

Office of Inspector General

Licensing Division

And

Background Studies Division

# Year-End Report

**2013**

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## Executive Summary

The Department of Human Services (DHS), in partnership with counties, licenses approximately 22,000 service providers and monitors and investigates their compliance with Minnesota laws and rules. The DHS Licensing Division (Division), located within the Office of the Inspector General (OIG), 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. Licensed programs serve thousands of people in child care centers, adolescent group homes, adult day service centers, day training and habilitation programs, as well as residential and outpatient programs for people with chemical dependency, mental illness or developmental disabilities.

The Division's work can 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.<sup>1</sup>

This Report provides a general overview of the responsibilities of the Division and data related to these functions. The report also summarizes the key outcomes of the 2013 legislative session that address issues noted in the Division's 2012 Year-End Report, and the activities by the Division to implement these changes. The 2013 proposals were broad ranging across service types; they clarify, update and expand licensing standards to be monitored by the Division, and they provide increased accountability related to public funding. In addition, 20 new licensing positions were funded by the Legislature to further the goals and mission of the Division to assist it in meeting its responsibilities under these new laws.

### Legislation passed in 2013:

- Improves child safety by providing training to enhance compliance with safe sleep practices and better protect infants receiving care in licensed settings.
- Strengthens regulation of methadone clinics by incorporating other state agency and federal standards into DHS licensing laws, making violations clearly enforceable at the state level and allowing DHS to act on violations more quickly and effectively.
- Requires licensure under new standards for over a thousand providers of Home and Community-Based Services (HCBS), and authorizes the Division to monitor for compliance and take enforcement action in settings that were previously unlicensed by the Division.

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<sup>1</sup> Over time, the scope and volume of background studies have increased significantly. In August 2013, the background study unit became its own Division within the Office of Inspector General. However, the activities and data for the Background Studies Division are included in this report.

- Strengthens the background studies processes by allowing DHS to partner with the Minnesota Court Information System (MNCIS) to electronically receive new criminal activity data on people subject to previous background studies. The Legislature also authorized DHS to access the Predatory Offender Registry (POR), sometimes referred to as the "sex offender registry," to determine whether the subject of a background study has registered as a predatory offender due to offenses committed in Minnesota or other states.

The Year-End Report offers an opportunity to examine trends over previous years.

Trends noted this year include:

- The number of infant deaths in licensed child care settings fell dramatically in 2013 from the prior two years. In 2013 there were three infant deaths in these settings, compared to nine deaths in 2012 and 11 deaths in 2011. The decrease was likely the result of a heightened awareness of family child care safety issues that resulted from the publication of information on compliance histories of child care providers on the DHS website, media coverage of infant deaths and how violations of licensing standards played a role in these deaths, and the high profile nature of the OIG's "Safe Sleep Initiative" proposed to the 2013 Legislature.
- There was a decrease in licensing inspections completed, along with an expected decrease in correction orders and sanctions issued. This was a result of a temporary refocus of licensing staff to provide technical assistance to providers of Home and Community Based services who are now getting licensed for the first time.
- The number of directly licensed programs that closed dropped significantly, from 167 programs to 112 in the past year, a 33% decrease.
- The number of licensing sanctions issued in delegated licensing programs increased by 5% in the past year to a total of 760 sanctions issued in 2013.
- The number of temporary immediate suspensions issued in the past year decreased substantially, from 16.4% of total sanctions issued in 2012 to 11.6% of total sanctions issued in 2013. A portion of this decrease maybe attributable to the decreased violations of safe sleep practices in family child care settings and the related decrease in infant deaths that is also noted.
- In regard to background studies, the number of completed studies increased by 2% over the previous year (271,476 completed studies in 2012 compared to 277,906 in 2013).
- The number of petitions for expungement of criminal records served on DHS continues to increase annually. In 2013, the Licensing legal office received 748 expungement petitions, a 10% increase from the previous year.

In 2014, the Division will focus on:

- Maintaining the decrease in infant deaths in licensed child care settings by implementing the enhanced standards and new training requirements for licensed family child care providers;
- Conducting licensing work in licensed child care centers that are identified as high risk for program integrity issues and/or fraud activity, and implementing a seamless referral system between the child care center licensing unit and the newly created OIG child care provider fraud investigation unit.
- Implementing licensure requirements under Minnesota Statutes, Chapter 245D- Home and Community-Based Services standards by providing technical assistance reviews to newly-licensed providers, and developing self-monitoring checklists for providers to help them identify where corrective action or improvement is needed before a licensing visit is conducted.
- Expanding maltreatment investigations to settings now licensed under Minnesota Statutes, Chapter 245D, and coordinating maltreatment and licensing inspections as appropriate to improve protection of the health, safety and rights of people served in these settings;
- Incorporating key federal requirements governing methadone clinics into state licensure requirements, thereby enabling the Division to respond more quickly and effectively to violations of these standards and better protect individuals being treated for opioid addiction, and
- Developing an “integrated licensing system” for regulating the providers who provide both MDH licensed home care under Minnesota Statutes, Chapter 144A, and DHS licensed home and community-based (HCBS) services under Minnesota Statutes, Chapter 245D.
- Continuing the expansion and rollout of newly developed technology and software that allows for increased electronic communication with license applicants and license holders, thereby enhancing the efficiencies of the licensing process wherever possible.

In addition, the newly-created Background Studies Division within the Office of Inspector General will continue to redesign Minnesota’s background study procedures to enhance the safety and wellbeing of Minnesotans using long-term care services by seeking legislative authority to conduct fingerprint-based searches for state criminal record checks.

The Division’s paramount purpose remains the protection of the health, safety, rights, and well-being of people 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.

## I. Introduction

The Office of Inspector General of the Department of Human Services consists of three divisions: the Licensing Division, the Financial Fraud and Abuse Division, and the Background Studies Division. 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.

This is the Department of Human Services (Department), Licensing Division's year-end report for calendar year 2013. The primary purpose of the report is to identify trends and action taken to address them, as well as other emerging issues 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 to prioritize its work and affords an opportunity to pause and assure that priorities align with the Department's vision statement of *Healthy People, Stable Families, Strong Communities* and the Division's mission (see sidebar).

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 individuals who can no longer be employed due to their history, finding people and programs responsible for maltreatment, and imposing licensing sanctions on licensed programs.

### ***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.*

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 noncompliance. Further, there are increasing expectations that information about services and providers be readily available to the public.

## **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.<sup>2</sup>

Each of these areas is described in greater detail below. The work of the Division is supported by legal and administrative support units. 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.

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<sup>2</sup> Ibid.

