Maltreatment Report: Vulnerable Adults & Minors Served by Minnesota Licensed Providers

Joint Biennial Report to the Minnesota Legislature summarizing allegations and investigations of maltreatment for State Fiscal Years 2014-2015.

Minnesota Department of Health
Minnesota Department of Human Services
March 4, 2016

LEGISLATIVE REPORT

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The estimated cost of preparing this report is approximately $12,000 combined for both the Minnesota Department of Health and Department of Human Services.

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Legislation and Purpose of this Report

Minnesota Statutes, section 626.557, requires the Minnesota Department of Health and the Department of Human Services to report biennially to the Legislature and the Governor about alleged maltreatment in facilities licensed by each respective agency. Minnesota Statutes, section 626.557, subdivision 12b, paragraph (e) states:

On a biennial basis, the commissioners of health and human services shall jointly report the following information to the legislature and the governor:

> *(1) the number and type of reports of alleged maltreatment involving licensed facilities reported under this section, the number of those requiring investigations under this section, the resolution of those investigations, and which of the two lead agencies was responsible;*
>
> *(2) trends about types of substantiated maltreatment found in the reporting period;*
>
> *(3) if there are upward trends for types of maltreatment substantiated, recommendations for addressing and responding to them;*
>
> *(4) efforts undertaken or recommended to improve the protection of vulnerable adults;*
>
> *(5) whether and where backlogs of cases result in a failure to conform with statutory time frames and recommendations for reducing backlogs if applicable;*
>
> *(6) recommended changes to statutes affecting the protection of vulnerable adults; and*
>
> *(7) any other information that is relevant to the report trends and findings.*

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Glossary

Allegation: A claim or assertion received from any source that abuse, neglect, and/or financial exploitation (maltreatment) has occurred to a vulnerable adult or a claim that physical abuse, neglect, sexual abuse, or mental injury of a child in a facility has occurred. A report may contain one or more allegations of maltreatment.

Complaint: When a vulnerable adult or interested party makes a complaint about abuse, neglect, or financial exploitation under the state's Vulnerable Adults Act.

False: A preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur (also referred to as "not substantiated").

Inconclusive: A finding of inconclusive means that there is less than a preponderance of evidence to show that maltreatment did or did not occur.

In-office Investigation: The process by which additional information is gathered to determine jurisdiction, whether the allegation was reportable and whether additional investigation is needed.

Maltreatment: Under the state's Vulnerable Adults Act (VAA), maltreatment is defined as abuse, neglect, and/or financial exploitation. Under the state's Maltreatment of Minors Act (MOMA), maltreatment is defined as any of the following acts or omissions: physical abuse, neglect, sexual abuse, or mental injury of a child in a facility.

Out of Office Investigation: The process of an investigator going to the site where the alleged maltreatment occurred to gather information, including documents and interviews, to determine whether maltreatment occurred (also referred to as an "onsite investigation")

Provider Self-Report: When a provider reports an incident of possible abuse, neglect, financial exploitation under the state's Vulnerable Adults Act.

Report: Report means the information that is provided from any source that alleges licensing violations or maltreatment. A report may contain one or more allegations of maltreatment.

Substantiated: A substantiated finding means a preponderance of the evidence shows that an act that meets the definition of maltreatment did occur.

Acronyms

CMS: Centers for Medicare and Medicaid Services

DHS: Minnesota Department of Human Services

MAARC: Minnesota Adult Abuse Reporting Center

MOMA: Maltreatment of Minors Act

MDH: Minnesota Department of Health

OHCF: Office of Health Facility Complaints

VAA: Vulnerable Adults Act

Executive Summary

The regulatory role of the Minnesota Department of Health (MDH) Health Regulation Division and Department of Human Services (DHS) Licensing Divisions is to protect the safety, health, well-being and rights of the public who receive services from health and human services licensed providers.

The Department of Human Services (DHS), in partnership with counties, licenses several types of service providers and monitors and investigates their compliance with Minnesota laws and rules. The Minnesota Department of Health (MDH) licenses healthcare entities.

The MDH's Office of Health Facility Complaints (OHFC) is responsible for completing maltreatment investigations for MDH licensed entities. In addition, OHFC is also responsible for investigating allegations of non-compliance with federal certification requirements and state licensing regulations.

DHS Licenses 22,500 service providers, including:

- Child Care Centers
- Adolescent Group Homes
- Adult Day Service Centers
- Day Training and Habilitation Programs
- Chemical Dependency Treatment Centers
- Adult Foster Care

And several others

MDH Licenses 2,600 healthcare entities, including:

- Nursing homes
- Hospitals
- Boarding care homes
- Supervised living facilities
- Freestanding outpatient surgical centers

These centers have a total of 54,000 licensed beds and serve 36,000 vulnerable adults per year

The focus of this report is the investigation of maltreatment in DHS directly licensed programs and adult foster care, and MDH licensed providers. Data in this report combines information about reports and investigations of alleged maltreatment of both vulnerable adults under Minnesota Statutes, section 626.557, and minors under Minnesota Statutes, section 626.556, in DHS and MDH licensed programs. Although this report specifically addresses state fiscal year (SFY) 2015, some of the charts and graphs contained in this report provide data for multiple fiscal years in order to show changes occurring over a period of time.

This report responds to Minnesota Statutes, section 626.557, subdivision 12b, paragraph (e). Historically, the Minnesota Department of Human Services (DHS) and the Minnesota Department of Health (MDH) were required to submit an annual report to the legislature and the governor that detailed maltreatment investigation work completed by each agency. In 2014, the legislature eliminated the requirement for individual reports from each agency. Instead, on a biennial basis, the Commissioners of Health and Human Services must provide a joint report to the legislature and the governor about maltreatment investigations, outcomes, trends and recommendations for improving the protection of vulnerable adults.

