



# Office of the Ombudsman for Mental Health and Mental Retardation

2004 / 2005 Biennium Report to the Governor on Agency Activities

## Ombudsman Overview of Activities

During the 2004/2005 biennium the agency continued to receive more requests for services than the agency has resources available. A breakdown of the agency *Contacts by Type for the Biennium* is shown on page six. Staff of the agency constantly triage and juggle cases while working in multiple systems at the same time. During the 04/05 biennium many cases seemed to indicate that concerns exist in a number of areas of service delivery. These concerns may not rise to the level of a comprehensive overhaul or systemic review. The concerns are indicators that public policy might need changing or that persons who are charged to administer those programs may need clarification on the program's intended purpose. I will highlight some of those areas in this overview.

### Children's Mental Health

One of the areas where the ombudsman saw concerns was in the area of children's mental health. The policy of Minnesota clearly states that custody shall not be transferred when the reason is to provide out of home services to children with development disabilities or mental illness. However, the ombudsman saw far too many situations where the child receiving services had been placed under the legal and physical custody of the county. Parents reported that they were under the impression, or that they had been told that it was necessary for parents to relinquish legal and physical custody in order to access certain services the county provides for the purposes of receiving treatment. Because of state and federal laws governing out of home placement and its funding requirements, there is a lot of confusion in the service delivery system and the courts. This resulted in allowing children who were abused or neglected to move quickly to some permanent situation, including returning home, being adopted or finding a permanent foster home so the child would not experience multiple disruptions. Minnesota's emphasis is on providing necessary services to the child and the family so the child can return home and be successful. When timelines reach a certain point, the

case requires judicial review and permanency planning. Too often the paperwork for this hearing includes a request to transfer custody using language that states that "the parent(s) are unwilling or unable" to provide for the needs of the child. For a child with a disability and their family these are hurtful words. These words imply that the parents don't want their child or are incompetent to parent.

### State Chemical Dependency Unit

A state operated chemical dependency program serves persons who have been committed as needing chemical dependency treatment. It may also serve those who voluntarily seek treatment. A person can be placed there from anywhere in the state but most often the facility serves individuals from the metropolitan counties. Based on a number of calls about treatment issues the ombudsman began a more careful examination of client concerns. Issues raised included access to health care, client rights, medication management, death

*The Ombudsman was satisfied that program leadership was committed to make change for the benefit of the clients.*

reviews, serious injuries, changing of medications without the client's knowledge, nursing care, Chemical Dependency (CD) treatment methods, clients' rights, and dignity and respect. During the review the ombudsman identified a number of significant problems that were reported to the Minnesota Department of Human Services (DHS) Licensing and Maltreatment Investigations Division. Based on the work of the ombudsman as well as Licensing, one person was substantiated of maltreatment of vulnerable adults that was serious enough to lead to disqualification of that worker. Others were substantiated of

(Continued on Page Five - Overview)

### Mission

... Promoting the highest attainable standards of treatment, competence, efficiency and justice for persons receiving services for mental health, developmental disabilities, chemical dependency, or emotional disturbance.

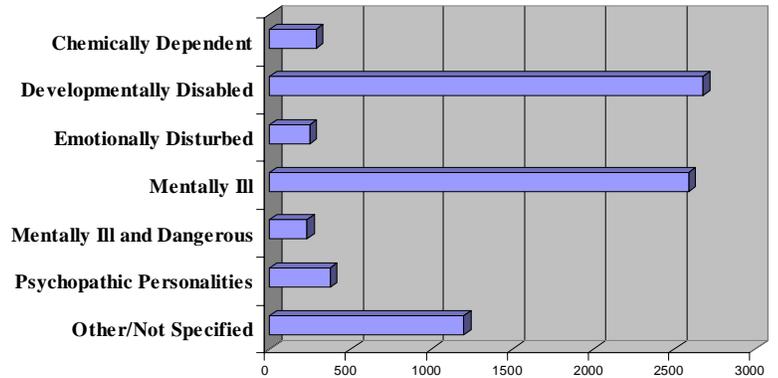
# Client Services Overview

During the biennium, our regional staff have continued to keep pace with an ever changing environment for persons with mental disabilities, particularly, in the social services system. Our contact service percentage between persons with developmental disabilities and mental illness remains almost even. However, compared to the previous biennium, we are seeing an increase in the number of contacts from persons with mental illness and developmental disabilities.

