Report on Transfer of Vulnerable Adult Investigation Duties

Office of Inspector General
Licensing Division

August 2015

Legislative Report

Minnesota Department of **Human Services**

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TABLE OF CONTENTS

I. 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. Licensed programs have the capacity to serve over 275,000 individuals 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.

In 2012 and 2013 the Legislature enacted new and comprehensive licensing standards that combined 19 services, some of which were previously unlicensed, under one statewide license and shifted responsibility for certain licensing and maltreatment investigative functions from the counties to the State. Generally, services funded under one federal Home and Community Based Services (HCBS) waiver were required to be licensed, but services under the other federal HCBS waivers previously were not. The licensed services were held accountable to the standards in Minnesota Statutes, Chapter 245B (hereafter referred to as "Chapter 245B"), and the new comprehensive licensing standards are specified in Minnesota Statutes, Chapter 245D (hereafter referred to as "Chapter 245D").

The Legislature also adopted a revenue-based license fee schedule for providers that would take effect in fiscal year 2017 (FY17). Until FY17, providers who held a Chapter 245B license and converted to a Chapter 245D HCBS license are not subject to the new fee schedule; instead, they continue to pay their Chapter 245B license renewal fee. New providers seeking a license under Chapter 245D are required to pay a renewal fee based on the new revenue-based schedule.

With the interim fee schedule that is in place, the Legislature also directed DHS to complete this report describing (i) the actual costs associated with implementing the new Chapter 245D standards, (ii) the maltreatment investigation costs relating to Chapter 245D; (iii) the actual license fees collected by providers under Chapter 245D; (iv) how the Minnesota Department of Health completes similar maltreatment investigations and how that work is funded; (v) and actions DHS can take to reduce maltreatment investigation costs, and options for funding maltreatment investigations. DHS is to recommend an alternative license fee structure if warranted.

There are approximately 32,000 people over 65 and/or with a disability served by 1,256 providers delivering home and community-based services licensed under Minnesota Laws, Chapter 245D. Prior to January 1, 2014, nearly half of these providers were not required to be licensed by DHS. Chapter 245D expanded the scope and complexity of licensing. After more than 18 months of providing technical assistance to license holders and for compliance with the new standards, DHS has learned that many of the previously unlicensed providers, and some previously licensed providers, require significantly more technical assistance, including on-going technical assistance, to comply with the new Chapter 245D HCBS standards. Reports of licensing violations have increased and require additional time to analyze under the new standards. In addition, technology that was anticipated to provide efficiency in the licensing process has not yet been realized. . Finally, the Positive Supports Rule under Minnesota Rules, Chapter 9544 will become effective August 2015. These standards apply to all people receiving HCBS services. DHS Licensing will monitor programs' compliance with this rule and must ensure that license holders/programs incorporate positive support strategies into the services they provide. DHS estimates that an additional 8 staff are needed to ensure that all programs are reviewed at least every two years and licensing violations that are reported to DHS can be promptly investigated and corrective action ordered if warranted.

Funding from fees collected under the "interim fee schedule":

- **FY15**: In FY15, providers licensed under Chapter 245D paid $2,422,100 in license fees. These fees are deposited into the State Government Special Revenue Fund and appropriated to the department to fund this licensing work. The Licensing Division also received an additional appropriation of $1,330,000 in state general fund dollars to meet the expected costs of licensing and maltreatment work while the temporary fee schedule was in effect. Thus, total funding for licensing and maltreatment costs in FY15 was $3,752,100.

- **FY16**: Total funding projected for FY16 is $3,621,000. For purposes of this report, DHS assumes that fees paid by license holders for FY16 will be similar to fees paid for FY15, giving DHS projected licensing fee revenue of $2,422,100. In addition, the Licensing Division will receive a slightly reduced appropriation of $1,119,000 in state general fund dollars.

- **FY17:** If the permanent fee schedule takes effect, providers licensed under Chapter 245D are projected to pay $1,964,600 in license fees in FY17. In addition, the Licensing Division will receive an additional $1,439,000 in state general fund dollars. Thus, total funding for licensing and maltreatment costs in FY17 is projected to be $3,453,600.

  However, neither the interim fee schedule nor the permanent fee schedule that will be implemented for FY17 are adequate to fully fund the HCBS-related work of the Licensing Division.

	Chapter 245D Cost Estimate	
	FY16	FY17
Chapter 245D total costs (includes maltreatment related costs)	$4,750,903	$4,692,168
Chapter 245D total funding - *License fees* - *General Fund Appropriation through FY17*	$3,621,100 *2,422,100* *1,199,000*	$3,453,600 *1,964,000* *1,439,000*
Additional Funding Needed	(1,129,803)	(1,288,568)

If the current general fund appropriation ends after FY17, an additional $2,727,568 must be obtained by increases in licensing fees to fully fund costs.

DHS proposes a new fee schedule:

DHS identified four revenue based options to recover the costs of licensing and investigating maltreatment in Chapter 245D licensed programs. The advantages of using a revenue based fee schedule include:

- It provides a relatively stable funding source for licensing activity that will automatically increase as the workload demand increases with additional providers, and will be automatically reduced if numbers of providers requiring oversight decreases. Future fee increases would be based on increased provider revenue so the schedule likely would rarely require modification.
- It provides a straightforward/simple means for providers to calculate the licensing fee.
- It is equitable, in that the providers with the greatest revenue and those delivering the most services requiring oversight, pay the highest licensing fee. The very small providers would not have excessive fees that could cause them to discontinue providing care. The middle size providers' rate would still not be prohibitive.

After review of the options, the recommendation of the department in this report is that licensing and maltreatment investigation activities should be funded through a new fee schedule. The new schedule is based on a flat licensing fee for all providers plus a percent of each provider's revenue from Medical Assistance reimbursement for the Chapter 245D licensed services provided and would be effective for CY16. There would not be a general fund appropriation after FY17.

This model charges all license holders a base rate of $450 per license – to recognize the minimum cost to DHS for maltreatment- and licensing-related work for any provider – plus an additional one-half of one percent of a provider's Chapter 245D payment over $100,000 (meaning all providers would be allowed to subtract the first $100,000 in revenues before paying the one-half of one percent of revenue).

Under this hybrid fee schedule (base fee plus percentage of adjusted revenue), license fee revenues are estimated to be approximately $4.8 million in FY17. The hybrid model keeps fees low for the small providers – fees are not much different in the lower ranges from the fees that would be generated under the 2013 fee schedule for Chapter 245D. Fees increase in the middle and upper range groups, but not unreasonably, based on total revenues. In addition, no additional general fund dollars would be required to fund the Chapter 245D licensing and maltreatment investigation work.

II. Legislation

2013 Laws of Minnesota, Chapter 108, Article 8, Section 59:

Sec. 59. REPORT ON TRANSFER OF VULNERABLE ADULT MALTREATMENT INVESTIGATION DUTIES.

(a) The commissioner of human services shall provide a follow-up report on the collection of fees and actual licensing and maltreatment investigation costs resulting from the reform of the standards and oversight for home and community-based services as adopted and funded by the 2013 legislature.

(b) The report must identify actual fees collected based on provider revenue, distinguish the amount of fees collected based on non-medical assistance revenue, and determine the impact of the non-medical assistance revenue on future licensing fees.

(c) The report must recommend how maltreatment investigations, when conducted by the commissioner of human services, should be funded and at what amount. The recommendation must identify whether maltreatment investigation costs should be recovered through licensure fees, an appropriation from the general fund, provider fines for substantiated maltreatment, licensing fee surcharges related to substantiated maltreatment, or a combination of these sources.

(d) The report must contain a cost comparison between similar maltreatment investigations completed by the Minnesota Department of Health and the Department of Human Services, and describe the method of funding for the investigations conducted by the Department of Health.

(e) The report must make recommendations for changes that the commissioner determines are appropriate to reduce the costs of maltreatment investigations.

(f) The commissioner must submit the report with draft legislation proposing alternative fees, if necessary, to the chairs and ranking minority members of the legislative committees with jurisdiction over health and human services policy and finance by July 1, 2015.

III. Introduction

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, 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, Minnesota Statutes, Chapter 245A. The Division's work may be categorized in three main functions: (1) licensing programs directly through monitoring and enforcement activities; (2) overseeing licensing functions delegated by statute to counties and private agencies, and (3) conducting investigations of alleged maltreatment.

Licensed programs serve more than 270,000 thousand people in child care centers, family child care programs, 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, brain injury or developmental disabilities.