Summary of Maltreatment Investigations by Agency, State Fiscal Year 2015

In Fiscal Year 2015, **DHS**:	In Fiscal Year 2015, **MDH**:
• Received 3,249 ***reports***[1] of possible maltreatment for assessment. • Assigned 860 reports for out-of-office maltreatment investigations.	• Received 16,954 ***allegations*** of possible maltreatment for assessment. • Assigned 746 allegations for out-of-office maltreatment investigations.
In Fiscal Year 2015, **DHS** also:	In Fiscal Year 2015, **MDH** also:
• Completed 1,078 maltreatment investigations; 32 % had a finding of maltreatment determined; 45% had a finding of maltreatment not determined, and 23% had a finding of inconclusive. • Disqualified 97 individuals found responsible for serious or recurring maltreatment from providing direct contact services according to the Human Services Background Study Act (Minn. Stat., chapter 245C).	• Completed 653 maltreatment investigations; 16 % had a finding of maltreatment determined; 67% had a finding of maltreatment not determined, and 17% had a finding of inconclusive. • Disqualified 74 individuals found responsible for serious or recurring maltreatment from providing direct contact services according to the Human Services Background Study Act (Minn. Stat., chapter 245C).

[1] A report may contain multiple allegations. DHS maltreatment data is reported by numbers of reports received and by the number of allegations after a case is investigated out-of-office. MDH data is reported by total allegations received in initial reports.

Trends in Maltreatment Investigations by Agency, State Fiscal Year 2015

DHS Trends:	MDH Trends:
• Reports of neglect increased by 24% over the past five years (SFY11-15). • Neglect continues to be the largest category of maltreatment reports received (64% in SFY15) and substantiated maltreatment determinations (59% in SFY15). • Reports of abuse increased by 27% between 2014 and 2015. Reports of abuse have increased by 29% over the past five years. • Reports of financial exploitation have increased by 27% over the last five years. • The percentage of substantiated maltreatment determinations averaged 31% over the last five years. • The number of maltreatment investigations completed increased by 8% between 2014 and 2015. • The number of maltreatment investigations remaining open at the end of the fiscal year decreased by 67% from 2014 to SFY2015. • There were 106 reports pending at the end of SFY15, a decrease of 83% from SFY12. • Over 99% of reports received in SFY15 were completed within the 60-day statutory deadline.	• Allegations of neglect increased by 14% over the past five years (SFY11-15). • Neglect continues to be the largest category of maltreatment allegations received (67% in SFY15) and substantiated maltreatment determinations (55% in SFY15). • Allegations of abuse increased by 20% between 2014 and 2015. Allegations of abuse have increased by 92% over the past five years. • Allegations of overall financial exploitation (including drug diversion) have increased by 107% over the last five years. • Allegations of drug diversion increased by 48% between 2014 and 2015. • The percentage of substantiated maltreatment determinations averaged 18% over the last five years. • Maltreatment allegations received as complaints from vulnerable adults, family or community members have increased by 134% in the past 5 years. • Maltreatment allegations received from provider self-reports have increased by 22% in the past 5 years. • From SFY11 to SFY14, the percentage of cases completed within the 60 day time limit required by statute increased from 18% to 31%.

I. Introduction and Background

"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. In addition, it is the policy of this state to require the reporting of suspected maltreatment of vulnerable adults, to provide for the voluntary reporting of maltreatment of vulnerable adults, to require the investigation of the reports, and to provide protective and counseling services in appropriate cases."

- *Minn. Stat. Sec. 626.557, subd. 1*

The role of both the Minnesota Department of Health (MDH) Health Regulation Division and Department of Human Services (DHS) Licensing Divisions as regulators is to protect the safety, health, well-being and rights of the public who receive services from health and human services licensed providers. There is no overlap in the scope of the licenses, registrations, or certifications issued by MDH and DHS. However, some providers may have both an MDH license and a DHS license. For example, chemical health services provided in a residential setting require a DHS license related to the services provided and an MDH license as a supervised living facility.

Establishing licensure requirements that are clear for both providers and consumers leads to improved compliance by providers and result in better outcomes for consumers of those services. Each agency is charged with oversight of distinct services, providers and facilities, including the investigation of alleged maltreatment of vulnerable adults and minors in facilities or programs licensed by each agency.

- The Department of Human Services (DHS), in partnership with counties, licenses approximately 22,500 service providers and monitors and investigates their compliance with Minnesota laws and rules. DHS-licensed programs serve thousands of people in child care centers, adolescent group homes, adult day service centers, day training and habilitation programs, as well as residential and outpatient programs for people with chemical dependency, mental illness or developmental disabilities. DHS is responsible for completing maltreatment investigations when they relate to approximately 8,755 licensed settings, consisting of DHS directly-licensed and monitored programs (approximately 4,000 licensed programs) and adult foster care homes (approximately 4,700 licensed programs).

- The Minnesota Department of Health (MDH) 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. The MDH's Office of Health Facility Complaints (OHFC) is responsible for completing maltreatment investigations for MDH licensed entities. In addition, OHFC is also responsible for

investigating allegations of non-compliance with federal certification requirements and state licensing regulations.

The statutes most relevant to the investigation of maltreatment are:

- Minnesota Statutes, section 626.557, the Reporting of Maltreatment of Vulnerable Adults Act and 626.5572, Definitions for the Reporting of Maltreatment of Vulnerable Adults Act
- Minnesota Statutes, section 626.556, the Reporting of Maltreatment of Minors Act
- Minnesota Statutes, Chapter 245A, the Human Services Licensing Act
- Minnesota Statutes, Chapter 245C, the Human Services Background Study Act.

The Maltreatment of Minors Act (MOMA) was enacted in 1975, and the Vulnerable Adults Act (VAA) was enacted in 1980. Both laws are meant to ensure the protection of adults and children, who, because of a variety of circumstances, are vulnerable to maltreatment. Over time, statutory changes have increased the complexity of maltreatment investigations by initiating an appeal process and requiring extensive notifications of decisions made and actions taken.

Because statutory background study requirements direct DHS and MDH to disqualify people from providing direct contact service when they are found responsible for serious or recurring maltreatment, the changes have also addressed standards for determining who was responsible for maltreatment.

Most reports assigned for further investigation include a visit to the program, numerous interviews and the collection of pertinent documents. Each investigation must answer several questions:

- What actually happened?
- Did the event meet a statutory definition of maltreatment?
- If maltreatment occurred, was an individual or the facility responsible?
- Was any determined maltreatment recurring or serious?
- Is action necessary to reduce the chance that maltreatment will recur?

