



Minnesota Department of **Human Services**

OFFICE OF INSPECTOR GENERAL

LICENSING DIVISION

YEAR-END REPORT

CALENDAR YEAR 2012

**DEPARTMENT OF HUMAN SERVICES
LICENSING DIVISION**

**YEAR-END REPORT
CALENDAR YEAR 2012**

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Executive Summary

The Licensing Division (Division), in general, is responsible for enforcement of licensing standards that are designed to protect the health, safety, rights, and well-being of children and vulnerable adults who receive services from programs governed by the Human Services Licensing Act, Minnesota Statutes, chapter 245A.

The Division's work may be categorized in four main functions: (1) licensing programs directly through monitoring and enforcement activities; (2) overseeing licensing functions delegated to counties and private agencies; (3) conducting investigations of alleged maltreatment; and (4) performing background studies.

This report provides a general overview of the responsibilities of the Licensing Division, data related to these functions, and highlights four significant licensing trends and emergent issues observed over the course of the past year that impact the customers served and the public in general and for which the Division is seeking legislative changes. The trends highlighted include an increase in infant deaths in child care settings, an increase in serious licensing violations at opioid addiction treatment clinics, implementation of new standards for providers of home and community-based services and redesigning the Department's background studies processes. The report also provides an update of several initiatives that are currently underway including the ongoing coordination of licensing and program integrity functions, a legislatively mandated report examining the feasibility of licensing agency providers of Personal Care Assistance services and the development of eLicensing functions that are designed specifically to meet the needs of the Licensing Division. Responsibilities relating to these key initiatives are in addition to the Division's overall current work responsibilities and resources.

The report also contains an Appendix that provides updates on many of the issues and legislative proposals referenced in the 2011 Year End Report.

I. Introduction

This is the Department of Human Services (Department), Licensing Division's year-end report for calendar year 2012. The primary purpose of the report is to identify trends and action taken to address the trends, as well as other emerging issues identified for which legislative proposals are planned. For context, an overview of licensing functions and data is provided. The report also summarizes key initiatives affecting the Division because of their relationship to existing work, resources, and legislative proposals.

Examining the trends, data, and emerging issues assists the Department and the Licensing Division in prioritizing its work and affords an opportunity to pause and assure our priorities align with the Department's vision statement of *Healthy People, Stable Families, Strong Communities* and the Division's mission (see sidebar), and are consistent with public expectations of transparency and accountability in government.

The Licensing Division's mission and culture are premised on protecting Minnesota's most vulnerable citizens. Staff members are highly committed to this protection role and are very mindful that the gravity of the work they do on a daily basis directly impacts people's lives. Actions taken by the Licensing Division may have weighty consequences, such as issuing a temporary immediate suspension that closes the business of a provider, disqualifying an individual who may then no longer be employed due to their history, finding people and programs responsible for maltreatment, and imposing licensing sanctions on licensed programs.

All actions taken by the Division are supported by statute and rule, and individuals and providers that are the subject of these actions are afforded significant due process. The Division strives to appropriately and thoughtfully balance the protection of children and vulnerable adults with the level of requirements for which providers are accountable. The Division understands its accountability to the public and that the public expects that certain services provided to the state's most vulnerable citizens are held to some basic standards and that action is taken for non-compliance. Further, there are growing public expectations that information about services and providers be readily available.

Licensing Division Mission Statement

The Licensing Division, partnering with many others, helps to protect and to promote the health, safety, and well-being of people receiving human services and health care through informed, objective, and consistent enforcement of applicable regulations.

We are accountable to consumers and their families, communities, caregivers, providers, our partners, and elected representatives in these public and private activities.

II. Overview of Licensing Functions

The Division's work is statewide and may be categorized in four primary areas: (1) licensing programs directly through monitoring and enforcement activities; (2) managing licensing functions delegated to counties and private agencies; (3) conducting investigations of alleged maltreatment; and, (4) performing background studies. Each of these areas is described in greater detail below. The work of the Division is supported by two units - legal and administrative support. Information technology (IT) support is provided by the state MN.IT Services agency. The report does not capture the full scope and quantity of work or responsibilities of any of these areas.

The functions of these four primary areas are mandated by state statute. Minnesota Statutes, chapter 245A, the Human Services Licensing Act, governs the licensure of programs and services. Maltreatment investigations are conducted in accordance with Minnesota Statutes, section 626.556, the Reporting of Maltreatment of Minors Act, and 626.5572, the Reporting of Maltreatment of Vulnerable Adults Act. Background studies are required by and conducted in accordance with the standards set forth in Minnesota Statutes, chapter 245C, the Human Services Background Studies Act.

Much of the work of the Division is interrelated. The work of any one area may have an impact on another and it is not unusual for a licensing action in one area to necessitate action in another area. For example, a report of alleged maltreatment that is investigated by the Investigations Unit may lead to a licensing inspection by the Licensing Unit resulting in the issuance of a licensing sanction as well as a maltreatment determination. This same maltreatment investigation may also cause a staff person to be disqualified by the Background Studies Unit. Each of these actions would be subject to appeal requiring the support of the Division Legal Office. Additionally, related data is maintained and certain public documents are posted to the Department's website. A summary of the Division's budget and staffing is also discussed in the report.

A. Directly-licensed programs

The Division directly licenses approximately 4,000 programs in 17 different services. The licensing process is designed to assure that programs meet minimum standards related to health, safety, rights, and wellbeing of children and vulnerable adults.

The work begins at the point of application and includes evaluating whether the applicant meets the requisite standards to be licensed. For licensed programs, licensors conduct periodic on-site inspections to evaluate compliance with the applicable licensing

requirements. These are unannounced and generally occur every two years. Programs may be visited more often based on performance and, in some cases, the reviews may occur less often due to the Division’s staffing limitations. Licensors also conduct investigations of suspected or reported licensing violations, and receive and evaluate critical incident reports for certain programs. Some of these reports prompt further action. Twenty-eight (28) licensors and three unit managers carry out the work in this area.

During inspections and investigations, licensors review files, policies, procedures, and other documentation required by statute or rule and interview individual facility staff. They provide technical assistance, inform the license holder of areas of non-compliance that require correction and make recommendations related to improving the services they provide. Depending upon the results of the review, a correction order or licensing sanction may be issued. Correction orders detail the findings of the review and specific non-compliance. Licensing sanctions are ordered based on the nature, severity or chronicity of the violation(s) and the effect on the health, safety, or rights of the people served by the program. These actions include placing a program’s license on conditional status, issuing fines, or suspending or revoking the license. Table 1 summarizes the licensing activities related to directly-licensed programs over the last four years.

Table 1

Licensing Activity (by calendar year)	2009	2010	2011	2012
Licensing inspections completed	1,894	1,692	1,819	1,729
Licensing complaint investigations completed	447	507	550	590
Correction orders issued	1,660	1,685	1,735	1,527
Licensing sanctions issued	182	227	247	239
First time licenses issued	179	162	176	195
Programs that closed	170	144	102	167

Types of Directly Licensed Programs (on January 3, 2013):

Adult and Child Day Services:

- *Adult Day Service Centers:* Adult day centers are center-based facilities directly licensed by the Department that provide adult day services to functionally impaired adults on a regular basis for periods of fewer than 24 hours during the day in a setting that is not a residence. (156 providers)
- *Child Care Centers:* The center based child care rules set standards for licensing child care centers including programs that provide child care, preschool/nursery programs, Head Start programs, night care, drop-in and sick

care for fewer than 24 hours a day in a setting that is not a residence. (1,586 providers)

Chemical Health and Mental Health Unit:

- *Chemical Dependency Treatment Services:* Chemical dependency treatment rules set standards for licensing chemical dependency treatment programs for outpatient adolescent treatment, outpatient and residential treatment for adults, treatment of opioid addiction, treatment for people with co-occurring chemical and mental health problems, and treatment for parents with children. (349 providers)
- *Detoxification Programs:* Detoxification programs are licensed programs that provide short-term care on a 24-hour basis for the purpose of detoxifying clients and facilitating access to chemical dependency treatment programs as indicated by an assessment of client needs. Detoxification program rules set standards for licensing detoxification programs not operated in and by hospitals. (22 providers)
- *Children's Residential Treatment:* Children's residential facilities standards govern the licensing of providers of residential care and treatment or foster care services for children in out-of-home placement. (109 providers)
- *Independent Living Assistance for Youth:* Independent living assistance for youth means a nonresidential program that provides a system of services that includes training, counseling, instruction, supervision and assistance provided to youth according to the youth's independent living plan, when the placements in the program are made by the county agency. (4 providers)
- *Mental Health Centers:* Provide outpatient clinical services (e.g., individual, group and family therapy; individual treatment planning; diagnostic assessments; medication management; and psychological testing) to treat mental health conditions. (66 providers)
- *Residential Treatment Facilities for Adults with a Mental Illness:* Provide 24-hour-a-day program under the clinical supervision of a mental health professional, in a community residential setting other than an acute care hospital or regional treatment center inpatient unit. The Programs may provide Intensive Residential Treatment Services (IRTS) under a variance. (50 providers)
- *Minnesota Sex Offender Treatment Programs:* Provide treatment of men and women who are committed or on a hold for commitment as sexual psychopathic personalities or sexually dangerous persons. (2 programs)

Developmental Disabilities Unit:

- *Day Training and Habilitation Services:* Licensed supports to provide people with developmental disabilities with help to develop and maintain life skills, participate in community life and engage in proactive and satisfying activities of their own choosing. (267 providers)