Prior to 2014, only providers of services for people on the Developmental Disabilities (DD) waiver program were required to be licensed by the State and adhere to standards set forth under Minnesota Statutes, Chapter 245B. Service standards for the other waivers (Community Alternatives for Disabled Individuals, Brain Injury, Community Alternative Care, and Elderly Waiver) were unlicensed and were managed through county contracts, resulting in variation across the state. Licensing oversight and monitoring of services paid for by the state under the various waivers was also fragmented: DHS Licensing Division investigated licensing and maltreatment complaints involving individuals on a DD waiver and also investigated maltreatment complaints involving foster care services for adult foster care settings. However, counties handled similar complaints for individuals receiving unlicensed services under other waivers, including services provided in unlicensed settings (e.g., waiver recipient's own home).

The Centers for Medicare & Medicaid Services (CMS) notified the state that managing service standards at the county level through contracts was unacceptable and the use of contracts had to be discontinued no later than January 1, 2014, for the state to continue to receive federal financial participation for these services. DHS had already been working with stakeholders to develop standards and payment rates for nearly all home and community-based services. The Legislature incorporated much of this work and enacted new standards and license fees in three phases.

Phase 1: Many unlicensed services now subject to licensure. The 2012 Legislature enacted the first phase of new and comprehensive standards in deciding which previously unlicensed services provided under waivers must be licensed. The 2012 Legislature also directed DHS to consult with stakeholders to gather input related to the development of an administrative cost recovery methodology to establish a license fee to implement the provisions in Chapter 245D.

<u>Phase 2</u>: <u>Standards for services provided under the Developmental Disabilities waiver eliminated and maltreatment investigation oversight transferred to DHS.</u> The 2013 Legislature expanded the Chapter 245D standards to include services provided under the DD waiver, which were previously licensed under Minnesota Statutes, Chapter 245B, and repealed the Chapter 245B standards. The new Chapter 245D Home and Community-Based Services license is structured much differently than the Chapter 245B license. Under Chapter 245D:

- Providers are issued one statewide license under which they may provide up to 19 different home and community-based services. Previously, many Chapter 245B providers held multiple licenses and paid separate fees for each license.

- The Licensing Division, not the county in which the licensed setting is located, monitors the services provided in the licensed setting, and the county monitors only the physical plant standards for the setting.

- The standards for the 19 home and community-based services are streamlined into one license that applies to all people served, regardless of the person's diagnosis or funding source. This supports providers' administrative efficiencies such as those related to staff training, development of policies and procedures, etc.

In addition, the Legislature recognized that many waiver services were unlicensed, and consumers did not have basic protections consistently applied or enforced, due to county variations in enforcement activities. Therefore, the Legislature transferred oversight of all licensed services and maltreatment complaints from the counties to the state so that concerns about the quality of care or allegations of maltreatment of vulnerable adults and children receiving licensed waiver services are sent to DHS to investigate and take appropriate action.

<u>Phase 3: Interim Chapter 245D license fee methodology approved; report by DHS on costs required before FY17 license fee schedule takes effect.</u> During the 2013 legislative session DHS had put forward a license fee proposal based on a flat fee per license and an additional fee based on the number of individuals served in certain programs. The cost recovery methodology was limited to actual projected costs of licensing, including maltreatment investigations and provider due process for appeals and hearings that had previously been carried out by counties. There was no appropriation or other funding source sought for the work.

Throughout the session there were discussions among legislators, stakeholders, and DHS about the proposed fee schedule and other methodologies for establishing a licensing fee. In the end, the Legislature adopted a revenue-based fee schedule that would take effect in fiscal year (FY) 2017. Until FY17, providers who held a Chapter 245B license and converted to a Chapter 245D HCBS license are not subject to the new fee schedule; instead, they continue to pay their Chapter 245B license renewal fee. New providers seeking a license under Chapter 245D are required to pay a renewal fee based on the new revenue-based schedule. This fee structure will be referred to in this report as the **interim fee schedule**.

The interim fee schedule adopted by the 2013 Legislature did not fully recover the projected costs of licensing and maltreatment investigations following the enactment of HCBS standards in

Chapter 245D. Therefore, the 2013 Legislature also appropriated general fund dollars through FY17 to ensure that the Licensing Division has adequate resources to meet the anticipated increase in licensing monitoring, enforcement, and maltreatment investigation activities.

Finally, the Legislature directed DHS to report on actual license fees paid based on revenue, along with the actual costs of HCBS licensing and maltreatment work, and determine if changes to the license fee cost recovery methodology are warranted. This report will address what fees are necessary to fully fund the licensing and maltreatment investigations in HCBS programs, and propose alternative license fee options for HCBS providers. In addition, as directed, this report will compare the costs of investigations conducted by DHS with those conducted by the Minnesota Department of Health Office of Health Facilities Complaints and recommend how DHS maltreatment and licensing should be funded and at what amount.

IV. Collection of fees following enactment of Chapter 245D

This report must identify actual fees collected based on provider revenue, distinguish the amount of fees collected based on non-Medical Assistance revenue, and determine the impact of the non-Medical Assistance revenue on future licensing fees. However, obtaining reliable information regarding the amount of provider revenue that is derived through non-Medical Assistance sources was determined to be sufficiently challenging and costly. DHS did not identify a means of obtaining the provider revenue that was cost-effective, accurate, and that could be easily provided for purposes of this report. And for any data received, there would be virtually no way for DHS to efficiently verify the validity of any funding amounts reported. Anecdotally, providers have stated that only a very small amount of services provided according to the definitions and standards under Chapter 245D are reimbursed with non-public funds. Therefore, it was determined that all licensing fee proposals based on revenue should be limited to the providers' revenue derived through reimbursement from Medical Assistance for Chapter 245D services. As the payer of these services, DHS has ready access to this information and can use it to calculate licensing fees.

Funding from fees collected under the "interim fee schedule" and general fund appropriations:

FY15:

- License fees revenue: In FY15, providers licensed under Chapter 245D paid $2,422,100 in license fees:
  - $1,812,170 was paid by providers who previously held a Chapter 245B license.
  - $609,930 was paid by newly-licensed providers who did not previously hold a Chapter 245B license.
- General fund: The Licensing Division also received an additional $1,330,000 in state general fund dollars to meet the expected costs of licensing and maltreatment work while the temporary fee schedule was in effect.
- Total: The total funding for licensing and maltreatment costs in FY15 was $3,752,100.

FY16:

- License fee revenue: For purposes of this report, DHS assumes that fees paid by license holders for FY16 will be similar to fees paid for FY15, giving DHS projected licensing fee revenue of $2,422,100.
- General fund: In addition, the Licensing Division will receive a smaller appropriation of $1,119,000 in state general fund dollars.
- Total: Total funding for FY16 is projected to be $3,621,000.

FY17:

- License fee revenue: The projected FY17 funding from license fees, if the permanent fee schedule were to take effect, would include revenue of $1,964,600.
- General fund: In addition, the Licensing Division will receive an additional $1,439,000 in state general fund dollars.
- Total: Total funding for licensing and maltreatment costs is projected to be $3,453,600.

The current temporary fee schedule will end on June 30, 2016. Beginning FY17, all license holders must pay an annual license renewal fee of between $200 and $18,000. A license holder's actual renewal fee must be based on all revenues derived from the provision of services that would require licensure under Chapter 245D during the calendar year immediately preceding the year in which the license fee is paid. (See, Minnesota Statutes, section 245A.10, subdivision 4, paragraph (b), clause (1)).

Based on data provided by DHS Provider Enrollment for the 12 month period from February 1, 2014, to January 31, 2015, Medical Assistance payments for HCBS services totaled $907 million during this time period.[1] Using that revenue information, the estimated license renewal fee revenues for all providers currently licensed under Chapter 245D is projected at $1,964,600 for FY17.

The table below shows the number of Chapter 245D license holders projected for each fee tier, and the projected total funding from license fees in FY17. The permanent license fee schedule, if implemented, is expected to generate $1,964,600 in funding for licensing and maltreatment activities in FY17. This represents a decrease of almost $400,000 compared with license renewal fees that license holders are paying under the interim fee schedule.

[1] Providers have 18 months to submit claims for Medical Assistance reimbursement for Chapter 245D services. However, for cash flow purposes, it is assumed that the majority of HCBS providers submit their claims monthly, e.g., claims for services provided in January 2014 would be submitted in February 2014 and claims for services provided in December 2014, would be submitted by January 31, 2015. Nonetheless, the reimbursement amounts identified above may not represent 100 percent of the claims to be submitted for FY15.