### **A. Directly-licensed programs**

The Division directly licenses approximately 2,500 providers in 11 different service classes. 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. Programs with the most compliance problems are visited more often. 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.

During inspections and investigations, licensors review files, policies, procedures, and other documentation required by statute or rule, and interview individual facility staff. Licensors 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 areas of noncompliance. 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. There was a decrease in inspections completed, along with an expected decrease in correction orders and sanctions issued. These decreases can be attributed in part to the actions taken by the Division's Home and Community-Based Services (HCBS) Unit to prepare for the implementation of the new 245D HCBS standards (see p. 21). In July 2013, in order to ensure staff could timely process and approve licensure applications from an anticipated 1,600 providers, the unit discontinued conducting regularly scheduled licensing reviews of 245B Developmental Disabilities Services providers. Licensors continued to investigate licensing complaint reports and provide technical assistance to 245B license holders. Other reasons for the decrease can be attributed to a period of understaffing in the licensing units that impacted work flow until positions were filled.

**Table 1 – Directly-Licensed Programs**

<b>Licensing Activity (by calendar year)</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Licensing inspections completed	1,894	1,692	1,819	1,729	1,256
Licensing complaint investigations completed	447	507	550	590	529
Correction orders issued	1,660	1,685	1,735	1,527	1,207
Licensing sanctions issued	182	227	247	239	158
First time licenses issued	179	162	176	195	194
Programs that closed	170	144	102	167	112

Types of Directly-Licensed Programs<sup>3</sup>:

*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. (171 licenses)
- *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 care and sick care for fewer than 24 hours a day in a setting that is not a residence. (1,658 licenses)

*Chemical Health and Mental Health Services:*

- *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. (372 licenses)
- *Detoxification Programs:* Detoxification programs are licensed programs that provide short-term care on a 24-hour basis for 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 licenses)

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<sup>3</sup> Provider data as of January 3, 2014.

- *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. (115 licenses)
- *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. (3 licenses)
- *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. (68 licenses)
- *Residential Treatment Facilities for Adults with a Mental Illness*: Provide a 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. (54 licenses)
- *Minnesota Sex Offender Treatment Programs*: Provide treatment for men and women who are committed, or on a hold for commitment, as sexual psychopathic personalities or sexually dangerous persons. (2 licenses)

*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 licenses)

*Home and Community-Based Services:*

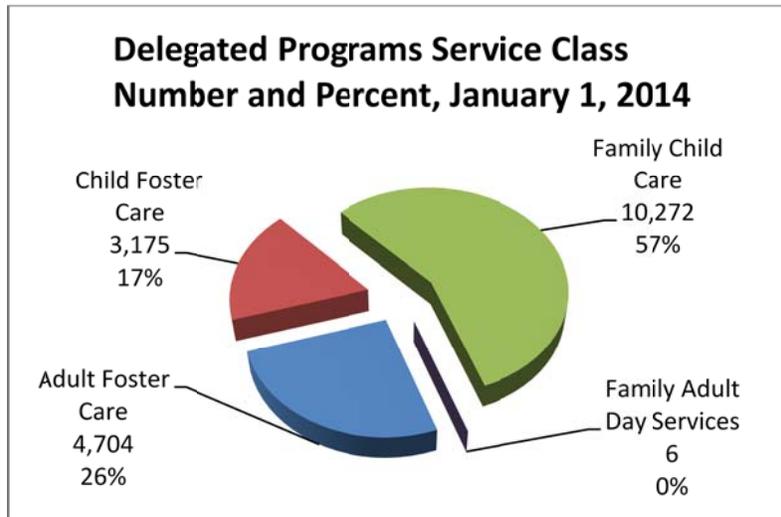
Home and Community-Based Services is a new license class that took effect January 1, 2014. Effective that date, the provider requirements for Developmental Disabilities (DD) Services currently licensed under Minnesota Statutes, Chapter 245B, were repealed and the new Home and Community-Based Services (HCBS) Standards under Minnesota Statutes, Chapter 245D, went into effect. In addition, certain services that were unlicensed, including many services provided to people on a home and community-based services waiver, will now require a license from DHS. (1,155 licenses)

**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 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, 2014.

**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 Division evaluates recommendations for sanctions made by the county licensing unit and 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.

The Division performs a number of services for the non-delegated licensing functions including 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. Division licensors also provide ongoing technical assistance and case consultation to county and private agency staff regarding performance of the delegated functions. Division licensors complete periodic reviews of each county and private agency to evaluate their compliance with delegated licensing functions and issue compliance reports.

Table 2 summarizes the number of sanctions issued to license holders and the number of new and closed programs over the last five years.

**Table 2 - Delegated Licensed Programs**

Licensing Activity (by calendar year)	2009	2010	2011	2012	2013
Licensing sanctions issued	667	510	642	725	760
First time licenses issued	2,341	1,314	2,090	1,968	1,997
Programs that closed	2,838	2,629	2,650	2,531	2,497

Within licensing sanctions issued, there was a substantial decrease in temporary immediate suspensions 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. See Figure 2. Of the 760 sanctions issued in 2013, 88 included temporary immediate suspensions (11.6% of total sanctions). This compares to 119 temporary immediate suspensions (16.4% of total sanctions) issued in 2012 and 95 temporary immediate suspensions (14.8% of total sanctions issued) issued in 2011.