If maltreatment occurred, there is a secondary determination of whether a person(s) or a facility was responsible, whether the maltreatment was serious or recurring, and whether any action was necessary to reduce the risk of recurrence. Actions taken by MDH or DHS to reduce the risk of recurrence of maltreatment are governed by state law and include the following:

- Disqualifying an individual from providing direct care to people served by unlicensed personal care provider organizations and by programs licensed by the Department of Human Services, the Minnesota Department of Health, and certain programs licensed by the Department of Corrections.
- Issuing citations ordering a facility to correct the licensing violation.
- Issuing a fine, placing the license on conditional status, or suspending or revoking the license.

A summary of the information obtained during the investigation is documented in a public report. The results and determinations of these investigations are subject to appeal. Maltreatment

investigations conducted by DHS are available on Licensing Information Lookup. Maltreatment investigations conducted by MDH are also available online.

Historically, both MDH and DHS were required to submit an annual report to the legislature and the governor that detailed maltreatment investigation work completed by each agency. In 2014, the Legislature eliminated the requirement for individual reports from each agency. Instead, on a biennial basis, the Commissioners of Health and Human Services must provide a joint report to the legislature and the governor about maltreatment reports, investigations, outcomes, trends and recommendations for improving the protection of vulnerable adults. This report must include information about maltreatment reports, investigations, outcomes, trends, and recommendations for improving the protection of vulnerable adults and minors.

Data in this report covers the five-year period from for fiscal years 2011 to 2015 and includes information about reports and investigations of alleged maltreatment of vulnerable adults and minors in programs or providers licensed by either MDH or DHS.

II. Maltreatment Complaints Received

Complaints received. State and federal laws authorize anyone to file a complaint about licensed facilities, including complaints of alleged maltreatment. State law also mandates that licensed health care providers report all incidents of potential maltreatment (allegations) against a vulnerable adult or a minor.

Figure 1 shows the types of DHS-licensed programs where victims of incidents reported as possible maltreatment in SFY15 received services. For DHS, the greatest number of maltreatment reports received in 2015 were for vulnerable adults receiving home and community- based services.

DHS licenses approximately 1,250 distinct providers who provide services to more than 32,000 children and adults in the community and/or in residential settings governed by standards under Chapter 245D. The next largest provider class for which DHS receives reports are child care centers. The category “other” includes reports relating to any of the remaining provider types licensed by DHS, including adult day care services, chemical dependency residential treatment programs, mental health programs, and the Minnesota Security Hospital.

Figure 1. DHS-Licensed Services with Maltreatment Alleged, SFY15

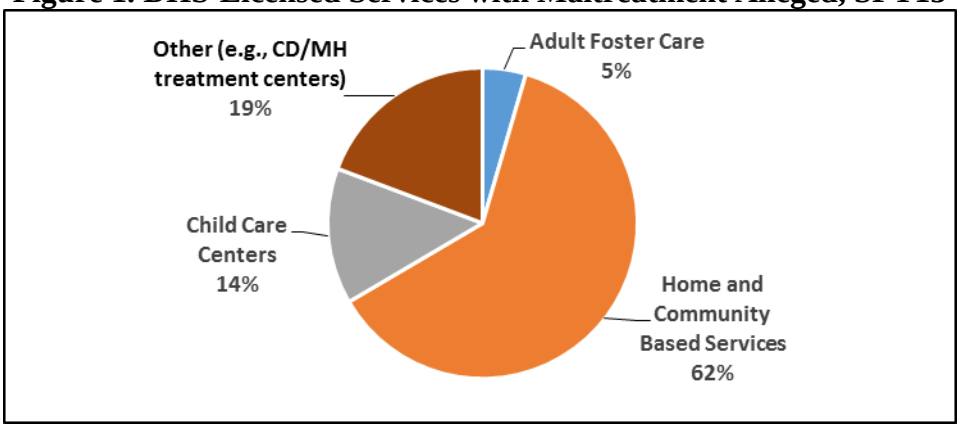
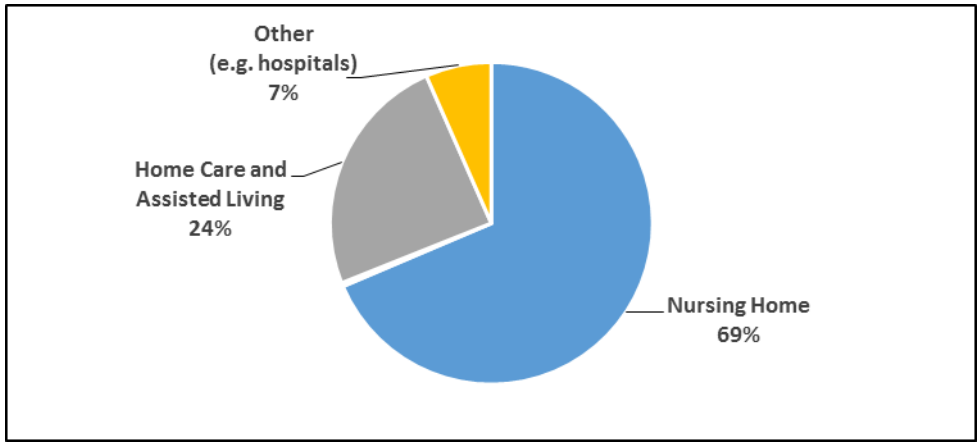


Figure 2 shows the types of MDH-licensed providers where incidents of alleged maltreatment occurred in SFY15. For MDH, the greatest number of maltreatment allegations received in 2015 were for vulnerable adults receiving nursing home services. MDH licenses approximately 374 distinct providers who provide services to vulnerable adults in nursing homes governed by standards under Chapter 144. The next largest provider class for which MDH receives allegations of maltreatment are for home care and assisted living services. The category "other" includes allegations relating to any of the remaining provider types licensed by MDH, including hospitals, supervised living facilities and hospice providers[2].

Figure 2. MDH-Licensed Services with Maltreatment Alleged, SFY15



[2] More information about allegations MDH received by specific provider-types is located in the Appendix

Type of Maltreatment Allegations Received. Under the VAA, maltreatment is defined as abuse, neglect, and financial exploitation. Maltreatment has a slightly different meaning when applied to minors. Under the MOMA, maltreatment is defined as any of the following acts or omissions: physical abuse, neglect, sexual abuse, and/or mental injury of a child in a facility.