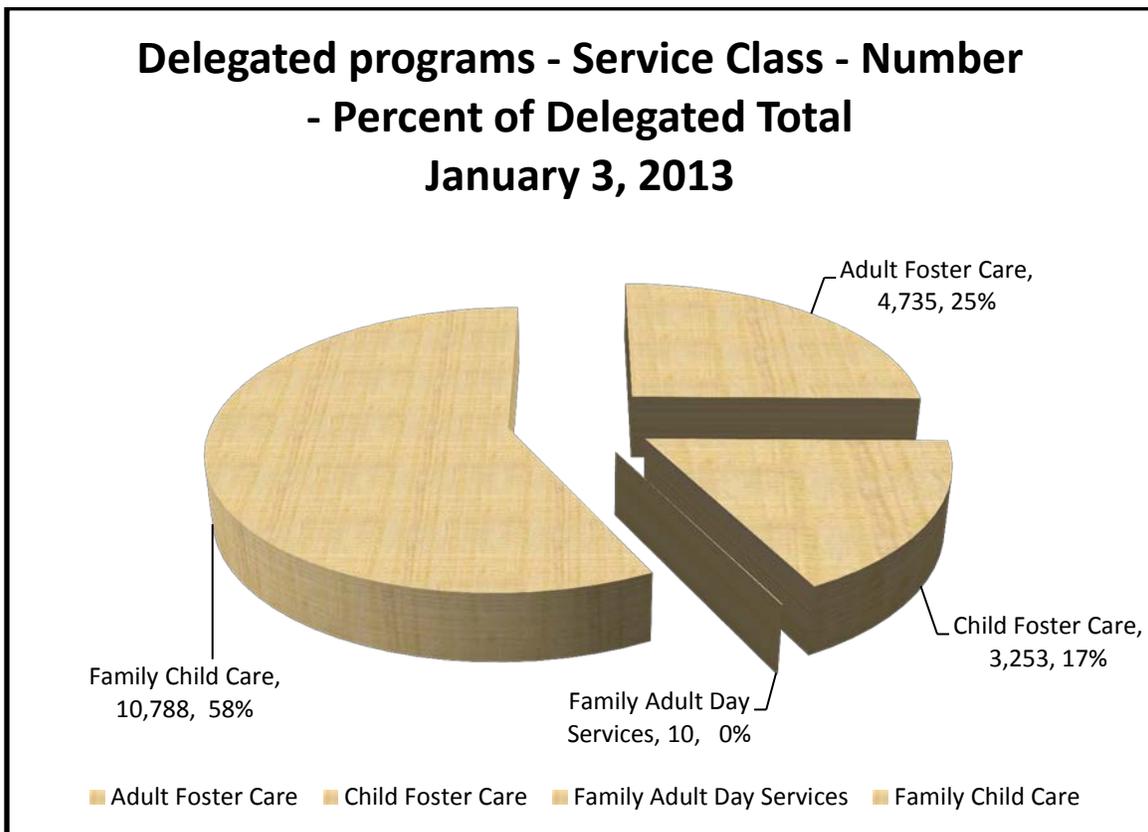
- *Crisis Respite Services* - Crisis respite services provide specific short-term care and intervention strategies to a person due to the need for relief and support of the caregiver and/or protection of the person or others living with that person. (18 providers)
- *Residential Habilitation Services under the Developmental Disabilities or Related Condition Home and Community-based Waiver* - Services provided to a person who cannot live in his or her home without such services or who need outside support to remain in his or her home. (880 providers)
- *Semi-Independent Living Services* - SILS include training and assistance in managing money, preparing meals, shopping, personal appearance and hygiene and other activities needed to maintain and improve and adult with developmental disabilities' capacity to live in the community. (127 providers)
- *Supported Employment Services* - Supported employment services are provided to people for whom competitive employment at or above the minimum wage is unlikely, and who, because of their disabilities, needs intensive ongoing support to perform in a work setting. The person receiving services must be in a paid employment situation. (93 providers)
- *Residential Services for people with DD, facility-based- Intermediate Care Facility for Persons with Developmental Disabilities* - An ICF/DD is a residential facility licensed as a health care institution (supported living facility [SLF]) and certified by the Minnesota Department of Health to provide health or rehabilitative services for people with developmental disabilities who require active treatment. (211 providers)
- *Residential Services for people with DD – Non-Certified ICF/DD: An ICF/DD is a residential facility licensed as a health care institution (supported living facility [SLF]) and not certified by the Minnesota Department of Health to provide health or rehabilitative services for people with developmental disabilities who require active treatment. (17 providers)*
- *Residential Program & Services for Physically Disabled (Rule 80):* Licensing Division performs licensing activities related to the licensure of programs serving persons with physical disabilities located in nursing home facilities licensed by the Department of Health. (4 providers)

B. Delegated licensing.

The Division also licenses approximately 19,000 programs through the oversight of licensing functions that are delegated by statute to the counties and 31 private licensing agencies. Licensing staff work closely with approximately 414 county and private agency licensing staff that carry out delegated functions. Services licensed through counties and agencies are generally provided in residential neighborhoods and most often in family homes such as family child care, foster care provided to children and adults,

and family adult day services. Figure 1 shows the number and type of delegated licensing programs on January 1, 2013.

Figure 1



Licensing activities completed by counties and private licensing agencies include processing license applications, conducting routine site visits, investigating complaints of alleged licensing requirement violations, issuing correction orders, and recommending licensing sanctions to the Department. This work must be completed within statutory and rule standards and guidance provided by the Department. The Department's Licensing Division performs the non-delegated licensing functions for these programs which include maintaining the license database, issuing licenses, issuing license sanctions based upon recommendations from county and private agencies, granting some variances, and funding some costs for appeal hearings.

Recommendations for licensing sanctions are evaluated by the Licensing Division and the Division issues sanction orders to license holders as applicable. Due to the serious nature of situations that lead to sanctions and the gravity of some of the orders, evaluating and acting on these cases is a priority for staff and, often times, very involved. Division licensors provide ongoing technical assistance and case consultation to county and

private agency staff regarding performance of the delegated functions. Division licensors also complete periodic reviews of each county and each private agency to evaluate the agencies' compliance with delegated licensing functions and issue compliance reports. Training is provided on a limited basis to county and private agency staff, as time permits. Five licensors and one unit manager carry out this work. Table 2 summarizes the number of sanctions issued to license holders and the number of new and closed programs over the last four years.

Table 2

Licensing Activity (by calendar year)	2009	2010	2011	2012
Licensing sanctions issued	667	510	642	725
First time licenses issued	2,341	1,314	2,090	1,968
Programs that closed	2,838	2,629	2,650	2,531

The 725 sanctions include 121 temporary immediate suspensions. This compares to 95 temporary immediate suspensions issued in 2011.

C. Maltreatment investigations

To help protect health, safety and well-being of the individuals receiving services from licensed facilities, investigators from either the local county or the Licensing Division investigate reports of alleged maltreatment. Division investigators act on allegations of maltreatment of children and of vulnerable adults in programs and facilities that are directly-licensed by the Division and in adult foster care homes. County child protection agencies are the lead investigative agency for investigating alleged maltreatment in licensed family child care and child foster care homes. County child protection and adult protection also investigate other settings that are not licensed by the Department as specified in statute.

The Division receives reports of alleged maltreatment through the common entry point^[1] and directly. All reports of alleged maltreatment receive an initial investigation. A significant number of reports contain multiple allegations of suspected maltreatment. Reports that are determined to meet the statutory criteria as possible maltreatment are more formally investigated. Those that are more formally investigated are reflected in the number referred to in Table 3 as "assigned for field investigation." Investigations that are assigned for field investigation include (with some narrow exceptions) visiting the program or location where the incident occurred, reviewing all of the pertinent documentation and the physical setting, interviewing people involved and relevant witnesses, making collateral contacts, and researching subjects related to the report, as needed. In some cases, investigations are coordinated with law enforcement.

Reports that are assigned for field investigation result in a determination of whether maltreatment occurred. Each investigation must answer several questions:

- *What actually happened?*
- *Did the event meet a statutory definition of maltreatment?*
- *If maltreatment occurred, was an individual or the facility responsible?*
- *Was any determined maltreatment recurring or serious?*
- *Is action necessary to reduce the chance that maltreatment will recur?*

If maltreatment occurred, there is a secondary determination of whether a person(s) or a facility was responsible, whether the maltreatment was serious or recurring, and whether any action was necessary to reduce the risk of recurrence. Actions taken by the Department to reduce the risk of recurrence of maltreatment are governed by state law and include the following.

- Disqualifying an individual from providing direct care to people served by unlicensed personal care provider organizations and by programs licensed by the Department, the Minnesota Department of Health, and certain programs licensed by the Department of Corrections.
- Issuing citations ordering a facility to correct the licensing violation.
- Issuing a fine, placing the license on conditional status, or suspending or revoking the license.

A summary of the information obtained during the investigation is documented in a public report called an Investigation Memorandum and the privacy of information obtained during an investigation is explained in the Division's Privacy Notice. Investigation memoranda for maltreatment investigations and investigations of alleged licensing violations are public documents and are available to the public on the Department's [Licensing Information Lookup](#) website. The results and determinations of these investigations are subject to appeal.

Table 3 summarizes the maltreatment investigation actions over the last four years. The maltreatment investigation work is carried out by 24 investigators and intake workers and two unit managers and a section supervisor.

Table 3

Maltreatment data (by calendar year)	2009	2010	2011	2012
Number of reports assigned for field investigation	895	899	1,036	1,002
Number of allegations reported	1,144	1,167	1,230	1,134
Number of reports completed	955	863	827	882
Number of persons disqualified based on substantiated maltreatment, serious or recurring	76	66	69	63
Number of persons responsible for maltreatment, not serious or not recurring (non-disqualifying)	119	76	109	84
Number of investigations pending	362	398	604	724

D. Background studies

To help protect people receiving health care and human services, individuals with certain criminal or maltreatment histories are disqualified by law from working in various settings that serve children and vulnerable adults. To help implement this requirement, the Division completes background studies on various people according to Minnesota Statutes, Chapter 245C. Individuals required to pass a background study completed by the Division are specified under Minnesota Statute Section 245C.03. These individuals include: current and/or prospective employees/contractors who will have direct contact with vulnerable populations, volunteers who will have unsupervised direct contact with vulnerable populations (e.g., student interns), and anyone age 13 and over living in the household where a licensed program will be provided (e.g.: day care and foster care).

