

LEGISLATIVE BILL 821

Approved by the Governor April 11, 2012

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.

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

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

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

(a) The Health and Human Services Committee of the Legislature documented serious problems with the child welfare system in its 2011 report of the study that was conducted under Legislative Resolution 37, One Hundred Second Legislature, First Session, 2011;

(b) Improving the safety and well-being of Nebraska's children and families is a critical priority which must guide policy decisions in a variety of areas;

(c) To improve the safety and well-being of children and families in Nebraska, the legislative, judicial, and executive branches of government must work together to ensure:

(i) The integration, coordination, and accessibility of all services provided by the state, whether directly or pursuant to contract;

(ii) Reasonable access to appropriate services statewide and efficiency in service delivery; and

(iii) The availability of accurate and complete data as well as ongoing data analysis to identify important trends and problems as they arise; and

(d) As the primary state agency serving children and families, the Department of Health and Human Services must exemplify leadership, responsiveness, transparency, and efficiency and program managers within the agency must strive cooperatively to ensure that their programs view the needs of children and families comprehensively as a system rather than individually in isolation, including pooling funding when possible and appropriate.

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

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

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

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

(b) The Director of Children and Family Services or his or her designee; and

(c) Sixteen members appointed by the Governor within thirty days after the effective date of this act. The members appointed pursuant to this subdivision shall represent stakeholders in the child welfare system and shall include: (i) A director of a child advocacy center; (ii) an administrator of a behavioral health region established pursuant to section 71-807; (iii) a community representative from each of the service areas designated pursuant to section 81-3116. In the eastern service area designated pursuant to such section, the representative may be from a lead agency of a pilot project

established under Legislative Bill 961, One Hundred Second Legislature, Second Session, 2012, or a collaborative member; (iv) a prosecuting attorney who practices in juvenile court; (v) a guardian ad litem; (vi) a biological parent currently or previously involved in the child welfare system; (vii) a foster parent; (viii) a court-appointed special advocate volunteer; (ix) a member of the State Foster Care Review Board or any entity that succeeds to the powers and duties of the board or a member of a local foster care review board; (x) a child welfare service agency that directly provides a wide range of child welfare services and is not a member of a lead agency collaborative; (xi) a young adult previously in foster care; and (xii) a representative of a child advocacy organization that deals with legal and policy issues that include child welfare.

(3) The commission shall have the following nonvoting, ex officio members: (a) The chairperson of the Health and Human Services Committee of the Legislature or a committee member designated by the chairperson; (b) the chairperson of the Judiciary Committee of the Legislature or a committee member designated by the chairperson; (c) the chairperson of the Appropriations Committee of the Legislature or a committee member designated by the chairperson; and (d) three persons appointed by the State Court Administrator. The nonvoting, ex officio members may attend commission meetings and participate in the discussions of the commission, provide information to the commission on the policies, programs, and processes of each of their respective bodies, gather information for the commission, and provide information back to their respective bodies from the commission. The nonvoting, ex officio members shall not vote on decisions by the commission or on the direction or development of the statewide strategic plan pursuant to section 4 of this act.

(4) The commission shall meet within sixty days after the effective date of this act and shall select from among its members a chairperson and vice-chairperson and conduct any other business necessary to the organization of the commission. The commission shall meet not less often than once every three months, and meetings of the commission may be held at any time on the call of the chairperson. The commission shall be within the office of the chief executive officer of the Department of Health and Human Services. The commission may hire staff to carry out the responsibilities of the commission. The commission shall hire a consultant with experience in facilitating strategic planning to provide neutral, independent assistance in developing the statewide strategic plan. The commission shall terminate on June 30, 2014, unless continued by the Legislature.

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

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

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

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

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

(d) If the One Hundred Second Legislature, Second Session, 2012, creates the Title IV-E Demonstration Project Committee or the Foster Care Reimbursement Rate Committee, or both, such committees shall be under the jurisdiction of the commission.

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

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

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

Sec. 4. (1) The Nebraska Children's Commission shall create a statewide strategic plan to carry out the legislative intent stated in section 1 of this act for child welfare program and service reform in Nebraska. In developing the statewide strategic plan, the commission shall consider, but not be limited to:

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

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

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

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

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

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

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

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

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

(d) Provide accountability for meeting the outcomes and performance standards related to child welfare services established by Nebraska child welfare policy and the federal government.

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

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

Sec. 6. The Department of Health and Human Services shall fully cooperate with the activities of the Nebraska Children's Commission. The department shall provide to the commission all requested information on children and juveniles in Nebraska, including, but not limited to, departmental reports, data, programs, processes, finances, and policies. The department shall collaborate with the commission regarding the development of a plan for a statewide automated child welfare information system to integrate child welfare information into one system if the One Hundred Second Legislature, Second Session, 2012, enacts legislation to require the development of such a plan. The department shall coordinate and collaborate with the commission regarding engagement of an evaluator to provide an evaluation of the child welfare system if the One Hundred Second Legislature, Second Session, 2012, enacts legislation to require such evaluation.

