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SUNSET COMMISSION: HEALTH LICENSING BOARDS SECTION 31 – FEES FOR HEALTH OCCUPATION PROGRAMS

Minnesota Department of Health
Report to the Minnesota Legislature 2013

January 23, 2013

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Contents

| | |
|--|----|
| EXECUTIVE SUMMARY | 4 |
| I. Legislative charge and study parameters..... | 5 |
| II. Monitoring of Health Occupations Program Budgets | 7 |
| Fees..... | 7 |
| Appropriations..... | 7 |
| Annual budgets..... | 7 |
| Revenues..... | 7 |
| Expenditures..... | 8 |
| Apportionment of shared resources..... | 8 |
| Projections..... | 8 |
| Program Growth and Changing Requirements..... | 8 |
| Summary..... | 9 |
| III. Financial Forecast..... | 10 |
| APPENDIX I – Health Licensing Boards | 12 |
| APPENDIX II. Minnesota Statutes Section 214.055 | 13 |
| APPENDIX III. Minnesota Statutes Section 214.06..... | 14 |

EXECUTIVE SUMMARY

This report responds to a directive in Section 31 of the Laws of Minnesota 2012, Chapter 278, Article 2 requiring the Minnesota Department of Health (“MDH”) to report on the extent to which fees for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers comply with Minnesota Statutes section 144.122.

Section 144.122 prescribes certain requirements for fees assessed in connection with licenses. Primarily, fees must be reasonable, total amounts collected must approximate the cost of administering the fee-based program, and amounts must be deposited in the state government special revenue fund (SGSR).

Occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers are regulated by the Health Occupations Program (“HOP”) within the Compliance Monitoring (“CM”) Division of MDH. CM and HOP adhere to standard procedures designed to ensure compliance with applicable portions of statutes governing fees collected from licensure and certification of regulated occupations. The legislature sets budgetary appropriations and fees for each occupational group. HOP assesses and collects fees for licensure/certification and other services as appropriate. Funds are deposited in the state treasury and credited to the SGSR. HOP and financial management for MDH track expenditures and revenues against budgetary appropriations for each group to ensure that expenditures stay within the appropriation and to compare revenues with the appropriation. Each year, financial management prepares a Departmental Earnings Report (“DER”). The DER tracks revenues and projects each budget several years into the future. HOP uses projections to determine whether MDH should request changes to the appropriation and/or fees for an occupational group. Generally, requests are made based on a pattern established over several years. MDH may request that an appropriation be increased or decreased; that fees be increased or decreased; or that an occupational group be granted a “fee holiday.”

I. Legislative charge and study parameters

Section 31 of the Laws of Minnesota 2012, Chapter 278, Article 2, was enacted as the Health Licensing Boards (“HLBs”) underwent Sunset Commission review. (See Appendix I for a list of the HLBs.) While the Minnesota Department of Health (MDH) does not sunset until 2014, the Sunset Commission extended certain directives in Chapter 278 to the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, as-well-as to the HLBs. Section 31 directed the HLBs and the commissioner of health to submit reports on the degree to which fees imposed comply with Minnesota Statutes, sections 214.055 and 214.06 and section 144.122, respectively, for the HLBs and the commissioner of health.¹ The statutory mandate is as follows:

Sec. 31. REPORT; HEALTH-RELATED LICENSING BOARD FEES

Each health-related licensing board, as defined in section 214.01, subdivision 2, and the commissioner of health, as the regulator for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, shall report to the chair and lead minority member of the senate and house of representatives committees with jurisdiction over health and human services finance by January 15, 2013, on the degree to which fees imposed comply with Minnesota Statutes, sections 214.055 and 214.06, for the health-related licensing boards or Minnesota Statutes, section 144.122, for the commissioner of health. If a board determines that its fees are expected to produce more revenue than needed to recover expenditures during a five-year period, the board must propose reductions in those fees according to section 16A.1283.

