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DEPARTMENT OF HUMAN SERVICES

LICENSING DIVISION

LEGISLATIVE REPORT

MALTREATMENT REPORT

(Minnesota Statutes, section 626.557, subdivision 12b)

MARCH 2004

COST OF PREPARING THE REPORT

The cost of preparing this report is provided to comply with the requirements of Minnesota Statutes, section 3.197, which states:

3.197 Required reports. A report to the legislature must contain, at the beginning of the report, the cost of preparing the report, including any costs incurred by another agency or another level of government.

This report was prepared by staff from the Department of Human Services, Division of Licensing. No outside consultants assisted in the development of this report.

It took approximately 100 hours of staff time to prepare the report. Based on average per hour compensation of staff, including benefits, the staff costs for preparing the report is \$3,000.

The cost of printing and distributing 20 copies of the report is estimated to be \$30. The report will also be available to the public on the Department of Human Services, Division of Licensing web site (<http://www.dhs.state.mn.us/licensing/>).

The total cost of preparing, printing, and distributing this report is \$3,030.



LEGISLATIVE DIRECTIVE

Minnesota Statutes, section 626.557, requires DHS to annually report to the Legislature and the Governor information about alleged maltreatment in licensed facilities.

Minnesota Statutes, section 626.557, subdivision 12b, paragraph (e), states:

Summary of reports. The commissioners of health and human services shall each annually report to the legislature and the governor on the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigation under this section, and the resolution of those investigations. The report shall identify:

- (1) whether and where backlogs of cases result in a failure to conform with statutory time frames;*
- (2) where adequate coverage requires additional appropriations and staffing; and*
- (3) any other trends that affect the safety of vulnerable adults.*



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DEPARTMENT OF HUMAN SERVICES LEGISLATIVE REPORT MALTREATMENT

I. EXECUTIVE SUMMARY

The focus of this report is the investigation of maltreatment in the Department of Human Services (DHS), Division of Licensing directly licensed programs (approximately 4,000 programs) and adult foster care homes (approximately 4,000 homes). This is the second annual report required under Minnesota Statutes, section 626.557, subdivision 12b.

Key Data

The report provides information on the following: general trends in the number of reports received, assessed, and investigated; allegations substantiated and action taken by DHS; information on the effect of maltreatment on vulnerable adults and children; resolution of investigations; conformance with statutory time frames; progress made on the backlog of cases; and adequacy of resources.

Numbers of Reports Received

The data shows:

- An increase in the number of reports of suspected maltreatment of vulnerable adults and children received and assessed by DHS from approximately 3800 in FY 02 to just over 4000 in FY 03 (9 percent increase).
- A continuing increase in the number of reports receiving a telephone investigation from 1449 in FY 02 to 2172 in FY 03 (72 percent).
- A slight decrease in the number of reports assigned for field investigation from 695 in FY 02 to 673 in FY 03. This follows a significant increase in the number of reports assigned for field investigation from 650 in FY01 to 695 in FY 02.

Serious Issues

The data shows that the effect of alleged maltreatment on the vulnerable adult and/or child victim is often serious. In FY03 there were:

- 22 allegations assigned for investigation where the alleged maltreatment preceded or caused a vulnerable adult or child's death (FY02 27);
- 43 allegations where a vulnerable adult or child sustained a serious or life threatening injury (FY02 32);
- 83 allegations where a vulnerable adult or child was sexually abused (FY02 114); and
- 80 allegations where a vulnerable adult or child sustained a moderate injury (FY02 61).

Comparison of the total number of reports with the most serious impact on the vulnerable adult or child shows that there were 234 in FY02 and 228 in FY03. In FY03 allegations of the most serious effects of alleged maltreatment on the vulnerable adult and/or child victim decreased slightly.

Number of Investigations Completed

The number of field investigations completed by DHS per year for the previous 6 years averaged 570. FY02 had the lowest number of field investigations completed (425) due primarily to staffing shortages. The number of field investigations completed in FY 03 was 715; an increase of 20% from the average number of field investigations completed in the preceding 6 years.