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

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

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

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

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

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

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

(2) It is not the intent of the Legislature in enacting the Office of Inspector General of Nebraska Child Welfare Act to interfere with the duties of the Legislative Performance Audit Section of the Legislative Performance Audit Committee or the Legislative Fiscal Analyst or to interfere with the statutorily defined investigative responsibilities or prerogatives of any officer, agency, board, bureau, commission, association, society, or institution of the executive branch of state government, except that the act does not preclude an inquiry on the sole basis that another agency has the same responsibility. The act shall not be construed to interfere with or supplant the responsibilities or prerogatives of the Governor to investigate, monitor, and report on the activities of the agencies, boards, bureaus,

commissions, associations, societies, and institutions of the executive branch under his or her administrative direction.

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

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

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

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

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

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

Sec. 16. Malfeasance means a wrongful act that the actor has no legal right to do or any wrongful conduct that affects, interrupts, or interferes with performance of an official duty.

Sec. 17. Management means supervision of subordinate employees.

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

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

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

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

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

Sec. 23. Responsible individual means a foster parent, a relative provider of foster care, or an employee of the department, a foster home, a private agency, a licensed child care facility, or another provider of child welfare programs and services responsible for the care or custody of records, documents, and files.

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

(2) The Inspector General shall be appointed for a term of five years and may be reappointed. The Inspector General shall be selected without regard to political affiliation and on the basis of integrity, capability for strong leadership, and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, investigation, or criminal justice administration or other closely related fields. No former or current executive or manager of the department may be appointed Inspector General within five years after such former or current executive's or manager's period of service with the department. Not later than two years after the date of appointment, the Inspector General shall obtain certification as a Certified Inspector General by the Association of Inspectors General, its successor, or another nationally recognized organization that provides and sponsors educational programs and establishes professional qualifications, certifications, and licensing for inspectors general. During his or her employment, the Inspector General shall not be actively involved in partisan affairs.

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

Legislature.

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

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

(b) Death or serious injury in foster homes, private agencies, child care facilities, and other programs and facilities licensed by or under contract with the department and death or serious injury in any case in which services are provided by the department to a child or his or her parents or any case involving an investigation under the Child Protection Act, which case has been open for one year or less. The department shall report all cases of death or serious injury of a child in a foster home, private agency, child care facility or program, or other program or facility licensed by the department to the Inspector General as soon as reasonably possible after the department learns of such death or serious injury. For purposes of this subdivision, serious injury means an injury or illness caused by suspected abuse, neglect, or maltreatment which leaves a child in critical or serious condition.

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

(3) Notwithstanding the fact that a criminal investigation, a criminal prosecution, or both are in progress, all law enforcement agencies and prosecuting attorneys shall cooperate with any investigation conducted by the Inspector General and shall, immediately upon request by the Inspector General, provide the Inspector General with copies of all law enforcement reports which are relevant to the Inspector General's investigation. All law enforcement reports which have been provided to the Inspector General pursuant to this section are not public records for purposes of sections 84-712 to 84-712.09 and shall not be subject to discovery by any other person or entity. Except to the extent that disclosure of information is otherwise provided for in the Office of Inspector General of Nebraska Child Welfare Act, the Inspector General shall maintain the confidentiality of all law enforcement reports received pursuant to its request under this section. Law enforcement agencies and prosecuting attorneys shall, when requested by the Inspector General, collaborate with the Inspector General regarding all other information relevant to the Inspector General's investigation. If the Inspector General in conjunction with the Public Counsel determines it appropriate, the Inspector General may, when requested to do so by a law enforcement agency or prosecuting attorney, suspend an investigation by the office until a criminal investigation or prosecution is completed or has proceeded to a point that, in the judgment of the Inspector General, reinstatement of the Inspector General's investigation will not impede or infringe upon the criminal investigation or prosecution. Under no circumstance shall the Inspector General interview any minor who has already been interviewed by a law enforcement agency, personnel of the Division of Children and Family Services of the department, or staff of a child advocacy center in connection with a relevant ongoing investigation of a law enforcement agency.

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

(2) A full investigation conducted by the office shall consist of retrieval of relevant records through subpoena, request, or voluntary production, review of all relevant records, and interviews of all relevant persons.

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

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

(a) The complaint alleges misconduct, misfeasance, malfeasance, violation of a statute or of rules and regulations of the department, or a

basis for discipline pursuant to the Uniform Credentialing Act;

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

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

(3) The Inspector General shall determine within fourteen days after receipt of a complaint whether it will conduct a full investigation. A complaint alleging facts which, if verified, would provide a basis for discipline under the Uniform Credentialing Act shall be referred to the appropriate credentialing board under the act.