Subdivision (a) of Minnesota Statutes, section 144.122 governs how Health Department license fees are set, collected, and deposited. Section 144.122 reads as follows:

144.122 LICENSE, PERMIT, AND SURVEY FEES.

(a) The state commissioner of health, by rule, may prescribe procedures and fees for filing with the commissioner as prescribed by statute and for the issuance of original and renewal permits, licenses, registrations, and certifications issued under authority of the commissioner. The expiration dates of the various licenses, permits, registrations, and certifications as prescribed by the rules shall be plainly marked thereon. Fees may include application and examination fees and a penalty fee for renewal applications submitted after the expiration date of the previously issued permit, license, registration, and certification. The commissioner may also prescribe, by rule, reduced fees for permits, licenses,

¹ While section 31 does not require the commissioner of health is to address the requirements of sections 214.055 and 214.06, the text of these statutes and a brief discussion of how each relates to HOP occupations is provided in Appendices II and III.

registrations, and certifications when the application therefor is submitted during the last three months of the permit, license, registration, or certification period. Fees proposed to be prescribed in the rules shall be first approved by the Department of Management and Budget. All fees proposed to be prescribed in rules shall be reasonable. The fees shall be in an amount so that the total fees collected by the commissioner will, where practical, approximate the cost to the commissioner in administering the program. All fees collected shall be deposited in the state treasury and credited to the state government special revenue fund unless otherwise specifically appropriated by law for specific purposes.

Minnesota Statutes, section 16A.1283 requires that all fees be set by the legislature, effectively superseding the commissioner of health's authority in section 144.122 to set fees by rule. In accordance with Section 16A.1283, license and permit fees for the MDH-regulated occupations that are included in the section 31 directive are set by statute rather than by rule. (Minnesota Statutes, sections 148.5194; 148.6445; and 153A.17.) While fees for HOP's occupational groups are no longer set by rule, MDH still follows the remaining requirements of section 144.122 regarding fees. Fees collected are deposited in the state treasury and credited to the state government special revenue fund. MDH monitors the expenditures and revenues of each program against the appropriation set for that program by the legislature and makes recommendations so that the appropriation, the fees, and the expenditure are all in approximate balance.

For the purpose of satisfying the directive in section 31, this report describes how MDH manages the budgets for occupational therapy practitioners, speech-language pathologists, audiologists, and hearing instrument dispensers, to ensure that appropriations, fee-based revenues and costs are approximately balanced.

The MDH occupations evaluated in this report are housed in MDH's Health Occupations Program ("HOP"), which is part of the Compliance Monitoring Division in the Policy, Quality and Compliance Bureau. HOP also houses the Office of Unlicensed Complementary and Alternative Care Practice (OCAP) which is defined as a health licensing board under Minn. Stat. § 214.01, subd. 2.² OCAP's regulatory activities include investigating consumer complaints and enforcing penalties, if warranted, and serving as an information clearinghouse for consumers and practitioners. OCAP does not license practitioners. OCAP is funded by an appropriation from the general fund, rather than fees. For this reason, OCAP is not included in this report.

The Minnesota Department of Health (MDH) submits this report in satisfaction of the directive in Section 31 of the Laws of Minnesota 2012, Chapter 278, Article 2. Please note that MDH is subject to its own sunset review and is due to expire on June 30, 2014. (Minnesota Statutes, section 3D.21.)

² In addition to licensing audiologists, speech-language pathologists, occupational therapists and occupational therapy assistants and certifying hearing instrument dispensers, and administering the Office of Complementary and Alternative Health Care Practices (the occupations included in the Section 31 directive), HOP also licenses body artists (including piercers and tattooists), maintains a fee-based roster of spoken language health care interpreters, and registers doulas. None of these occupations has a board.

II. Monitoring of Health Occupations Program Budgets

Section 144.122 (a) allows the commissioner to prescribe filing procedures and fees by rule, requires that fees be reasonable and approximate the cost of administering the licensure program, and requires deposit of fees in the SGSR. As stated above, fees for occupations regulated by HOP are set forth in statute rather than in rule. To date, with careful stewardship, revenues for most HOP programs have covered expenses for that program. One program with a small number of practitioners can only cover expenses through imposition of high fees. Long-term, the continued viability of this program is a concern. Due to growth in the occupation, another program has been accumulating a carryover balance. Salary for additional staff to assist with this growing occupation is expected to reduce the carryover.