In addition, individuals affiliated with programs under the jurisdiction of the Minnesota Department of Health, individuals providing direct contact in programs serving youth and children licensed by the Minnesota Department of Corrections, prospective adoptive families, conservators, guardians and guardians ad litem, and personal care attendants and assistants (PCAs) who are affiliated with non-licensed Personal Care Provider Organizations (PCPO) are all required to have background studies completed. All applicants for a license through the Department, their owners and managerial officials are also required to complete a background study. Finally, if the Commissioner has reasonable cause, background studies can also be required of individuals who may have unsupervised access to vulnerable populations without providing direct contact services (e.g.: a frequently visiting “boyfriend” of a family child care provider), as well as individuals between the ages of 10 and 12 living in a household where a licensed program will be provided.

All background studies include a review of criminal records obtained from the Minnesota Bureau of Criminal Apprehension (BCA) and state records of individuals who have been determined responsible for the maltreatment of a child or vulnerable adult by any of the lead agencies. More than 85% of the background studies result in no criminal or

maltreatment information being returned, and are approved within a matter of a day or two. The remaining 15% had information returned that required Department staff to conduct further review to determine if the information belonged to the background study subject and, if so, whether it would result in the individual's disqualification.

In addition, the scope of the background study is expanded when there is reasonable cause as defined in statute. In some of these cases, a fingerprint-based study is conducted obtaining criminal records from the Federal Bureau of Investigation (FBI); in other cases, court and arrest records and maltreatment records from other states are reviewed. The background studies statute specifies those offenses that disqualify an individual from any position having direct contact with, or access to persons receiving services. Almost 3% of all studies result in a disqualification of some duration. The law specifies whether a disqualification is permanent or time-limited. For example, the most serious offenses are permanent disqualifications; felonies generally are disqualifications for 15 years, gross misdemeanors for ten years, and misdemeanors for seven years. Figure 2 shows the range of entities that contact the Division to request a background study. Not every entity that contacts the Division is represented here.

Figure 2



Background studies staff conduct the background study, review the records obtained, and issue notices to the study subject and the licensed program. This notice informs individuals who are disqualified of the applicable due process rights. The Division also coordinates with the Department’s provider enrollment division concerning personal care assistants (PCAs) who must individually enroll and who must have a completed background study. If a PCA is subsequently disqualified due to a new criminal or other disqualifying event (e.g., a determination of responsibility for maltreatment of a minor or

vulnerable adult), the Division coordinates with the provider enrollment division to terminate the PCA's ability to provide services.

Twenty-nine staff, three unit managers and a section supervisor carry out the background studies work. Table 4 summarizes background studies completed for the past four years.

Table 4

Background studies (calendar year)	2009	2010	2011	2012
Number of studies completed	252,552	268,239	270,729	271,476
Number of individuals disqualified	13,981	10,275	10,115	8,112
Percent disqualified	5.536 %	3.831 %	3.736 %	2.988%

E. Division support

The Division's legal office and administrative support staff have responsibilities that apply across the Division, as described below.

Legal office. The legal office supports the Division in the performance of its statutorily mandated responsibilities to facilitate performance of these responsibilities in accordance with applicable state and federal law. Much of the work of the legal staff is related to the due process rights of individuals and entities that are the directly impacted by a licensing action. Essentially all licensing determinations are subject to appeal.

Individuals who are disqualified by the background studies unit have the right to request administrative reconsideration of this determination and, following that reconsideration decision, may have a right to an administrative fair hearing under Minnesota Statutes, section 256.045 or a contested case hearing right under Minnesota Statutes, chapter 14. Individuals who are found responsible for maltreatment of a minor or vulnerable adult have the right to request administrative reconsideration and the right to an administrative fair hearing to challenge the determination.

A license holder who is issued a correction order or whose license is placed on conditional status also may request administrative reconsideration of these orders. When a licensing sanction is ordered or a license is denied, the license holder or applicant has the right to a contested case hearing under Minnesota Statutes, chapter 14. Legal representation in directly-licensed administrative hearings is generally handled by the Office of the Attorney General, and representation in matters for which the licensing function is delegated to the county is handled by the county attorneys' offices.

Legal staff review all requests for administrative reconsideration and issue reconsideration decisions. Legal staff also perform many functions relating to the

administrative hearings, including handling all appeals requests, notices and decisions; drafting notices of and orders for hearing; testifying at hearings; coordinating with the Attorney General's Office; and, providing technical assistance to county attorneys.

Primary responsibilities of the legal office include supporting the background studies unit by reviewing criminal records from Minnesota and other states to determine whether there is a preponderance of evidence of a disqualifying offense or whether the elements of an offense committed in another state meet the elements of a disqualifying offense in Minnesota. Other primary duties to support other Division functions include: drafting certain licensing sanctions; handling settlements of certain licensing sanctions; responding to data requests; responding to expungement petitions and orders; handling all litigation-related matters, including judicial review and civil litigation-related processes; providing legal support relating to legislation; and other legal research and analysis. Nine attorneys, one paralegal, and one unit manager carry out this work.

In calendar year 2012, the Division's legal office:

- issued 1,632 administrative reconsideration decisions
- handled 287 requests for administrative hearings
- received 5 appeals to the District Court
- received 11 appeals to the Minnesota Court of Appeals
- completed 1,098 preponderance of evidence reviews and analyses of criminal laws and records from other jurisdictions for background studies
- responded to 677 expungement petitions
- responded to 568 expungement orders
- responded to 70 data requests and 25 litigation holds, as well as provision of other data practices support

In April of 2012, the Licensing legal office launched a new County Attorney Outreach project. Through this initiative, Division attorneys are now providing a higher level of technical assistance and support to county attorneys who defend the commissioner's orders in contested case hearings. One attorney is assigned to oversee each such case. The Division's attorneys ensure the cases stay on track and assist the county attorneys with drafting appeal documents, motions and settlement agreements. They are also available to answer any questions the county attorneys may have. Since starting this project, the Division has received very positive feedback from the counties on this collaboration. Of the 287 administrative hearings reported above in the summary, 126 (44%) are County Attorney Outreach cases.

The Licensing Division is often asked by license holders to consider settlement of cases prior to fair hearings or contested case hearings. Legal staff work closely with the county attorneys and the Attorney General's Office to negotiate and draft settlement agreements. In calendar year 2012 the legal office settled 67 cases, thereby saving the expense of a

hearing while still ensuring there are appropriate safeguards in place to protect children and vulnerable adults.

Administrative support. The administrative support unit generally does not provide traditional clerical support to Division staff. Their primary role is to directly support the licensing processes and workflow. These staff members touch nearly every licensing action in some way, performing such functions as processing all data entry for license applications, updating licensing information in the Division's database for all licensed programs, managing hard-copy documents and electronic documents, printing and mailing licenses, and processing massive amounts of incoming and outgoing mail daily. Six staff are responsible for this work.

One other higher level administrative staff person, who works more directly with licensing managers, is directly responsible for invoicing fines and licensing fees and background study fees that are based on interagency agreements, serves as the Division contact for billing questions, drafts licensing sanction orders, provides legislative support, oversees the Division's budget, manages interoffice requisitions and payments, completes ad hoc reports, coordinates Division responses to citizen correspondence, and performs other special project work as assigned. Legislative support work includes drafting legislation, preparing legislative background and presentation materials, preparing bill analysis and providing fiscal analysis.

F. Information Technology (IT) Support

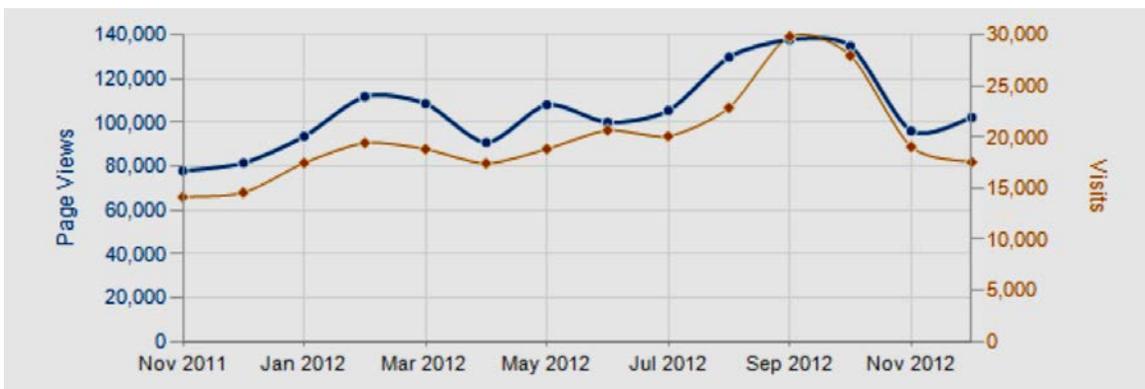
In 2012, the Division's Information Technology (IT) unit completed its merger with the state's new centralized IT office, [MN.IT Services](#). The centralized IT office was created when the information technology staff at 70 State of Minnesota agencies, boards and commissions were consolidated into a single IT organization through interagency agreements signed in October 2011. Prior to that time, the Division had IT staff dedicated solely to licensing projects. MN.IT Services continues to support the business of the State and individual agencies; however, the centralization of IT services means that the Division's IT staff now have a new administrative reporting relationship: Staff are no longer located within the business area, and they report to MN.IT Services managers and not Licensing Division managers. This move occurred at a time when the Division was increasing its work on updating the Division's electronic database and developing a licensing system due to rollout in 2013 for certain license applicants. Staff from this unit have been intricately involved in the development of the eLicensing system that, once fully implemented, will transition a significant portion of the Division's paper transactions from counties and providers to electronic transactions. This is discussed in greater detail under the initiatives section of the report.