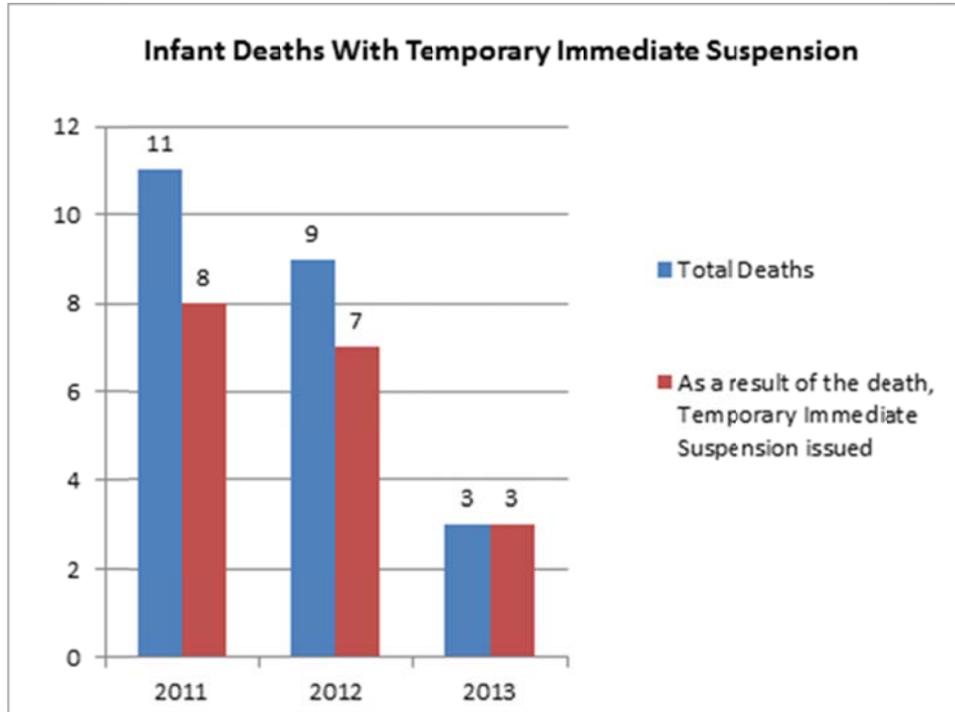
**Figure 2**



The 2012 Year-End Report discussed the increase in both (1) temporary immediate suspensions 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 and, (2) infant deaths in licensed child care settings. That report highlighted the actions the Division took in early 2012 to address this serious issue, including alerts to providers around safe infant sleep practices. In 2013, the Division implemented a multi-faceted legislative initiative to increase standards and training requirements in order to reduce these trends that garnered significant media attention. In 2013, there were three infant deaths in licensed child care settings. The heightened awareness of family child care

safety issues, the publicity surrounding noncompliance resulting in infant deaths, and DHS efforts to direct the public to the Department’s website for information on child care providers’ compliance histories are all thought to have influenced the decrease in both infant deaths and temporary immediate suspensions. See Figure 3.

**Figure 3**



### **C. Maltreatment investigations**

DHS is responsible for completing maltreatment investigations when they relate to approximately 8,755 licensed settings, consisting of DHS directly-licensed and monitored programs (approximately 4,034 licensed programs) and adult foster care homes (approximately 4,721 licensed programs). DHS investigates allegations of maltreatment of children and vulnerable adults.

The Division receives reports of alleged maltreatment through each county’s designated common entry point for reporting maltreatment and directly to the Division. 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 assigned for an out-of-office/field investigation. These investigations 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. Field investigations 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. Investigation memoranda for maltreatment investigations 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.

While the Division strives to complete more timely investigations, maintaining the integrity of the investigative work is paramount both to protect the health, safety and wellbeing of children and vulnerable adults and because significant licensing actions affecting both individuals and facilities are taken as a result of investigation determinations. To further these goals, the Investigation section of the Licensing Division restructured to separate support, report intake and report assessment from investigator functions and developed specialty teams that ensure that investigators with the greatest experience in a particular service area are assigned to investigate in those facilities. (Previously, all investigators conducted investigations of reports in any service area.)

Table 3 summarizes maltreatment investigation data over the last three fiscal years.<sup>4</sup> During a significant portion of 2013, there were as many as five vacant positions; this resulted in fewer reports assigned for out-of-office/field investigation and fewer investigations completed.<sup>5</sup> Detailed information is available in the [Fiscal Year 2013 Maltreatment Report](#) submitted to the Legislature in December 2013.

**Table 3 - Maltreatment Investigations**

General Data	FY11	FY12	FY13	Percent Change from FY12
Reports received	4,486	4,922	5,273	7%
No jurisdiction <sup>a</sup>	234	400	405	1%
In-office investigation only	846	916	829	-9%
Not assigned for further investigation	2,041	2,309	2,698	17%
Reports referred to other entity	903	952	987	4%
Assigned to DHS licensors – licensing complaint	679	589	662	12%
Reports assigned for out-of-office maltreatment investigation	785	880	718	-18%
Total maltreatment allegations in reports assigned (one report or investigation often involves more than one allegation)	1,034	1,126	906	-20%
Investigations of maltreatment completed	821	648	704	9%
Reports substantiated <sup>b</sup>	218	174	192	10%
Allegations substantiated	274	217	235	8%
Individuals disqualified from direct contact	92	57	54	-5%
Maltreatment investigations remaining open on June 30 of fiscal year	379	628	601	-4%

<sup>a</sup> Event did not occur in a DHS licensed program.

<sup>b</sup> Substantiated means that it was determined by a preponderance of the evidence that an event/incident occurred that met a definition of maltreatment.

#### 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. Background studies are governed by Minnesota Statutes, Chapter 245C. Individuals required to undergo a background study

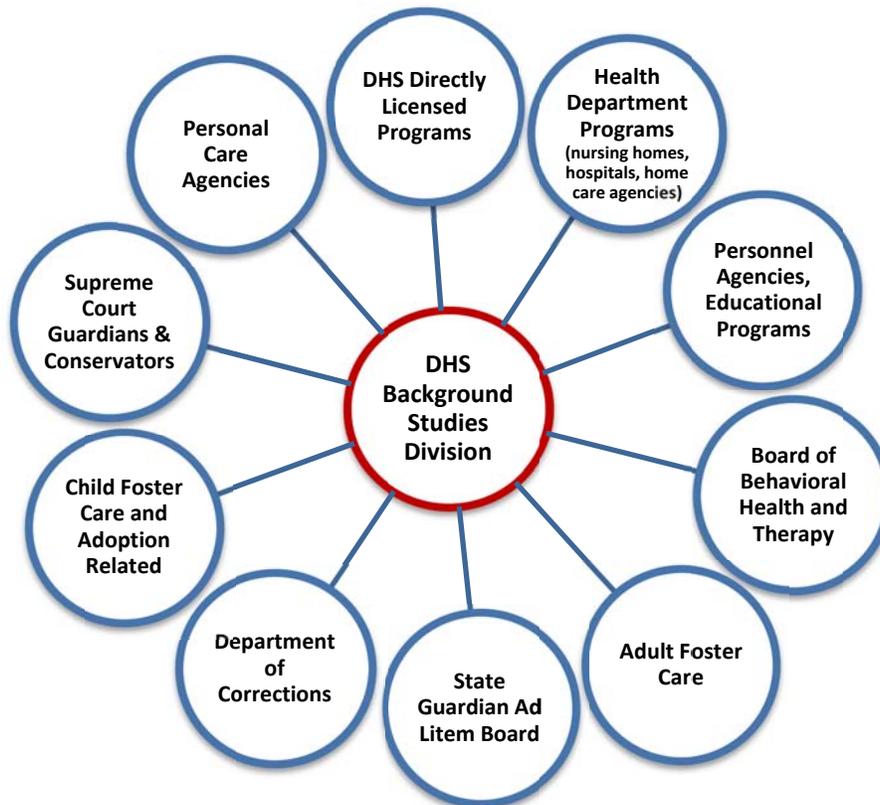
<sup>4</sup> Extensive reporting is necessary for the statutorily required Maltreatment Report which is based on fiscal year data. Due to efforts to compile those numbers, they are used in this report as well. All other data in this report are based on calendar year.

