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To: Special Committee on Foster Care Adequacy

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Re: Privatization of Foster Care Services

PRIVATIZATION IN KANSAS

History of Privatization of Foster Care Services in Kansas

In 1996 and 1997, the Department of Social and Rehabilitation Services (SRS), now known as the Department for Children and Families (DCF), privatized family preservation, adoption, and foster care services. This decision was based in part on longstanding concerns about the quality of services for children in SRS custody, including a class action lawsuit filed in 1989, and subsequently joined by the Children's Rights Project of the American Civil Liberties Union, alleging SRS failed to adequately care for children who may have been victims of abuse or neglect. Additionally, performance audits conducted by the Legislative Division of Post Audit (LPA) in 1990 and 1991 identified serious weaknesses in the State's foster care system. A 1998 audit referred to children "languishing in foster care for extended periods, being shuffled from one home to another, not getting the services they needed, and continuing to be abused or neglected." More specifically, the report noted complaints SRS failed to, assess the needs of children and families; provide the services ordered or recommended; house children in the types of facilities recommended; place children close to their families; provide courts with the information needed to decide whether to return children to their families; timely pay foster parents or providers; consider the good of children over finances; and adequately address complaints or violations.

The court approved a 33-page settlement in 1993, which included 153 requirements with which SRS was required to comply within certain time frames. However, SRS was unable to achieve compliance with many of the settlement requirements for handling cases, and in early 1996, SRS officials informed the Legislature they were moving toward privatization of adoption and foster care services in order to improve the quality of services and provide them in a more efficient, cost-effective manner. Before privatization, foster care and adoption were not distinct programs. Rather, SRS staff served as case managers for all children in state custody and decided on a case-by-case basis which foster care agency to place a child with when necessary. Adoption services were privatized first in October 1996, followed by foster care services in February 1997 when contracts were awarded to three not-for-profit agencies. SRS divided the state into five regions, and agencies bid for the right to serve as the contractor for one or more regions.

Under privatization, children removed from their homes are referred to the foster care contractor for their region, who are obligated to take and place the child in an appropriate home or facility. Initially, the contractors were paid a fixed amount per child, which generally was expected to cover the costs of a child or family while the child is in custody and for 12 months after being placed permanently back in the home or in a permanent foster care arrangement. A “shared-risk” arrangement for the first year required SRS to pay more money if the costs for all children in aggregate exceeded 110 percent of the standard case rate. Alternatively, contractors were required to rebate money to SRS if actual costs were less than 90 percent of the case rate. In 2000, SRS modified the contract so that foster care contractors receive a base administrative rate with a variable rate per child per month.

LPA audits of the foster care system in 1998 include an admission from contractors that the first few months of privatization were chaotic, overwhelmed by the tasks of hiring and training enough staff to handle the children being referred. Further, the foster care system continued to struggle with a lack of foster homes and staffing shortages. In all, the audits showed marked improvements in some areas and mixed results in others. LPA also monitored compliance with the terms of the settlement agreement, and by 2002, SRS was found to have successfully completed its terms.

2001 Performance Audit Report—The State’s Adoption and Foster Care Contracts: Reviewing Selected Financial and Service Issues

In 2001, LPA performed a review of the contracts with adoption and foster agencies. The audit report explained that SRS did not have accurate historical information about how much it had been spending for adoption and foster care-related services before privatization, and thus had difficulty determining how much to pay contractors to provide those services. After early indications from contractors that they were not receiving amounts sufficient to cover their costs, the Legislature appropriated an estimated \$125 million in additional funding for the foster care and adoption contractors. Still, concerns about the level of funding persisted, and legislators raised several questions about the privatized system. The audit considered how the results achieved by the privatized adoption contractor compared with results achieved by SRS before privatization; how the portion of the total cost of providing foster care and adoption services currently paid by the State and by other sources compared with the portion each paid before privatization; and whether current safeguards for monitoring the finances and services of the foster care and adoption contractors were adequate.

Results Achieved by Privatized Adoption Contractors

The LPA analysis of the results achieved by contractors revealed that while the total number of adoptions had increased, the percentage of children adopted had decreased, as had the percentage of children placed with prospective adoptive families. Further, growth in the adoption program had exceeded the growth in the foster care system. The audit proposed likely reasons for this growth, including an increase in the number of children in the foster care system, which reasonably could result in more children entering the adoption program.

The audit also identified an incentive for foster care contractors to refer children to the adoption contractor as quickly as possible, namely, that they would not receive final payments for a child until the child left foster care. By contract, the foster care contractor could not refer the child to the adoption program until the parental rights of one parent had been terminated,

resulting in an increased effort to terminate parental rights for the parent whose case was most clear cut without assuring that both parents' rights could be terminated. SRS modified this practice, however, so that foster care contractors receive a monthly rate per child and removed the referral provision from the contract.