As a result of the consolidation, MN.IT Services now oversees the Division’s database, referred to as License Information System (LIS), provides technical support for electronic data management, and provides overall technical assistance to all Division staff. The LIS database is the central repository for the Division’s data. It includes over 80 data tables and countless relationships between the tables for data reporting. As such, it is used by other departments, agencies, and divisions of the Department. For example, the Alcohol and Drug Abuse Division use licensing data to inform policy directions and evaluate their impact.

The MN.IT Services is responsible for the NETStudy system, which providers use to submit background studies electronically to be processed. NETStudy processes over 1,100 transactions per day.

MN.IT Services is also responsible for the Division’s [Licensing Information Lookup](#) function on the Department’s website. Consumers now have 24/7 access to important information about licensed programs with the expansion of the website. Lookup provides the public with a source to identify license holders based on the type of service they provide or by location. The most frequently requested public documents about the Department’s licensed programs are now online, giving consumers quick access to important health and safety information about child care centers, group homes for people with disabilities, and a range of other services for children and vulnerable adults. In 2012, License Information Lookup had over 278,000 visits to the web site in 2012, with almost 1.5 million pages viewed.¹ Figure 3 shows the trends by month on the number of visits to the site by the public and the number of pages viewed by the public. The numbers average over 750 visits per day, and viewing about 4,000 pages per day.

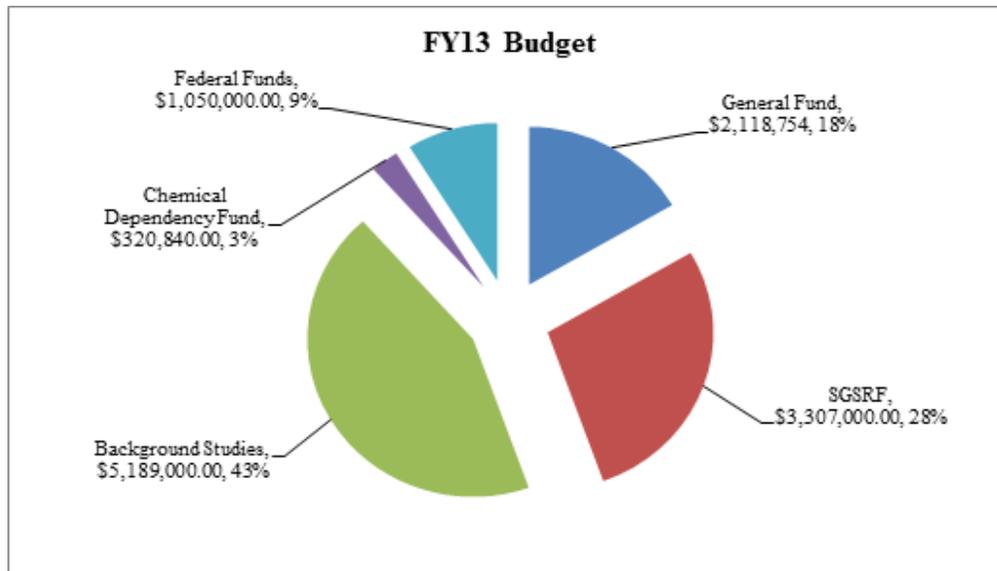
Figure 3



¹ Due to an upgrade in the software since the 2011 Year End Report was completed, the numbers reported in the 2011 and 2012 Reports cannot be compared against each other for trend analysis. The programs use a slightly different algorithm to attain website usage results.

Figure 4 shows the division's state fiscal year 2013 budget of \$11.8 million by funding source.

Figure 4



Of the total budget, about 82% is spent on salary and benefits, and 18% is spent on non-salary related expenses. The major non-salary expenditures for FY 2012 related to: the Bureau of Criminal Apprehension for criminal history information from both Minnesota and the FBI (\$908,418); telephones and mailing costs (\$329,597); travel expenses for investigations and licensing inspections (\$160,131) and Office of Administrative Hearings costs related to appeal hearings (\$420,350).

H. Updates from 2011 Year End Report

Efforts to link licensing standards to rate enhancements

Background. The Division directly licenses providers of chemical dependency treatment services. This includes conducting on-site inspections to evaluate compliance with the licensing standards, completing investigations as applicable, issuing correction orders, providing technical assistance, and taking licensing actions, as applicable, for non-compliance. As part of these activities, licensors review client and personnel records, program documentation related to staffing and other requirements governing the service.

Effective July 1, 2011, the Division of Alcohol and Drug Abuse (ADAD), implemented a statewide uniform rate setting methodology for chemical dependency services that included “enhanced” (increased) rates for providers that met specific standards. The current licensing requirements to provide chemical dependency services include specific certification standards for specialized services. While the rate enhancement standards are independent of certifications, they are similar to licensing requirements. In many cases the rate enhancement standards intertwine with licensing requirements, such as the number of hours of training that is required for staff.

ADAD has managed compliance with the rate enhancement standards and furnished provider support. However, because Division staff conducted site reviews and other licensing activities with these providers, it was determined to be more efficient to have licensing staff monitor providers’ compliance with the rate enhancement standards. The transition of that work between the divisions is underway. There are several advantages to having the Division be responsible for overseeing compliance with the rate enhancement standards, including administrative efficiencies for both the Department and providers. For providers compliance with the rate enhancement standards will be coupled with their licensing reviews and licensing work. This eliminates providing documentation at another time specific to the rate enhancement and all due process rights apply to the Department’s action. In 2012, the Division sought legislative authority to address noncompliance with the rate enhancement standards as we would address any other licensing determination.

Outcome of the 2012 Session: In the 2012 legislative session, the Division was successful in obtaining the proposed legislative changes highlighted in its 2011 Year End Report to grant the Division the authority to issue licensing sanctions for non-compliance with the rate enhancement standards under the Human Services Licensing Act. By transferring the responsibility for monitoring these standards to the Licensing Division, the scope of the licensing review, monitoring, related actions, and due process will be expanded and licensors could conduct the reviews related to the rate enhancement standards as part of the licensing and ongoing monitoring processes. Licensors will now conduct the reviews related to the rate enhancement standards as part of the licensing and ongoing monitoring processes.

Efforts to enhance requirements of license applicants

Background. The 2011 Year End Report highlighted the significant increase in deficient license applications. In addition to the concerns that such providers may not provide acceptable services, these applications deplete limited resources required to complete other licensing work, including responding in a timely manner to applications of more prepared providers.

The Division has recognized a pattern between license applicants that require considerable technical assistance to meet the initial standards to be licensed and on-going

compliance problems, sometimes culminating in licensing sanctions. Applicants that are ill prepared or that do not understand the fundamental requirements to provide a service are more likely to have difficulty achieving and maintain compliance with the standards and therefore pose a higher risk to children and vulnerable adults who use these services. The Division has also received very questionable applications that are complex to sort through without considerable investigation. These applications take considerably more time and effort from licensing staff to educate the applicant on the regulations and how to address the deficiencies in the application. Prior to changes put forward by the Division and enacted by the 2012 Legislature, the law did not provide authority to terminate an application for failure to respond or for multiple inadequate or partial responses.

Outcome of 2012 Session: In the 2012 legislative session, the Division was successful in obtaining almost all of the proposed legislative changes highlighted in its 2011 Year End Report to more specifically address the preparedness of applicants. The change now permits the Division to deny an application when it is deficient, and the applicant has been provided notice and information, but continues to fail to meet the requirements. In addition, the Department is now authorized to develop a competency-based exam through which the applicant, not a consultant assisting with the application process, must demonstrate a basic understanding of the requirements in order to provide the service. Applicants must also provide the names of all individuals who have a controlling interest in the business operation and must provide identification information as a business entity, or as an individual, including social security numbers, and must submit a notarized signature form containing the name, address and notarized signature of the license holder's authorized agent who will handle all communications relating to the license with the Department. These changes should allow the Division to more readily identify problems, complete reviews of applications and deny a license based upon a deficient application. The legislative changes will also positively impact services to consumers in that providers will be better prepared and more likely to comply with required standards on an on-going basis.

Evaluating merging regulatory functions with the Minnesota Department of Health

The 2011 Legislature required a [report](#) to be completed by the Minnesota Department of Health (MDH) in consultation with the Department to evaluate and determine whether reorganizing the regulatory responsibilities between agencies would be cost effective. The report was submitted to the Legislature in February 2012.

The report contained an inventory of services that are regulated by either the MDH or the Department's Licensing Division and found that there are a very few provider types that hold both a MDH and Department issued license. For these providers there is a requirement to hold a license related to service standards – issued by the Department – and a license related to physical plant or medical services – issued by MDH. The standards enforced by each agency were distinctly different and the report found no overlap. Of the 51 license types regulated by the respective departments, there are only

four settings licensed by MDH that may also have a program license issued by the Department.

As a result, the report did not recommend that regulatory activities be moved from one agency to another or from both agencies to a new one. Instead, the report offered several recommendations for a more seamless regulatory oversight structure: blend regulatory activities for facilities licensed by MDH with the Department's licensed programs; clearly inform providers and the public about MDH and the Department's regulatory responsibilities; cross train staff in MDH and the Department's Licensing Divisions; establish linkages between MDH and the Department's Office of Inspector General (OIG), and conduct a broader regulatory evaluation of all the regulatory activities in MDH and the Department. The agencies have convened an interagency regulatory group to pursue these recommendations. Collaborative work has included cross-agency regulatory training and development of linkages across the agencies respective websites.