DHS and MDH have different processes for receiving, processing and tracking maltreatment data. MDH tracks maltreatment data by each *allegation received*. DHS tracks maltreatment data by each *report received*, even if the report contains multiple allegations involving the same provider or multiple vulnerable adults or children. DHS subsequently tracks allegations on reports assigned for out-of-office investigation. The following tables and charts in this report reflect these differences.

Table 1 shows the type of maltreatment allegations that MDH received in SFY15. Over the 5-year period SFY11-SFY15, there has been an increase in the number of allegations in all areas (i.e. neglect, abuse and financial exploitation)[3]. During that same period, MDH saw a 92% increase in the number of allegations involving abuse. From SFY14 to SFY15, the number of allegations involving drug diversion increased by 48%.

- Prior to SFY14, all allegations relating to drug diversion were coded as financial exploitation. Beginning in SFY14, MDH made a change to internal maltreatment coding to allow the tracking of allegations of maltreatment that specifically relate to drug diversions.
- This distinction provides data that enables MDH to track allegations and trends of diversion of pharmaceutical drugs belonging to vulnerable adults by health care professionals. The drug diversion number is being reported as its own total, and therefore should be considered *in addition to* the financial exploitation count to arrive at the true total count of financial exploitation allegations.

Table 1: MDH Maltreatment Allegations Received by Type, SFY11-SFY15[4]

Type of Allegation	SFY11	SFY12	SFY13	SFY14	SFY15
Neglect	10,011	13,174	16,374	15,217	11,407
Abuse	1,792	2,132	2,751	2,867	3,435
Financial Exploitation	1,020	1,361	1,757	1,773	1,828
- Drug Diversion	N/A	N/A	N/A	192	284
Total	**12,823**	**16,667**	**20,882**	**20,049**	**16,954**
Percent change from the previous year	---	30%	25%	-4%	-15%

[3] More information about changes in allegations received by MDH is located in the Appendix
[4] Previously MDH has reported on two subcategories of neglect (unexplained injury and accident). The unexplained injury and accident subcategories are now being counted in the larger category of neglect.

Table 2 shows the type of maltreatment reports that DHS received in SFY15. Over the 5-year period SFY11-SFY15, there has been an increase in number of reports in all areas (i.e. neglect, abuse and financial exploitation), though the number of neglect reports has fallen over the last two fiscal years. During SFY11-SFY15, DHS saw a 29% increase in the number of reports involving abuse. DHS does not track drug diversion separately and includes it in financial exploitation.

Table 2: DHS Maltreatment Reports Received by Type, SFY11-SFY15

Type of Report	SFY11	SFY12	SFY13	SFY14	SFY15
Neglect	1,689	2,170	2,277	2,115	2,092
Abuse	620	683	731	632	802
Financial Exploitation	280	330	317	308	355
Total	**2,589**	**3,183**	**3,325**	**3,055**	**3,249**
Percent change from the previous year	--	23%	4%	-8%	6%

III. Maltreatment Reports Completed and Outcome of Investigations

After an initial investigation to obtain information regarding the vulnerable adult or child, the provider, and the staff person(s) involved, one of six possible determinations is made:

- No jurisdiction because the event did not occur in a DHS or MDH licensed setting.
- No further investigation is necessary because the event does not meet a statutory definition of maltreatment and does not represent a possible licensing violation.
- In some limited cases, further investigation is not necessary because of low risk (the vulnerable adult or child was not physically injured and risk of injury is low because the facility took action to reduce the risk of recurrence).
- The report is assigned for out-of-office maltreatment investigation.
- The report is assigned for out-of-office investigation of possible licensing standards violations only.
- The report is assigned for out-of-office maltreatment investigation with the additional investigation of a possible violation of one or more licensing standards.

If an out-of-office investigation of maltreatment is conducted, the VAA allows for one of four determinations:

- *Substantiated*– A substantiated finding means a preponderance of the evidence shows that an act that meets the definition of maltreatment occurred;
- *False* – a finding of false means a preponderance of the evidence shows that an act that meets the definition of maltreatment did not occur;
- *Inconclusive* – An inconclusive finding means that there is not a preponderance of evidence to show that maltreatment did or did not occur. A vulnerable adult or their health care agent can appeal an inconclusive finding; however, facilities and alleged perpetrators are limited to appealing only substantiated maltreatment determinations, or
- *No determination will be made*.

If an out-of-office investigation of maltreatment of a minor is conducted, the MOMA allows for one of the two following determinations:

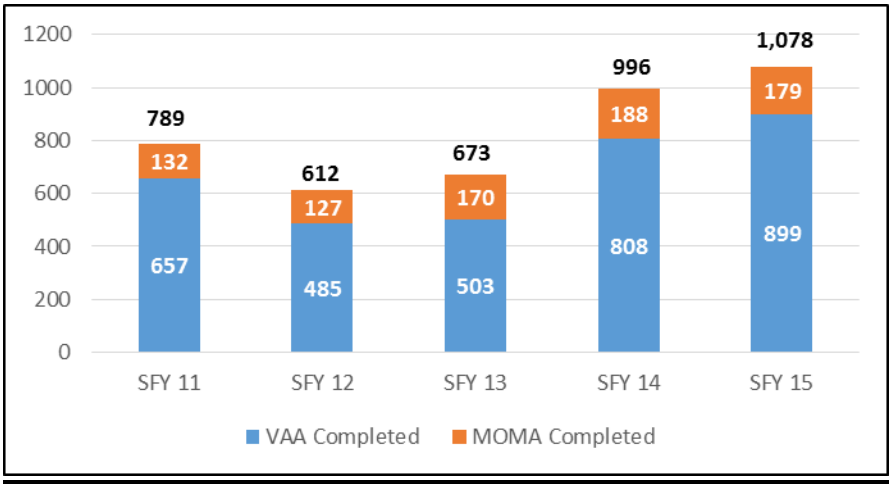
- *Maltreatment Determined* – A maltreatment determined finding means that a preponderance of the evidence shows that an act or omission that meets the definition of maltreatment occurred.
- *Maltreatment Not Determined*– A not determined finding means a preponderance of the evidence shows that an act or omission that meets the definition of maltreatment did not occur.

As noted above, the VAA and MOMA statutes use different terms for similar findings. For purposes of combining VAA and MOMA data in this report, MOMA findings of "Maltreatment Determined" will be included with "Substantiated." The MOMA findings of "Maltreatment Not Determined" and the VAA findings of "False" will be included with "Not Substantiated" Neither agency uses the outcome "no determination will be made."