## Type of Issue

Type of Issue	FY 04	FY 05	Biennium Total	Percentage
Abuse/Neglect	481	673	1154	9%
Child Custody/Protection/Visitation	54	57	111	1%
Civil Commitment	263	241	504	4%
Client Rights	509	473	982	7%
Contracted Social Services Agency	8	13	21	0%
County Social Services	179	142	321	2%
Criminal	48	48	96	1%
Data Privacy/Client Records	55	55	110	1%
Death	535	533	1068	8%
Dignity and Respect	312	333	645	5%
ECT	7	6	13	0%
Education System	26	16	42	0%
Employment	27	27	54	0%
Financial	140	115	255	2%
Guardianship/Conservatorship/Rep Payee	67	52	119	1%
Housing	79	58	137	1%
Information	67	42	109	1%
Insurance	22	18	40	0%
Legal	93	55	148	1%
Managed Care	15	15	30	0%
Medical Issues	184	143	327	2%
Placement	276	299	575	4%
Psychotropic Meds	110	84	194	1%
Public Benefits	37	24	61	0%
Public Policy	14	16	30	0%
Referral	6	4	10	0%
Restraint/Seclusion/Rule 40	35	56	91	1%
Restrictions	123	69	192	1%
Serious Injury	1255	1300	2555	19%
Special Review Board	114	104	218	2%
Staff/Professional	591	739	1330	10%
Training	22	12	34	0%
Transportation	17	7	24	0%
Treatment Issues	233	183	416	3%
Violations of Rule or Law	101	195	296	2%
Waivered Services	17	20	37	0%
Other	497	407	904	7%
<b>Total</b>	<b>6619</b>	<b>6634</b>	<b>13253</b>	<b>100%</b>

## Contacts by Disability for Biennium



Requests from those who are committed as mentally ill and dangerous and those who are sex offenders and committed as psychopathic personalities has remained stable. Committed sex offenders are a challenging group to work with and as the population continues to grow, we can expect additional calls for service. During this growth in treatment services to committed sex offenders, we are challenged to keep a balance between neutral fact finder and advocate, and also between assuring respectful quality care and treatment while protecting public safety.

We are also experiencing a continued increase in issues involving children who are mentally disabled, or have a parent with a mental disability and are entangled with child protection, corrections and/or a child in significant need of treatment. Mental health/child protection cases are particularly complicated, require a great deal of time and effort and often place us in direct conflict with county social services.

During the biennium many of the issue types flux by +/- 1% points. Notable increases during the biennium were seen in abuse and neglect (5%-9%), serious injury (16%-19%), staff/professional (7%-10%) and other (2%-7%). Other and Not Specified represents requests for services or information that does not fit into other categories, are internet or web based inquiries from around the country and are staff assisting consumers to advocate on their own behalf. We believe that teaching persons with mental disabilities to have the courage to advocate for themselves helps them with life skills that will serve them well over time.

# Medical Review Unit

The Medical Review Unit (MRU) is comprised of three staff people: the Medical Review Coordinator (MRC), a nursing evaluator, and a fulltime reviewer. The MRU serves as a support to the Medical Review Subcommittee (MRS), which includes volunteer members of the Ombudsman’s Advisory Committee and which is empowered under Minn. Stat. 245.97, Sub. 5. The MRS met eight times during FY 04 and 10 times during FY 05 to review the deaths and serious injuries of clients that met its established guidelines. During FY 04 the MRS reviewed and closed 20 full reviews and 18 limited reviews. During FY 05 the MRS reviewed and closed 14 full reviews and 44 limited reviews. There were 512 deaths reported to the Medical Review Coordinator in FY 04 and 513 deaths reported in FY 05. This total of 1025 deaths compares with the total of 990 deaths reported in the previous biennium. Most death reports are closed by the MRC upon report when information is complete or after the collection and review of additional records. There were 2550 serious injuries reported in the 2004/2005 biennium. This compares with 2145 serious injury reports from the previous biennium. The continued increase in reported death and serious injury reports is in part due to increased outreach by the Office and improved compliance with mandatory reporting requirements by providers.