Outcome of the 2012 Session: The 2012 Legislature passed legislation that requires Minnesota Management and Budget (MMB) to facilitate an expanded evaluation of regulatory functions and prepare a report on how each department administer health and human services regulations. The report is due to the Legislature by August 1, 2013. Licensing staff are currently participating in that effort as well. In addition, as an outcome of the 2012 Legislative report, legislation was passed that requires MDH and the Department to update and link website information between the two departments in certain areas where regulation overlaps. The departments have embraced a "no wrong door" policy to help ensure that providers, families, and members of the public can easily find the information they are seeking regardless of which web site the person accesses.

III. 2012 Trends, Emergent Issues and Related Legislative Proposals

Over the past twenty-plus years the Division has proposed legislative changes in response to issues identified by Department staff based on licensing activities and feedback from stakeholders. The 2013 legislative session is no exception. This section of the report highlights four areas in which emergent issues are identified and for which related legislative amendments are being proposed: (1) enhancing licensing standards relating to sleep safety in licensed child care settings; (2) enhancing licensing standards for opioid addiction treatment clinics; (3) implementing new standards for home and community-based services, and (4) redesigning Minnesota's background study procedures to enhance the safety and wellbeing of Minnesotans using long term care services.

For each of the issues, the following information is provided: background information; the problem or reason for the change; the current action being taken by the Division; the proposed legislative change; and, the desired outcome. The proposals all support the

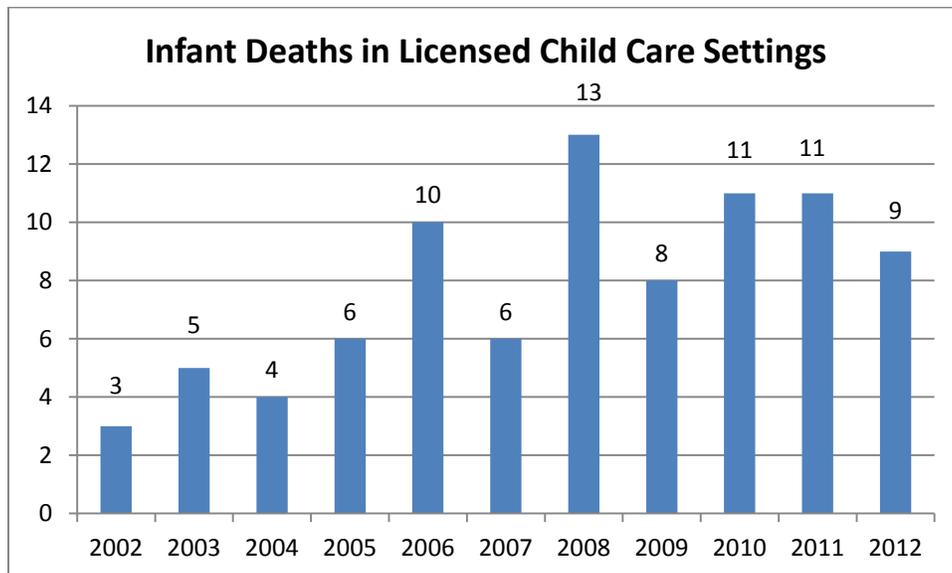
Division’s paramount purpose to protect Minnesota’s most vulnerable citizens, as well as providing accountability and transparency in state government, and working to reduce fraud, waste, and abuse.

A. Enhancing Standards for Safe Infant Sleep in Child Care Settings

Background: In the 2011 Licensing Year End Report, the Division noted an increase in the issuance of temporary immediate suspension orders, in which the license holder must immediately cease operation due to the serious nature of the licensing violations noted by a licensor during an inspection. Of the 95 immediate suspension orders issued by the Division in 2011, eight involved infant deaths in a licensed child care setting.

In early 2012, the Division continued to analyze the data relating to infant deaths in child care settings over the past 10 years and noticed an alarming trend: The number of deaths was increasing, from an average of six per year prior to 2006 to more than 11 in both 2010 and 2011. Within the first four months of 2012, the Division had already been notified of six infant deaths and issued four temporary immediate suspension orders to immediately close down the affected programs. Almost all of these deaths occurred in licensed family child care homes (as opposed to licensed centers). Seventy-five percent of those deaths (63 out of 83) occurred when the infant was in an unsafe sleep arrangement in a family child care setting. Figure 5 shows the 10-year trend in reports of infant deaths in a licensed child care setting.

Figure 5



Issue: The number of infant deaths reported in a child care setting continued to increase throughout 2012. Staff analyzed data involving reports of an infant death over the previous 10 years, noting whether the deaths occurred in family child care or a child care center. Of the 86 death reports, all but three occurred in family child care as opposed to child care centers. In these cases involving infant deaths, the most common licensing sanctions involved violations of infant safe sleep requirements, as well as violations related to training, exceeding licensing capacity limits and failure to provide adequate supervision.

Action Taken in 2012: The Division took immediate steps in response to this data. First, the Division changed its data collection and recording categories to better reflect the number of temporary immediate suspension orders involving infant deaths and other suspected violations in their reports to and from the counties. This was a change from previous years, when infant deaths were included under other existing categories of suspected licensing violations. The change was made to emphasize to the counties that unsafe infant sleep practices are occurring and are resulting in deaths, and that the Division is issuing more temporary immediate suspension orders due to infant sleep violations.

Then in May 2012, the Licensing Division Director sent a communication to all licensed family child care providers alerting them to the increase in infant deaths of the past 10 years, the outcome of the Division's analysis, including the most common violations associated with a reported death. The letter stressed the importance of abiding by licensing requirements pertaining to safe infant sleep practices, and it outlined additional actions the Division was undertaking to reduce the number of deaths, including an increase in the frequency of fines and other sanctions for non-compliance with requirements related to safe sleeping, supervision, and adherence to capacity limits.

Finally, the Department requested that the Minnesota Child Mortality Review Panel (Panel), which examines child deaths and near fatal injuries, play a role in examining this trend. In May 2012, a subcommittee of the Panel was convened to further study infant deaths in licensed family child care homes and make recommendations for improvements to child safety in licensed child care to the commissioner.

The Panel reviewed the work and recommendations of the subcommittee and issued a report, [Review of Child Deaths in Minnesota Licensed Family Child Care Homes \(PDF\)](#), in August 2012. The report will be used to inform work with legislative leaders to improve Minnesota's child care standards. Division staff participated in the review and carefully examined the recommendations contained in the report. The report reinforces the need for continued cooperation between the Department and the Legislature to make necessary system improvements, including:

- Seeking statutory and administrative changes, where needed, to ensure child safety in licensed family child care homes

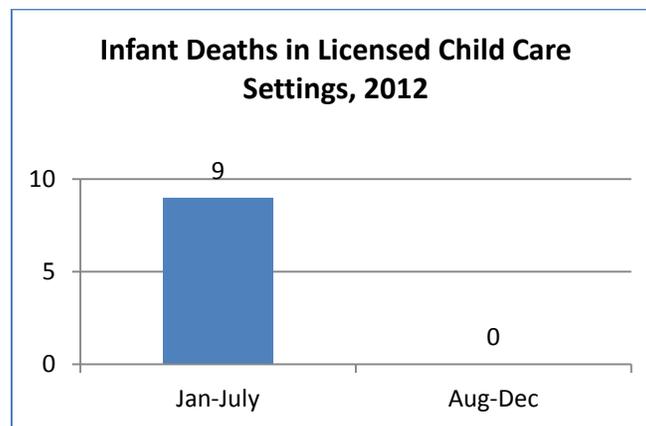
- Increasing public awareness of licensing information, including providing online information about providers' licensing correction orders, and raising public awareness about practices to ensure safe sleep for infants
- Improving the quality and consistency of oversight of licensed family child care homes, and the consequences for noncompliance
- Improving training for licensed providers to assure appropriate safety and response in emergency situations
- Continuing to work with the Minnesota Department of Health on the study of infant deaths.

Some of those recommendations generated a great deal of controversy and raised concerns that increasing regulations, training requirements or sanctions for licensing violations would have a detrimental impact on the child care provider system – particularly family child care providers. Division staff and other Department officials met with numerous stakeholder groups and legislators and attended several public meetings to obtain feedback on the Panel's report before developing 2013 legislative proposals to implement some of the recommendations.

These actions, combined with the media coverage around this alarming trend, appear to have significantly raised awareness on the part of providers and parents, and there were no infant deaths reported from July 2012 to the end of 2012.

Figure 6 shows the decrease in infant deaths reported during the end of 2012.

Figure 6



Legislative Proposal for 2013: Many policy recommendations from the Panel's report are still being considered by the Department, and some cut across several areas of the Department that are responsible for child wellbeing and safety. The 2013 Licensing

legislative proposals will include a number of provisions that pertain to child care, including: amending the state licensing standards for crib safety, crib inspections, and documentation standards to comport with federal requirements; requiring that for family child care at least one caregiver must be present in the home who has been trained in CPR *specifically for infants and children*; and, clarifying that regulations that apply to licensed family child care programs apply to the provider's own child who is ten years of age or younger and is present in the home during child care hours. This last provision acknowledges that family in-home child care providers are often caring for their own young children and that these children are not exempt from the health and safety standards governing the other children in the provider's care. The Division will continue to work with other areas of the Department to determine if further changes will be pursued this session that impact licensing standards and enforcement activities.

Desired outcome: Minnesota's crib safety and inspection standards will align with federal requirements, which were updated in 2010 but allowed child care centers and other places of public accommodation until December 28, 2012, to ensure that all cribs used in their facilities meet the requirements of the new federal guidelines. Aligning requirement for documenting compliance with the new federal standards will reduce administrative regulations on providers and make oversight more efficient. In addition, providers will be trained in CPR techniques specific for infants and young children, which should help to increase the effectiveness of the CPR training and ensure that providers understand how to respond to certain emergency medical needs of the children in their care.