Fees. The legislature has established licensure fees for occupational groups regulated by HOP as shown in the following table. Civil penalties imposed for violations of practice acts add to revenues, but not substantially.

| Practitioner Type | Authority | License / Certification Fee | License / Certification Period | FY2012 Appropriation |
|----------------------------------|------------------------|-----------------------------|--------------------------------|----------------------|
| Audiologist | § 148.5194, subd. 7 | \$ 435 | Biennial | \$131,000 |
| Hearing Instrument Dispenser | § 153A.17 | \$ 600 | Annual | \$185,000 |
| Occupational Therapist | § 148.6445, subd. 1, 2 | \$ 145 | Biennial | \$282,000* |
| Occupational Therapist Assistant | § 148.6445, subd. 1, 2 | \$ 80 | Biennial | |
| Speech-Language Pathologist | § 148.5194, subd. 2 | \$ 200 | Biennial | \$144,000 |

* Occupational therapists and occupational therapist assistants are licensed through a single program for occupational therapy practitioners.

Appropriations. The Minnesota legislature establishes an annual appropriation for each occupational group. Even if the total amount of fees collected exceeds the appropriated amount, the program cannot spend more than its appropriation, averaged over a five year period.

Annual budgets. For each program, HOP and MDH financial management track revenues and expenditures against appropriations to ensure that, over a five year period, expenditures do not exceed revenues or appropriations. If a program's expenses are less than its revenues so that, over a period of years, the program begins to accumulate significant carryover, HOP will consider requesting a decrease in fees or a "fee holiday." If a program's needs increase so that the appropriation no longer adequate to meet those needs, HOP will request that the legislature increase the appropriation.

Revenues. Fees are the only source of revenue for these occupations. Fees for temporary, initial, and renewal applications are the largest contributors to revenue. Other fees include

penalty fees for late submission of an application or a continuing education requirement, fees for verification of credential status in other states, and fees related to enforcement actions. The number of licensed or credential practitioners is the primary driver of revenues. Because Minnesota's population is growing and aging, the number of health care practitioners in these occupations tends to be increasing. This leads to a slow but steady increase in revenue.

Expenditures. Staffing is the primary expenditure for each occupation, followed by indirect costs, calculated at 23.8% of the total budget for fiscal year 2013.³ Other expenditures include costs associated with computers, computer services and database management; advisory committee meetings; enforcement costs, such as those for competency review hearings, attorney general services, and administrative hearings; administrative oversight; printing; telephones; training; and supplies.

Apportionment of shared resources. Costs of staff and other items that are shared across occupational groups are apportioned to approximate the resources absorbed by each occupation and/or the number of licensed or certified practitioners. Apportionment is thoroughly reviewed at the time annual budgets are set and is monitored over the course of the year as changes in staffing, legislative requirements, or internal operations occur.

Projections. As part of the biennial budget process, financial management prepares a DER every other year. The DER tracks how much each fee program generates in the State Government Special Revenue Fund (SGSR) and projects each budget several years into the future. Generally, projections assume that trends in revenues and expenditures that have developed over past years will continue.

Program Growth and Changing Requirements. The growth and aging of Minnesota's population is increasing the demand for health care services.^{4,5} In response to this demand as well as other factors, the number of practitioners in HOP occupations is increasing. The following table shows growth within HOP professions since the end of 2005. While staff can absorb some amount of increase, eventually, additional staffs are required in order to continue to provide responsive service and meet program timelines. Legislative mandates that increase responsibilities for staff can also lead to a need for additional staffs. Section management monitors trends in the numbers of practitioners, difficulty staffs have in meeting deadlines as

³ Indirect costs are those costs which benefit more than one program or division of the department and for which the breakdown and allocation to specific budgets is not cost effective. Indirect cost charges pay for central administrative services such as rent, facilities management, information technology, financial management, human resources, and executive functions.

