welfare services that is the subject of the report and to
4 persons involved in the implementation of the recommendations in the
5 report. Within forty-five days after receipt of the report, the
6 foster parent, private agency, licensed child care facility, or other
7 provider may submit a written response to the office to correct any
8 factual errors in the report. The Inspector General, with input from
9 the Public Counsel, shall consider all materials submitted under this
10 subsection to determine whether a corrected report shall be issued.
11 If the Inspector General determines that a corrected report is
12 necessary, the corrected report shall be issued within fifteen days
13 after receipt of the written response.

14 (3) If the Inspector General does not issue a corrected
15 report pursuant to subsection (2) of this section, or if the
16 corrected report does not address all issues raised in the written
17 response, the foster parent, private agency, licensed child care
18 facility, or other provider may request that its written response, or
19 portions of the response, be appended to the report or corrected
20 report.

21 (4) A report which raises issues related to credentialing
22 under the Uniform Credentialing Act shall be submitted to the
23 appropriate credentialing board under the act.

24 Sec. 36. No report or other work product of an
25 investigation by the Inspector General shall be reviewable in any

1 court. Neither the Inspector General nor any member of his or her
2 staff shall be required to testify or produce evidence in any
3 judicial or administrative proceeding concerning matters within his
4 or her official cognizance except in a proceeding brought to enforce
5 the Office of Inspector General of Nebraska Child Welfare Act.

6 Sec. 37. The Office of Inspector General of Nebraska
7 Child Welfare Act does not require the Inspector General to
8 investigate all complaints. The Inspector General, with input from
9 the Public Counsel, shall prioritize and select investigations and
10 inquiries that further the intent of the act and assist in
11 legislative oversight of the Nebraska child welfare system. If the
12 Inspector General determines that he or she will not investigate a
13 complaint, the Inspector General may recommend to the parties
14 alternative means of resolution of the issues in the complaint.

15 Sec. 38. On or before September 15 of each year, the
16 Inspector General shall provide to the Health and Human Services
17 Committee of the Legislature and the Governor a summary of reports
18 and investigations made under the Office of Inspector General of
19 Nebraska Child Welfare Act for the preceding year. The summaries
20 shall detail recommendations and the status of implementation of
21 recommendations and may also include recommendations to the committee
22 regarding issues discovered through investigation, audits,
23 inspections, and reviews by the office that will increase
24 accountability and legislative oversight of the Nebraska child
25 welfare system, improve operations of the department and the Nebraska

1 child welfare system, or deter and identify fraud, abuse, and illegal
2 acts. The summaries shall not contain any confidential or identifying
3 information concerning the subjects of the reports and
4 investigations.

5 Sec. 39. Section 28-711, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 28-711 (1) When any physician, any medical institution,
8 any nurse, any school employee, any social worker, the Inspector
9 General appointed under section 24 of this act, or any other person
10 has reasonable cause to believe that a child has been subjected to
11 child abuse or neglect or observes such child being subjected to
12 conditions or circumstances which reasonably would result in child
13 abuse or neglect, he or she shall report such incident or cause a
14 report of child abuse or neglect to be made to the proper law
15 enforcement agency or to the department on the toll-free number
16 established by subsection (2) of this section. Such report may be
17 made orally by telephone with the caller giving his or her name and
18 address, shall be followed by a written report, and to the extent
19 available shall contain the address and age of the abused or
20 neglected child, the address of the person or persons having custody
21 of the abused or neglected child, the nature and extent of the child
22 abuse or neglect or the conditions and circumstances which would
23 reasonably result in such child abuse or neglect, any evidence of
24 previous child abuse or neglect including the nature and extent, and
25 any other information which in the opinion of the person may be

1 helpful in establishing the cause of such child abuse or neglect and
2 the identity of the perpetrator or perpetrators. Law enforcement
3 agencies receiving any reports of child abuse or neglect under this
4 subsection shall notify the department pursuant to section 28-718 on
5 the next working day by telephone or mail.