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

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

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

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

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

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

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

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

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

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

Sec. 31. (1) In conducting investigations, the office shall access all relevant records through subpoena, compliance with a request of the office, and voluntary production. The office may request or subpoena any record necessary for the investigation from the department, a foster parent, a licensed child care facility, or a private agency that is pertinent to an investigation. All case files, licensing files, medical records, financial and administrative records, and records required to be maintained pursuant to applicable licensing rules shall be produced for review by the office in the course of an investigation.

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

(a) Production of all records requested;

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

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

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

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

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

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

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

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

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

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

(7) The office shall present to the responsible individual or the administrator or other employee of the departmental office, bureau, or division, private agency, licensed child care facility, or other service provider a copy of the request, stating the date and the titles of the records received.

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

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

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

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

(3) Records and documents, regardless of physical form, that are obtained or produced by the office in the course of an investigation are not public records for purposes of sections 84-712 to 84-712.09. Reports of investigations conducted by the office are not public records for purposes of sections 84-712 to 84-712.09.

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

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

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

(2) Any person receiving a report under this section shall not further distribute the report or any confidential information contained in the report. The Inspector General, upon notifying the Public Counsel and the director, may distribute the report, to the extent that it is relevant to a child's welfare, to the guardian ad litem and attorneys in the juvenile court in which a case is pending involving the child or family who is the subject of the report. The report shall not be distributed beyond the parties except

through the appropriate court procedures to the judge.

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

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

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

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

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

Sec. 36. No report or other work product of an investigation by the Inspector General shall be reviewable in any court. Neither the Inspector General nor any member of his or her staff shall be required to testify or produce evidence in any judicial or administrative proceeding concerning matters within his or her official cognizance except in a proceeding brought to enforce the Office of Inspector General of Nebraska Child Welfare Act.

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

Sec. 38. On or before September 15 of each year, the Inspector General shall provide to the Health and Human Services Committee of the Legislature and the Governor a summary of reports and investigations made under the Office of Inspector General of Nebraska Child Welfare Act for the preceding year. The summaries shall detail recommendations and the status of implementation of recommendations and may also include recommendations to the committee regarding issues discovered through investigation, audits, inspections, and reviews by the office that will increase accountability and legislative oversight of the Nebraska child welfare system, improve operations of the department and the Nebraska child welfare system, or deter and identify fraud, abuse, and illegal acts. The summaries shall not contain any confidential or identifying information concerning the subjects of the reports and investigations.

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

28-711 (1) When any physician, any medical institution, any nurse, any school employee, any social worker, the Inspector General appointed under section 24 of this act, or any other person has reasonable cause to believe that a child has been subjected to child abuse or neglect or observes such child being subjected to conditions or circumstances which reasonably would

result in child abuse or neglect, he or she shall report such incident or cause a report of child abuse or neglect to be made to the proper law enforcement agency or to the department on the toll-free number established by subsection (2) of this section. Such report may be made orally by telephone with the caller giving his or her name and address, shall be followed by a written report, and to the extent available shall contain the address and age of the abused or neglected child, the address of the person or persons having custody of the abused or neglected child, the nature and extent of the child abuse or neglect or the conditions and circumstances which would reasonably result in such child abuse or neglect, any evidence of previous child abuse or neglect including the nature and extent, and any other information which in the opinion of the person may be helpful in establishing the cause of such child abuse or neglect and the identity of the perpetrator or perpetrators. Law enforcement agencies receiving any reports of child abuse or neglect under this subsection shall notify the department pursuant to section 28-718 on the next working day by telephone or mail.

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

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

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

Sec. 41. Section 81-8,240, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

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

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

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

81-8,244 (1)(a) The Public Counsel may select, appoint, and compensate as he or she sees fit, within the amount available by

appropriation, such assistants and employees as he or she deems necessary to discharge the responsibilities under sections 81-8,240 to 81-8,254. He or she shall appoint and designate one assistant to be a deputy public counsel, one assistant to be a deputy public counsel for corrections, one assistant to be a deputy public counsel for institutions, and one assistant to be a deputy public counsel for welfare services.

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

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

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

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

(f) The Public Counsel may delegate to members of the staff any authority or duty under sections 81-8,240 to 81-8,254 except the power of delegation and the duty of formally making recommendations to administrative agencies or reports to the Governor or the Legislature.

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

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

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

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

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

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

(4) Request and receive from each administrative agency, and such agency shall provide, the assistance and information the counsel deems necessary for the discharge of his or her responsibilities; inspect and examine the records and documents of all administrative agencies notwithstanding any other provision of law; and enter and inspect premises within any administrative agency's control;

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

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

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

(8) Carry out his or her duties under the Office of Inspector

General of Nebraska Child Welfare Act. If any of the provisions of sections 81-8,240 to 81-8,254 conflict with provisions of the Office of Inspector General of Nebraska Child Welfare Act, the provisions of such act shall control.

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

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