Table 1. Total Projected Funding From License Fees in FY17 under Current Law

Chapter 245D HCBS Revenue-Based Tiers	License Fee Payable in FY17	Programs at This Revenue Level	Total Projected License Fees for FY17
≤ $10,000	$200	163	$32,600
> $10,000 ≤ $25,000	$300	103	$30,900
> $25,000 ≤ $50,000	$400	120	$48,000
> $50,000 ≤ $100,000	$500	174	$87,000
> $100,000 ≤ $150,000	$600	88	$52,800
> $150,000 ≤ $200,000	$800	99	$79,200
> $200,000 ≤ $250,000	$1,000	91	$91,000
> $250,000 ≤ $300,000	$1,200	33	$39,600
> $300,000 ≤ $350,000	$1,400	24	$33,600
> $350,000 ≤ $400,000	$1,600	18	$28,800
> $400,000 ≤ $450,000	$1,800	22	$39,600
> $450,000 ≤ $500,000	$2,000	13	$26,000
> $500,000 ≤ $600,000	$2,250	29	$65,250
> $600,000 ≤ $700,000	$2,500	20	$50,000
> $700,000 ≤ $800,000	$2,750	25	$68,750
> $800,000 ≤ $900,000	$3,000	13	$39,000
> $900,000 ≤ $1,000,000	$3,250	20	$65,000
> $1,000,000 ≤ $1,250,000	$3,500	25	$87,500
> $1,250,000 ≤ $1,500,000	$3,750	26	$97,500
> $1,500,000 ≤ $1,750,000	$4,000	12	$48,000
> $1,750,000 ≤ $2,000,000	$4,250	17	$72,250
> $2,000,000 ≤ $2,500,000	$4,500	28	$126,000
> $2,500,000 ≤ $3,000,000	$4,750	11	$52,250
> $3,000,000 ≤ $3,500,000	$5,000	19	$95,000
> $3,500,000 ≤ $4,000,000	$5,500	8	$44,000
> $4,000,000 ≤ $4,500,000	$6,000	6	$36,000
> $4,500,000 ≤ $5,000,000	$6,500	6	$39,000
> $5,000,000 ≤ $7,500,000	$7,000	18	$126,000
> $7,500,000 ≤ $10,000,000	$8,500	12	$102,000
> $10,000,000 ≤ $12,500,000	$10,000	8	$80,000
> $12,500,000 ≤ $15,000,000	$14,000	2	$28,000
> $15,000,000	$18,000	3	$54,000
Total		**1,256**	**$1,964,600**

The following table shows the revised revenue estimates for FY16-17. As noted above, the 2013 Legislature appropriated general fund dollars through FY17 to fund Chapter 245D licensing and maltreatment investigation activities while the interim fee schedule is in effect.

Table 2. Revised DHS Licensing Division Revenue Estimates for FY16-17

	Revised revenue estimate	
	FY16	FY17
Chapter 245B fees	$1,812,170	
Chapter 245D fees (estimated)	$ 609,930	$1,964,600
Total fees	$2,422,100	$1,964,600
General Fund	$1,199,000	$1,439,000
Total Funding	**$3,621,100**	**$3,453,600**

V. Costs for Licensing and Maltreatment Investigations Related to Licensed Providers of Home and Community-Based Services

The report must provide information on the actual licensing and maltreatment investigation costs related to the implementation of the new Chapter 245D HCBS standards. There are seven general cost categories associated with HCBS licensure:

- HCBS Licensing unit costs for processing license applications, providing technical assistance, conducting licensing reviews and conducting licensing complaint investigations
- Maltreatment investigation unit costs for conducting maltreatment investigations in HCBS programs
- Intake unit costs associated with assigning reports for maltreatment or licensing investigations
- Technology costs for IT staff and IT programming costs related to the HCBS data management system
- Legal unit and legal unit support costs related to HCBS programs and due process for provider appeals of licensing actions
- Office of Administrative Hearing (OAH) costs related to HCBS programs and appeals of licensing actions
- Management and support costs for the above activities for HCBS programs

The new HCBS standards took effect on January 1, 2014. After 18 months of implementation, DHS has a better understanding of the unique challenges facing license holders that have also impacted the work of the HCBS licensing unit.

The need for additional staff is related to several factors. In addition to the expanded scope of licensing under the HCBS standards described earlier in this report, technical assistance reviews of previously unlicensed providers are showing that many of these providers struggle to demonstrate compliance with the new policies and documentation requirements of Chapter 245D. These providers – almost 50% of all Chapter 245D license holders – require on-going, significant technical assistance to meet the HCBS standards, requiring more time per site visit than was estimated by DHS. In addition, with the phase-out of the use of mechanical restraints and manual restraints by license holders, except as authorized under Chapter 245D, maltreatment and licensing investigations have become more complex. All DHS staff have had to work closely to ensure consistent interpretation of new standards. Reports of licensing violations have increased, adding to the work of licensors. Also, anticipated efficiencies from technology enhancements related to Chapter 245D licensing work have not yet been fully realized, resulting in more time spent on provider questions and customer service needs that detract from time in the field on reviews.

Other factors impacting the complexity and time needed for HCBS licensing and maltreatment investigation activities include coordinating technical assistance and provider training with other areas of the DHS on issues related to the Jensen Settlement Agreement. Finally, the HCBS Licensing unit will also need to devote additional time to monitoring provider compliance with the recently promulgated Positive Supports Rule under Minnesota Rules, Chapter 9544 (effective August 2015).

DHS licensing staff endeavor to review all programs on a two-year cycle, with visits occurring more frequently when licensing violations are documented and corrective action is ordered. When DHS reviewed its work from the past 18 months, including the time needed to respond to license holder inquiries about the new standards and documentation requirements, requests for technical assistance, and interactions with county staff and case managers assisting individuals receiving services that had been unlicensed, it became apparent that current funding would not be adequate to ensure staff could visit all programs within a two-year cycle. As a result, DHS projects that an additional eight staff persons are needed to adequately staff the HCBS unit over current levels.

Table 3 shows the maltreatment- and licensing-related costs for this work.

Table 3. Estimated DHS Licensing Division Costs for Chapter 245D Work.[2]

HCBS Cost Categories	**FY16**	**FY17**
HCBS licensing unit costs	$2,129,944	$2,035,152
Maltreatment costs for investigations in HCBS programs	1,641,751	1,666,805
Intake costs for HCBS reports	376,297	382,086
IT staff / programming related to the HCBS e-licensing	200,000	200,000
Management & admin support costs – HCBS programs	237,163	240,882
Legal unit & legal support costs – HCBS programs	97,708	99,203
OAH costs – contested case hearings for HCBS programs	68,040	68,040
Total costs	**$4,750,903**	**$4,692,168**

[2] A detailed narrative on cost assumptions is provided in the appendix.

Comparison of Projected Costs and Revenues
The table below shows the projected fees to be collected and the projected licensing costs, including maltreatment investigation costs, associated with HCBS licensed services. The data show that either the interim fee schedule or the default permanent fee structure that would be implemented in FY17 would inadequately fund the statutorily required HCBS-related work of the Licensing Division.

Table 4. Estimated DHS Licensing Division Costs and Funding for Chapter 245D Work

	Chapter 245D Cost and Funding Estimates	
	FY16	FY17
Chapter 245D total costs (includes maltreatment related costs)	$4,750,903	$4,692,168
Chapter 245D total funding - *License fees* - *General Fund Appropriation, through FY17*	$3,621,100 *2,422,100* *1,199,000*	$3,453,600 *1,964,000* *1,439,000*
Additional Funding Needed	(1,129,803)	(1,288,568)

Comparison of the revenue estimate for FY16, using the interim fee schedule, and FY17, if the permanent fee schedule is implemented, shows that additional revenue is needed to fully fund the actual licensing and maltreatment investigation costs following the implementation of the new Chapter 245D services. The costs noted above include eight additional staff over current levels to ensure that all programs are reviewed at least every two years and licensing violations that are reported to DHS can be promptly investigated and corrective action ordered if warranted. If the option of hiring additional staff is not approved by the Legislature, then HCBS licensing costs in FY17 and subsequent years will be reduced by $743,687. However, this also means that licensing reviews will be completed on a four-year cycle instead of a two-year cycle. A four-year cycle of review would not provide licensed programs with the regulatory feedback they need to remain compliant with regulations that help assure adequacy of services to disable vulnerable adults – particularly those providers who are new and those for whom regulatory oversight is a new experience.

If the general fund appropriation ends after FY17, an additional $2,727,568 must be obtained by increases in licensing fees to fully fund costs.