<sup>5</sup> All of those vacancies were filled in October 2013.

completed by the Division are specified under Minnesota Statutes, Section 245C.03. They 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., child care and foster care).

Figure 4 shows the range of entities that contact the Division to request a background study. Not every entity is represented here.

**Figure 4**



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. In addition, the scope of the background study is expanded when the study relates to child foster care or adoption. Those background studies include a fingerprint-based check of records from the Federal Bureau of Investigation (FBI), and a check of child abuse and neglect findings in any state the individual has resided in the past five years. The scope of the background study is also expanded when there is reasonable cause as defined in statute. In some cases, a fingerprint-based study is conducted by obtaining criminal records from the FBI; in other cases, staff review court and arrest records, and maltreatment records, from other states. The background studies statute specifies which offenses disqualify an individual from any position having direct contact with or access to persons receiving services. 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.

Table 4 summarizes background studies completed for the past five years. In 2013, more than 85% of the background studies resulted in no criminal or maltreatment information being returned, and were approved within a matter of a day or two. For the remaining 15%, Department staff were required 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. Slightly more than 2% of all studies result in a disqualification of varying duration.

**Table 4 - Background Studies Data**

<b>Background studies (calendar year)</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>
Number of studies completed	252,552	268,239	270,729	271,476	277,906

## **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 entire Division to carry out its statutorily mandated responsibilities according to 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 background study or licensing action. Essentially all background study and licensing determinations are subject to some form of due process.

Individuals who are disqualified under Minnesota Statutes, Chapter 245C 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. Hearings for the directly-licensed programs are handled by the Office of the Attorney General, and those in the delegated licensing areas are handled by the county attorneys' offices.

Legal staff review all requests for administrative reconsideration and issue decisions under a delegation from the Commissioner. Legal staff also perform many functions relating to the administrative hearings, including reviewing and assigning all appeals; drafting the Notice of and Order for Hearing for directly licensed programs; reviewing motions, briefs and decisions; assisting with hearing preparation and discovery; negotiating, drafting, and coordinating settlements; testifying at hearings; coordinating with the Attorney General's Office; drafting exceptions and requests for reconsideration; and providing extensive technical assistance and oversight to county attorneys for delegated licensed programs.

Primary responsibilities of the legal office include supporting the Background Studies Division by reviewing criminal and maltreatment records from Minnesota and other jurisdictions 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 duties include: providing legal advice and training to staff; drafting certain licensing sanctions; responding to data

requests; HIPAA disclosure tracking; overseeing civil and appellate cases; drafting and reviewing legislation; and other legal research and analysis.

The legal office also reviews all expungement petitions that are served on DHS and the Minnesota Department of Health, drafts and files written objections in District Court when an expungement may impact DHS background studies, and seals DHS records when DHS is ordered to do so. The number of expungement petitions served on DHS continues to increase annually. In 2013, the legal office received 748 expungement petitions, 10% more than in 2012.

Over the past two years, the legal unit has also taken on the responsibility of representing DHS at agency fair hearings relating to background study disqualifications and maltreatment determinations. This was begun as a pilot project and has been extremely successful.

In calendar year 2013 the Division's legal office:

- Issued 1,444 administrative reconsideration decisions
- Handled 239 requests for administrative hearings
- Received 2 appeals to the District Court
- Received 8 appeals to the Minnesota Court of Appeals
- Completed 934 preponderance of evidence reviews and analyses of criminal laws and records from other jurisdictions for background studies
- Responded to 748 expungement petitions
- Responded to 664 expungement orders
- Responded to 98 data requests and 29 litigation holds
- Represented the Commissioner in 21 appeals before Human Services judges

Administrative support. The administrative support unit generally does not provide traditional clerical support to Division staff. Its 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.

One higher level administrative staff person works more directly with licensing managers and is directly responsible for invoicing fines, licensing fees and background study fees that are based on interagency agreements; serving as the Division contact for billing questions; drafting licensing sanction orders; providing legislative support; overseeing the Division's budget; managing interoffice requisitions and payments; completing ad hoc reports; coordinating Division responses to citizen correspondence; and, performing 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**

The state's centralized IT office, [MN.IT Services](#), oversees the Division's database, referred to as the License Information System (LIS), provides technical support for electronic data management and overall technical assistance to all Division staff. The LIS database is the central repository for the Division's data and 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.

MN.IT Services is responsible for the NETStudy system which providers use to submit background studies electronically to be processed. NETStudy processes almost 1,200 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. The 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. The Licensing Information Lookup site also offers a subscription service that notifies subscribers of new licensing documents added to the site daily. Currently, there are approximately 1,200 subscribers e-mailed daily.

In 2013, [Licensing Information Lookup](#) website had:

- Over 334,000 visits to the website
- Over 1.7 million pages viewed
- Over 900 visits per day to the website
- About 4,600 pages viewed daily

## **G. Staffing**

When fully staffed, the Licensing Division is comprised of the Deputy Inspector General and 104 staff, excluding background study staff.<sup>6</sup> In 2013, the Division restructured in response to an increase in positions funded by the Legislature. These actions will allow

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<sup>6</sup> The new Background Studies Division is comprised of 35 staff and a division director.

the Licensing Division to remain more focused on responding to maltreatment allegations as well as the investigative, licensing, monitoring and enforcement activities, and due process related legal functions that are at the core of the Division's regulatory functions. It will also enable the Division to enhance its efforts to coordinate licensing and program integrity functions.