Reports Completed for Vulnerable Adults and Children. Both DHS and MDH investigate allegations of maltreatment of a child under the Maltreatment of Minors Act (MOMA), Minn. Stat. 626.556. DHS has historically reported those outcomes separately from outcomes relating to vulnerable adults. Figure 3 shows the total number of maltreatment reports completed by DHS for each of the last five fiscal years and the number that involved maltreatment under the Vulnerable Adults Act (VAA) and Maltreatment of Minors Act (MOMA). MDH has historically included MOMA outcomes in its overall outcomes.

The total number of DHS investigations completed increased substantially (76 percent) from SFY12-SFY15. The increase is due in part to the increased licensing duties from the new 245D statute, increased staffing, and changes in DHS Licensing's business process resulting in the elimination of a backlog of investigations during SFY14 and SFY15.

Figure 3: DHS Out-of-Office Investigations Completed for Minors and Vulnerable Adults



Outcome of Completed Reports Assigned for Out-of-Office Investigation. Substantiated maltreatment means a finding that the abuse or neglect of a vulnerable adult or a child, or the financial exploitation of a vulnerable adult, occurred. Table 3 shows the outcomes of MDH maltreatment allegations over the five year period (2011-2015), and the percent of completed onsite investigations that were substantiated. The data indicate a slight decrease in the percent of substantiated outcomes by MDH, although this could change when pending reports are completed and the outcomes for SFY15 are finalized. MDH also saw a decrease in the percentage of reports with a non-maltreatment determination of "inconclusive."

Table 3: MDH Maltreatment Onsite Investigations Completed and Outcomes

	Total Completed	Substantiated	Not Substantiated	Inconclusive	Substantiated %
SFY11	852	174	438	240	**20%**
SFY12	760	139	392	229	**18%**
SFY13	581	119	308	154	**20%**
SFY14	763	141	438	184	**18%**
SFY15	653	104*	435*	114*	**16%***
Pending	93				

* Both DHS and MDH both have pending cases at end of SFY and both complete those pending cases in next fiscal year. MDH goes back and recalculates its "results of allegations assigned for onsite investigation"; DHS includes the results in the totals for the SFY in which the report is completed. Therefore, SFY15 maltreatment investigation conclusion percentages for MDH may change in subsequent reports once the 93 pending investigations are concluded.

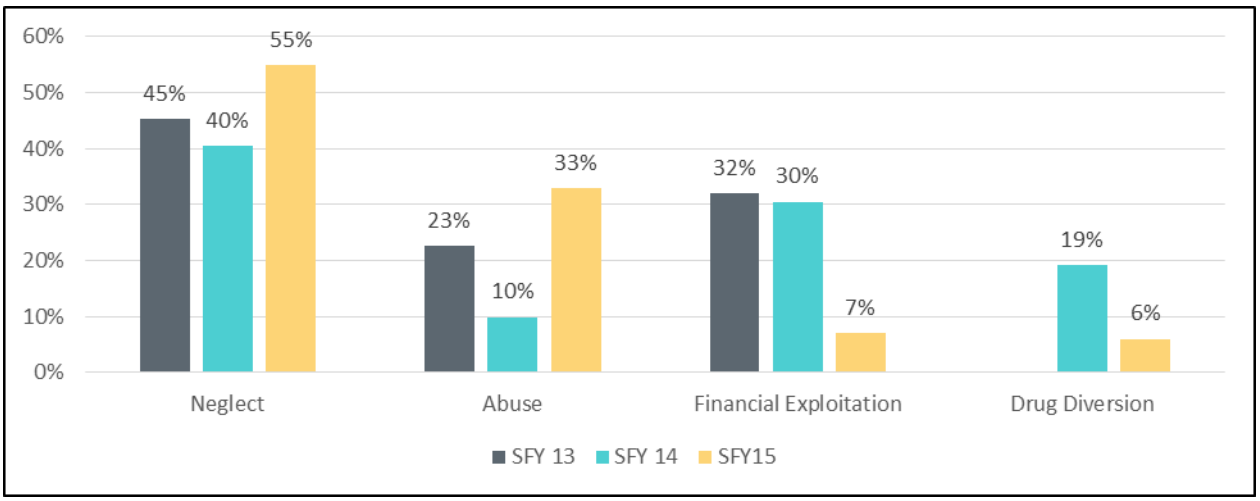
Table 4 shows the outcomes of DHS maltreatment out-of-office investigations over a five-year period, and the percent of completed out-of-office investigations that were substantiated. The data indicate an increase in the percent of substantiated claims by DHS over the five year period (2011-2015). This increase may be due to a higher number of older cases closed in SFY14 (48% increase in closed cases over SFY13) and SFY15 that were substantiated. DHS saw a decrease in the percentage of reports with a non-maltreatment determination of "inconclusive."

Table 4: DHS Maltreatment Out-of-Office Investigations Completed & Outcomes

	Total Completed	Substantiated	Not Substantiated	Inconclusive	Substantiated %
SFY11	789	218	239	332	**28%**
SFY12	612	174	216	222	**28%**
SFY13	673	192	217	264	**29%**
SFY14	996	384	217	395	**39%**
SFY15	1,078	349	485	244	**32%**

Maltreatment determinations by type. Figure 4 shows the type of maltreatment that was substantiated by MDH. The percent of maltreatment determined due to neglect, abuse or financial exploitation can vary significantly from year to year. Although represented separately in Figure 4, drug diversion is a subset of financial exploitation, and thus the total percent of substantiated financial exploitation reports is 49% in SFY14 and 11% in SFY15.