VI. Comparing Maltreatment Investigations Conducted by Minnesota Department of Health and Minnesota Department of Human Services

As part of this report, the 2013 Legislature directed DHS to compare the maltreatment investigation work and funding of its agency and the Minnesota Department of Health, and make recommendations for changes appropriate to reduce the costs of maltreatment investigations by DHS.

Both DHS and the Minnesota Department of Health are responsible for investigating allegations of maltreatment in programs or facilities licensed by the respective agency. Minnesota Statutes, section 626.557 governs the reporting and investigation of suspected maltreatment of vulnerable adults receiving licensed services. Minnesota Statutes, section 626.556 governs the reporting and investigation of suspected maltreatment of minors receiving licensed services. Maltreatment means the abuse or neglect of a vulnerable adult or a child, or the financial exploitation of a vulnerable adult. Reports of maltreatment are received from vulnerable adults, county staff members, family members of vulnerable adults and children, staff members of licensed programs, other professionals working with people receiving services, and community members. State statute also requires that all deaths of vulnerable adults and children in DHS licensed services be reported to DHS by the program serving the individual.

A. Overview of DHS Maltreatment Investigation Work and Funding

The Licensing Division is the lead agency for responding to reports of alleged maltreatment that occur within a facility or program licensed by DHS. DHS is responsible for completing maltreatment investigations related to approximately 9,000 licensed settings. These settings consist of approximately 4,249 programs that are monitored by DHS licensing staff, and another 4,693 providers that are monitored by county licensing staff. The county monitored programs include 1,307 adult foster care homes and the 3,386 community residential settings that prior to July 1, 2014, were licensed as adult foster care homes.

When an initial report is received by the Licensing Division, research of DHS data is conducted to locate any history available on the vulnerable adult, the child, the facility, or the staff person involved in the report. Many reports do not include adequate information for DHS to determine the harm, or risk of harm, presented to the vulnerable adult or child by the reported event or condition, or to determine whether the issue reported represents maltreatment or a licensing violation. Therefore, additional information is obtained during an in-office investigation.

In general, in-office investigations result in the following outcomes:

- If the event did not occur in a DHS licensed program, the report would be closed as "no jurisdiction" and referred whenever possible to the correct agency or board that has jurisdiction to investigate the complaint.
- If the event does not meet a statutory definition of maltreatment and does not represent a possible licensing violation, no further investigation is necessary and the report is closed.
- If information obtained from the in-office investigation indicates that the incident appears to meet the statutory definition of maltreatment, the report is then assigned for out-of-office investigation.
- If information obtained indicates a possible violation of a licensing standard, the report is then assigned for investigation by a licensing unit.
- Due to the seriousness of reports involving the death of a child or vulnerable adult, all such reports are immediately assigned to a senior investigator for an in-office investigation. If resulting information indicates possible maltreatment, the report is assigned for an out-of-office maltreatment investigation.

Prior to the 2011 Special Session, licensing fees were deposited into the state general fund and most licensing activities, including maltreatment investigations, were funded out of the state general fund. The license fees charged at that time did not, and were not intended to, cover the costs related to licensing activities. During the 2011 Special Session, the legislature adjusted licensing fees (nearly all were increased) to cover more of the actual costs for licensing and directed the funds collected to a State Government Special Revenue Fund (SGSRF) used to fund licensing activities. As a result, Minnesota Statutes, section 245A.10, subdivision 7, was enacted and requires the commissioner to plan to fully recover direct expenditures for licensing activities through collection of licensing fees. The effect was to move the Licensing Division to more of an enterprise operation. For example, in state fiscal year 2012 only 18 percent (18%) of the division's budget came from the state general fund.

B. Overview of MDH Maltreatment Investigation Work and Funding

The Minnesota Department of Health (MDH), through its Health Regulation Division (HRD), licenses over 2,600 health care entities, including: nursing homes, hospitals, boarding care homes, supervised living facilities, assisted living providers, home care providers, hospice providers, and free standing outpatient surgical centers. These entities account for over 54,000 licensed beds and provide services for over 36,000 vulnerable adults statewide each year. Many of the MDH licensed providers are also federally certified with the Centers for Medicare and Medicaid Services (CMS), which contracts with MDH to conduct federal certification inspections for the approximately 1,375 certified providers involving over 46,500 federally certified beds.

Within the Health Regulation Division, the Office of Health Facility Complaints (OHFC) investigates allegations of non-compliance with federal certification requirements; state licensing regulations; and investigations into claims of abuse and neglect of residents in licensed health care facilities. Since most of MDH's providers are both state licensed and federally certified, almost all OHFC investigators need to be trained and qualified to conduct investigations for all three areas of responsibility. Moreover, due to the level of medical care provided by many of these providers, nearly all of OHFC investigators are Registered Nurses (RN), which is a very different staffing complement than DHS utilizes.

Every complaint and facility-reported incident (report) received by OHFC is reviewed and triaged according to state and federal protocols to determine what further action should be taken. The intake unit receives complaints and reports through a variety of sources including: email, fax, letters, phone calls, the common entry point, and via the OHFC web-based reporting system. Once a complaint or report is received, the intake and triage unit is responsible for gathering sufficient information to make a triage determination. This gathering of information or "in-office investigation" is for triage purposes and often includes the following: phone calls made to the facility, the complainant, or the police; medical records; and/or other types of additional information may be requested. Once sufficient information is received, the triage unit conducts an in-office investigation of the additional information collected. Depending on the allegation and the amount of information needed to make a decision, this internal review may take days to fully conduct. At the conclusion of the in-office gathering of information, the determination is made as to what further action is appropriate. The determination to conduct an onsite investigation is based on a number of factors including:

- seriousness of the harm;
- previous complaint results;

- previous reporting history;
- date of last onsite licensing inspection; and,
- whether the facility has appropriately addressed and corrected the alleged violations.

OHFC's response to these complaints and reports is based on the level of harm and/or potential harm to vulnerable adults who reside in Minnesota health care facilities. The highest priority complaints and reports are assigned for onsite investigations. Timeframes for initiating onsite investigations may vary from two days to the next scheduled annual inspection, depending on the level of harm involved with the allegation. OHFC reviews every allegation, and the determination may be made that the complaint or report will not be investigated under the VAA if another state or federal regulation may provide better outcomes for the affected vulnerable adults. In addition, some complaints are forwarded to other agencies for further action. These agencies may include the Office of Ombudsman, the Minnesota Attorney General Office, the Office of Inspector General, the Board of Medical Practice, the Board of Nursing or other licensing boards.

MDH oversight of the various facilities it regulates is supported by Medicare, Medicaid, and state fees, although the actual funding sources vary by provider type and regulatory activity. For example, the funding split for monitoring nursing homes is approximately 40% from Medicare, 40% from Medicaid and 20% from state fees paid by providers. However, maltreatment investigations done solely under the authority of the VAA are funded entirely by state funds – federal funds cannot be applied to a VAA-only investigation.

Since enactment of the VAA in 1981, MDH has not received any state general fund appropriation for its work in enforcing the VAA (which in the previous fiscal year involved over 17,000 investigating hours). VAA investigations conducted by OHFC have historically been funded by licensing fees and State Government Special Revenue (SGSR) fund. However, there have been substantial increases in allegations in recent years, resulting in a 458% increase in maltreatment allegations from 2010 to 2014. Given this dramatic growth in allegations, the 2015 Legislature appropriated $1.5 million state general fund dollars to fund MDH's enforcement of the VAA.

C. DHS Actions to Reduce the Cost of Maltreatment Investigations

As noted above, DHS Licensing Division is responsible for completing maltreatment investigations related to approximately 9,000 licensed settings. These settings consist of approximately 4,249 programs that are monitored by DHS licensing staff, and another 4,693 providers that are monitored by county licensing staff. Minnesota statutes govern the process and timeframe for completing an investigation.[3] The process for conducting and completing investigations was developed to protect the health, safety, and well-being of vulnerable adults and children receiving services in DHS licensed programs. The challenge has been to balance the need for quick turnaround of these cases against increasingly complex maltreatment laws and high standards of quality and integrity. While staff strive to complete timely investigations, maintaining the integrity of the investigative work is paramount both to protect the health, safety and well-being of children and vulnerable adults and because significant licensing actions that

[3] The investigations are completed according to Minnesota Statutes, section 626.557, the Vulnerable Adults Act, and Minnesota Statutes, section 626.556, the Maltreatment of Minors Act.

affect individuals and facilities may be taken at the conclusion of the investigation. By 2012, however, data showed a decrease in the number of investigations being completed within the 60-day period required by statute, resulting in a backlog of cases.