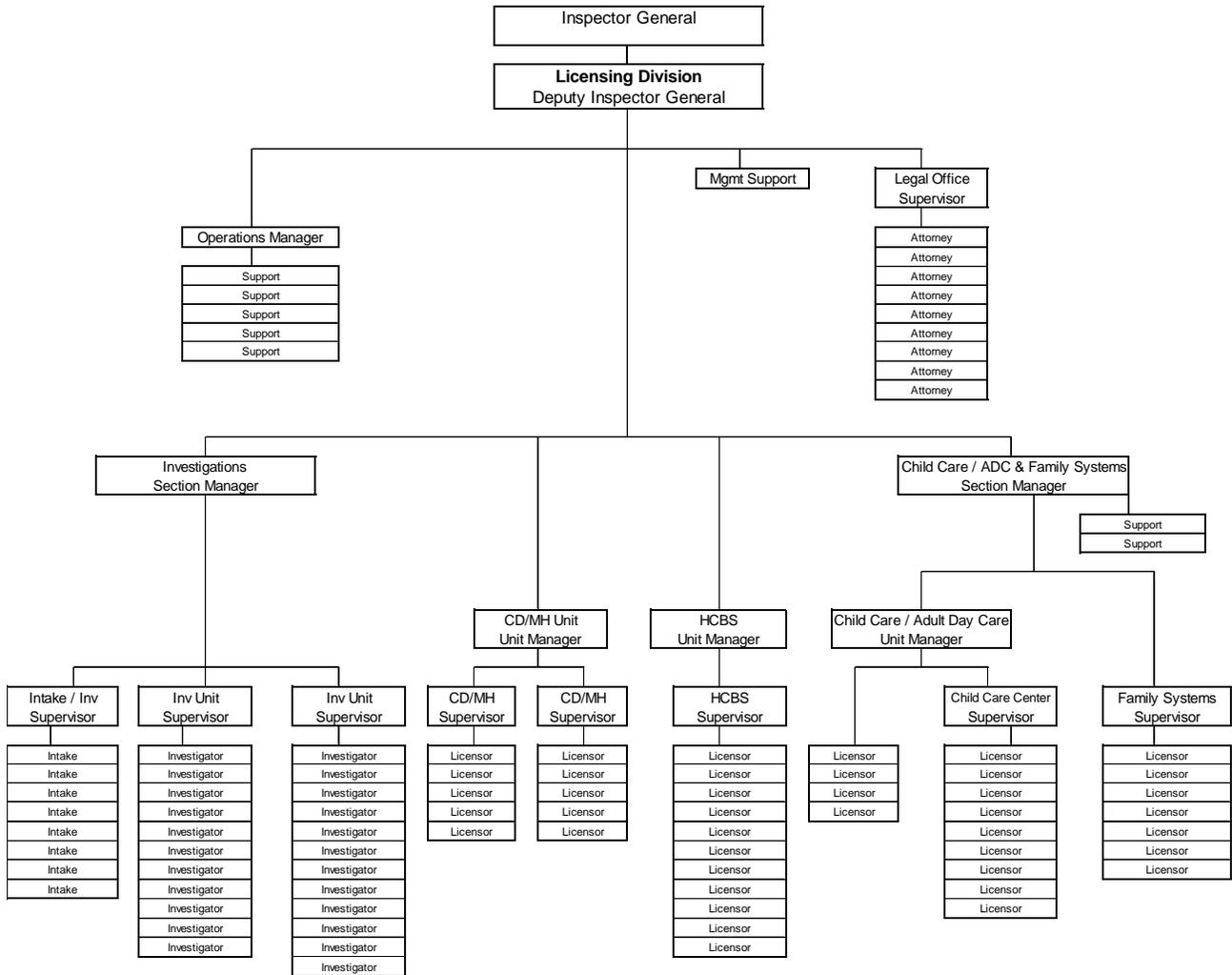
In 2013, the Division received funding for 21 new positions, including:

- Eight additional positions for maltreatment investigations. In response, the unit restructured to separate support, report intake and report assessment from investigator functions. The unit has developed specialty teams to ensure that investigators with the greatest experience in a particular service area are assigned to investigate in those facilities.
- Four additional positions for the child care center licensing unit, including two that will focus primarily on conducting licensing work in programs that are identified as high risk for program integrity issues and/or fraud activity. These new licensing staff will be responsible for inspecting, investigating, monitoring compliance, and collecting data in high risk programs and will work collaboratively with the newly-created OIG child care center provider fraud investigation unit.
- Two additional positions for the family child care licensing unit to provide regular training to county licensors who are responsible for compliance and monitoring of family child care settings, and to enhance the information available on the DHS website about family child care licensing requirements.
- Two additional positions for the 245D Home and Community-Based Services unit to oversee licensing and compliance monitoring of the new 245D-HCBS licensing standards. With the January 1, 2014 effective date of the new standards, the Developmental Disabilities Unit restructured and is now the Home and Community-Based Services Unit.
- Four additional positions to conduct additional background studies work required to meet enhanced background study requirements on potential guardians and conservators.
- One additional position for the chemical dependency treatment unit, funded by reallocating resources within the Department, will oversee provider compliance with the enhanced regulations for methadone clinics. The Mental Health/Chemical Health Unit also reorganized into two distinct sub-units, one for mental health programs and one for chemical dependency treatment programs, to enhance efficiencies and allow for specializing, with some staff cross-trained for oversight of programs providing dual diagnoses services.

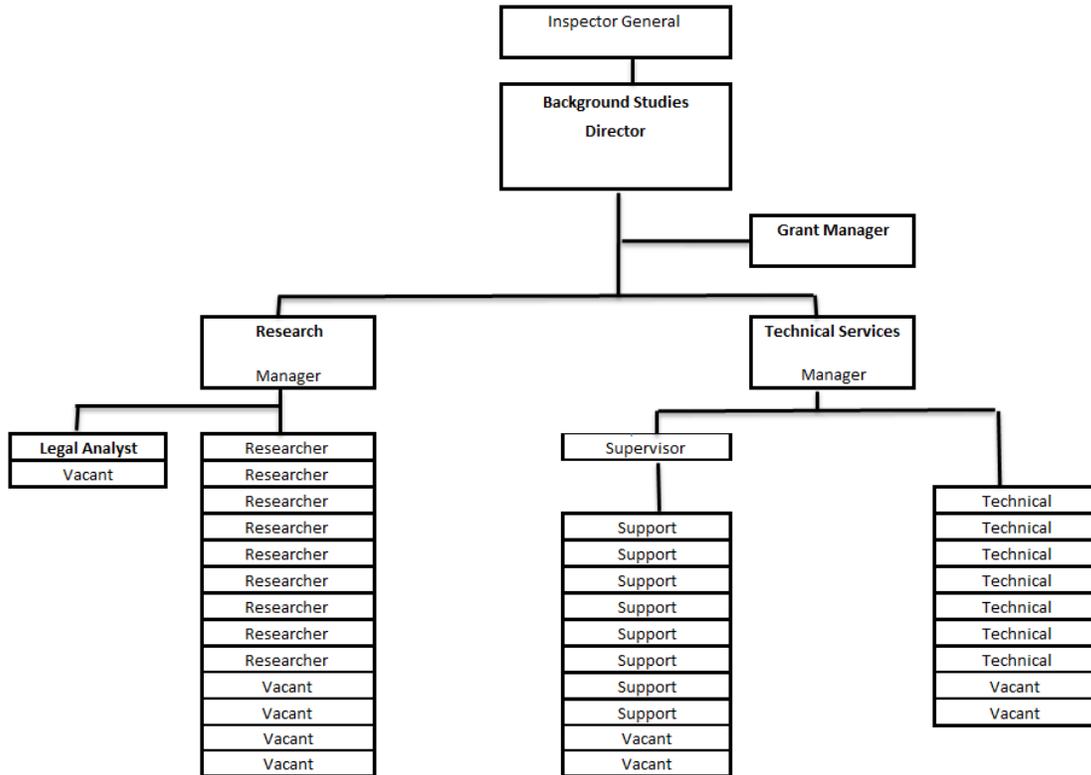
The Division further restructured in August when the background studies functions were removed from Licensing and a new Background Studies Division was created within the OIG. Although the Division has performed background studies functions as required by Minnesota law since 1991, those required to undergo a DHS study as well as the scope of