Issues Affecting DHS Output

The 2001 Legislature reviewed the workload and product of this Department function and provided an increased appropriation of \$359,000 in FY02 and \$277,000 each year thereafter. Staffing issues significantly affected the number of investigations, 425, that were completed in FY02. Toward the end of FY 02 six new positions were created and filled in the Intake and Investigations Unit, and two positions that had been left vacant due to a hiring freeze were filled. The hiring and restructuring of duties facilitated the increase in the number of field investigations completed, from 425 to 715.

There were three positions vacated during FY 03 and two already in FY04. As a result of a hiring freeze all of these positions were only recently filled in November 2003 and there are again resources redirected to the training of new investigators.

Improvements Made and Planned to Increase Output

During FY02 DHS received additional resources and reorganized duties to maximize the effectiveness of the increased resources. Specifically, DHS:

- hired and trained six additional investigators and filled two positions that had remained open as a result of a hiring freeze;
- centralized the report intake functions and restructured related duties within the division;
- developed and implemented technological changes; for example, beginning in September 2002 reports of alleged maltreatment were received electronically from Hennepin County. This increased efficiency by reducing data entry and reduced cost for Hennepin County.

During FY03 DHS continued to refine the centralization of functions and newly hired investigators gained experience which enhanced the Division's ability to complete more investigations in a timely manner. Timely completion of reports will continue to be an issue until the backlog of reports needing investigation is completed. With current resources and no staff turnover this is still approximately two to three years away.

The effective and efficient utilization of resources positions DHS well to continue to conduct thorough and objective investigations of reports of alleged maltreatment. However, on-going staff turnover continues to significantly impact DHS's progress in this area.

II. INTRODUCTION AND BACKGROUND*

The Minnesota Department of Human Services (DHS), in cooperation with counties, licenses approximately 28,000 service providers and monitors and investigates their compliance with Minnesota laws and rules. The purpose of licensing is to protect the health, safety, rights and well-being of those receiving services by requiring that providers meet minimum standards of care and physical environment. Licensed programs serve thousands of people in child care centers, adolescent group homes, day training and habilitation programs, and residential and outpatient programs for people with chemical dependency, mental illness or developmental disabilities. The focus of this report is the investigation of maltreatment in DHS directly licensed programs (approximately 4,000) and adult foster care homes (approximately 4,000) licensed by DHS which, except for maltreatment investigations, are monitored by counties.

The statutes most relevant to investigating maltreatment are Minnesota Statutes: section 626.557, the Reporting of Maltreatment of Vulnerable Adults Act (VAA); section 626.556, the Reporting of Maltreatment of Minors Act (MOMA); Chapter 245A, the Human Service Licensing Act (HSLA); and Chapter 245C, the Human Services Background Study Act. From 1995 to the present there have been significant changes to both the VAA and the MOMA. Some of these changes made DHS the sole agency responsible for investigating reports of maltreatment in DHS directly licensed programs and in adult foster care homes. All adults served in DHS licensed programs, except for outpatient chemical abuse treatment programs and the two sexual psychopath programs, are categorically "vulnerable adults" under the VAA.

Also since 1995, additional statutory changes increased the complexity of investigations by initiating a sophisticated appeal process and requiring extensive notifications of actions taken. Because statutory background study requirements direct DHS to disqualify people from providing direct contact service when they are found responsible for some types of maltreatment, the changes have also addressed standards for determining who was responsible for maltreatment. Today each investigation must determine:

- what actually happened;
- whether the event met the definition of maltreatment;
- whether an individual or facility was responsible for substantiated maltreatment;
- whether the maltreatment was serious and/or recurring; and
- whether action was necessary to reduce the chance of recurrence of the event to protect the health and safety of vulnerable adults and children.

Most investigations include a visit to the program, many interviews, and the review and collection of a variety of documents. The complexity of investigations requires an extensive training period for new investigators and limits the number of investigations each investigator can adequately complete. A trained investigator is expected to complete approximately 50 investigations per year. This includes time in appeals such as assisting in preparation for, and testifying at, administrative hearings.

* There are minimal changes to this section since there were no legislative or other changes to the work required.