Portion of Total Costs Paid by the State Compared to Portion Before Privatization

The audit looked at agencies partnering with SRS both before and after privatization and found the State funded a greater percentage of the agencies' foster care costs after privatization. However, after privatization, the contractors assumed greater responsibilities for providing case management and other services and thus incurred greater costs. The audit also revealed most agencies spent a smaller portion of their budgets on administrative costs and experienced a reduction in the cost per day of service after privatization. The report speculates this decrease could, in part, be due to economies of scale as the agencies examined had begun to provide more days of care than before, so they had more days over which to spread their fixed costs. Additionally, agency officials reported they had increased their use of less costly family foster care homes rather than more expensive group homes.

Monitoring of Finances and Services

Generally, the audit found SRS procedures for monitoring the financial viability of its contractors were adequate, except the agency did not have a procedure for regularly evaluating each contractor's financial management and record keeping systems. The procedures for monitoring how well its contractors provided services met or exceeded LPA standards. The report notes SRS had delayed implementation of monthly case reviews and performance reports during the period LPA reviewed, however, it also states neither delay prevented SRS from obtaining information about how well the contractors were providing services.

Ultimately, the report found SRS had good procedures for monitoring the finances and services of its contractors, which, if followed, would provide SRS with sufficient reliable information to identify problems in these areas when they occur. To ensure the financial viability of contractors, however, it recommended SRS policy require its staff to review contractors' financial-management systems on a regular basis, at least once every two years.

PRIVATIZATION IN OTHER STATES

Privatization of child welfare services comes in three main forms: small-scale, in which contractors provide case management services for a subset of children in a limited geographic location; large-scale, in which contractors provide case management services or out-of-home placements for all children in the state; and system-wide, in which all services except for investigations are handled by private contractors. Small-scale privatization is found in the following states: Arizona, Colorado, Michigan, Missouri, Nebraska, Ohio, Pennsylvania, South Dakota, Tennessee, Texas, and Wisconsin. States that have privatized on a large scale include Illinois, New York, and Oklahoma. The District of Columbia also has privatized on a large scale. Finally, Florida and Kansas have privatized the entirety of their child welfare systems.¹ The following provides an overview of selected states' privatization efforts.

¹ Reason Foundation, *Annual Privatization Report 2010*, p. 42.

System-Wide Privatization

Florida

Florida began to privatize its child welfare system in 1993, starting with foster care.² By 2005, Florida's system was completely privatized.³ The structure of privatization in Florida starts with contracts between the Florida Department of Children and Families (DCF) and single counties or multi-county areas. These "lead agencies" then may subcontract with other community providers to meet their service needs. The lead agencies must be nonprofit organizations and are contractually obligated to meet certain performance standards. Each lead agency is allocated a share of the State's total child welfare budget based on caseloads in a particular area.⁴

A 2006 study conducted by Florida's Office of Program Policy Analysis and Government Accountability (OPPAGA) found that none of the 22 lead agencies in the state were meeting all eight performance standards as required by DCF, and that making the transition to privatized service was extremely challenging in the very first years.⁵ In 2010, the Casey Family Foundation published a report that portrayed a much-improved system:

In the 2010 Casey report, there was consensus among those interviewed that the Federal IV-E Waiver has been one of the most crucial components of the success of privatization. The waiver allows federal foster care funds to be used for any child welfare purpose rather than being restricted to out-of-home care, as generally required under federal law. This allows the lead agency to flexibly move the money in the way it determines is best for the children; simply put, the money serves the child who needs it and not the foster care placement specifically. In addition to the waiver, Florida participants also identified a paradigm shift in Florida toward family-centered, permanency-driven practice as essential to the improvements in outcomes. They acknowledged the three-fold combination of family-centered practice, flexible funding through the waiver, and the practices through privatization as the driver behind Florida's reduction in out-of-home care.⁶

In conjunction with the signing of the federal waiver agreement, Florida's foster care population declined from almost 29,000 children in FY 2006 to 18,534 in FY 2010.⁷ Another important aspect of Florida's system is its advanced computer tracking system that provides caseworkers, attorneys, law enforcement, and judges with real-time information on children in foster care. State law requires caseworkers to visit each child every 30 days. When caseworkers makes a visit, they take a picture of the child and date-, time-, and GPS-stamp the photo and immediately upload with a mobile device to ensure accountability in the system.⁸

2 Snell, Lisa. "Child Welfare Privatization Update," available at <http://reason.org/news/show/apr-2013-child-welfare-privatizatio>.

3 Reason Foundation, *Annual Privatization Report 2006*, p.142.

4 *Id.*

5 Reason Foundation, *Annual Privatization Report 2007*, p. 66.

6 Reason Foundation, *Annual Privatization Report 2010*, p. 47.

7 Reason Foundation, *Annual Privatization Report 2011*, p. 56.

8 Snell, Lisa. "Child Welfare Privatization Update," available at <http://reason.org/news/show/apr-2013-child-welfare-privatizatio>.