those studies have expanded significantly over time, as discussed earlier. Worth noting is that more background studies are now conducted for individuals in settings not governed by the Division than for those that are under the Licensing Division's jurisdiction. Finally, the Department was awarded a \$3 million federal background study grant in 2012 to bring significant enhancements to its background study system (discussed below and in the 2012 Year-End Report). Separating the background study functions from the work of the Division will allow staff in the Background Study Division to more nimbly implement the changes required under the grant and to develop the legislative packages for the next three legislative sessions to help meet all of the expectations of the grant.

Licensing Division Organization Chart:



Background Studies Division Organization Chart:



### III. Outcome of the Division's 2013 Legislative Initiatives

The 2012 Year End Report highlighted four significant issues that affect the customers served and the public in general:

- Infant deaths in child care settings
- Serious licensing violations at opioid addiction treatment clinics
- New standards for providers of home and community-based services
- Redesigning the background studies processes to enhance the safety and wellbeing of Minnesotans.

The Licensing Division's primary focus in the 2013 legislative session was to address these issues.

The 2013 proposals were broad ranging across service types, seeking to clarify, update and expand licensing standards to be monitored by licensing staff. The proposals also provided increased accountability related to public funding. On all of these issues, the Division worked closely with stakeholders, advocates, providers and legislators to balance the need for enhanced standards and increased regulatory oversight with the impact on providers and the costs of implementing these changes, always keeping the safety and well-being of Minnesotans using these services as the overarching goal. The following proposals were passed into law.

- A. Enhancing standards for safe infant sleep in child care settings.** Changes in child care licensing aimed at preventing deaths in child care settings were passed in the 2013 legislative session. The changes are intended to strengthen child care licensing, improve the quality and consistency of licensing oversight, improve safe sleep practices, improve and subsidize training for providers, and increase public awareness.

Key safe sleep changes passed into law:

- Requires a physician's directive for anything other than a back sleeping position by an infant.
- Allows an infant who independently rolls over to remain on tummy with signed parent statement.
- Clarifies that nothing is allowed in the crib with the infant except a pacifier.
- Clarifies that the definition of "infant" as being up to the child's first birthday.
- Outlines allowable use of swaddling.
- Encourages in-person checks on sleeping infants at specific intervals.
- Encourages the use of audio or video monitoring of sleeping infants.

Family child care provider liability insurance requirements passed into law:

- If a family child care provider carries no liability insurance, then the provider must give annual written notice to families stating this fact.
- If coverage changes, the provider must notify families immediately.
- If coverage is carried, the provider must give annual notice with the expiration date.

Training requirements passed into law: Family child care providers are required to complete 16 hours of on-going training each year. DHS must not mandate the new required trainings until available and accessible statewide.

- Requires First Aid and CPR training every two years.
- Adds Behavior Guidance to the scope of Child Development and Guidance and sets annual training requirements.
- Changes terminology of Sudden Infant Death Syndrome (SIDS) to Sudden Unexpected Infant Death (SUID) and sets annual training requirements.
- Changes terminology of Shaken Baby Syndrome (SBS) to Abusive Head Trauma (AHT) and sets training requirements.
- Requires Supervising for Safety training annually.

The 2013 Legislature also allocated resources to address inconsistencies in family child care licensing enforcement. Two new licensing positions have been created to (i) provide regular training to county licensors who conduct licensing inspections, investigate complaints of alleged licensing violations, issue correction orders, and recommend licensing sanctions to the Department, and (ii) enhance the information available on the DHS website about family child care licensing requirements.

#### Implementation Action Taken in 2013

The Licensing Division has taken the following steps to implement the 2013 changes:

- Prepared and posted a summary of the changes on the DHS website, informed county licensing agencies of the changes, and provided instruction to counties on implementation of the changes.
- Developed new forms and tools for licensed providers and county licensors.
- Began the process of hiring the additional staff allocated by the Legislature to enhance training for county licensors and enforcement efforts related to safe sleep.
- Held stakeholder meetings with family child care providers and child care centers in August to provide updates on implementation of the 2013 changes and to solicit feedback on DHS stakeholder engagement efforts.

- Worked with Governor Dayton’s Office to have issued a Safe Sleep Week proclamation for the week of September 23. DHS also partnered with various counties and legislators on safe sleep campaign efforts.
- Worked with the DHS Child Development Services Division to establish statewide accessibility to required trainings; determine effective dates for the new training requirements; and, prepare a communication plan for providers, county licensors, and trainers.
- Made changes to the Licensing crib inspection checklists to make them consistent with the federal crib standards even though the proposed crib inspection provisions did not pass into law.

**B. Enhancing Standards for Opioid Addiction Treatment Programs.** 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 needs to be accredited, like most other clinics and health-care facilities (i.e., hospitals).

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, the Division advanced a proposal to 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).

In response, the 2013 Legislature adopted a significant expansion of licensing standards that significantly increase the accountability of opioid addiction treatment programs throughout the state. The Department allocated additional internal resources for the Licensing Division to enhance program monitoring and oversight. Providers worked with DHS to refine the language and develop consistent standards; stakeholder groups testified at hearings in support of the proposal. The new laws will strengthen regulation of methadone clinics and improve treatment for people who are addicted by incorporating some federal standards into state licensing laws, making violations clearly enforceable at the state level and allowing DHS to act on violations more quickly and effectively. Specifically, the legislation adds additional requirements for all opioid addiction treatment providers to limit the potential for diversion of medications to the illicit

market, and includes changes to methadone dispensing requirements, drug testing, guest dosing, use of the prescription monitoring programs, and criteria for take-home doses. One of the important new standards requires the provider to maintain an active quality assurance program that monitors and improves client services and treatment outcomes.

