Iowa Department of Human Services

Terry E. Branstad
Governor

Kim Reynolds
Lt. Governor

Charles M. Palmer
Director

December 3, 2012

Michael Marshall
Secretary of the Senate
State Capitol Building
L O C A L

Carmine Boal
Chief Clerk of the House
State Capitol Building
L O C A L

Dear Mr. Marshall and Ms. Boal:

Enclosed please find the Summary of Charge from House File 2226, Section 7, Child Abuse Assessments Administrative Appeals.

This report is also available on the Department of Human Services website at http://www.dhs.iowa.gov/Partners/Reports/LegislativeReports/LegisReports.html.

Sincerely,

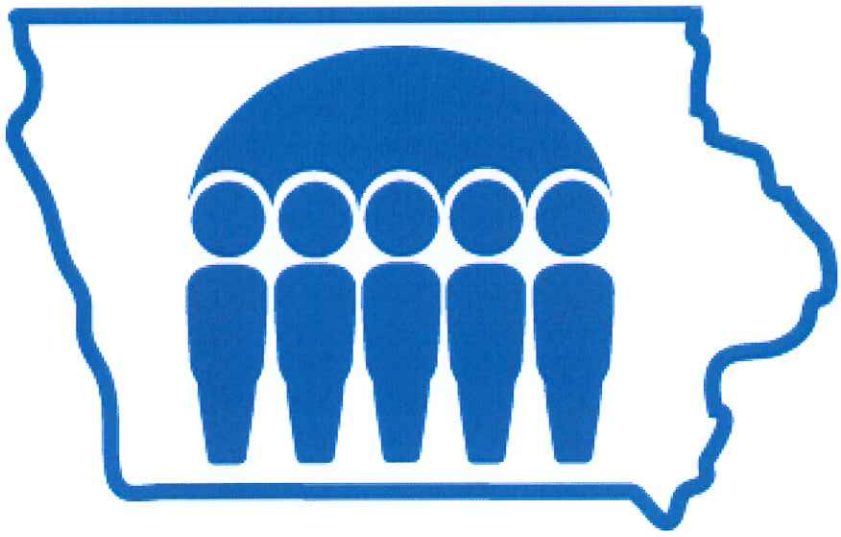
Jennifer Davis Harbison (dlf)

Jennifer Davis Harbison
Policy Advisor

Enclosure

cc: Governor Terry E. Branstad
Senator Jack Hatch
Senator David Johnson
Representative David Heaton
Representative Lisa Heddens
Legislative Services Agency
Kris Bell, Senate Majority Staff
Josh Bronsink, Senate Minority Staff
Carrie Kobrinetz, House Majority Staff
Zeke Furlong, House Minority Staff

Iowa Department of Human Services



Summary of Child Abuse Assessments Administrative Appeals Charge from House File 2226

December 2012

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Executive Summary:

The workgroup conducted five meetings and was comprised of eleven members representing the Iowa Department of Inspections and Appeals (DIA), the office of Iowa attorney general, and four divisions within the Iowa Department of Human Services (DHS). As requested in House File 2226, the product of this group consists of information on:

1. The number of persons appealing
2. The alleged reason for the placement
3. The length of time for an appeal (including the time between a request for a contested case hearing and the occurrence of the contested case hearing)
4. The proposed decision of the presiding officer
5. If the proposed decision was appealed, the review of the director
6. Reasons for outliers in the length of time for an appeal

Introduction:

The DHS implemented the current appeals information tracking software, the Appeals Information System (AIS), in January 2010 after 2.5 years of development. Prior to that time, information regarding appeals was monitored through a combination of mainframe programming and an ACCESS database. Due to inaccurate data contained within the old system the preliminary report utilized information from AIS on founded child abuse assessments, which were completed in calendar year 2010 and calendar year 2011. Information for calendar year 2012 and calendar year-to-date for 2013 will be added to the final report in December 2013.

Workgroup Overview:

The Child Abuse Assessments Administrative Appeals Workgroup is the result of Section 7 of House File 2226: "The department of human services and the department of inspections and appeals shall, by December 1, 2012, submit a preliminary report to the governor and general assembly regarding the length of time for appeals of placement on the child abuse registry within the last five years." This section of the bill further stated: "The department of human services and the department of inspections and appeals shall submit a final report to the governor and the general assembly by December 1, 2013."