Florida's child welfare system was again measured in 2013 to evaluate its effectiveness. OPPAGA found there were more adoptions, less repeat maltreatment, less institutionalization, and more efficient spending since the state became fully privatized.⁹

Large-Scale Privatization

Illinois

In 1995, Illinois granted private case managers full authority over adoption and foster care cases. The State also modified its payment structure to adopt a case rate, based on a caseload of 25 cases per caseworker, rather than the previous *per diem* flat rate.¹⁰ According to an evaluation conducted by the Quality Improvement Center on the Privatization of Child Welfare Services, performance-based contracting in Florida, Illinois, and Missouri has resulted in improving outcomes.¹¹ . As an illustration of Illinois' performance-based contracting in action, in FY 2009, 24 residential facilities were penalized for failing to meet performance standards, resulting in \$712,033 in penalties for contractors. Agencies also may be rewarded for exceptional performance in the form of bonuses. In FY 2009, the State rewarded 21 providers with bonuses totaling \$3 million.¹² Since the implementation of performance-based contracting, the number of children in foster care in Illinois has dropped from 51,331 in FY 1997 to 16,157 in 2007.¹³

Small-Scale Privatization

Missouri

Since 2005, Missouri has increasingly privatized its foster care services, using Illinois' performance-based contracts as a model. Missouri structures its privatization program much like that of Florida, using lead agencies that subcontract with local providers in communities. In Missouri, contractors receive payment for a child for the duration of the one-year contract, even if the child is adopted before the contract expires. The state also may sever contracts with agencies if they fail to meet performance standards.¹⁴

Nebraska

Nebraska began experimenting with privatization in 2009, but three years later, was experiencing a number of challenges with the system. In 2012, the Legislature voted to roll back privatization measures and instead returned case management to the Department of Health and Human Services (DHHS) with the exception of cases in the Omaha area.¹⁵ Three of five

9 Reason Foundation, *Annual Privatization Report 2015*, pp. 42-43.

10 "The Privatization of Child Welfare," Alliance for Children and Families Magazine, Issue 3—2011, available at www.alliance1.org/magazine.

11 Reason Foundation, *Annual Privatization Report 2010*, p. 49.

12 *Id.* at 52.

13 Reason Foundation, *Annual Privatization Report 2007*, p. 70.

14 Reason Foundation, *Annual Privatization Report 2006*, p. 146.

15 Snell, Lisa. "Child Welfare Privatization Update," available at <http://reason.org/news/show/apr-2013-child-welfare-privatizatio>.

agencies selected to contract with the state had withdrawn from their contracts a year and a half later, and the state ended up paying \$30.3 million more than budgeted in the first two years of privatization. An audit performed by the Legislature's Performance Audit Committee found DHHS failed to conduct a cost-benefit analysis or to set clear goals and deadlines prior to enacting the reforms.¹⁶ In 2012, the Legislature passed measures aiming to address cost overruns, including a requirement of greater transparency and reporting on child welfare spending, a plan for a statewide automated online information system, higher payments for foster parents, licensing reforms, and a requirement that DHHS apply for a federal waiver. The state also regained control over all cases except those being managed by Nebraska Families Collaborative (NFC) in the Omaha metro area.¹⁷ In 2014, an independent audit was performed on NFC. The audit found no measurable difference in performance outcomes for children and families managed by NFC compared to state management.¹⁸

Texas

Texas voted to privatize child welfare services in 2005, but inadequate oversight of foster care providers in the first two years of privatization resulted in the delay of further plans to privatize in 2007. Instead, the Legislature voted to require annual inspections of all foster homes and to implement a database to track foster parent information. The initial privatization efforts of Texas predictably led to more child abuse investigations, and, in turn, more children entered the foster care system.¹⁹ The Center for Public Policy Priorities (CPPP), a Texas-based nonpartisan research institution, published a policy brief in March 2005 that considered the question of whether privatization of case management would improve the quality of services in child protection. In that brief, CPPP explained:

The quality of services in child protection has little, if anything, to do with how case management is organized. To begin with, the children and families that come into the system have difficult problems. Our state makes little help available. For example, the state has limited mental health care and substance abuse treatment. Nothing about privatization fixes this problem. The state does not have an adequate number of foster homes or adoptive homes. Nothing about privatization fixes this problem. In those states that have privatized, private agencies struggle with the same issues that public agencies do, such as obtaining adequate services, reducing caseloads, and reducing turnover. More money would increase the availability of services whether spent through the public or private sector, but merely hiring a middle man to manage services does neither.²⁰

The Texas Department of Family and Protective Services (DFPS) again initiated a reform of the foster care system in 2013. To date, only one region has successfully implemented a program, serving approximately 3,000 children in seven counties. In addition, the contract came up \$1.2 million short of covering the first year's costs. Another regional contractor withdrew from its agreement with the state a year into its contract after it failed to obtain more state funding. As

16 Reason Foundation, *Annual Privatization Report 2011*, p. 57.

17 Snell, Lisa. "Child Welfare Privatization Update," available at <http://reason.org/news/show/apr-2013-child-welfare-privatization>.

18 Reason Foundation, *Annual Privatization Report 2015*, p. 31.

19 Reason Foundation, *Annual Privatization Report 2007*, pp. 68-69.

20 Center for Public Policy Priorities, "Privatization of Child Protective Services," Mar. 2005, p. 3.

of January 2015, some members of the Texas Legislature were recommending that DFPS abandon its privatization efforts.²¹

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²¹ Reason Foundation, *Annual Privatization Report 2015*, pp. 32-33.