#### Implementation Action Taken in 2013

The Licensing Division issued a [legislative session summary](#) of the changes and held several meetings with stakeholders to explain the new law, discuss how OIG would monitor compliance, and solicit feedback on unintended consequences that may have to be addressed in the future. The Chemical Dependency unit created a new licensing position for improved monitoring of methadone treatment programs.

#### **C. Implementing Standards for Home and Community-Based Services (HCBS).**

There are an estimated 1600 providers of services for people over 65 and people with a disability that are governed under Minnesota Statutes, Chapter 245D, Home and Community-Based Services Standards. Prior to January 1, 2014, almost half of those providers were not required to be licensed by DHS, although they did receive reimbursement for services under the medical assistance program. In addition, many of the services affected by the legislation are provided in adult foster care settings. In fiscal year 2013, 64% of all DHS maltreatment investigations were related to these settings, even though the Division had no direct regulatory oversight over them and often no oversight over the services provided within the settings.

Legislative changes passed in both 2012 and 2013 now require these providers to be licensed under Minnesota Statutes, Chapter 245D as of January 1, 2014. These changes significantly expand the scope of the Division's regulatory authority over services delivered in community residential settings and will allow the Division to better coordinate its maltreatment investigation work and its licensing standards monitoring and compliance work. The Division expects improved protections of the health, safety, and rights of clients receiving these services in the hope these changes will help curb the trend of increasing reports of alleged maltreatment.

Major accomplishments of this multi-year initiative by the Licensing Division and the Disability Services Division, working in consultation with counties, providers, consumers and advocate stakeholders, include:

- Broadening the scope of the HCBS standards in 245D beyond waiver-funded services to include all developmental disabilities (DD) services licensed according to Minnesota Statutes, Chapter 245B.
- Establishing standards, supported by providers and advocates, including the Office of Ombudsman for Mental Health and Developmental

Disabilities and the Governor's Council, that govern the use of restraints and other aversive and deprivation procedures.

- Establishing standards that support the principles and intent of the department's *Olmstead* plan.
- Establishing standards allowing an optional adult mental health certification for providers serving people with mental illness in community-based settings.

The Legislature also allocated funding for additional positions within the Licensing Division to assist with monitoring and enforcing the new 245D standards. The number of investigations is expected to rise as more services delivered in these settings are under licensure. To ensure that the Division has adequate resources to meet the anticipated increase, the Legislature approved funding for eight additional maltreatment investigation-related positions and two new 245D licensors in both state fiscal years 2014 and 2015.

#### Implementation Action Taken in 2013

There are an estimated 1,600 providers of services to be governed under Minnesota Statutes, Chapter 245D. Almost half of those providers were not previously required to be licensed. Therefore, the Licensing staff participated in a significant outreach effort to educate these providers about the new requirements for licensure. In addition,

- Staff worked closely with staff in the DHS Disability Services and Provider Enrollment Divisions, along with county agencies, provider groups and stakeholders, to develop webpages, host webinars, and provide other information for providers to help them determine whether they needed to apply for a 245D-HCBS license.
- Licensing Division staff worked closely with MN.IT Services staff to build online, web-based applications for three distinct provider groups affected by the roll-out of 245D standards.
- The Division launched the online application in stages beginning July 1; by early October, all three provider applications were available on the website.
- In spite of some technology challenges and delays, staff processed and approved for licensure by December 31 all applications that met the conditions for licensure. These providers were able to provide services to vulnerable adults and children without interruption after January 1. The work and dedication of the entire HCBS Unit was extraordinary in rising to the challenge and assisting providers as they attempted to navigate a

new web-based application system. In all, 1,155 applications were processed and approved by December 31.

Additional IT system improvements will continue to be rolled out over the next year to facilitate oversight of 245D licensed services. One example is the remote data entry functionality that will allow licensing staff to electronically record site visit information, upload it into the Division's database, and generate correction order letters that will only require minimal editing to issue. After rollout for 245D oversight, these features will be modified for implementation across all service types. As the Division seeks to develop additional web-based applications, the lessons learned from this inaugural e-Licensing effort will inform future efforts and allocation of resources within the Licensing Division and MN.IT Services.

**D. Strengthening the Department's Background Studies Procedures.** Legislation advanced by the Department in 2013 sought to close some gaps in the information being accessed for background studies. For example, there are individuals who are the subjects of a background study who are required under Minnesota's predatory offender registration law to register as a predatory offender because of crimes in other states. However, if they have no Minnesota criminal history, those out-of-state crimes were not detected under the existing background study system. To close this gap, the Legislature authorized DHS to access data maintained by the Department of Public Safety on individuals required to register under Minnesota's predatory offender registration law for purposes of conducting background studies under Chapter 245C.

Another notification gap involved individuals who already have had a background study and later committed crimes in Minnesota that could disqualify them from providing care. As a result, these individuals may be able to continue providing direct care to some of the state's most vulnerable children and adults. DHS now has the authority to receive new criminal offense information from the Minnesota Court Information System (MNCIS) through an electronic notification system currently under development. This will enable DHS to develop and implement an electronic "rap back" process for Minnesota crimes committed by individuals who have been the subject of a background study.

Finally, the Legislature also enacted new background study requirements on potential guardians and conservators. The legislation changed the requirement for conducting FBI criminal history checks on proposed guardians or conservators to include those who resided outside of Minnesota within the past ten years. Previously, FBI checks were only required of those who had resided outside the state during the previous five years. To meet the additional work associated with

these changes, the Legislature allocated funding for four additional positions in the Background Studies Division.

#### Implementation Action Taken in 2013

Since receiving the grant funding, the Department has made a significant effort toward enhancing its current background study system and implementing legislation passed in 2013. Work completed under the grant in 2013 included:

- The Department completed its IT system modifications in the fall and began accessing information from the state's Predatory Offender Registry as part of the information received from the Bureau of Criminal Apprehension when completing a background study. Results of this database search are now being used in background study determinations.
- The Department expects to complete systems work in March 2014, to receive information from the MNCIS. This will automatically notify the Department when previously approved background study subjects subsequently commit crimes in Minnesota that may disqualify them. This will result in a more reliable method of receiving updated criminal history information and increasing the length of time the background study is valid.
- The Department conducts outreach to a wide range of stakeholders to solicit feedback on the proposed design of the new background study system. Since spring 2013, the Department has sought considerable stakeholder feedback on the enhancements to the background study system contemplated under the grant and is currently working with a small group of nursing facility providers to test and implement an updated version of NETStudy, the on-line system that providers use to initiate background studies.
- The Department updated software and computer systems to support the background study enhancements; this work will continue through the grant period.