⁴ Minnesota's population increased by 0.6 percent from 2011 to 2012 and by 1.4 percent or 75,000 people since April 1, 2010, the date of the 2010 Census. <http://www.demography.state.mn.us/resource.html?Id=3304> Minnesota's population is projected to grow to 5,772,258 by 2020 and 6,537,710 by 2040. <http://www.demography.state.mn.us/PopulationPyramids2015-2040/Projecxtions2012Paper.pdf>

⁵ Minnesota's population aged 60 and over is projected to increase from slightly over 18 percent of the total population in 2010 to over 23 percent by 2020. <http://www.demography.state.mn.us/resource.html?Id=32539>

their workloads increase, and the number of complaints in order to project whether and when additional staffs must be taken on.

| | 2005 | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 |
|---|-------|-------|-------|-------|-------|-------|-------|-------|
| Audiologists | 334 | 349 | 363 | 375 | 384 | 399 | 406 | 415 |
| Hearing Instrument Dispensers | 170 | 178 | 181 | 178 | 182 | 187 | 189 | 193 |
| Occupational Therapists | 2,619 | 2,633 | 2,701 | 2,757 | 2,856 | 2,965 | 3,060 | 3,193 |
| Occupational Therapist Assistants | 804 | 794 | 821 | 837 | 881 | 918 | 944 | 986 |
| Speech-Language Pathologists | 1,000 | 1,068 | 1,128 | 1,192 | 1,257 | 1,300 | 1,362 | 1,444 |
| Body Artists ⁶ | N/A | N/A | N/A | N/A | N/A | N/A | 666 | 847 |
| Body Art Establishments ⁶ | N/A | N/A | N/A | N/A | N/A | N/A | 194 | 232 |
| Spoken Language Health Care Interpreters ⁷ | N/A | N/A | N/A | N/A | 41 | 950 | 1,525 | 2,837 |
| Doulas ⁸ | N/A | N/A | 2 | 3 | 3 | 1 | 3 | 5 |

Data management requirements are another primary consideration for projecting expenditures and funding needs for programs. As technology changes, computer and database systems must be updated. This can be a very expensive proposition. HOP is fee-based and the regulated occupations that are the subject of this report receive no non-fee funds. Therefore, assessed fees must be sufficient to cover on-going maintenance and improvements, as-well-as system upgrades when necessary.

Summary. HOP management and MDH financial management both monitor revenues and expenditures for HOP occupations. Evaluation includes a consideration of both the current year and future years. Trends established by tracking annual revenues and expenditures serve as a foundation for projections. Management also consider evolving needs that will require a significant one-time (or irregular) investment of funds (such as a new database), or that will require an overall increase in funding needs for a program (such as accumulated growth that warrants additional staff.

Most HOP occupation budgets carry relatively small amounts over from year-to-year. However, when expenditures or revenues differ significantly from budgetary appropriations, HOP has requested increases or decreases in the appropriation or a “fee holiday.” For example, HOP requested and OTPs were granted a “fee holiday” for the fiscal year 2004-2005 biennium. Since OTPs have a biennial license period, accumulated funds must be sufficient to cover all program costs for two years before a fee holiday is authorized. OTP fees were reduced in 2007. For HIDs, fees were adjusted upward after 1995; as practitioner numbers increased, a surplus was produced, and fees were reduced in 2003 and a fee holiday was provided in 2004. Efforts to balance revenues to fees within the appropriated amount resulted in a fee increase in 2007 and a subsequent decrease as revenues and expenditures again came into balance. Going forward,

⁶ Licensure of body artists and body art establishments began in 2011.

⁷ The 2008 Minnesota Legislature directed creation of a roster of spoken language health care interpreters effective January 1, 2009. The numbers shown reflect interpreters who registered and noted their availability to provide interpretation. Because some interpreters are not available, actual numbers of registered interpreters are higher.

⁸ The 2007 Minnesota Legislature mandated a registry of doulas. Registration is optional.

MDH will continue this process of monitoring and requesting adjustments to appropriations and fees to ensure that over time the fees collected approximate the cost of regulatory programs.