III. CURRENT STATUS AND TRENDS

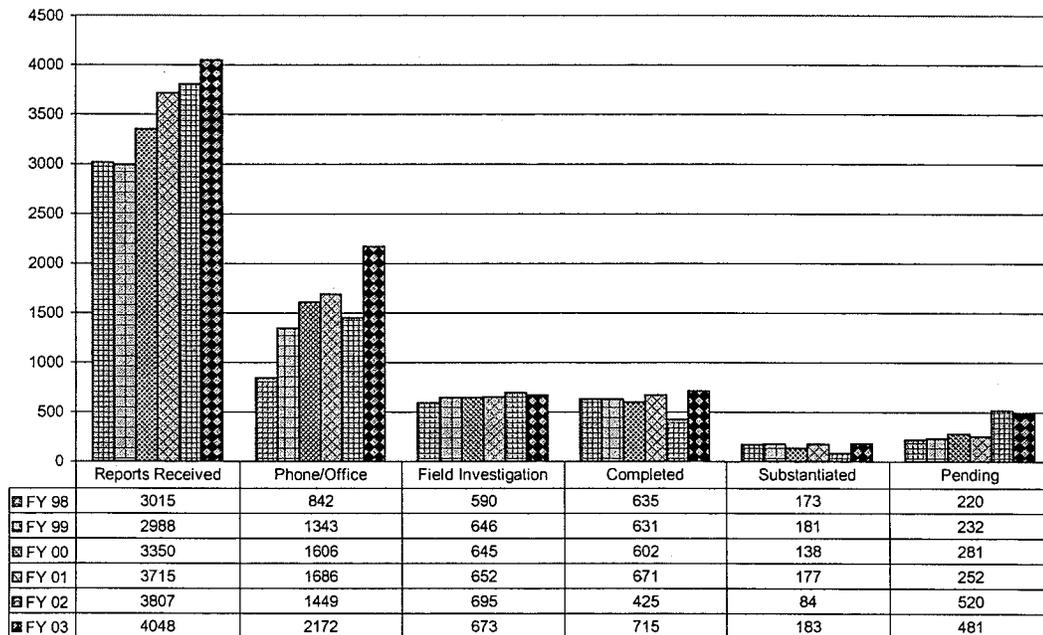
A. Reports assessed

The number of reports of suspected maltreatment of vulnerable adults and children received by DHS each year increased from approximately 3000 in FY 98 to almost 3800 in FY 02 (33 percent increase). In FY03 there was an increase of 9 percent to just over 4000. Reporters of maltreatment include county staff members, family members of vulnerable adults and children, staff members of licensed programs, other professionals working with people receiving services, and community persons.

Following are trends identified in recent data:

- The number of reports receiving a **phone investigation** continues to increase and went from 1449 in FY02 to 2172 in FY 03 (33 percent increase).
- The number of reports **assigned** for maltreatment field investigations was generally unchanged in FY's 99, 00, and 01, approximately 650, and then increased in FY02 to 695. In FY 03 there was a slight decrease in the number of reports assigned for field investigation from 695 to 673.
- The number of investigations **completed** per year over the preceding 6 years averaged 570. FY02 had the lowest number of investigations completed (425) due primarily to staffing shortages. The staffing issues included staff turnover, a hiring freeze that resulted in unfilled positions, a strike by MAPE employees, and redirection of some staff resources to train new investigators. See Figure 1 for an overview of reports received, reports receiving office or field investigations, reports substantiated, and reports pending.

Figure 1 Maltreatment and Abuse Reports and Investigations by Fiscal Years



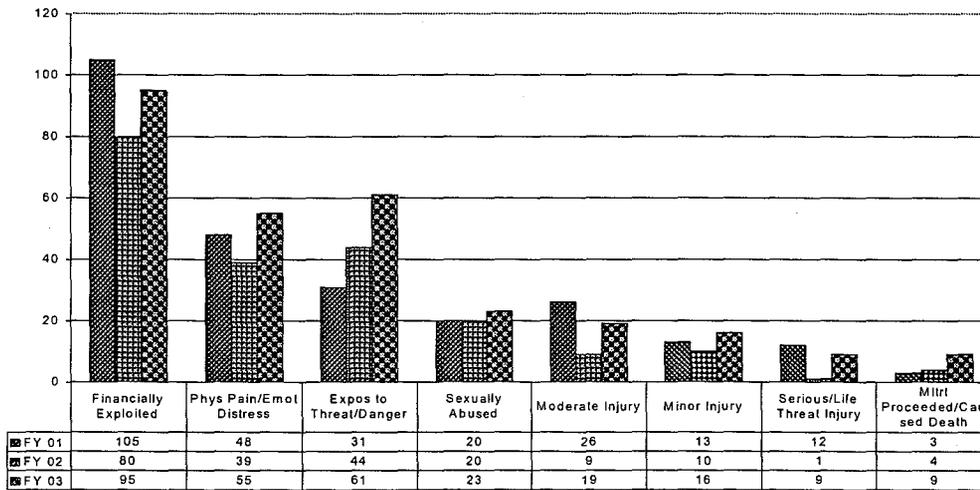
B. Effect of Alleged Maltreatment on the Victim