During 2013 and 2014, DHS took several steps to increase efficiencies and reduce the backlog and the amount of time spent completing an investigation, including:

- Restructured the intake and assessment process to separate the complaint/intake and assessment functions from maltreatment investigator functions (similar to the Minnesota Department of Health's Office of Health Facility Complaints) and added staff to the new intake and assessment unit.
- Increased the focus on triaging new reports in order to resolve more cases at the point of assessment.
- Implemented a pilot project to abbreviate the investigation memoranda written for reports that result in a finding of false, inconclusive, or maltreatment not determined. This change was designed to provide some workload relief that should assist in addressing the timeliness and backlog issues. The success of this pilot project led to an overall effort to streamline the length of all reports and use plain language wherever possible, reducing staff time spent on writing each report while making the reports more readable.
- Developed specialty teams to ensure that investigators with the greatest experience in a particular service area are assigned to investigate those facilities. (Previously, all investigators conducted investigations of reports in all service areas.)

In addition, in spring 2014 the Licensing Division partnered with the DHS Office of Continuous Improvement and instituted a Continuous Improvement Project to identify additional strategies to increase the timeliness of investigations. The changes implemented by the Licensing Division fell into three main categories: creating a Central Intake Unit so as to better separate triage and assessment from out-of-office investigation work; developing an electronic file management and workflow system, including the use of laptops and scanners in the field; revising all protocols to standardize review and editing workflows; and streamlining the review and approval processes when maltreatment is not substantiated. Each of these changes has been initiated to reduce the number of hours required to complete an investigation and to achieve and maintain manageable workloads for investigators. Improvements implemented to date have resulted in the elimination of the backlog of pending reports that exceed the 60-day timeframe. Investigations assigned after July 1, 2014, have been evaluated for compliance with the 60-day time period set forth in statute.[4]

Because these changes have helped achieve a significant increase in productivity and adherence to the 60-day completion period, DHS does not believe any additional recommendations are necessary to reduce the cost of maltreatment investigations.

[4] For new reports assigned for out-of-office investigation after July 1, 2014, all but five investigations were completed within 60 days as of June 30, 2015.

VII. Options Specific to Funding DHS Maltreatment Investigations

The 2013 Legislature also directed DHS to recommend how maltreatment investigations, when conducted by the commissioner of human services, should be funded and at what amount. The recommendation must identify whether maltreatment investigation costs should be recovered through licensure fees, an appropriation from the general fund, provider fines for substantiated maltreatment, licensing fee surcharges related to substantiated maltreatment, or a combination of these sources. Options for funding maltreatment investigations include:

General fund. Minnesota Statutes, Chapter 626.557 Reporting of Maltreatment of Vulnerable Adults Act (VAA) begins: “The legislature declares that the public policy of this state is to protect adults who, because of physical or mental disability or dependency on institutional services, are particularly vulnerable to maltreatment; to assist in providing safe environments for vulnerable adults; and to provide safe institutional or residential services, community-based services, or living environments for vulnerable adults who have been maltreated.” This argues for paying the costs of maltreatment investigation through a general fund appropriation in the public interest of protecting vulnerable adults. This is consistent with the decision by the 2015 Legislature to appropriate general fund dollars to MDH to fund VAA-only investigations in facilities it regulates, as noted above. However, a general fund appropriation specifically for maltreatment investigations is less stable and predictable than recovering costs through the licensing fees.

Licensing fee. Recovering all of the costs related to HCBS maltreatment investigations through license fees recognizes that DHS conducts more than 65% of all out-of-office maltreatment investigations in Chapter 245D licensed programs. The funding will be predictable, ensuring that investigations will continue to be done thoroughly and timely. Because many maltreatment investigations also result in licensing violations that are identified during the site visit, funding the maltreatment work through the license fee provides maximum efficiency in ensuring that client rights are protected in addition to health and safety.

Surcharge or Fines. The Legislature could require that a surcharge or fines be assessed on providers as a means of paying for maltreatment investigations. DHS believes this would be problematic for several reasons. First, section 626.557 requires certain individuals report any suspected maltreatment of a vulnerable adult. Charging facilities who report maltreatment, as required, could have a chilling effect on facilities and individuals’ willingness to report and on their willingness to participate in investigations. Second, there are numerous complexities in maltreatment investigation findings that make adding a surcharge or fine to substantiated maltreatment investigations difficult. One or more individuals or the facility can be responsible for maltreatment. If an individual is responsible, who will pay the surcharge or fine? If a facility is responsible and Licensing issues a negative licensing action to the facility, for example a revocation, will the facility pay the fine? Currently, pursuant to section 245A.07, subdivision 3, clause (c)(4), mandates that a license holder forfeit a fine of $1,000 for each determination of maltreatment for which the license holder is determined responsible. However, the license holder is found responsible in about one-third of all maltreatment investigations. That number is further reduced when a license holder exercises its appeal rights and successfully challenges the determination, which can take up to a year to fully complete. Using a fine or surcharge to fund maltreatment investigations would likely yield a fluctuating and unstable funding source. It could also inadvertently creative the impression that reports are opened and assigned for investigation based less on merit and more on the need to generate revenue.

In addition, there are due process rights related to decisions made by the Licensing Division. If a provider or individual appeals a determination that maltreatment occurred, it can take several months before the determination either becomes final or is reversed. In addition, many cases are resolved by settlement. In FY14, there were 996 maltreatment investigations completed. With HCBS-related maltreatment investigations costs of $1,641,751 and 613 HCBS investigations completed in FY14, the cost per completed investigation would be $2,678. If the surcharge applied only to cases of substantiated maltreatment in HCBS programs (268 in FY14), this would result in a much higher cost per completed report ($6,126). DHS believes a surcharge would likely have a negative impact on reporting of maltreatment and cooperating with the investigative process.

VIII. Options for Funding Licensing and Maltreatment Investigations Related to Licensed Providers of Home and Community-Based Services

DHS identified four revenue based options to recover the costs of licensing and investigating maltreatment in Chapter 245D licensed programs. The advantages to using a revenue-based fee schedule include:

- It provides a relatively stable funding source for licensing activity that will automatically increase as the workload demand increases with additional providers, and will be automatically reduced if numbers of providers requiring oversight decreases. Future fee increases would be based on increased provider revenue so the schedule likely would rarely require modification.
- It provides a straightforward/simple means for providers to calculate the licensing fee due.
- It is equitable, in that the providers with the greatest revenue, and who provide the most services requiring oversight, pay the highest licensing fee. The very small providers would not have excessive fees that could cause them to discontinue providing care. The middle size providers' rate would still not be prohibitive.

Option 1: Continue with the **current interim fee schedule** and maintain a general fund appropriation. However, as noted above, due to the complexity of the work and the need for ongoing technical assistance to license holders on a range of issues, DHS has identified a need for additional staff to adequately monitor compliance with Chapter 245D standards and complete maltreatment and licensing investigations. Under Option 1, DHS would need an additional $1,129,803 in FY17 and total general fund dollars of $2,328,803 annually thereafter. General fund dollars are eligible for federal financial participation (FFP) of 35 percent. Therefore, while

$2,328,803 would be expended, the State would be reimbursed $815,081 of the costs for a net impact on the general fund of $1,513,722.

Option 2: Implement the **permanent** fee schedule based upon provider revenue that was adopted but delayed until FY17 and maintain a general fund appropriation to adequately fund the licensing and maltreatment investigation activities. Under Option 2, DHS would need an ongoing general fund appropriation of approximately $2,727,568 annually. General fund dollars are eligible for federal financial participation (FFP) of 35 percent. Therefore, while $2,727,568 would be expended, the State would be reimbursed $954,649 of the costs for a net impact on the general fund of $1,772,919.

Option 3: Implement a license fee schedule that recovers only the licensing costs related to HCBS programs and then fund maltreatment investigations separately with a general fund appropriation. DHS estimates that an ongoing general fund appropriation of approximately $1.6 million would be necessary to fund the maltreatment investigation work. General fund dollars are eligible for federal financial participation (FFP) of 35 percent. With FFP, the State would be reimbursed $560,000 of the costs for a net impact on the general fund of $1,040,000.

Option 4: Recover all costs of licensing and maltreatment investigation work in HCBS programs through a new license fee schedule that will not require a general fund appropriation after FY17. There are two variations presented below on this option for determining license fees.

The fee schedules below rely on Medical Assistance reimbursement revenue because DHS has the ability to obtain and verify those revenue amounts within DHS. Providers have some other smaller sources of revenue: some state funding, some county funding and some private insurance. As discussed above in Section IV, DHS does not currently have a means of determining those revenues or verifying in an efficient manner any financial information submitted by providers.