6 (2) The department shall establish a statewide toll-free
7 number to be used by any person any hour of the day or night, any day
8 of the week, to make reports of child abuse or neglect. Reports of
9 child abuse or neglect not previously made to or by a law enforcement
10 agency shall be made immediately to such agency by the department.

11 Sec. 40. Section 73-401, Reissue Revised Statutes of
12 Nebraska, is amended to read:

13 73-401 Except for long-term care facilities subject to
14 the jurisdiction of the state long-term care ombudsman pursuant to
15 the Long-Term Care Ombudsman Act, the contracting agency shall ensure
16 that any contract which a state agency enters into or renews which
17 agrees that a corporation, partnership, business, firm, governmental
18 entity, or person shall provide health and human services to
19 individuals or service delivery, service coordination, or case
20 management on behalf of the State of Nebraska shall contain a clause
21 requiring the corporation, partnership, business, firm, governmental
22 entity, or person to submit to the jurisdiction of the Public Counsel
23 under sections 81-8,240 to 81-8,254 with respect to the provision of
24 services under the contract.

25 Sec. 41. Section 81-8,240, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 81-8,240 As used in sections 81-8,240 to 81-8,254, unless
3 the context otherwise requires:

4 (1) Administrative agency shall mean any department,
5 board, commission, or other governmental unit, any official, any
6 employee of the State of Nebraska acting or purporting to act by
7 reason of connection with the State of Nebraska, any corporation,
8 partnership, business, firm, governmental entity, or person who is
9 providing health and human services to individuals or service
10 delivery, service coordination, or case management under contract
11 with the State of Nebraska and who is subject to the jurisdiction of
12 the office of Public Counsel as required by section 73-401, any
13 regional behavioral health authority, any community-based behavioral
14 health services provider that contracts with a regional behavioral
15 health authority, and any county or municipal correctional or jail
16 facility and employee thereof acting or purporting to act by reason
17 of connection with the county or municipal correctional or jail
18 facility; but shall not include (a) any court, (b) any member or
19 employee of the Legislature or the Legislative Council, (c) the
20 Governor or his or her personal staff, (d) any political subdivision
21 or entity thereof except a county or municipal correctional or jail
22 facility or a regional behavioral health authority, (e) any
23 instrumentality formed pursuant to an interstate compact and
24 answerable to more than one state, or (f) any entity of the federal
25 government; and

1 (2) Administrative act shall include every action, rule,
2 regulation, order, omission, decision, recommendation, practice, or
3 procedure of an administrative agency.

4 Sec. 42. Section 81-8,241, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 81-8,241 The office of Public Counsel is hereby
7 established to exercise the authority and perform the duties provided
8 by sections 81-8,240 to 81-8,254 and the Office of Inspector General
9 of Nebraska Child Welfare Act. The Public Counsel shall be appointed
10 by the Legislature, with the vote of two-thirds of the members
11 required for approval of such appointment from nominations submitted
12 by the Executive Board of the Legislative Council.

13 Sec. 43. Section 81-8,244, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 81-8,244 (1)(a) The Public Counsel may select, appoint,
16 and compensate as he or she sees fit, within the amount available by
17 appropriation, such assistants and employees as he or she deems
18 necessary to discharge the responsibilities under sections 81-8,240
19 to 81-8,254. He or she shall appoint and designate one assistant to
20 be a deputy public counsel, one assistant to be a deputy public
21 counsel for corrections, one assistant to be a deputy public counsel
22 for institutions, and one assistant to be a deputy public counsel for
23 welfare services.

24 (b) Such deputy public counsels shall be subject to the
25 control and supervision of the Public Counsel.

1 (c) The authority of the deputy public counsel for
2 corrections shall extend to all facilities and parts of facilities,
3 offices, houses of confinement, and institutions which are operated
4 by the Department of Correctional Services and all county or
5 municipal correctional or jail facilities.