The Department tracks the effect of alleged maltreatment on the vulnerable adult or child victim by using the statutory definitions of maltreatment. Each report may include more than one allegation (average of 1.4 allegations per investigation in FY03). This means that there can be more than one effect on the vulnerable adult or child victim on each report assigned for field investigation. For example, it may be alleged that a vulnerable adult was both financially exploited and physically abused.

Figure 2 below shows the effect of maltreatment on the vulnerable adult or child victim in investigations completed in FY01, FY02, and FY03 where DHS substantiated that maltreatment occurred. Since the number of investigations completed in FY02 was significantly lower than those completed in FY03, FY03 data was compared to the average of FY01 and FY02 data to identify trends. General trends include:

- a slight increase in the number of investigations that substantiated that the vulnerable adult was financially exploited (FY01 and FY02 average 92.5, compared to FY03 total of 95);
- an increase in cases that substantiated that the vulnerable adult or child victim experienced or could reasonably have been expected to experience physical pain or emotional distress (FY01 and FY02 average 43.5, compared to a FY03 total of 55);
- a significant increase in cases that substantiated that the vulnerable adult or child victim was exposed to threat or danger (FY01 and FY02 average 37.5, compared to a FY03 total of 61);
- an increase in cases where the vulnerable adult or child victim was sexually abused (FY01 and FY02 average 20, compared to a FY03 total of 23);
- a slight in the number of cases that substantiated that the vulnerable adult or child victim sustained a moderate injury (FY01 and FY02 average 17.5, compared to a FY03 total of 19);
- an increase in the number of cases that substantiated that the vulnerable adult or child victim sustained a minor injury (FY01 and FY02 average 11.5, compared to a FY03 total of 16);
- an increase in cases that substantiated that the vulnerable adult or child victim sustained a serious or life threatening injury (FY01 and FY02 average 6.5, compared to a FY03 total of 9); and
- a significant increase in the number of cases where maltreatment preceded or caused the vulnerable adult's or child victim's death (FY01 and FY02 average 3.5, compared to a FY03 total of 9).

Figure 2 Maltreatment Substantiated by Effect on Victim by Fiscal Years

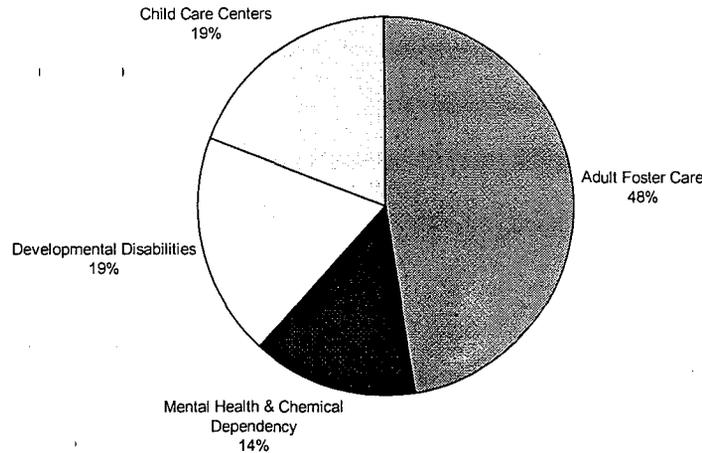


C. Type of program/vulnerability of victim

The data shows:

- In FY03 approximately 70 percent of reports assigned for field investigation involved a vulnerable adult and approximately 30 percent involved a child. In FY02 approximately 66 percent of reports assigned for field investigation involved a vulnerable adult and approximately 33 percent of reports involved a child.
- Figure 3 shows that in FY03 the number of reports assigned for field investigation was: child care centers - 19 percent; programs serving persons with developmental disabilities - 19 percent; programs serving persons with mental illness and chemical dependency - 14 percent, and Adult Foster Care homes - 47 percent. These numbers show a slight decrease in the investigations assigned in Adult Foster Care homes (FY02 49%) and programs serving persons with mental illness and chemical dependency (FY02 16%) and a slight increase in investigations assigned in child care centers and programs serving persons with developmental disabilities (FY02 17%, 18% respectively).

Figure 3 Type of Programs Where Victim of Reports Assigned for Investigation Received Service (FY 03)



IV. RESOLUTION OF INVESTIGATIONS

Determinations: Under the maltreatment reporting and investigations statutes and under the licensing statutes, various types of resolutions are possible at different stages of the investigation. These include an initial determination, a determination of whether maltreatment occurred, and a determination as to whether action is necessary to decrease the risk of recurrence of maltreatment.

A. Initial Determinations

The initial resolution of investigations includes one of the following three determinations: no jurisdiction because the event did not occur in a DHS licensed program; further investigation is not necessary because the event does not meet a statutory definition of maltreatment and does not represent a possible licensing violation; or the report is assigned for further investigation.

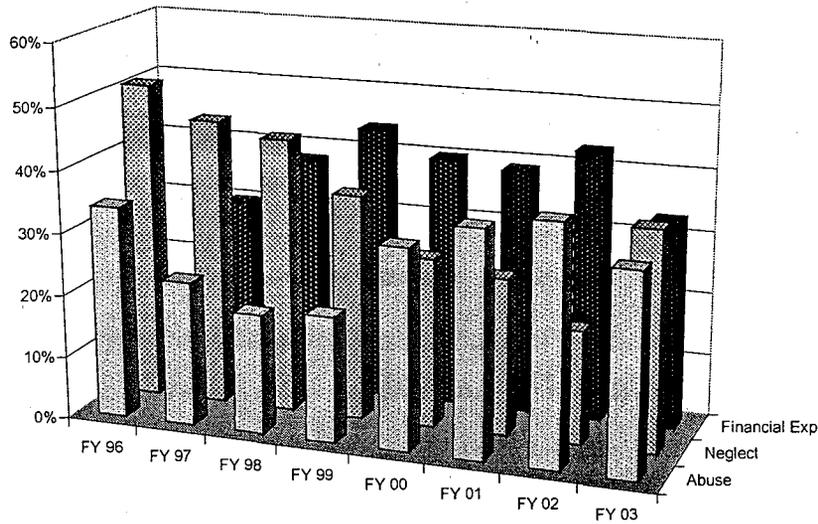
B. Did Maltreatment Occur

As stated earlier, each report assigned for further investigation will result in a determination of whether or not maltreatment occurred. If maltreatment occurred there is a determination of whether an individual(s) or facility was responsible for the maltreatment, whether the maltreatment was serious and/or recurring, and whether any action was necessary to reduce the risk of recurrence. The determinations of whether or not maltreatment of children occurred include: "maltreatment determined" or "maltreatment not determined." Determinations for vulnerable adult maltreatment include: "substantiated," "inconclusive," "false," or "no determination will be made."

A review of **substantiated reports and allegations** shows the following:

- Prior to FY02 the percent of reports substantiated had remained relatively stable; averaging 26 percent until FY02 when the percent of substantiated reports declined to 20 percent. In FY03 the percent of substantiated reports was again 26 percent. See Figure 1 on page 5.
- Historically, approximately one-fourth of substantiated findings determined that a facility was responsible for the maltreatment and approximately three-fourths determined that an individual was responsible. In FY03 facilities were responsible for approximately 15 percent of substantiated findings and individuals were responsible for approximately 85 percent of substantiated findings.
- Over the past eight fiscal years the percent of investigations that substantiated:
 - abuse declined from FY96 to FY98, remained about the same in FY98 and FY99, then increased through FY02, and decreased in FY03;
 - neglect declined from FY96 through FY02, then increased in FY03; and
 - financial exploitation increased from FY96 through FY99, then decreased each year through FY03.
- In FY03 substantiated abuse comprised 32 percent of the total allegations completed and substantiated, while neglect allegations were 35 percent and financial exploitation allegations were 33 percent of the total cases. See Figure 4 on next page.