Because the two proposed fee schedules below are each based on a percentage of revenue, they are based on the mid-point of the revenue range. The current temporary fee schedule also results in inexact estimates of licensing fees to be collected as that schedule clusters providers according to their revenues and payment amount. Providers' revenue can increase or decrease minimally and place them in either a lower or higher licensing fee group. The schedules below are provided so that they can be compared to the Chapter 245D schedule and to each other.

For FY17, DHS projects that total licensing and maltreatment investigation costs (as described above in Section IV) will be in the $4.6 million to $4.8 million range. As noted earlier in this report, Medical Assistance reimbursement paid to providers for HCBS services for the 12 month period from February 1, 2014, to January 31, 2015 totaled $907 million. One half of one percent (.005) of the $907 million paid to providers is $4,535,000, which comes close to the total projected cost for the Chapter 245D regulatory work. For this reason, DHS believes that a revenue-based schedule using one-half of one percent of Medical Assistance revenue, with some adjustments as noted below, will yield the funding needed by the Licensing Division to perform its work.

- Schedule A, below, shows the license fees calculated by each provider paying one-half of one percent of their Medical Assistance revenue in license fees. The fee is based on the mid-point of the Chapter 245D payments/reimbursement clusters.

- Schedule B, below, is based on a $450 base licensing fee plus one-half of one percent of provider “adjusted” revenue, meaning that the first $100,000 of revenue is disregarded. Providers receiving less than $100,000 in Chapter 245D revenue from Medical Assistance reimbursement would pay only the base license fee. Providers with Chapter 245D revenue above $100,000 would pay the base license fee of $450 plus an additional fee in the amount of one-half of one percent of revenue above $100,000.

Schedule A

License Fee Based Upon Current Law		New License Fee Proposal			
Chapter 245D HCBS Revenue-Based Tiers	**License Fee Payable in FY17**	**Mid-point of Chapter 245D Revenue-Based Tiers**	**Fee based on one-half of one percent of provider revenue at tier midpoint**	**Number of Programs**	**New Proposed Licensing Division Fee Revenue**
≤ $10,000	$200	$5,000	**$25**	163	$4,075
> $10,000 ≤ $25,000	$300	$17,500	**$88**	103	$9,064
> $25,000 ≤ $50,000	$400	$37,500	**$188**	120	$22,560
> $50,000 ≤ $100,000	$500	$75,000	**$375**	174	$65,250
> $100,000 ≤ $150,000	$600	$125,000	**$625**	88	$55,000
> $150,000 ≤ $200,000	$800	$175,000	**$875**	99	$86,625
> $200,000 ≤ $250,000	$1,000	$225,000	**$1,125**	91	$102,375
> $250,000 ≤ $300,000	$1,200	$275,000	**$1,375**	33	$45,375
> $300,000 ≤ $350,000	$1,400	$325,000	**$1,625**	24	$39,000
> $350,000 ≤ $400,000	$1,600	$375,000	**$1,875**	18	$33,750
> $400,000 ≤ $450,000	$1,800	$425,000	**$2,125**	22	$46,750
> $450,000 ≤ $500,000	$2,000	$475,000	**$2,375**	13	$30,875
> $500,000 ≤ $600,000	$2,250	$550,000	**$2,750**	29	$79,750
> $600,000 ≤ $700,000	$2,500	$650,000	**$3,250**	20	$65,000
> $700,000 ≤ $800,000	$2,750	$750,000	**$3,750**	25	$93,750
> $800,000 ≤ $900,000	$3,000	$850,000	**$4,250**	13	$55,250
> $900,000 ≤ $1,000,000	$3,250	$950,000	**$4,750**	20	$95,000
> $1,000,000 ≤ $1,250,000	$3,500	$1,125,000	**$5,625**	25	$140,625
> $1,250,000 ≤ $1,500,000	$3,750	$1,375,000	**$6,875**	26	$178,750
> $1,500,000 ≤ $1,750,000	$4,000	$1,625,000	**$8,125**	12	$97,500
> $1,750,000 ≤ $2,000,000	$4,250	$1,875,000	**$9,375**	17	$159,375
> $2,000,000 ≤ $2,500,000	$4,500	$2,250,000	**$11,250**	28	$315,000
> $2,500,000 ≤ $3,000,000	$4,750	$2,750,000	**$13,750**	11	$151,250
> $3,000,000 ≤ $3,500,000	$5,000	$3,250,000	**$16,250**	19	$308,750
> $3,500,000 ≤ $4,000,000	$5,500	$3,750,000	**$18,750**	8	$150,000
> $4,000,000 ≤ $4,500,000	$6,000	$4,250,000	**$21,250**	6	$127,500
> $4,500,000 ≤ $5,000,000	$6,500	$4,750,000	**$23,750**	6	$142,500
> $5,000,000 ≤ $7,500,000	$7,000	$6,250,000	**$31,250**	18	$562,500
> $7,500,000 ≤ $10,000,000	$8,500	$8,750,000	**$43,750**	12	$525,000
> $10,000,000 ≤ $12,500,000	$10,000	$11,250,000	**$56,250**	8	$450,000
> $12,500,000 ≤ $15,000,000	$14,000	$13,750,000	**$68,750**	2	$137,500
> $15,000,000	$18,000	$15,000,000	**$75,000**	3	$225,000
Total				1,256	$4,600,699
		Initial license application		100	$50,000
Total Revenue					$4,650,699

Schedule B

License Fee Based Upon Current Law		New License Fee Proposal			
Chapter 245D HCBS Revenue-Based Tiers	License Fee Payable in FY17	Mid-point of Chapter 245D Revenue-Based Tiers	Fee based on $450 plus one-half of one percent of provider revenue at tier midpoint minus $100,000	Number of Programs	New Proposed Licensing Division Fee Revenue
≤ $10,000	$200	$5,000	**$450**	163	$73,350
> $10,000 ≤ $25,000	$300	$17,500	**$450**	103	$46,350
> $25,000 ≤ $50,000	$400	$37,500	**$450**	120	$54,000
> $50,000 ≤ $100,000	$500	$75,000	**$450**	174	$78,300
> $100,000 ≤ $150,000	$600	$125,000	**$575**	88	$50,600
> $150,000 ≤ $200,000	$800	$175,000	**$825**	99	$81,675
> $200,000 ≤ $250,000	$1,000	$225,000	**$1,075**	91	$97,825
> $250,000 ≤ $300,000	$1,200	$275,000	**$1,325**	33	$43,725
> $300,000 ≤ $350,000	$1,400	$325,000	**$1,575**	24	$37,800
> $350,000 ≤ $400,000	$1,600	$375,000	**$1,825**	18	$32,850
> $400,000 ≤ $450,000	$1,800	$425,000	**$2,075**	22	$45,650
> $450,000 ≤ $500,000	$2,000	$475,000	**$2,325**	13	$30,225
> $500,000 ≤ $600,000	$2,250	$550,000	**$2,700**	29	$78,300
> $600,000 ≤ $700,000	$2,500	$650,000	**$3,200**	20	$64,000
> $700,000 ≤ $800,000	$2,750	$750,000	**$3,700**	25	$92,500
> $800,000 ≤ $900,000	$3,000	$850,000	**$4,200**	13	$54,600
> $900,000 ≤ $1,000,000	$3,250	$950,000	**$4,700**	20	$94,000
> $1,000,000 ≤ $1,250,000	$3,500	$1,125,000	**$5,575**	25	$139,375
> $1,250,000 ≤ $1,500,000	$3,750	$1,375,000	**$6,825**	26	$177,450
> $1,500,000 ≤ $1,750,000	$4,000	$1,625,000	**$8,075**	12	$96,900
> $1,750,000 ≤ $2,000,000	$4,250	$1,875,000	**$9,325**	17	$158,525
> $2,000,000 ≤ $2,500,000	$4,500	$2,250,000	**$11,200**	28	$313,600
> $2,500,000 ≤ $3,000,000	$4,750	$2,750,000	**$13,700**	11	$150,700
> $3,000,000 ≤ $3,500,000	$5,000	$3,250,000	**$16,200**	19	$307,800
> $3,500,000 ≤ $4,000,000	$5,500	$3,750,000	**$18,700**	8	$149,600
> $4,000,000 ≤ $4,500,000	$6,000	$4,250,000	**$21,200**	6	$127,200
> $4,500,000 ≤ $5,000,000	$6,500	$4,750,000	**$23,700**	6	$142,200
> $5,000,000 ≤ $7,500,000	$7,000	$6,250,000	**$31,200**	18	$561,600
> $7,500,000 ≤ $10,000,000	$8,500	$8,750,000	**$43,700**	12	$524,400
> $10,000,000 ≤ $12,500,000	$10,000	$11,250,000	**$56,200**	8	$449,600
> $12,500,000 ≤ $15,000,000	$14,000	$13,750,000	**$68,700**	2	$137,400
> $15,000,000	$18,000	$15,000,000	**$74,950**	3	$224,850
Total				1,256	$4,716,950
		Initial license application		100	$50,000
Total					**$4,766,950**

Under Schedule A, 386 providers – almost 30% of all Chapter 245D licensed providers – would pay less than the $200 minimum license fee included in the permanent fee schedule that is set to take effect in FY17. Although these are smaller providers, these are also the providers who were previously not licensed under Chapter 245B and who have demonstrated a need for significant technical assistance in complying with Chapter 245D standards.