B. Enhancing Standards for Opioid Addiction Treatment Programs

Background: Minnesota is known for its numerous, free-standing drug and alcohol dependency treatment centers. There are 349 licensed treatment centers in the state; of these, 16 (4.5%) are opioid addiction treatment programs. Methadone is a *synthetic opioid agonist medication* that eliminates withdrawal symptoms and relieves drug cravings by acting on the same brain targets as other opioids like heroin, morphine, and opioid pain medications. It has been used successfully for more than 40 years to treat heroin addiction, and must be dispensed through opioid treatment programs.² Methadone is often used long term, perhaps even over a lifetime, as a maintenance treatment to avoid relapse. People receiving Methadone go to an opioid addiction treatment clinic in order to receive this medication, or they may take the dose off-site when certain criteria are met. Most opioid addiction treatment programs have early morning clinic hours where clients come for a once-daily dosing. According to the recently released [State Substance Abuse Strategy](#), heroin and opiate addictions are on the rise in Minnesota:

*Gradually over the past decade the abuse of heroin and prescription opiates, specifically narcotic analgesics also known as painkillers, has escalated throughout the state. Opiates have high abuse potential, high addictive potential and high overdose potential.*³

Methadone maintenance programs are regulated and monitored at both the state and federal level. Obtaining approval to operate an opioid addiction treatment program involves meeting requirements of several state and federal regulatory agencies, including:

- The State Board of Pharmacy
- The State Methadone Authority (The Department)
- Drug Enforcement Administration/DEA
- Center for Substance Abuse Treatment/CSAT
- In addition, each clinic will need to be accredited, like most other clinics and health-care facilities (i.e. hospitals).

During 2012, the Licensing Division issued an order of revocation to one license holder who operates five of the 16 opioid addiction treatment programs in Minnesota and an order of conditional license to two of the other 16 programs. These three programs under sanction serve over 1,500 clients. At the time of this report, the Division is also engaged in complex and time consuming investigations of twelve complaints regarding these treatment services in other opioid addiction treatment programs, the findings of which could result in additional sanctions.

² State Substance Abuse Strategy, [Minnesota State Substance Abuse Strategy](#)

³ Id.

Issue: The rule that governs chemical dependency treatment was promulgated in 2004 and effective January of 2005. The rule was subsequently updated in 2008, but the focus of the rule is on chemical dependency treatment. The certification for Methadone Programs Serving Intravenous Drug Abusers does not include any additional treatment requirements. At the time the rule was revised and promulgated, the number of people receiving Methadone treatment was significantly less. Additionally, because the full scope of regulations governing Methadone services are disbursed across state and federal agencies, the Department's licensing action is limited as to the scope of what may be identified as a licensing violation under the jurisdiction of the Department.

Action Taken in 2012: In response to the violations determined in some of the opioid treatment programs, accelerated site reviews of other programs was initiated and is taking action as applicable. The Division is also conducting unannounced follow-up site visits to further monitor compliance. Additionally, the Department is seeking legislation to increase the treatment standards for the service and have authority to enforce specific requirements that are currently only under federal jurisdiction. For example, increased standards related to the amount of treatment services provided and client to staff ratios, and authority to enforce such things as the criteria used to determine whether people may receive doses of Methadone to take outside of the clinic.

Legislative Proposal for 2013: Despite the number of agencies involved and the regulations that exist at the federal level, staff have not been able to rely on federal enforcement of federal policies in a timely manner to respond to more immediate risks to the clients of opioid addiction treatment clinics. For this reason, licensing staff will incorporate some federal requirements into state licensure standards, so that a violation is clearly enforceable as a violation under the Human Services Licensing Act (chapter 245A). The standards will more closely regulate treatment procedures to enhance client safety and prevent misuse of this highly-addictive prescription drug.

In addition, both the Alcohol and Drug Abuse Division and the Licensing Division staff believe that the client to staff ratio of one counselor to 50 clients is too high to allow staff time to effectively engage in other addiction treatment (e.g. group therapy, individual counseling) beyond daily dosing of methadone. Future changes to the reimbursement rate are also being considered, so that administering doses is paid at a lower rate while allowing for the reimbursement of individual and group therapy separately, similar to other outpatient clinics. These changes to the rate structure are designed to incent more intensive treatment therapies by allowing for the billing of treatment services separately and dovetail with the proposed changes to the licensing requirements.

Finally, the 2013 legislative proposal will seek a requirement that prescribers in opioid addiction treatment programs first check the state's Prescription Monitoring Program's database maintained by the Minnesota Board of Pharmacy for other potentially complicating prescriptions issued to the client. Staff are also exploring the possibility of

seeking a federal waiver to allow the state to require that prescription data from opioid addiction treatment programs be entered into the Prescription Monitoring Program database so that community-based prescribers are aware that a patient is receiving Methadone before prescribing additional Methadone or other pain control medications. This would help to minimize peoples' access to Methadone for purposes of selling the medication or using it inappropriately. Other alternatives are also being discussed with the Board of Pharmacy.

Desired outcome: Incorporating some federal regulations and guidelines into state licensure requirements would allow the Licensing Division to monitor for compliance with the most serious standards and to more effectively issue licensing actions without needing to wait for any federal enforcement action. Increases use of the Prescription Monitoring Program will decrease the opportunities for opiate misuse. All of these changes would further the goals of the *State Substance Abuse Strategy*.

C. Implementing Standards for Home and Community-based Services

Background: The 2011 Year End Report highlighted the work of the Division in collaboration with the Department's Disabilities Service Division (DSD) on developing standards for the services covered under the home and community-based waivers (herein after "waiver" or "waivers"). The waivers offer services to specific target groups of people who are at risk of the level of care provided in an institutional setting. The services provided under the waivers enable these people to live in the community and avoid institutionalization. The 2011 Year End Report summarized the Division's work on Phase 1 of the licensure standards, which resulted in the enactment by the Legislature of Minnesota Statutes, chapter 245D. These standards require providers of currently unlicensed waiver services to obtain a license from the Department and meet standards that promote and protect basic health, safety, and rights of service recipients. The goals of this effort are:

- Integrate key legislative initiatives to improve program quality and service options (e.g., quality outcome legislation; residential support service legislation)
- Act on the requirements of the CMS corrective action plan issued to the Department related to the management of the state's Medicaid waiver plans
- Comply with the terms of the [Jensen Settlement](#) court case

Issue: Phase 1 implementation was to begin on January 1, 2013. However, implementation of Phase 1 was delayed at the direction of the 2012 Legislature to allow the Department to consult with the existing stakeholder group established as part of the provider standards process to gather input related to the development of an administrative cost recovery methodology to implement the provisions in chapter 245D. Development of Phase 2 has been dependent on recommendations from the *State Quality Council*, the

Rule 40 Advisory Committee, and the *Olmstead Planning Committee*, and on the development of the Department of Health's home care licensing amendment.

Action Taken in 2012: After session ended, licensing staff began working closely with Continuing Care Administration policy staff and Department stakeholders, including the Department of Health Compliance Monitoring Division, on Phase 2 of the licensure project. Because of the comprehensive nature of this project involving multiple services and populations being served, spanning several legislative sessions and requiring significant and ongoing stakeholder involvement, one licensing supervisor has been dedicated to the project and her other responsibilities temporarily assigned to other staff. Phase 2 requires the Department to integrate developmental disability services currently licensed under chapter 245B into the new standards found in chapter 245D and further develop standards specific to habilitative and rehabilitative services, including residential services, and a licensing fee structure under chapter 245D.

Licensing staff prepared materials for and participated in a webinar in October 2012 detailing the proposed changes to provider standards implemented through the creation and amendment of Minnesota Statutes, chapter 245D. The chapter 245D Amendments and Licensing Fees webinar handouts are available on the [Handouts from Past Training Opportunities page](#). Stakeholders were given options for a fee methodology under consideration by the Department and were asked to participate in a survey to provide additional input to be considered by the Department in determining the fee structure to recommend to the 2013 Legislature. The [DHS 245D License Fee Survey Results](#) are available on the Department's website.

From October through December of 2012, the Department convened a number of smaller stakeholder groups to address comments, concerns and recommendations to the draft Minnesota Chapter 245D standards. In addition, licensing staff participated as a member of the *State Quality Council* and as a subject matter expert resource for the *Rule 40 Advisory Committee*, both of which are sponsored by the Disability Services Division. Ongoing feedback from these groups has been incorporated into the Phase 2 draft of 245D pending final recommendations from either group on their issues related to chapter 245D. Licensing staff also consulted with Department staff coordinating the *Olmstead Planning Committee*. The applicable recommendations from that committee were incorporated into the Phase 2 draft of 245D. Licensing staff have worked with *Department of Health Compliance Monitoring Division* to address issues of potential crossover or conflict between the 245D standards and the Department of Health's home care amendment proposal.

Taking that input, licensing staff have continued to refine the licensure requirements and fee structure. In 2013, the Department will seek approval from the Legislature for additional standards and the establishment of a licensing fee structure for licenses issued under chapter 245D.

Legislative Proposal for 2013: The Phase 2 legislative proposal requires licensure of some currently unlicensed basic support services that provide the level of assistance, supervision, and care that is necessary to ensure the health and safety of the person. In addition to the basic support services, some currently unlicensed intensive support services directed toward the training, habilitation, or rehabilitation of the person will require licensure. Where some of these services are currently licensed, such as when they are provided to people with developmental disabilities under chapter 245B, the licensing standards will change to the statewide standards under chapter 245D.