#### **IV. Looking Forward: Division Initiatives for 2014**

The Division is impacted by and directly involved with other initiatives and changes that are underway or expected in the coming months. These include initiatives to:

- Establish a state-wide infrastructure for the efficient collection and transmission of electronic fingerprint and photo images of background study subjects
- Increase efficiencies through continued integration of licensing enforcement with program integrity efforts, and
- Develop an integrated licensing system for certain providers licensed by both DHS and MDH, described below.

**A. Continued Redesign and Enhancement of the Background Studies Processes.**

The 2011 and 2012 Year-End Reports included information and updates on the \$3 million grant from the federal Centers for Medicare & Medicaid Services (CMS) that was awarded to the Department in September 2012. The grant, provided under the National Background Check Program, is propelling a major evolutionary advancement of the Department's 25-year commitment to background studies on direct care workers serving people who are elderly, people with disabilities, and children who rely on their care. Rather than relying on name and date of birth record checks, the enhanced background study system will use fingerprint-based searches for state criminal record checks and will automatically check for criminal history in all states when the person has a criminal record in Minnesota. This will be expanded in the future to include record searches through the National Criminal Records Repository maintained by FBI and will apply regardless of whether the person has a criminal record in Minnesota. These improvements are expected to be achieved without an increase in background study fees.

The resources provided through the grant will be used to develop systems and processes that will:

- Increase consumer protection through more comprehensive background studies that will apply to long-term care, child care, and other providers;
- Permit workers with cleared studies to be hired immediately;
- Create administrative efficiencies for providers; improve criminal record searches and reduce processing time;
- Simplify processes and essentially eliminate "repeat" studies.

Legislative Proposal for 2014 The Background Studies Division requires legislative authority to move forward with the next significant steps of the background study enhancements: requiring fingerprints of all background study subjects for state criminal record checks and conducting fingerprint-based FBI record checks of personal care attendants.

Once fully implemented, the enhanced system essentially will create a "one and you're done" background study for nearly all positions in health and human services and for providers of center-based child care services. The FBI is developing a system that would automatically inform the Department when a background study subject who had a fingerprint-based FBI record check commits a subsequent crime in any state. The system is specifically being designed to accommodate non-criminal justice background study subjects. The FBI expects the system to be available in the summer of 2014. For federal rap-back to be operational in Minnesota, the state's BCA will need to complete systems programming which will occur after 2014.

Because the Department will be automatically informed if people in the background study system commit crimes that would disqualify them, there is no longer a need to update criminal history checks through repeat background studies. The system also creates administrative efficiencies for providers, reduces hiring time, and provides a much more robust and comprehensive study. Vulnerable adults and children who receive services will be better protected as a result of more thorough studies that are subject to ongoing updates.

**B. Ongoing Coordination of Licensing and Program Integrity Enforcement.**

At the request of the OIG, the 2013 Legislature approved establishing a team of child care provider fraud investigators to work with child care assistance program staff, licensing staff, as well as law enforcement personnel in various government entities, to increase accountability related to the Child Care Assistance Program. The Licensing Division received funding for two additional child care licensors to oversee and investigate noncompliant child care providers. These positions will be specialized licensors who will focus on conducting licensing work in programs that are identified as high risk for program integrity issues and/or fraud activity. High risk providers will be identified through reports received from outside sources, analysis of child care assistance data, and licensing inspections and complaint investigations conducted by the child care center licensing unit.

The program integrity/fraud work will involve the development and implementation of a seamless referral system between the child care center licensing unit and the child care provider fraud investigation unit. Two specialized licensing positions will work closely with the OIG child care provider fraud investigation unit, as well as other fraud prevention and law enforcement agencies, to conduct joint licensing and fraud investigations.

In addition, during the 2012 Session, the Licensing Division was authorized to monitor for compliance the enhanced rate criteria for chemical dependency providers who indicate they are delivering these services and meet all of the requirements to receive the enhanced rate under Minnesota Statutes, section 245B.05, subdivision 5. There are approximately 350 licensed chemical dependency treatment programs, and about half of them are enrolled as providing co-occurring disorder treatment for the enhanced rate. By transferring the responsibility for monitoring these standards to the Licensing Division, the scope of the licensing review, monitoring, related actions, and due process was expanded. Licensors can now conduct reviews related to the rate enhancement standards as part of the licensing and ongoing monitoring processes.

With this new authority, the Licensing Division in 2013 began reviewing chemical dependency treatment programs for compliance with rate enhancement requirements to determine whether some programs billing for the enhanced rate

were billing for services they had not actually provided or were not qualified to provide. The initial monitoring and compliance activities of a small number of providers highlighted a need for provider training on billing requirements for both the base rate as well as any enhanced rate for which a provider may be claiming eligibility; several of these providers had significant record-keeping deficiencies, raising questions of billing irregularities.

Licensing staff began working closely with the OIG's Financial Fraud and Abuse Division and the Department's Alcohol and Drug Abuse Division (ADAD) to determine how to address these issues, ranging from additional training to referral for recovery of payments. A bulletin is being written to provide clarification and guidance on the billing requirements and staff qualification irregularities noted in the initial licensing inspections. The Division intends to continue its monitoring activities of these chemical dependency treatment providers in 2014, making referrals to the Financial Fraud and Abuse Division when warranted.

- C. Integrated Licensing Systems: MDH Home Care and DHS HCBS Licensing.** The 2013 Legislature authorized the Minnesota Department of Health (MDH) and DHS to develop an "integrated licensing system" which includes a joint regulatory agency mechanism for regulating the providers who provide both MDH licensed home care under Minnesota Statutes, Chapter 144A and DHS licensed home and community-based (HCBS) services under Minnesota Statutes, Chapter 245D. Recommendations and proposed legislation must be submitted jointly by the state agencies to the 2014 Legislature.

The integrated licensing system will allow an MDH licensed home care provider to also provide home and community based services without having to obtain a second license from DHS. The integrated licensing system will affect approximately 140 MDH licensed home care providers who would otherwise also have to obtain a DHS home and community based services license.

It is important to note that MDH licensed home care services and DHS licensed home and community based services are *different* services; there is no overlap of services. Nonetheless, the goal is to have one license. The two agencies will work together in the oversight of these providers.

During 2013, the Licensing Division worked with the MDH Compliance Monitoring Division to develop an Interagency Regulatory Framework that promotes timely, consistent, and proactive interagency communications and collaboration on legislative or policy proposals and federal agency requirements that intersect with regulatory programs and policies across both agencies. The agencies worked on improving their websites to help the public determine which agency licenses which services and when a provider might need a license from

each agency. In addition, the agencies created an implementation team to identify, analyze, and make recommendations to the leadership steering committee. This team assigns and oversees work assignments to lead staff in the regulatory divisions or others as may be needed. The team is composed of program management staff from each agency.