In developing Schedule B, DHS determined that even small providers should pay a minimum of $450 as a base rate for a license to recognize the licensing, maltreatment and legal due process related costs associated with regulating their services.

IX. Recommendation

DHS recommends that future Chapter 245D licensing fees to fund the maltreatment and licensing related work for Chapter 245D HCBS licensed providers be based on Option 4, Schedule B. This model charges all license holders a base rate of $450 per license, to recognize the minimum cost to DHS for maltreatment- and licensing-related work for any provider, plus one-half of one percent of a provider's Chapter 245D Medical Assistance reimbursement over $100,000 (meaning all providers would be allowed to subtract the first $100,000 in revenues before paying the one-half of one percent of revenue).

Under this hybrid fee schedule (base fee plus percentage of adjusted revenue), license fee revenues are estimated to be approximately $4.8 million in FY17. The hybrid model keeps fees low for the small providers; fees are not much different in the lower ranges from the fees that would be generated under the 2013 fee schedule for Chapter 245D providers. Fees increase in the middle and upper range groups, but not unreasonably, based on total revenues. Also, no additional general fund dollars would be required to fund the Chapter 245D licensing and maltreatment investigation work.

X. Implementation Language

Minnesota Statutes, section 245A.10, subdivision 4, paragraph (b), clause (1) should be amended as follows:

"(1) A program licensed to provide one or more of the home and community-based services and supports identified under Chapter 245D to persons with disabilities or age 65 and older, shall pay an annual nonrefundable license fee based on <u>a flat rate of $450 plus one-half of one percent of</u> revenues derived from the provision of services that would require licensure under Chapter 245D <u>after subtracting the first $100,000 received for</u> ~~during~~ the calendar year immediately preceding the year in which the license fee is paid."

APPENDIX

Cost Assumptions

1) HCBS Unit Costs

HCBS Unit Costs include FTE costs (salary and nonsalary) - 18 licensors, two unit supervisors and one unit manager. The table below shows HCBS unit cost by fiscal year.

Cost category	FY16	FY17	FY18
HBCS Unit - 13 FTEs SWIFT	$1,272,287	$1,291,465	$1,291,465
7 new licensors	727,692	627,543	627,543
1 new unit supervisor	129,965	116,144	116,144
Total	$2,129,944	$2,035,152	$2,035,152

SWIFT salary projections are used for 13 current employees. Funding for seven additional licensors and one unit supervisor are based on current contracts which expire on June 30, 2015. The salary for a Human Services Licensor is $55,603 (MAPE 14 Grid, Range 12, step 6) plus 30 percent fringe. The salary for the unit supervisor (State Program Admin Director) is $76,379 (MMA 16E, Range 21, step 8) plus 30 percent fringe. Salary for FY17 is increased by 1.8 percent.

Nonsalary is based on DHS' guidelines for estimating administrative expenses for new staff which is $29,672 the first year and $14,064 in subsequent years. Because the estimate for administrative expenses does not include travel costs, $2,000 per year in travel and per diem expenses are added to the nonsalary costs for all licensors and investigators with $1,000 per year in travel for the unit manager and unit supervisors.

Human Services Licensor (14-12-6)	First year	Ongoing
Salary	$ 55,603	$ 56,604
Fringe (30% of salary)	$ 16,681	$ 16,981
Nonsalary	$ 29,672	$ 14,064
Travel	$2,000	$2,000
Total	$ 103,956	$ 89,649

Unit supervisor (16E-21-8)	First year	Ongoing
Salary	$ 76,379	$ 77,754
Fringe (30% of salary)	$ 22,914	$ 23,326
Nonsalary	$ 29,672	$ 14,064
Travel	$1,000	$1,000
Total	$ 129,965	$ 116,144

Depending on the number of services the HCBS program provides and the number of satellite licenses the HCBS provider holds, the hours to complete licensing reviews will vary. To determine review hours, licensing staff considered a base-type service and determined the time required for pre-licensing review preparations, travel, on-site reviews, writing inspection reports, and post licensing follow up. In addition to the base, reviews hours were added when there were additional services or satellite facilities that would be reviewed.

We estimate four hours of round-trip travel to each program. There are 512 HCBS programs in the seven-county metro area and 765 HCBS programs outside the seven-county metro area. Assuming three hours for travel in metro counties and five hours for out-state counties equals total travel time of 5,361 hours (512 programs times 3 hours each plus 765 programs times 5 hours) for an average of 4.2 hours per program (5,361 hours divided by 1277 programs) - rounded to 4 hours.

It is estimated that total review hours for a two-year cycle of reviews is 53,135 hours. Based on 1,717 hours per FTE per year, the reviews will require 15.47 licensors per year (53,135 divide by two (2 year review cycle) divided by 1,717 hours. The 1,717 hours were determined as follows: Starting point is 2,080 hours per year (52 weeks times 40 hours per week), subtract 88 hours for 11 holidays, 80 hours for annual leave, 40 hours for sick leave (sickness, dental and medical appointment), 32 hours for OIG and Licensing Division meetings, 100 hours for bi-monthly HCBS unit meetings (25 weeks times 4 hours), and 24 hours per year per FTE for training and other required meetings or hearings.

Table for HCBS Reviews

HCBS		**Base Level**				**Additional Services**					
Type	Base review hours	Number of reviews	Hours Base x #	Additional Hours	Subtotal	Number	Hours	Additional Hours	Total hours	FTEs - annual reviews	FTEs - 2 yr reviews
Basic Supports	22.00	184	4,048	0	4,048	184	18	3,312			
AFC/CFC	22.00	470	10,340	175	10,515	47	2	94			
CRS	30.50	463	14,122		14,122	463	18	8,334			
CRS (25%) travel	1.00	850	850		850						
CRS (25%) reviews	8.00	850	6,800		6,800						
DSF	31.75	110	3,493		3,493						
DSF - additional sites	8.00	196	1,568		1,568						
					41,395			11,740	53,135	30.95	15.47

FTEs count based on 1,717 hours per year

Base Level

Base review = Notice of reinspection, pre-licensing preparation, travel, on-site review, written licensing report & post licensing follow-up
Basic supports and AFC/CFC = 22 hours
AFC/CFC - 175 hours statewide - review incident reports, maltreatment, EUMR, PSTP
CRS = 30.5 hours plus 1 hour travel (25% of sites) times 6 review hours
DSF = 31.75 hours plus 8 review hours other sites (100% of sites)

Additional Services

Basic Supports - 3 additional services per provider at 6 hours per service
AFC/CFC - 2 additional hours (10 percent of providers)
DSF - 2 additional services at 6 hours each

In addition to licensing reviews, it is estimated that there will be 120 licensing complaints investigated each year at an average of eight hours per complaint (960 hours). It is estimated that there will be 100 new applicants per year at 20 hours per application (2,000 hours). Work related to license fees, license renewal, and license fee collection is estimated at one hour per program (1,277 hours). Staff coordination with IT for the Chapter 245D dashboard functionality, triage, development, and maintenance is estimated at 200 hours (4 hours per week times 50 weeks).

Total annual hours = 26,568 review hours, 960 hours complaint investigations, 2,000 hours new license applicants, 1,277 hours for annual license renewal, 200 hours Chapter 245D dashboard) or 18.06

licensors (31,005 hours divided by 1,717 hours per FTEs). This requires an additional 8 FTEs (7 HCBS licensors and one additional unit supervisor).

2) HCBS maltreatment costs

The table below shows maltreatment costs – Total maltreatment costs and prorated HCBS maltreatment costs by fiscal year.