Significant efforts were made in this proposal to develop a set of standards that promotes individualized, person-centered service planning and delivery, that allows for a balance between opportunities to be served in the most integrated settings and management of potential risks to a person's health, safety, rights. This includes new, clear requirements on how a provider must ensure the protection and exercise of individual rights, management of health service needs, monitoring use of psychotropic medication, and restrictions and prohibitions on the use of restraints, seclusion, and time out. The proposal includes standards for overall quality management of the services by the license holder and strives to move from what is typically described as "paper compliance" to demonstration of outcomes for individuals and the program and ensuring staff competence through performance.

Desired outcome: There will be a consistent statewide licensure process for home and community based services providers with consistent and equitable provider standards and improved processes to verify standards. Recipients will have increased access to, and choice of, qualified providers. Recipients will receive individualized, person-centered services evaluated on the accomplishment of outcomes, greater protection of rights and freedom from restraints, and delivery of service in the most integrated setting.

D. Redesigning the Department's Background Study Procedures

Background: As anticipated in its 2011 year End Report, the Division submitted its application for a \$3-million grant from the federal Centers for Medicare & Medicaid Services (CMS) in February 2012. The grants are available to assist states in developing a comprehensive applicant background check program for jobs involving direct patient care. Funding comes from a program created in the Affordable Care Act of 2010 to help long-term care facilities and providers avoid hiring individuals with certain criminal histories by conducting federal and state criminal background checks on job applicants. The Department learned in September that it had been approved for the grant. Minnesota is one of 19 states awarded funding.

The federal grant will enable the Department, which processes more than 1,100 background study requests a day, to conduct more comprehensive background studies on

employees providing long-term care services. The enhanced background studies will ultimately include checks against various registries including the national sex offender registry, maltreatment registries in states in which the individual has lived, licensing and disciplinary boards. Rather than relying on name and date of birth record checks, the new system will conduct fingerprint-based criminal record checks that will automatically check for criminal history in all 50 states through the National Criminal Records Repository maintained by the Federal Bureau of Investigation (FBI). The federal grant will also enable the Department to establish a state-wide infrastructure for the efficient collection and transmission of electronic fingerprint images of background study subjects, which will be used to conduct background studies and are required for implementation of the federal “rap back” process, which is explained in more detail below.

Issue: There is currently no reliable and systematic way for the Department to receive subsequent notification when subjects of previous background studies later commit crimes in Minnesota that may disqualify them for providing care. The subsequent notification process is automated for abuse and neglect findings but not for criminal activity. As a result, these individuals may be able to continue providing direct care to some of the state’s most vulnerable children and adults. In addition, the FBI plans to implement a fingerprint-based federal “rap back” process in 2014, through which states will receive automated updates when subjects of previous background studies commit new crimes in other states. Minnesota will be unable to receive such information unless its current processes are updated.

Action Taken in 2012: Applying for the federal grant was a significant step in redesigning the Department’s mandated background study system to allow for subsequent notification of criminal activity that might otherwise disqualify the person from providing care. State laws will need to be amended to fully implement the system and the Department will work closely with legislators and stakeholders on the improvements. The fingerprint-based FBI checks will begin with direct support workers employed under the Personal Care Assistance program, a service that has been identified by state and federal audits as prone to fraud and abuse. If adopted by the Legislature, the enhancements will be phased in during the three year grant period as follows:

- July 2013, the information provided to the Department by the Bureau of Criminal Apprehension will be expanded to include information regarding a background study subject’s registration in Minnesota as a predatory offender.
- July 2013, the Department will develop and implement an electronic “rap back” process through the Minnesota Court Information System that will provide for the transfer of new criminal history information to the Department relating to individuals who have been the subject of a background study.
- July 2014, the Department will change from doing checks based on name and date of birth to fingerprint based state criminal record checks for all

applicants. Fingerprints will be collected and transmitted electronically to the Department.

- By January 2015, the multi-state background studies for people working in long-term care will start with personal care assistants (PCAs) and electronic fingerprints will be sent to the FBI.
- The Department also plans to pursue expansion of the system during this time to include other potential long-term care employees, and those who provide care to children and other vulnerable adults.

Legislative Proposal for 2013: Current proposals include legislation to expand the information provided to us by the BCA to include information regarding a background study subject's registration in Minnesota as a predatory offender and develop and implement the electronic "rap back" process through the Minnesota Court Information System (MNCIS) that will provide for the transfer of new criminal history information to the Department relating to individuals who have been the subject of a background study.

Desired outcome: Consumer safety and wellbeing will be enhanced by expanding background studies to include a search of the Minnesota Predatory Offender's Registry. The enhanced system will provide the Department with automated updates when subjects of previous background studies commit new crimes in Minnesota that may disqualify them for providing care and allow a seamless interface with the State Court's information system. The use of fingerprint comparisons will remove ambiguity about whether criminal history belongs to the individual studied. These systems, when fully implemented, are expected to diminish the need for repeat background studies on individuals who change jobs over a short time span.

IV. Other 2012 Division Initiatives

The Division is impacted by and directly involved with several large-scale initiatives and changes that are currently underway or expected in the coming months. These include initiatives to increase efficiencies through continued integration of licensing enforcement with program integrity efforts and the development of eLicensing. Additionally, the Division has been working on a report due to the Legislature in January 2013 that examines the feasibility of licensing agencies that provide Personal Care Assistance services and other alternatives to enhance consumer safety while also reducing fraud. Responsibilities relating to these new efforts are in addition to the Division's overall current work responsibilities and resources. The initiatives and legislative report are listed below, with a general explanation of each.

A. Pairing licensing and program integrity enforcement

Background: The Department enforces basic health, safety, and rights of consumers through licensing, assures providers meet certain standards to be enrolled if they are going to bill for services covered by Minnesota Health Care Programs and child care assistance (herein after “public funds”), and oversees requirements to minimize misuse or abuse of public funds and, as applicable, seeks recoveries related to fraud and abuse through the Surveillance and Integrity Review (SIRs) unit. In August 2011 the Department created the Office of the Inspector General (OIG) joining a number of financial fraud and abuse investigations areas along with the Licensing Division to enhance program integrity. This reorganization has allowed the Department to increase its focus on fraud prevention and recovery, streamline its external program integrity operations, and more effectively structure staff who investigate, audit and evaluate others. The work of detecting fraud and financial abuse, particularly within the area of child care, is more frequently occurring as part of licensing reviews and site inspections, when it is determined that poor provider record keeping and inadequate documentation lead to more systemic financial irregularities.

Issue: The OIG is identifying more issues concerning program integrity and has begun working with different areas of the Department and other county and state agencies to more purposefully use licensing visits as an additional method to monitor use of public funds. In doing so, several concerns have been identified, including poor record keeping. Providers who enroll as an MHCP provider agree to maintain documentation of the services they provided to support the claims they submit.

Action taken in 2012: In the 2012 legislative session, the OIG was successful in obtaining almost all of the legislative changes highlighted in its 2011 Year End Report to more specifically address the gaps in program integrity assurances required of providers. The changes include provisions to strengthen the relationship between provider monitoring conducted by the Division with existing program integrity work. Highlights of these changes include:

- Requiring attendance record documentation for publicly funded services, including child care centers, family child care and adult day service centers.
- Requiring an applicant or a license holder that has enrolled to receive public funding reimbursement for services to comply with the registration or enrollment requirements as licensing standards. Specifies that compliance may be monitored as part of a licensing inspection or investigation. Noncompliance with these licensure standards may result in:
 - (i) a correction order or a conditional license under section 245A.06, or sanctions under section 245A.07;

- (ii) nonpayment of claims submitted by the license holder for public program reimbursement according to the statute applicable to that program;
 - (iii) recovery of payments made for the service according to the statute applicable to that program;
 - (iv) disenrollment in the public payment program according to the statute applicable to that program; or
 - (v) a referral for other administrative, civil, or criminal penalties as provided by law.
- Requiring that at the time of application for licensure or renewal of a license, if an applicant or license holder elects to receive *any* public funding reimbursement from the commissioner for services provided under the license, the applicant or license holder ***must acknowledge*** that:
 - the requirements above regarding compliance with provider enrollment are also licensing standards;
 - compliance with these standards may be monitored as part of a licensing inspection or investigation; and
 - the consequences of noncompliance with these requirements are those specified above.
 - Requiring that enrolled providers that receive Medical Assistance reimbursement and that are also licensed by the commissioner under chapter 245A have a designated compliance officer, who must be responsible for program integrity requirements that are required by the statute.

Legislative Proposal for 2013: This proposal will establish a team of OIG child care provider fraud investigators and data analysts to identify provider fraud, collect, analyze and investigate the evidence against negligent or fraudulent providers and refer the cases for criminal or administrative prosecutions. These staff will team with Licensing and Child Care Assistance Program (CCAP) staff to identify factors that raise the inference of fraudulent activity. Then, independently or in conjunction with local, state and federal law enforcement, the unit will conduct thorough investigations to determine whether a provider's activity is abusive or fraudulent.

Desired outcome: Improved fraud prevention, leading to increased investigations, prosecution, and collections of overpayments. The proposal will strengthen the agency's goal of reducing fraud, waste and abuse and will enable Licensing to provide increased oversight of high risk providers. This proposal will help ensure that the funds go to those for whom they are intended.