III. Financial Forecast

This section presents an overview of the financial future of the HOP programs included in Section 31's mandate. Because the mandate in the last sentence of section 31, that fee reductions be proposed, is only directed toward the HLBs; and because MDH is be undergoing a Sunset Review in FY2013, affording an opportunity for a comprehensive review of programs and budgets, this overview is brief and is not intended to be propose changes in program fees or appropriations.

Overall, revenues for most programs cover expenses with insignificant carryover year to year, and both revenues and expenses are approximately in line with the appropriation. Maintaining expenses within appropriations and at or beneath revenues has sometimes resulted in delays in purchasing equipment to assist staff in performing their responsibilities. Consequently, there are some delayed equipment needs to be addressed and budgets will have to accommodate them. Additionally, until FY2013, HOP programs were not contributing to information technology (IT) costs, even though they require and receive IT services. As IT costs are distributed across the division more equitably, HOP may find the need to request increases in fees and appropriations.

Annual expenses for the speech-language pathology program closely approximate its appropriation. Revenues also approximate the appropriation. Some IT costs have been allocated to this program for FY2013; however, this program should be contributing more to both IT resources and section administrative costs. A reduction in fees is not warranted for this program.

Annual expenses for the audiology program are below its appropriation. However, for FY2012, expenses were slightly over revenues, and revenues were significantly below the appropriation. In addition, this program should be contributing more to IT resources and section administrative costs. A reduction in fees is not warranted for this program.

For the hearing instrument dispensers program, FY2012 revenues approximated the appropriation, while expenditures were less than both the appropriation and revenues. However, this current financial picture does not reflect the reality of this program's financial future. There are fewer than 200 hearing instrument dispensers. Because the group is so small, fees are significantly higher than other HOP occupations, and the certification period is annual, rather than biennial period of HOP's other occupations. Practitioners in this field tend to be older and there is significant annual attrition. Current trends show the number of certified dispensers and, thus, certification fees, shrinking. This program also receives revenues from fees associated with administration of a certification examination. The examination has two parts: written and practical. During FY2013, Minnesota will move to an electronic format for the written part of the examination. The written examination will be administered at testing sites across the state and MDH will no longer collect fees for this part of the exam. Thus, fees and revenues will

decline. MDH will continue to administer and collect fees for the practical part of the exam. In addition, in FY2013, Attorney General fees associated with two contested cases will drive expenses up. Finally, this program, too, should be contributing more to IT resources and section administrative costs. Given present trends, the continued financial viability of this program is doubtful.

With over 6,000 licensed practitioners, the occupational therapy practitioners comprise the largest of HOP's programs. In FY2012, expenses were less than the appropriation, while revenues approximated the appropriation. Expenses will increase in FY2013, as some IT salary costs have been allocated to this program. In addition, because of the rapid growth in the number of occupational therapy practitioners, additional staff time is being allocated to assist with licensing. This will also increase expenses. The financial status of this program will be revisited at the close of FY2012.

APPENDIX I – Health Licensing Boards

There are sixteen health licensing boards. The number of members on each board and their statutorily mandated qualifications differ.

Pursuant to MN Stat. § 214.01, subd. 2, “health-related licensing board” includes the Board of Examiners of Nursing Home Administrators, the Office of Unlicensed Complementary and Alternative Health Care Practice (OCAP), the Board of Medical Practice, the Board of Nursing, the Board of Chiropractic Examiners, the Board of Optometry, the Board of Physical Therapy, the Board of Psychology, the Board of Social Work, the Board of Marriage and Family Therapy, the Board of Behavioral Health and Therapy, the Board of Dietetics and Nutrition Practice, the Board of Dentistry, the Board of Pharmacy, the Board of Podiatric Medicine, and the Board of Veterinary Medicine. Information about these boards and others can be accessed from <https://www.hlb.state.mn.us/>. The table below lists the health licensing boards and the number of members on each board.