Cost category	**FY16**	**FY17**	**FY18**
Maltreatment Total - 21 FTEs	$2,312,326	$2,347,612	$2,347,612
HCBS maltreatment (71% of total)	$1,641,751	$1,666,805	$1,666,805

Assigned by Svc Class	VAA	MOMA	Total
All classes	716	144	860
Adult Foster Care	301	3	
HCBS	29	7	
H_CRS	238	1	
H_DSF	66		
H_RES	3		
Residential MI	50	1	
Detox Services	2		
CD Treatment	25	1	
Psychopathic Personality	14		
Adult Day Centers	7		
CRF	1	39	
RS-N	1		
Child care centers		92	

The VAA total excludes 21 assessments completed in State Operated Programs.

To determine maltreatment costs associated with maltreatment investigations of HCBS providers, total maltreatment costs were determined and HCBS maltreatment costs were prorated based on the percent of maltreatment investigations assigned to HCBS programs. Although there is only six months of data for CRS sites (prior to July 1, 2014, these facilities were corporate adult foster care facilities with a Chapter 245D HCBS license), the numbers of maltreatment investigations assigned at CRS facilities equal the actual number of CRS investigations during the last six months of calendar year 2014 plus the number of maltreatment investigations assigned for the first six months of CY 2014 for corporate AFC programs with a Chapter 245D HCBS license.

In calendar year 2014, 613 reports involving HCBS providers were assigned for a maltreatment investigation. This represents 71 percent of the reports assigned (613/860 = 71.3 percent). Therefore 71 percent of the maltreatment investigations unit costs are assigned to HCBS providers or $1,641,751 ($2,312,326 times 71 percent = $1,641,751). Using the same percentage for reports that will be assigned in FY17 (71 percent), costs will increase due to the 1.8 percent increase in salaries in FY17. FY17 costs are estimated to be $1,666,805 ($2,347,612 times 71 percent = $1,666,805)

Service Class	Reports 1-1 to 6-30-14	Reports 7-1 to 12-31-14	Total reports assigned	Percent of assigned
Adult Foster Care				
AFC only	20	15	35	4.07%
AFC with HCBS secondary	249	20	269	
_CRS with HCBS secondary	0	239	239	
HCBS			35	
HCBS_DSF			67	
HCBS_RES			3	
HCBS total			613	71.28%

3) HCBS Intake costs

DHS receives reports of alleged maltreatment and licensing violations through the Central Intake Unit. The table below shows intake costs – Total intake costs and prorated HCBS intake costs by fiscal year.

Cost category	**FY16**	**FY17**	**FY18**
Intake Unit - 8 FTEs	$774,273	$786,185	$786,185
HCBS Intake (48.6% of total)	$376,297	$382,086	$382,086

In calendar year 2014, 5,885 reports were received and investigated by the Central Intake Unit. This number included 4,382 reports that were not assigned for further investigation and 1,503 reports that were assigned for investigation. Assigned reports represent 25 percent of reports received (1,503/5,885 = 25.5 percent). The 1,503 reports assigned for investigation included 622 reports assigned for licensing violations, 716 reports assigned for vulnerable adults act (VAA) investigations, and 144 reports assigned for maltreatment of minors act (MOMA) investigations, total maltreatment investigations assigned equal 860 reports. The assigned VAA in the table below includes 737 reports. However, that includes 21 reports assigned for special assessment in state operated programs that did not result in an actual VAA maltreatment investigation.

	Unassigned				Total	Assigned				Total	Assigned &
	Unknown	VAA	MOMA	Licensing		Unknown	VAA	MOMA	Licensing		Unassigned
January	1	124	10	185	320	0	62	5	45	112	432
February	0	109	16	148	273	0	52	14	46	112	385
March	0	112	9	195	316	0	75	11	56	142	458
April	0	106	17	207	330	0	63	15	52	130	460
May	1	110	12	238	361	0	54	8	44	106	467
June	1	138	14	247	400	0	50	11	59	120	520
July	0	129	22	304	455	0	64	7	51	122	577
August	0	157	10	228	395	0	60	17	41	118	513
September	2	140	12	210	364	0	70	18	75	163	527
October	4	200	21	205	430	0	86	16	69	171	601
November	0	160	20	173	353	0	36	10	33	79	432
December	2	165	19	199	385	0	65	12	51	128	513
Total	11	1,650	182	2,539	4,382	0	737	144	622	1,503	5,885

Although 75 percent of the reports received and investigated by the Central Intake Unit are not assigned for further investigation, intake costs are assigned to the various licensed service classes based on the percent of reports assigned for further investigation by service class. For maltreatment, 613 of the 860 reports assigned for maltreatment investigations are HCBS programs. The total maltreatment assigned is 881 (737 plus 144). However, 21 of those reports were assigned assessments involving state operated programs. Therefore, we are using the figure of 860 reports assigned for maltreatment investigation.

For licensing complaints, 118 of the 622 reports assigned for licensing investigations are HCBS programs. Together, these reports constitute 731 of the 1503 reports assigned for investigation, or 48.6 percent. Since the Intake Units costs for FY16 are $774.273, HCBS programs are responsible for $376,297 of the Intake Unit costs ($774,273 x .486 = $376,297. Using the same percentage for FY17, costs will increase due to a 1.8 percent increase in salary expenses.

When determining intake maltreatment costs only, the HCBS maltreatment costs represent 40.5 percent of the total intake costs. Maltreatment reports assigned are 860 reports out of 1,503 total reports assigned, or 57 percent. Licensing complaints and assessments in state operated programs equal the remaining 43 percent (643 divided by 1503). HCBS programs are responsible for 71 percent of the maltreatment costs which translates into 40.5 percent of intake costs when licensing complaints are excluded (57 percent times 71 percent equals 40.5 percent). In FY 17, that amount is $318,405 of the Intake Unit's cost of $786,185.

4) Legal / Due Process costs

Legal / due process costs are related to reconsiderations of correction orders and conditional licenses, and appeals of license denial, fines, and license revocation.

Cost category	FY16	FY17	FY18
Legal unit and legal support	$1,436,884	$1,458,867	$1,458,867
20 Percent – directly licensed	$287,377	$291,773	$291,773
HCBS legal costs (34% of directly licensed)	$97,708	$99,203	$99,203

For FY16, the Legal Unit and legal support costs are estimated to be $1,436,884 with 70 percent of those costs the responsibility of the DHS Background Studies Division for reconsiderations, disqualification appeals, and expungements; 20 percent related to licensing sanctions in directly licensed programs; and 10 percent in family systems programs.

HCBS programs represented 34 percent of the directly licensed programs (excluding satellite facilities). To determine due process / legal costs, the HCBS unit was assessed 34 percent of the legal costs in directly licensed programs or $97,708 ($1,436,884 times 20 percent (directly licensed programs) times 34 percent). In FY17, the costs are estimated to be $99,203 ($1,458,867 times 20 percent times 34 percent).

5) Office of Administrative Hearings (OAH) costs

OAH costs are charges for hearing contested cases related to license denial, fines, and license revocation.

Cost category	FY16	FY17	FY18
Division Total	$700,000	$700,000	$700,000
20 Percent – directly licensed	$140,000	$140,000	$140,000
HCBS legal costs (48.6% of directly licensed)	$68,040	$68,040	$68,040

In FY15, the Licensing Division will be charged approximately $700,000 in OAH costs. The bulk of the OAH costs stem from actions in Family Systems Programs (87 percent in FY13 and 80 percent in FY 14).

In FY16, it is assumed that 20 percent of the OAH charges will be in directly licensed programs. Based on the percent of reports assigned for maltreatment and licensing complaint investigations, HCBS will be responsible for 48.6 percent of the OAH expenses in directly licensed programs or $68,040 ($700,000 times 20 percent times 48.6 percent).

6) Management and administrative staff support

Management and administrative staff support are necessary to support and oversee the Division's Chapter 245D-related work.

Cost category	FY16	FY17	FY18
Division Total	$1,395,075	$1,416,952	$1,416,952
50 Percent – directly licensed	$697,538	$708,476	$708,476
HCBS legal costs (34% of directly licensed)	$237,163	$240,882	$240,882

Management and administrative staff costs were allocated 50 percent to directly licensed programs and 50 percent to family systems programs and other management activities. To arrive at the cost estimate for HCBS programs, costs were estimated based on the number HCBS providers over all directly licensed providers. HCBS programs represented 34 percent of the directly licensed programs (excluding satellite facilities). Therefore, HCBS programs are responsible for $237,163 in FY16 ($1,395,075 times 50 percent times 34 percent). In FY17, the costs are estimated to be $240,882 ($1,416,952 times 50 percent times 34 percent).

7) IT costs

A stand-alone online licensing system was developed for HCBS providers. In FY16 and beyond, it is estimated that the cost of programming, ongoing maintenance, and program upgrades will be $200,000 annually.