The purpose of the Ombudsman’s death review process is to seek opportunities to improve the care delivery system for the living. The MRS has a quality-improvement focus, and, by statute, avoids duplication of the work of agencies such as the Office of Health Facility Complaints and DHS-Licensing, which perform detailed investigations and have sanction authority. If the MRU finds a situation that needs that type of investigation, referrals are made to the appropriate agencies or licensing boards. The MRU works collaboratively with the agencies or boards but avoids duplication of its work.

Type of Serious Injury	FY 04	FY 05	Biennium Total	Percentage
Aspiration Pneumonia	1	0	1	0.04%
<b>Burns</b>	<b>75</b>	<b>55</b>	<b>130</b>	<b>5.10%</b>
Complication of Medical Treatment	9	13	22	0.86%
<b>Complication of Previous Treatment</b>	<b>18</b>	<b>15</b>	<b>33</b>	<b>1.29%</b>
Dental Injury	25	31	56	2.20%
<b>Dislocation</b>	<b>2</b>	<b>7</b>	<b>9</b>	<b>0.35%</b>
Eye Injury	15	11	26	1.02%
<b>Frostbite</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>0.08%</b>
Head Injury	26	43	69	2.71%
<b>Heat Exhaustion/Sun Stroke</b>	<b>3</b>	<b>1</b>	<b>4</b>	<b>0.16%</b>
Ingestion of Harmful Substance	33	29	62	2.43%
<b>Internal Injury</b>	<b>7</b>	<b>8</b>	<b>15</b>	<b>0.59%</b>
Laceration	60	55	115	4.51%
<b>Major Fractures</b>	<b>178</b>	<b>179</b>	<b>357</b>	<b>14.00%</b>
Minor Fractures	384	427	811	31.80%
<b>Multiple Fractures</b>	<b>48</b>	<b>58</b>	<b>106</b>	<b>4.16%</b>
Near Drowning	2	2	4	0.16%
<b>Other</b>	<b>347</b>	<b>381</b>	<b>728</b>	<b>28.55%</b>
<b>Total</b>	<b>1234</b>	<b>1316</b>	<b>2550</b>	<b>100.00%</b>

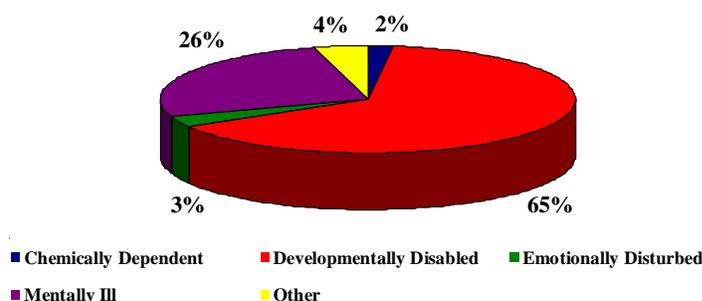
Type of Death	FY 04	FY 05	Biennium Total	Percentage
Accident	41	37	78	7.61%
Homicide	0	3	3	0.29%
Natural	422	427	849	82.83%
Suicide	42	39	81	7.90%
Undetermined	7	7	14	1.37%
<b>TOTAL</b>	<b>512</b>	<b>513</b>	<b>1025</b>	<b>100.00%</b>

In addition to site visits by the medical reviewer in the course of full reviews, both the Medical Review Coordinator and the nurse evaluator gave presentations at conferences and meetings throughout the state to develop and introduce a new brochure entitled *Information for Individuals and Families about Suicide Prevention*, which is available in multiple formats at the Ombudsman’s website.

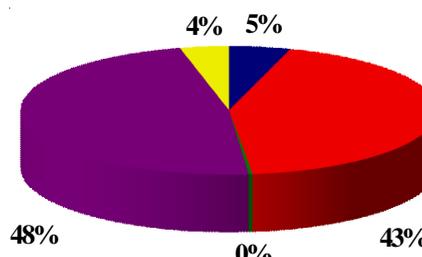
While seeking opportunities to improve the care delivery system, the MRS looks at not only individual cases but also for patterns and trends. When it identifies patterns or trends, the MRS uses that opportunity to make recommendations focused on the care delivery system. These recommendations may come in the form of a letter to a provider or agency, a Medical Update, an Alert, a recommendation for a systemic review by the Ombudsman, or

(Continued on Page Five - MRU)

## Serious Injury by Disability for Biennium



## Death by Disability for Biennium



# Civil Commitment Training and Resource Center

## Background and Overview of Current Activities

The Office of the Ombudsman for Mental Health and Mental Retardation established the Resource Center component of the training and resource center within the agency. The Center provides civil commitment information and referral, consultation, and advocacy services. In this biennium, the Center has provided these services to clients, family members, treatment professionals and the general public. The Center has added a fact sheet on sex offender commitments to the other fact sheets the office maintains. A notice was also developed for counties to give to persons who are in the process of being committed as Sexually Dangerous Person (SDP) or Sexual Psychopathic Personality (SPP), as required by the MN Commitment and Treatment Act. The Center updates all of the fact sheets and notices annually.