B. Legislative Report Examining Licensure of Personal Care Assistance Services

Background: There are currently no requirements that individuals or agencies be licensed or certified in order to provide personal care assistance (PCA) services solely to Medicaid-eligible individuals. Agencies that provide similar services to private pay and Medicare-eligible individuals, on the other hand, are required to obtain a home care license through the Department of Health (MDH). In the past, the large number of providers and the associated cost of licensing these providers have been cited as the main reasons for not adopting a licensure requirement. In 2012, the Legislature directed the Department to “study the feasibility of licensing personal care attendant services and issue a report to the Legislature no later than January 15, 2013, that includes recommendations and proposed legislation for licensure and oversight of these services.” ([Laws of Minnesota 2012, Chapter 247, Art. 4, Sec. 49](#))

As part of the Department’s [Reform 2020: Pathways to Independence](#), several initiatives were announced in 2012 to achieve better outcomes for people with disabilities, seniors and other enrollees. One key proposal includes a redesign of the Department’s current PCA program to maintain and increase independence, enhance consumer choice and provide maximum flexibility. As part of the redesign, the new program will expand opportunities that allow participants to self-direct their care and services. A key difference from the current PCA program is that recipients who choose to access services through a flexible spending model must use the services of financial management services (FMS) entity that will be under contract with the Department. Individuals choosing a flexible spending model may also choose whether to be the employer of their direct support workers. In light of the current redesign of the PCA program, it is anticipated that the number of agency providers will be reduced as participants become educated about the flexible spending model and receive the training and support they need to successfully participate in this model. The potential impact is twofold: First, there may ultimately be fewer agency providers to be licensed under the new program, as individuals opt for the flexible spending model. Second, as individuals begin using the services of the FMS entity – with some even assuming the role of employer of their direct support worker – responsibilities will need to be clarified for individuals, direct support workers and the financial management entities either in statute, through the contracts governing these support entities, or both.

Issue: In 2009 and 2010, changes were made to improve consumer protection and assure consumer health and safety through increased accountability and strengthened provider standards and training requirements for Individual PCAs. Despite those changes, the 2012 Legislature directed the commissioner of human services to propose language for licensure and make other recommendations for this service. This signals ongoing concerns about provider qualifications, individual well-being and program integrity. However, the new program is now expected to have a significant emphasis on allowing participants to control their own spending budget for services and supports, and hire,

train, supervise and dismiss their own support workers. These participants will be required to use the services of a fiscal management entity under contract with the Department. Thus, licensing provider agencies will not address support worker standards and participant wellbeing for those who choose a self-directed model.

Action Taken in 2012: The OIG participated in internal and external stakeholder meetings related to the development of the new Community First Supports and Services program that were organized by the Continuing Care Administration to understand the model being developed, to provide information on the role of licensure and to determine how other states have approached the issue of standards and oversight. The OIG completed the report on the feasibility of PCA licensure, as directed by the 2012 Legislature. This report provides a framework for understanding and addressing concerns at the state and federal level regarding participant wellbeing and fiscal integrity.

Legislative Proposal for 2013: The OIG is recommending licensure for provider agencies of personal care assistance services in the future but only after a stakeholder engagement process following the approval of the new Community First Supports and Services program by the 2013 Legislature. Depending on the scope of the services and provider requirements mandated under the new CFSS program when it is finally approved by the Legislature, it is possible that many requirements of under CFSS will look similar to current PCA enrollment requirements. Thus, a framework for regulating these provider agencies already exists. The OIG is also working with the Continuing Care Administration to develop standards for quality assurance, financial management and oversight, and measures to safeguard the safety and wellbeing of participants who choose to hire their own workers.

Desired Outcome: Provider agencies will be required to meet standards for the newly redesigned PCA program. Individuals choosing to hire their own worker and not use an agency will have clear oversight and employer standards to adhere to, and workers will have minimum training requirements they must meet to promote participant safety and wellbeing. Agencies providing financial management services will be accountable for ensuring fiscal integrity and service oversight under administrative contracts entered into with the state.

C. Expanding the Division's eLicensing System

The Licensing Division continues to work with MN.IT Services staff to identify ways to enhance and optimize the use of technology, both to increase staff efficiencies and to provide more transparency for the public and the media relating to the important functions performed by the Division. Several initiatives are being implemented, including an expansion of the Department's Licensing Information Lookup functions and the

development and implementation of an eLicensing website designed specifically to meet the needs of the Licensing Division.

1. Developing an online eLicensing system designed to meet the specific needs of the Department's Licensing Division.

The 2011 Year End Report referenced the Division's work on developing and implementing an eLicensing website, one of the Governor's Better Government initiatives. Implementation of an eLicensing pilot began more than two years ago, and it began with two counties, Ramsey and Kanabec, and involves approximately 1,200 licenses. During the process licensing staff worked closely with the counties to train them to use the system.

It was determined that the original software application identified for statewide eLicensing use was not configurable enough to meet the Division's needs, and therefore, the Division shifted to a more workable format and is making good progress.

- a. Web-based "Application for Licensure": The new software is being developed by MN.IT Services staff in close consultation with the Licensing Division as part of the Division's work to license providers of home and community based services (summarized above). Currently, relationships with these providers and the decision to allow them to offer services to consumers exist at the county level. These providers must then go through additional doorways where they are required to provide supporting credentials to obtain licensure and enroll with Minnesota Health Care Programs at the state level. The various contact points can be confusing to the provider. The Division saw an opportunity to link the licensing of providers of home and community based services with the roll-out of a web based eLicensing "Application for Licensure" that is designed specifically to meet the needs of the Division.

Building upon the lessons from the pilot project undertaken with the State's eLicensing effort, the Division's eLicensing application system is scheduled to roll out on July 1, 2013 and is expected to meet the following goals:

- 1) *Allow providers to submit a licensing application for the services beginning with certain home and community based services. (More license types will be added over the next year or two.)*
- 2) *Enable oversight at the state level to ensure providers are in compliance with consistent standards by capturing the data and storing supporting credentials.*
- 3) *Provide Workflow functionality for the Licensing function upon submission of the licensing application.*

- 4) *Ensure streamlined processes via electronic communications between a Licensor and Provider.*
- 5) *Streamline administrative activities for providers.*

In addition, it is expected to have a significant impact on the work of the Division's administrative support unit, decreasing time spent entering data and increasing accuracy of Licensing records and data.

- b. **Web-based Compliance and Monitoring:** In addition to developing a web-based application system for the public that will integrate seamlessly with our LIS database, the Division is also working with MN.IT staff on developing a web-based compliance and monitoring functionality for licensors. Currently, licensors use a paper compliance checklist that is completed by hand while onsite during a licensing review. This checklist can be up to 500 questions long depending upon the license and visit type. IT is developing a web version of the checklists that will allow licensors to carry out the inspection using almost any device that can run a browser. This system will work on or offline and will decrease the amount of time it takes to perform the visit follow up paperwork (licensing review, correction order, etc.)

The checklist application will give the Department access to citation level data immediately from both direct and indirectly licensed programs for the first time. This information will also be available for the public to view on the Division's Licensing Information Lookup website for the first time.

As a Division, we anticipate this will reduce the overall amount of time needed to investigate complaints and licensing inspections, by being able to complete more of the related paperwork onsite at the facility. Converting that process into a web-based electronic, data driven system for licensing violations will allow the Division to collect information more uniformly, enable better monitoring of work practices and trends, and provide a new level of communication with licensors and licensees. This project is still being developed and is expected to be operational in 2013.

2. **Providing the Public with Greater Access to Important Licensing Information.**

In the 2011 Year End Report, the Division highlighted the public's increased use of the Division's License Information Lookup (Lookup) function on the Department's website. Consumers now have 24/7 access to important information about licensed programs with the expansion of the [Licensing Information Lookup](#) website. Lookup provides the public with a source to identify license holders based on the type of service they provide or by location. The most frequently requested public documents about licensed programs are now online, giving

consumers quick access to important health and safety information about child care centers, group homes for people with disabilities, and a range of other services for children and vulnerable adults. The Division now posts certain license documents, issued from July 1, 2010, forward, including correction orders, licensing sanctions, and investigative memoranda. Members of the public can subscribe to email alerts when new documents are posted. The documents are in ADA compliant formats allowing people with visual impairments to access the information using technology that can read the reports aloud. Lookup provides the public with information in order to make more informed choices about providers and is consistent with the goal of open government.

In late 2012, as a continuation of the Division's efforts to provide more information to consumers and to provide more transparency around licensing actions, and in response to intense interest generated this past year over family child care infant deaths, the Division began working with a large county to develop a process for posting county correction orders issued to family child care providers using the Division's Licensing Information Lookup. This project is still being developed and is expected to be operational in 2013.

V. Conclusion

This report provided a general overview of vital functions of the Licensing Division, and provided data and trend information for each primary area of responsibility over the past four years. It highlighted four licensing trends and emergent issues for which legislative proposals are planned in 2013. The Division is actively pursuing additional licensing standards relating to sleep safety in licensed child care settings and more stringent requirements for license holders operating an opioid addiction treatment program. In addition, the Division is implementing new standards for home and community based services, and redesigning Minnesota's background study procedures to enhance the safety and wellbeing of Minnesotans using long term care services.

The report also described some new initiatives that significantly impact the work of the Division, including those related to pairing the work of licensing and information technology. These include initiatives to increase efficiencies through continued integration of licensing enforcement with program integrity efforts. Additionally, the Division has completed a report due to the Legislature in January 2013 that examines the feasibility of licensing agencies that provide Personal Care Assistance services and other alternatives to enhance consumer safety while also reducing fraud. Finally, the Division has expanded its work with MN.ITS staff to identify ways to enhance and optimize the use of technology. Several initiatives are being developed and implemented, including an expansion of the Department's Licensing Information Lookup functions and the

development and implementation of an eLicensing website designed specifically to meet the needs of the Licensing Division.

The Division's paramount purpose is at all times the protection of the health, safety, rights, and well-being of people who are served by licensed programs. While performing current licensing responsibilities and looking toward new initiatives, the Division continues to strive to improve systems and processes to enhance efficiencies and customer service. As evidenced by the data provided and trends highlighted in this report, the Division finds itself challenged with the demands to perform an increasing amount of work within the scope of its current licensing responsibilities and to assume expanded roles relating to new initiatives, and to do so within the existing organizational structure and resources.