Figure 4 VAA and MOMA Allegations Completed and Substantiated



	FY 96	FY 97	FY 98	FY 99	FY 00	FY 01	FY 02	FY 03
Abuse	34%	23%	19%	20%	32%	36%	38%	32%
Neglect	51%	46%	44%	36%	27%	25%	18%	35%
Financial Exp	15%	30%	38%	44%	40%	39%	43%	33%

C. Was Action Necessary to Decrease Risk of Recurrence

The focus of this section is on the resolution of reports assigned for further investigation where DHS determined that maltreatment occurred and investigations where there was a determination that some type of action was necessary to reduce the risk of recurrence. Possible actions taken to reduce the risk of recurrence of maltreatment are authorized under Minnesota Statutes, chapter 245A and 245C and include: disqualification of an individual from the provision of direct care to persons served in programs licensed by DHS, the Department of Health, the Department of Corrections, and Personal Care Provider Organizations; issuance of a citation(s) ordering a facility to correct a licensing violation or placing a program’s license on conditional status; or issuance of a negative licensing action (fine, conditional license, suspension or revocation of license).

The following **actions** have been **taken by DHS** following maltreatment investigations:

- From 1998 through FY02 investigations resulted in an average of 65 individuals per year being disqualified from direct contact with persons served by licensed programs. In FY03 there were 82 individuals disqualified; the percentage of completed investigations resulting in a disqualification remained 11 percent.
- During FY01 and FY02 combined there were 18 negative licensing actions that involved maltreatment investigations. In FY03 alone there were 17 negative licensing actions taken following maltreatment investigations. Again, if compared to the number of investigations completed this number is relatively stable.
- During FY01 and FY02 combined 150 citations for rule violations were issued following maltreatment investigations. In FY03 alone there were 140 citations for rule violations following maltreatment investigations. This represents an increase in citations issued.

D. Appeals

Every decision regarding maltreatment and every decision regarding consequences for maltreatment made by DHS following completion of an investigation is subject to review and appeal. A vulnerable adult, a vulnerable adult or child's designee, a substantiated individual perpetrator, or a substantiated facility may ask for reconsideration of the determination of whether maltreatment occurred. The Division of Licensing responds to each request for reconsideration received. If, after this administrative reconsideration, DHS does not change the finding, the substantiated perpetrator may request an administrative hearing. This administrative hearing is available to substantiated perpetrators only, whether they are individuals or facilities. The victim, victim's designees, or a child's parent or guardian may request review by a maltreatment review panel. The maltreatment review panel may make recommendations to the investigation agency.

The following **appeals** have been conducted following maltreatment determinations:

FY	Reports Completed/ Findings		Reconsiderations		Appeal Hearings	
			Total Requested and Processed	Changed Maltreatment Findings	Total Conducted	Changed Maltreatment Findings
98	635	*	68	2	8	2
99	631	1033	54	2	22	9
00	602	1122	48	4	13	5
01	671	1226	67	3	7	1
02	425	692	54	1	6	2
5 Year Total	2964	4073	291	12	56	19
03	715	1010	62	2	11	5

*Figure not available

FY03 was compared to the total number of appeals for the preceding 5 fiscal years.

FY98 – 02 / FY03

- 10% 9% of investigations were appealed through reconsideration
- 4% 3% of administrative reconsiderations resulted in a changed finding
- 19% 18% of investigations that were appealed through reconsideration went on to a fair hearing
- 34% 45% of hearings resulted in a changed finding
- 12% 11% of all appeals changed the determination as a result of either administrative reconsideration or fair hearings

Due to differences between the Division of Licensing and appeal referees in the definition/interpretation of what constituted an incident of maltreatment, the Division modified its interpretation. For example: in an incident where a vulnerable adult was physically and emotionally abused either during the same incident or within a relatively short period of time the Division had found the individual responsible for both physical and emotional abuse. The appeals referees found that these events represented one incident of maltreatment. The Division is now using a similar definition of what constitutes an incident of maltreatment and it is likely that this change will result in some reduction in the number of hearings resulting in a changed determination.