The Center also pays attention to current problems within the system of care in order to try to find a solution to the problems. Two of the current issues being reviewed are the lack of in-patient psychiatric beds and disagreements between counties over who is responsible for the commitment process while an individual is on a hold order.

## Training

The Center provided interdisciplinary training on the civil commitment process throughout the state. Regional trainings were held in Moorhead, Willmar, New Ulm and Owatonna. Statewide training was done through the CORE training process with the Department of Human Services, via ITV with individuals



(MRU - Continued from Page Three)

the development of education tools such as the suicide brochure mentioned previously. Medical Updates are available at the website: <http://www.ombudmhm.state.mn.us/alerts/default.htm>

The MRC produces a series of Summer and Winter Alerts, which are updated and released each year. These, too, are available on the Ombudsman's website. The Ombudsman's Office shares what it has learned through the death review and serious injury review process in an attempt to inform providers, so that they can avoid similar problems. In addition to the Summer and Winter Alerts, the following new Medical Alerts have been created and are available on the website:

- Hyperglycemia and Diabetes Alert (May 2005)
- Information for Individuals and Families about Suicide Prevention (November 2003)
- Immunization Alert



attending at sites throughout the state. These sessions were attended by social workers, court examiners, county attorneys, defense attorneys, treatment facility staff, law enforcement and court personnel.

Training was provided for the new Active Community Treatment (ACT) teams for the SW MN Consortium in Willmar and for the Region 4 South Team in Alexandria. Training on emergency hold orders was presented to the Stearns County mental health initiative steering committee.

The Center also started providing training for corrections personnel. A presentation to the MN Community Corrections Association was done at the association's annual meeting in Brainerd. Another training session took place at the Red Wing Correctional Facility.

In 2005 the Center added a section to the training on the sex offender commitment process. Many counties wanted more information on this emerging topic. The Center also developed a training package on sex offender commitments for the Governor's Commission on Sex Offender Policy.

The Center set up and participated in a training session on how Rule 20 and Chapter 253B interact and the difficulty that may occur in these situations. This was a regional training held in Foley, MN.

The Center also provided training to out-of-state treatment providers. These were done at Avera-McKinnan Hospital in Sioux Falls, S.D. and Merit Care in Fargo, N.D. These facilities contract with MN counties to provide emergency hold order care to MN residents. The Center has also been involved with the contracting process and provides technical assistance as these facilities work to understand the MN System.

## Resource Center

The Resource Center will continue to provide information and referral, consultation and advocacy services to agency clientele and the general public on civil commitment issues. All of the regional staff has been trained on the commitment act so they can answer questions from clients, professionals and the general public. More difficult questions are referred to the Center's coordinator or the Director of Client Services. The Center has increasingly been receiving referrals from other agencies and social services personnel.

The coordinator has also been involved in meetings with judges, court personnel, county attorneys and social service staff to discuss how the new community based treatment will affect the commitment process. Requests for this information have been increasing in number.

**(Overview - Continued from Page One)**

lesser counts of maltreatment. The DHS State Operated Services Division leadership began working with the ombudsman to make improvements to the program; they sought assistance from the federal government and developed additional training for staff. They set new standards for employee performance and changed key leadership positions. The ombudsman was satisfied that program leadership was committed to making change for the benefit of the clients.

**Law Review Article**

The Office of Ombudsman was invited by William Mitchell College of Law to author an article for their Law Review publication. The focus of the article was on Psychology and the Law/Mental Health Law. Ombudsman Roberta Opheim and Regional Ombudsman Michael Woods collaborated on an essay entitled “Are We Failing Our Children and Their Families? Children’s Mental Health and The Misuse of The CHIPS Process”. The article focused on what happens if a family needs help for mental health issues with either the child or parent. The article is available on the Office of Ombudsman’s web page.