| Profession | Board Members |
|---|---------------|
| Behavioral Health and Therapy | 13 |
| Chiropractic | 7 |
| Dentistry | 9 |
| Dietetics and Nutrition Practice | 7 |
| Marriage and Family Therapy | 7 |
| Medical Practice | 20 |
| Nursing | 19 |
| Nursing Home Administrators | 9 |
| Optometry | 9 |
| Pharmacy | 7 |
| Physical Therapy | 11 |
| Podiatric Medicine | 8 |
| Psychology | 10 |
| Social Work | 12 |
| Veterinary Medicine | 7 |
| Office of Unlicensed Complementary and Alternative Health Care Practice | 0 |

While MN Stat. § 214.01, subd. 2 includes OCAP as a health licensing board, there is no board and alternative and complementary health care practitioners are neither licensed nor registered. Pursuant to MN Stat. § 146A.02, OCAP is located within the Department of Health (MDH). Within MDH, the Health Occupations Program (HOP) administers OCAP.

APPENDIX II. Minnesota Statutes Section 214.055

214.055 FEES TO RECOVER EXPENDITURES.

A health-related licensing board that is created on or after September 1, 1995, must establish a fee structure which fully recovers its expenditures during a five-year period.

Section 214.055 is limited in its application to the health-related licensing boards and does not apply to occupations regulated through the Commissioner of Health.

APPENDIX III. Minnesota Statutes Section 214.06

14.06 FEES; LICENSE RENEWALS.

Subdivision 1. Fees to recover expenditures.

The commissioner of health as authorized by section 214.13 and all health-related licensing boards and non-health-related licensing boards shall propose or adjust any fee according to section 16A.1283. As provided in section 16A.1285, the fees shall be an amount sufficient so that the total fees collected by each board will be based on anticipated expenditures, including expenditures for the programs authorized by sections 214.10, 214.103, 214.11, 214.17 to 214.24, 214.28 to 214.37, and 214.40, except that a health-related licensing board may have anticipated expenditures in excess of anticipated revenues in a biennium by using accumulated surplus revenues from fees collected by that board in previous bienniums. A health-related licensing board may accumulate up to one year of operating funds, and then shall propose a fee reduction according to section 16A.1283. A health-related licensing board shall not spend more money than the amount appropriated by the legislature for a biennium. For members of an occupation registered after July 1, 1984, by the commissioner of health under the provisions of section 214.13, the fee established must include an amount necessary to recover, over a five-year period, the commissioner's direct expenditures for adoption of the rules providing for registration of members of the occupation. All fees received shall be deposited in the state treasury.

Subd. 1a. Health occupations licensing account.

(a) Fees received by the commissioner of health or health-related licensing boards must be credited to the health occupations licensing account in the state government special revenue fund. The commissioner of management and budget shall ensure that the revenues and expenditures of each health-related licensing board are tracked separately in the health occupations licensing account.

(b) The fees collected must be used only by the boards identified in section 214.01, subdivision 2, and only for the purposes of the programs they administer. The legislature must not transfer money generated by these fees from the state government special revenue fund to the general fund. Surcharges collected by a health-related licensing board under section 16E.22 are not subject to this subdivision.

Subd. 1b. Health-related licensing boards; surcharges.

When a health-related licensing board imposes a surcharge, the surcharge must not be incorporated as a fee increase, but must be made as a separate assessment to be paid by the individuals regulated by the board.

Subd. 2. License renewal.

Notwithstanding any law to the contrary, each health-related and non-health-related licensing board shall promulgate rules providing for the renewal of licenses. The rules shall specify the period of time for which a license is valid, procedures and information required for renewal, and renewal fees to be set pursuant to subdivision 1.

Practices of the Health Occupations Program (HOP) within the Minnesota Department of Health (MDH) comply with requirements of Section 214.06 subds. 1 and 1(a). Currently, all occupations regulated by HOP are governed by statute, rather than by rule. Thus, there are no rule-making costs. However, when HOP implements a new regulatory program it recommends fee structures that allow recovery of start-up costs within a five-year period. Initial fees and any increases or decreases thereafter must be proposed to and approved by the legislature. All fees are deposited in the State Government Special Revenue Fund in the state treasury. Revenues and expenses for each occupation are tracked separately.

Section 214.06, subds. 1(b) and 2 do not apply to HOP.