6 (d) The authority of the deputy public counsel for
7 institutions shall extend to all mental health and veterans
8 institutions and facilities operated by the Department of Health and
9 Human Services and to all regional behavioral health authorities that
10 provide services and all community-based behavioral health services
11 providers that contract with a regional behavioral health authority
12 to provide services, for any individual who was a patient within the
13 prior twelve months of a state-owned and state-operated regional
14 center, and to all complaints pertaining to administrative acts of
15 the department, authority, or provider when those acts are concerned
16 with the rights and interests of individuals placed within those
17 institutions and facilities or receiving community-based behavioral
18 health services.

19 (e) The authority of the deputy public counsel for
20 welfare services shall extend to all complaints pertaining to
21 administrative acts of administrative agencies when those acts are
22 concerned with the rights and interests of individuals involved in
23 the welfare services system of the State of Nebraska.

24 (f) The Public Counsel may delegate to members of the
25 staff any authority or duty under sections 81-8,240 to 81-8,254

1 except the power of delegation and the duty of formally making
2 recommendations to administrative agencies or reports to the Governor
3 or the Legislature.

4 (2) The Public Counsel shall appoint the Inspector
5 General of Nebraska Child Welfare as provided in section 24 of this
6 act. The Inspector General of Nebraska Child Welfare shall have the
7 powers and duties provided in the Office of Inspector General of
8 Nebraska Child Welfare Act.

9 Sec. 44. Section 81-8,245, Reissue Revised Statutes of
10 Nebraska, is amended to read:

11 81-8,245 The Public Counsel shall have the power to:

12 (1) Investigate, on complaint or on his or her own
13 motion, any administrative act of any administrative agency;

14 (2) Prescribe the methods by which complaints are to be
15 made, received, and acted upon; determine the scope and manner of
16 investigations to be made; and, subject to the requirements of
17 sections 81-8,240 to 81-8,254, determine the form, frequency, and
18 distribution of his or her conclusions, recommendations, and
19 proposals;

20 (3) Conduct inspections of the premises, or any parts
21 thereof, of any administrative agency or any property owned, leased,
22 or operated by any administrative agency as frequently as is
23 necessary, in his or her opinion, to carry out duties prescribed
24 under sections 81-8,240 to 81-8,254;

25 (4) Request and receive from each administrative agency,

1 and such agency shall provide, the assistance and information the
2 counsel deems necessary for the discharge of his or her
3 responsibilities; inspect and examine the records and documents of
4 all administrative agencies notwithstanding any other provision of
5 law; and enter and inspect premises within any administrative
6 agency's control;

7 (5) Issue a subpoena, enforceable by action in an
8 appropriate court, to compel any person to appear, give sworn
9 testimony, or produce documentary or other evidence deemed relevant
10 to a matter under his or her inquiry. A person thus required to
11 provide information shall be paid the same fees and travel allowances
12 and shall be accorded the same privileges and immunities as are
13 extended to witnesses in the district courts of this state and shall
14 also be entitled to have counsel present while being questioned;

15 (6) Undertake, participate in, or cooperate with general
16 studies or inquiries, whether or not related to any particular
17 administrative agency or any particular administrative act, if he or
18 she believes that they may enhance knowledge about or lead to
19 improvements in the functioning of administrative agencies; ~~and~~

20 (7) Make investigations, reports, and recommendations
21 necessary to carry out his or her duties under the State Government
22 Effectiveness Act; and -

23 (8) Carry out his or her duties under the Office of
24 Inspector General of Nebraska Child Welfare Act. If any of the
25 provisions of sections 81-8,240 to 81-8,254 conflict with provisions

1 of the Office of Inspector General of Nebraska Child Welfare Act, the
2 provisions of such act shall control.

3 Sec. 45. Original sections 28-711, 73-401, 81-8,240,
4 81-8,241, 81-8,244, and 81-8,245, Reissue Revised Statutes of
5 Nebraska, are repealed.

6 Sec. 46. Since an emergency exists, this act takes effect
7 when passed and approved according to law.