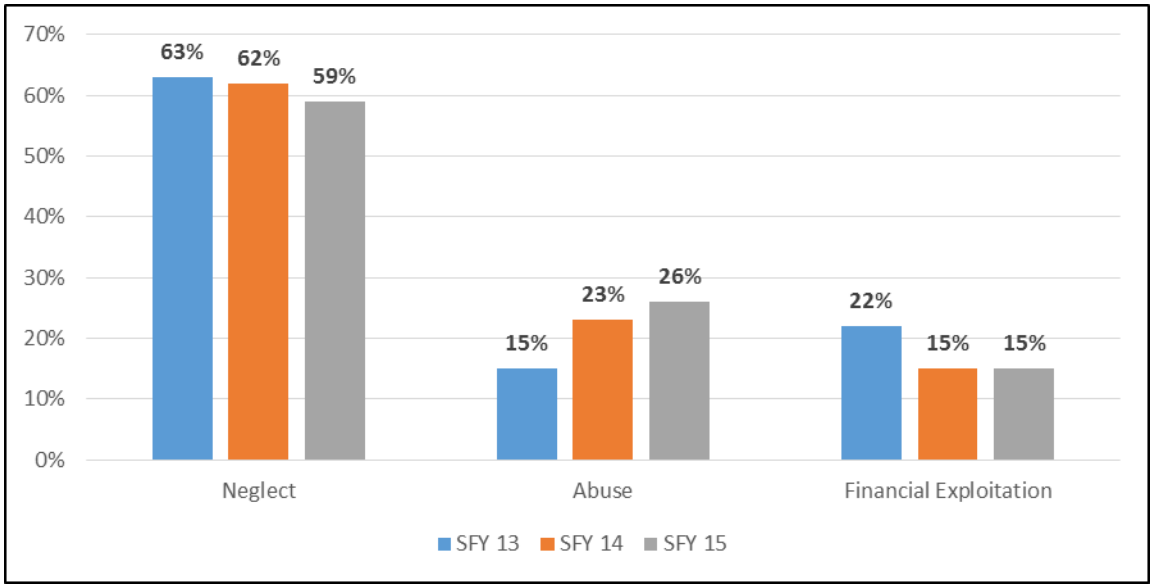
Figure 4: MDH Substantiated Maltreatment, by Type – SFY13-15 [5]



[5] SFY15 maltreatment investigation conclusion percentages for MDH may change in subsequent reports once the 93 pending investigations are concluded.

Figure 5 shows the type of maltreatment that was substantiated by DHS. The type of maltreatment most often found to have occurred is neglect. Unlike MDH, DHS does not track drug diversion report outcomes separately from other financial exploitation outcomes. The overall trend has been of decreasing neglect, increasing abuse and fairly consistent findings of financial exploitation. (Financial exploitation pertains to vulnerable adults only.)

Figure 5: DHS Substantiated Maltreatment, by Type – SFY13-15.



Outcome of Completed Reports: If MDH or DHS determine that maltreatment occurred, the agencies must then determine whether an individual, provider/employer, or both were responsible for the maltreatment, and whether the maltreatment was serious or recurring, and whether any action was necessary to reduce the risk of recurrence.

Table 5 shows the determination of responsibility by DHS for reports in which maltreatment occurred. The increase over the 5 year period may be partially due to the completion of a significant backlog by DHS in SFY14 and SFY15.

Table 5: DHS Substantiated Reports by Responsible Party

	SFY 11	SFY 12	SFY 13	SFY 14	SFY15
Only Individual Responsible	156	131	126	234	227
Only Provider Responsible	25	17	27	64	56
Provider & Individual Responsible	15	11	11	48	35
Inconclusive Responsibility	22	15	28	38	31
Total Substantiated	**218**	**174**	**192**	**384**	**349**

Table 6 shows the determination of responsible party by MDH for substantiated allegations of maltreatment in SFY15. MDH began tracking substantiated allegations by responsible party in the 2014, but did not have a full year of data to report until SFY15.

Table 6: MDH Substantiated Allegations by Responsible Party[6]

	SFY 15
Only Individual Responsible	32
Only Provider Responsible	40
Provider & Individual Responsible	32
Total Substantiated	**104**

Actions taken by DHS and MDH to reduce the risk of recurrence of maltreatment are governed by state law and include the following.

- Disqualifying an individual from providing direct care to people served by unlicensed personal care provider organizations and by programs licensed by the MDH, DHS, and certain programs licensed by the Department of Corrections.
- Issuing citations ordering a facility to correct the licensing violation.
- Issuing a fine, placing the license on conditional status, or suspending or revoking the license (DHS only).

Table 7 shows the number of individuals disqualified by MDH and DHS over the past five years due to serious or recurring maltreatment. Disqualifications are governed by Minnesota Statutes, section 245C.22.

Table 7: Number of Individuals Disqualified Due to Serious or Recurring Maltreatment

	SFY11	SFY12	SFY13	SFY14	SFY15
MDH Disqualifications	90	78	38	54	74
DHS Disqualifications	90	57	54	116	97

[6] SFY15 substantiated allegations for MDH may increase in subsequent reports once the 93 pending investigations are concluded.

IV. Compliance with Statutory Timeframes

Minnesota Statutes govern the process and timeframe for completing an investigation.[7] The process for conducting and completing investigations was developed to protect the health, safety, and well-being of vulnerable adults and children receiving licensed services. In 1995, these statutes were significantly amended to require, among other things, completion of an investigation within 60 days.[8]

Since 1995, additional statutory changes in two important areas have increased the complexity of maltreatment investigations: allowing the subject or facility to initiate an appeal process and requiring DHS to issue extensive notifications of decisions made and actions taken. In addition, because DHS and MDH are required to bar people from providing direct contact services when they are found responsible for certain types of maltreatment, the Legislature has enacted more exacting standards that the agencies must apply when determining who is responsible for maltreatment. All of these changes have resulted in lengthier investigations and more detailed reports that provide a thorough explanation for the decision.

Out-of-office vulnerable adult investigations completed within 60 days. Both MDH and DHS strive to complete the complex work of investigating alleged or suspected maltreatment within the statutory timelines and in a manner that upholds the highest standards for quality. 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 affect individuals and facilities are often taken at the conclusion of the investigation. Overall, the challenge for both agencies has been to balance the need for quick turnaround of these cases against increasingly complex maltreatment laws and high standards of quality and integrity.

In its SFY13 legislative report, DHS noted that the average length of time to complete an out-of-office investigation was seven months. In that report, DHS identified actions it would take to enhance efficiency and increase timeliness of completing reports, including:

- Centralized report assessment functions and restructured intake and assessment duties (originally two full time staff dedicated to this; currently five).
- Implementing a pilot project to abbreviate the investigation memoranda written for reports that result in a finding of false, inconclusive, or maltreatment not determined.
- Increased the focus on triaging new reports in order to resolve more cases at the point of assessment.
- Developed specialty teams to ensure that investigators with the greatest experience in a particular service area were assigned to investigate in those facilities. (Previously, all investigators conducted investigations of reports in all service areas.)