**Sex Offender Treatment Issues**

Persons who commit crimes that involve sexual offending have historically been handled by the criminal justice system. The ombudsman has identified some areas of concern as it relates to the increasing use of Minnesota’s Civil Commitment statute to provide for the care and treatment of sex offenders when their criminal sentences have been completed. The ability to use civil commitment as one of the tools necessary to address public safety as well as providing offenders with an opportunity to receive treatment leading to a life that is free of sex offending or violence towards others, comes with a price. This law was initially used sparingly. However, the numbers of individuals committed under the Psychopathic Personality and Sexually Dangerous Persons provision of the civil commitment statute is growing while no one is being released. This type of treatment is one of the most expensive tools the state uses. With the increasing admission numbers and the failure to release, the cost of this program is going to continue to grow, consuming a larger portion of the health and human service funding system. Because these services are provided in treatment setting, the ombudsman has jurisdiction to receive complaints and monitor the treatment programs. While

some would say “Who Cares?” the ombudsman cares because these are individuals in a treatment setting. If people are being treated, the theory that some will be released in the future makes it important that the treatment be appropriate, delivered in a timely manner, is done cost effectively and insures that human and civil rights are protected. If the residents do not receive appropriate treatment society is paying for ineffective treatment. Just as individuals who are in prison have rights, so do the individuals who reside in the Minnesota Sex Offender Program, a DHS operated facility commonly called MSOP. If resident rights are violated, the state risks law suits and federal oversight. Because the nature of this form of treatment is evolving, the ombudsman will continue to monitor the program.

**Medical Review Unit**

During the 2004/2005 Biennium, the Medical Review Unit (MRU) continued to improve its performance by completing its “Back to Basics” work plan, which incorporated many of the recommendations from the report on the “Medical Review Function” that was issued in November, 2000, by the Management Analysis Division of the Minnesota Department of Administration, at the request of the Ombudsman. Communication and collaboration between licensing agencies and the Ombudsman’s Office continues to improve. The Ombudsman’s website has been increasingly utilized both to improve communication with providers and clients and to make more efficient use of technology. Editable Death Report and Serious Injury Report forms were made available on the Ombudsman’s website in October 2004. Providers, clients, families, and other interested people have been encouraged to sign up for the Ombudsman’s Medical Alerts E-Mail List Service, which sends an e-mail notification to subscribers when new information is available on the website. Please see the Medical Review Unit section of the report for additional information.

**Equal Opportunity Statement**

The Ombudsman Office does not discriminate on the basis of age, sex, race, color, creed, religion, national origin, marital status or status with regard to public assistance, sexual orientation, membership in a local human rights commission or disability in employment or the provision of services.

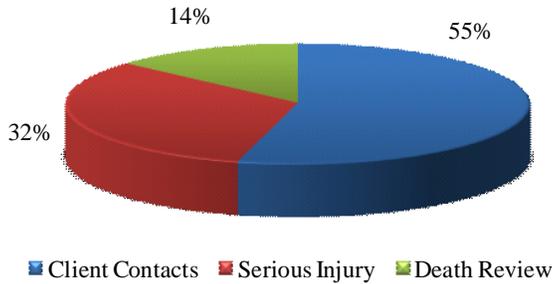
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This material can be given to you in different forms, like large print, Braille or on a tape, if you call 1-651-296-3848 Voice or 711 TTY and ask.

**Contacts by Type for the Biennium**

Below is a pie chart that illustrates the breakdown of the agency workload. The pie is divided into three sections. The first section *Client Contacts* covers any calls from clients, family members, facilities and the general public. This also covers any calls for general information, referrals, facility visits, agency presentations, etc. The next two sections show the *Serious Injuries and Death Reviews* that were reported to our agency during the biennium.

There were 4152 (or 55% of the total) documented contacts to our agency. The agency has additional contacts but to the overwhelming workload of our regional ombudsmen, some contacts i.e. referral for information or general contacts are not documented.

As discussed on page three, there were 2550 (or 32% of the total) Serious Injuries and 1025 (or 14% of the total) Deaths reported to our agency. While a large percentage of serious injuries and deaths are report to our agency, there are still some that are not reported so the numbers are slightly higher than what is reported.



**Regional Services Map**  
February, 2005