V. WHETHER AND WHERE BACKLOGS OF CASES RESULT IN A FAILURE TO CONFORM WITH STATUTORY TIME FRAMES

DHS continues to meet statutory timelines in assessing reports of alleged maltreatment within 24 hours, determining an initial disposition within five days, and providing notification of the initial disposition to reporters of alleged maltreatment within five days.

Although the VAA has required that investigations be completed within 60 days (VAA) since 1995, DHS has not been able to meet this timeline for all investigations. In FY02 and FY03 investigations were completed within the following timelines:

FY02 / FY03

- 61 / 78 of investigations were completed within 60 days;
- 99 / 137 were completed between 61 and 120 days; and
- 265 / 499 were completed in more than 120 days.

The average number of days to complete investigations has been increasing since FY99. In FY02 the average length of time to complete vulnerable adult maltreatment investigations was 7.2 months; the average for maltreatment of minors investigations was 6.3 months. In FY03 the averages increased to slightly over 10 months for all investigations. These averages continue to increase as some of the oldest outstanding reports continue to be completed. For example, in FY03 there were 26 investigations completed that were over one year old. Already in FY04, 23 reports received over one year ago have been completed. It will continue to be a struggle to balance completion of the oldest reports with completion of the current investigations.

The number of pending investigations decreased to 220 in FY98, but since then they dramatically increased to 520 in FY02. This increase corresponds with the previously mentioned staff turnover, high number of reports received and assigned, a strike, and a hiring freeze (resulting in unfilled positions). In FY03 the number of pending investigations decreased to 481. Based on maintaining 16 active investigator positions and each investigator maintaining a caseload of 15 to 20 open investigations, 225 – 300 pending investigations is reasonable. The average length of time taken to complete investigations should drop significantly once the backlog of pending investigations is reduced to under 300.

Barring unforeseen budget reductions, the Licensing Division is now positioned to complete maltreatment investigations at approximately the same rate as new reports needing investigations are received. The backlog of reports currently under investigation will provide an ongoing challenge that will be dealt with through increased efficiencies in investigative activities and through increased use of technology whenever and wherever possible. However, “catching up” can be expected to take from two to three years.

VI. WHERE ADEQUATE COVERAGE REQUIRES ADDITIONAL APPROPRIATIONS AND STAFFING

During FY02 and FY03 the Division of Licensing completed significant work that will maximize the utilization of the increased resources received in FY01. This work included the centralization of report intake functions, restructuring of duties within the division, and the hiring of additional investigators. This centralized intake unit now receives, processes, assesses, and assigns all reports of alleged maltreatment and licensing violations received by DHS.

Additional computer system modifications and other technological solutions to enhance and standardize data collection for managing workflow and for performance reporting are in process.

The restructuring, continued hiring and training of staff persons, and progress towards the most effective and efficient utilization of resources have positioned DHS well to continue to conduct thorough and objective investigations of reports of alleged maltreatment. However, on-going staff turnover and possible hiring freezes will significantly impact DHS' ability to continue progress in this area.

In addition to maltreatment investigations, the Licensing Division's other primary statutory duties relate to:

- conducting background studies (approximately 170,000 per year);
- monitoring directly licensed programs (approximately 4,000 programs);
- issuing negative licensing actions in indirectly licensed programs monitored by counties (approximately 24,000 programs with approximately 410 negative licensing actions per year); and
- investigation of approximately 850 reports of possible licensing violations in directly licensed programs.

Each of these duties also has statutory timelines for completion. While maltreatment investigations are a very high priority, they must be balanced against these other consumer protection functions when dealing with resource limitations such as budget and position reductions.

Each report received is prioritized for investigation, according to standardized criteria, based on the potential risk of harm to vulnerable adults or children with the reports with the highest risk of harm assigned for field investigation first. The current level of resources is helping to improve the turnaround time for maltreatment investigations, but given the backlog created when resources were more limited, and all other things remaining equal, it will take two to three years to effectively reduce the average turnaround time for all maltreatment investigations. Additional resources would improve this turnaround time faster.