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

[8] Minnesota Statutes, section 626.557, subdivision 9c. If an investigation is not completed within 60 days, the Department is required to provide a notice to the vulnerable adult or the vulnerable adult's legal guardian and the facility stating why the report was not completed and identifying a projected completion date.

During SFY14, DHS operationalized these changes and continued its efforts to increase the timeliness of completing maltreatment reports and made a concerted effort to reduce the number of reports pending more than 60 days. In SFY15, the average length of time to complete an out-of-office investigation was 42 days. Table 7 shows the percent of DHS reports pending after 60 days. Between SFY14 and SFY 15, DHS improved its compliance with the 60-day deadline from 10% to 72% for out-of-office investigations completed during those years. For all reports received in SFY15, including those that did not result in an out-of-office investigation, 99.6% were completed within the statutory 60-day deadline.

Table 8: DHS Maltreatment Out-of-Office Investigations Completed Within 60 Days

	Total Out-of-Office Investigations Completed	Total Out-of-Office Investigations Completed Within 60 days	Percent Over 60 Days	Percent On time
SFY 11	789	152	81%	19%
SFY 12	612	100	84%	16%
SFY 13	673	62	91%	9%
SFY 14	996	98	90%	10%
SFY 15	1,078	777	28%	72%

To comply with federal triage standards, many allegations received by MDH must be investigated within 2 days of receipt of the allegation. As a result, MDH investigators are oftentimes dispatched to different facilities before they have had time to complete previously assigned maltreatment reports. This requirement continues to impact investigator caseloads and causes delays in meeting the VAA requirement that maltreatment investigations be completed within 60 days. Table 8 shows the percent of MDH reports pending after 60 days.

Table 9: MDH Maltreatment Out-of-Office Investigations Completed Within 60 Days

	Total Out-of-Office Investigations Completed	Total Out-of-Office Investigations Completed Within 60 days	Percent Over 60 Days	Percent On time
SFY 10	591	97	84%	16%
SFY 11	852	152	82%	18%
SFY 12	760	231	70%	30%
SFY 13	581	234	60%	40%
SFY 14	763	239	69%	31%

V. Efforts Undertaken or Recommended to Improve the Protection of Vulnerable Adults

Centralized Reporting System for Maltreatment. On July 1, 2015, Minnesota Adult Abuse Reporting Center was established. The Minnesota Adult Abuse Reporting Center (MAARC) is the centralized statewide common entry point established by the commissioner of human services under Minnesota Statutes 626.557 Subds. 4 and 9. A centralized statewide common entry point (CEP) changes the reporting of maltreatment from a county-based local system to a CEP operated under the commissioner of human services.

The center provides a web-based reporting system available 24 hours a day, seven days a week for mandated reporters. Mandated reporters are professionals or professional's delegates identified by law (MS 626.5572 Subd. 16) who **must** make a report if they have reason to believe that the abuse, neglect or financial exploitation of a vulnerable adult has occurred. Mandated reporters can use this web-based reporting system. Reports will be promptly submitted to the appropriate investigative agencies. Mandated reporters may also make a phone report 24 hours a day, seven days a week by calling the statewide toll-free number 844-880-1574.

Every MAARC report made is referred to the Lead Investigative Agency (LIA) responsible. County adult and child protection, the Minnesota Department of Health and the Minnesota Department of Human Services are all part of the adult and child protection systems and serve as civil LIAs responsible for maltreatment reports. County agencies offer protective services to vulnerable adults and children who are the subject of maltreatment reports.

Based on experiences in other states, reports of suspected maltreatment under a centralized CEP are estimated to increase as a result of the public education campaign and the simplified reporting process.

Olmstead Plan. Since the U.S. Supreme Court's *Olmstead* decision in 1999, every state has been required to examine how it funds services and supports for persons with disabilities. This includes many vulnerable adults. States must provide those services and supports in the most integrated setting – which means that individuals with disabilities must have the opportunity to interact with other persons who don't have disabilities. As part of a 2011 federal court settlement involving the treatment of clients at a Department of Human Services facility, it was agreed that an Olmstead Plan would be developed for Minnesota.

In January 2013, Governor Mark Dayton issued an executive order, forming an Olmstead Subcabinet and directing agencies to develop and implement an Olmstead Plan. The Subcabinet provides direction and oversight of the development and implementation of the Olmstead Plan, monitors the impact of the activities of state agencies and delivery agents such as counties and providers, and works closely with the Olmstead Implementation Office.

On September 29, 2015, the Court approved Minnesota's August 2015 *Olmstead* Plan. The *Olmstead* Plan is a broad series of key activities Minnesota must accomplish to ensure people with disabilities are living, learning, working, and enjoying life in the most integrated setting.

The Plan will help achieve a better Minnesota for all Minnesotans, because it will help Minnesotans with disabilities have the opportunity, both now and in the future to:

- Live close to their family and friends
- Live more independently
- Engage in productive employment
- Participate in community life.

The August 2015 *Olmstead* Plan requires that, by 2016, a baseline and measurable goals will be established on statewide levels and trends of abuse, neglect, exploitation, injuries, and deaths.

MDH and DHS staff who oversee the intake, assessment and investigation of maltreatment reports have been part of a multi-agency workgroup that met during SFY15 to discuss the development of statewide reporting on abuse and neglect as required by the Olmstead Plan. The group recognized the variation among terms, processes, and reporting metrics, examples of which are noted above in this report. Agency staff discussed the need to develop consistent data and definitions and consider one statewide tracking system into which all required information from state agencies and counties would be stored, tracked, analyzed and reported on.

Tracking requirement for remediation. The Centers for Medicare and Medicaid Services (CMS) issued guidance to states in 2014 to strengthen oversight of the health and welfare of beneficiaries and realign reporting requirements under the Medicaid Home and Community-Based waivers. The CMS requires individual remediation for vulnerable adults who are the subject of substantiated maltreatment while on a Medical Assistance waiver.

The state is also required to develop a system that allows for the discovery, remediation, and improvement for all waiver participants. MDH and DHS are exploring changes that might be needed to collect and report on remediation data, specific to the individual, at close of investigations of substantiated maltreatment. Currently, the outcome is not linked to the individual in either MDH or DHS datasets.

Remediation options for substantiated maltreatment allegations for MDH and DHS investigations may vary, depending on whether the party responsible for maltreatment was an individual or a facility.

An individual found responsible for substantiated maltreatment of a vulnerable adult might be: (i) ordered to obtain training, retraining, coaching; (ii) suspended by their employer; (iii) terminated by their employer, or (iv) referred to DHS background studies to determine whether the individual should be disqualified from direct contact with persons served by a DHS or MDH licensed provider.

A provider responsible for substantiated maltreatment of a vulnerable adult might be: (i) ordered to pay a fine; (ii) issued a citation for a licensing deficiency; (iii) ordered to take corrective action to prevent recurrence; (iv) have their license placed on conditional status, or (v) have their license revoked.

VI. Recommended Changes to Statutes Affecting the Protection of Vulnerable Adults

As discussed above, “drug diversion” is not a recognized form of maltreatment; it is included in the broader category of financial exploitation. In SFY14 MDH changed its coding to enable tracking of maltreatment allegations that specifically relate to diversion of pharmaceutical drugs by health care professionals. MDH and DHS, in consultation with stakeholders, should consider whether to amend the Vulnerable Adult Act to add drug diversion as a separate category of maltreatment.

Because of enhanced reporting requirements noted above for both the Olmstead Plan and the CMS remediation outcomes, MDH and DHS will use the work done on those issues to inform future statutory changes, which may include clarifying terms or definitions that are currently in statute, identifying standards that require clarification or updates due to changes in research, or identifying standards that are not having the intended outcome.

Any changes brought forward should have as their goal improving the protections of the health, safety and rights of clients and curbing the trend of increasing reports of alleged maltreatment.

Appendix – Additional Maltreatment Related Data by Source and Provider Type, Minnesota Department of Health (MDH)

State and federal laws authorize anyone to file a complaint about licensed health care facilities, including complaints of alleged maltreatment. State and federal law also mandate licensed and certified health care providers report all incidents of potential maltreatment (allegations) against a vulnerable adult or a minor. MDH therefore receives maltreatment allegations from two types of sources:

* **Complaints:** When a vulnerable adult or interested party makes a complaint about alleged abuse, neglect, or financial exploitation.

* **Provider Self-Reports:** When a provider reports an incident of alleged abuse, neglect, financial exploitation.

In order to provide further detail on the source of maltreatment allegations, Table 1-A separates the total number of allegations by complaints and provider-reported incidents. Within each of these categories, the totals are broken down again to reflect the number received for each by provider-type.

Table 1-A: Allegations by Source and Provider-Type

Maltreatment Allegations - Complaints	SFY11	SFY12	SFY13	SFY14	SFY15
Nursing Home	588	516	553	855	1,177
Hospital	18	19	17	6	21
Home Care and Assisted Living	419	538	664	830	1,328
Other Licensed Providers	112	150	111	126	139
Total Complaint Allegations	**1,137**	**1,223**	**1,345**	**1,817**	**2,665**
Maltreatment Allegations - Provider Reported	**SFY11**	**SFY12**	**SFY13**	**SFY14**	**SFY15**
Nursing Home	10,152	13,546	16,784	15,177	10,453
Hospital	101	140	161	130	40
Home Care and Assisted Living	874	1,113	1,730	2,125	2,815
Other Licensed Providers	559	645	862	801	981
Total Provider Reported Allegations	**11,686**	**15,444**	**19,537**	**18,233**	**14,289**
Grand Total	12,823	16,667	20,882	20,050	16,954

Trends Noted:

* **Complaints:** Maltreatment allegations received as complaints have increased by 134% in the past 5 years. Consistent with previous trends, the largest increases in maltreatment complaint allegations have been with nursing homes (100%) and home care and assisted living providers (217%).

* **Provider Self-Reports:** Maltreatment allegations received from provider self-reports have increased by 22% in the past 5 years.

MDH Allegation Coding Change: Beginning in SFY15, MDH staff must manually code an incoming provider-reported nursing home allegation as either a maltreatment allegation or a licensing allegation. As anticipated in the SFY13 MDH VAA report, the coding change had only a slight effect on the number of nursing home allegations that are self-reported; most of the provider-initiated reports from nursing facilities are still maltreatment allegations (83%).

In other words, it is important to recognize that the change in coding does not mean that MDH received fewer allegations. Rather, it means that *some* of those allegations are now more appropriately coded as possible compliance allegations of state and/or federal regulations verses maltreatment allegations. Allegations that rose to the level of receiving an onsite investigation were always coded appropriately as either a maltreatment or compliance investigation, meaning this coding change only had an effect on allegations which did not receive an onsite investigation.

While this report typically focuses on maltreatment allegations, compliance allegations (referred to as licensing allegations) must also be taken into consideration to fully understand trends in allegations received by MDH.

Table 2-A reflects *all* allegations received by MDH from SFY11 through SFY15, by provider-type. The top half of the chart reflects all maltreatment allegations (including complaints and provider self-reports) and the bottom half reflects all allegations of possible non-compliance with state and/or federal regulations (referred to as licensing allegations).

Table 2-A: Total allegations received by MDH – Maltreatment and Licensing

Maltreatment Allegations	SFY11	SFY12	SFY13	SFY14	SFY15
Nursing Home	10,740	14,062	17,337	16,032	11,630
Hospital	119	159	178	136	61
Home Care and Assisted Living	1,293	1,651	2,394	2,955	4,143
Other Licensed Facilities	671	795	973	927	1,120
Total Maltreatment Allegations	12,823	16,667	20,882	**20,050**	**16,954**
Licensing Allegations	**SFY11**	**SFY12**	**SFY13**	**SFY14**	**SFY15**
Nursing Home	533	618	1,070	1,065	3,407
Hospital	326	335	447	371	501
Home Care and Assisted Living	438	322	499	499	725
Other Licensed Facilities	227	273	309	294	392
Total Licensing Allegations	1,524	1,548	2,325	**2,229**	**5,025**
Allegations Grand Total	14,347	18,215	23,207	22,279	21,979
Percent change from the previous year	---	27%	27%	-4%	-1.3%