The workgroup began reviewing the charge of House File 2226 and discussing the methodology for how to provide the information in a clear and concise manner. The workgroup confirmed that the charge was specific to the length of time for appeals of placement on the Child Abuse Registry. Therefore, it was determined that only founded

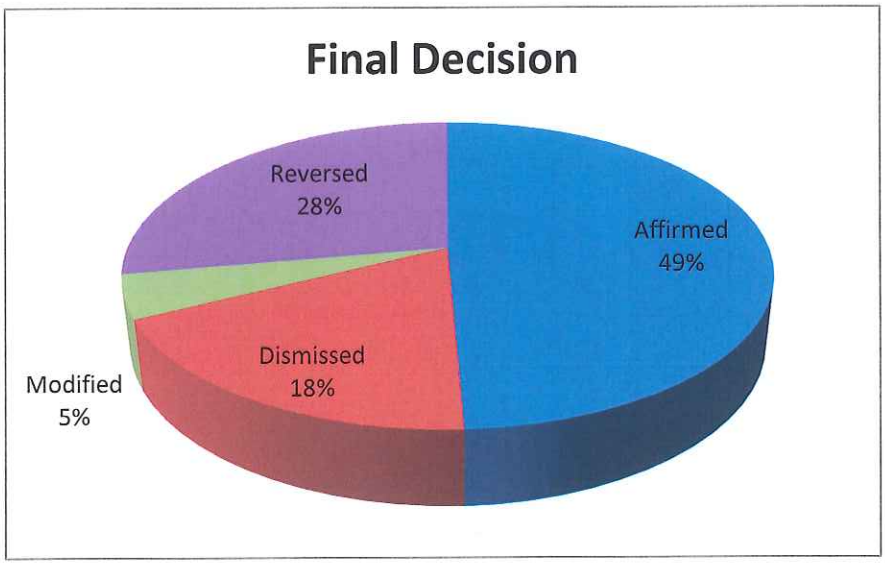
reports of child abuse that were appealed would be used in this report. Confirmed and not confirmed reports of child abuse were excluded since these reports would not be listed on the registry.

The workgroup used a "snapshot in time" report generated from the AIS. This AIS report provides information on the number of appeals received by the DHS appeals unit within any specified period of time. In addition to the number of appeals received, it gives details on how many appeals were disposed (completed), the method of disposition (affirmed, reversed, dismissed, modified, withdrawn, abandoned, denied, or remanded; see Appendix A for definitions), and information on timeliness of appeal completion. The workgroup focused on appeals of founded reports of child abuse that were considered complete, by having a disposition, in 2010 or 2011.

The Number of Persons Appealing:

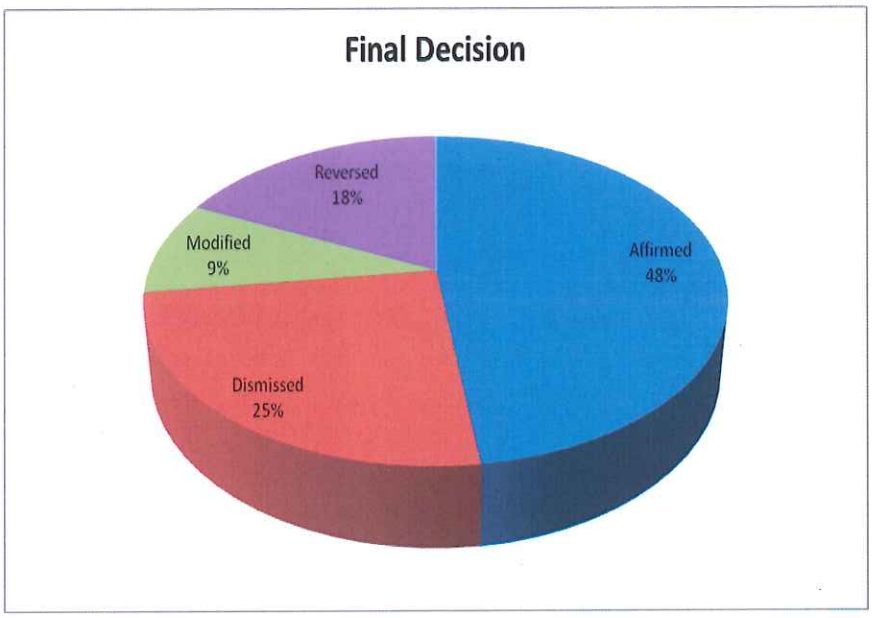
The workgroup separated the information regarding appeals that proceeded through the entire appeal process (from filing to a proposed decision) from those that did not go through the entire appeal process. This separation allows for a clear view of the different paths that are possible within the appeal process.

Appeals that proceeded through the entire appeal process included those with dispositions (final decisions) that were affirmed, reversed, dismissed, or modified. The AIS report confirmed there were 152 founded child abuse assessment reports under appeal which proceeded through the entire appeal process and closed in 2010. The dispositions of those appeals appear within the chart below:



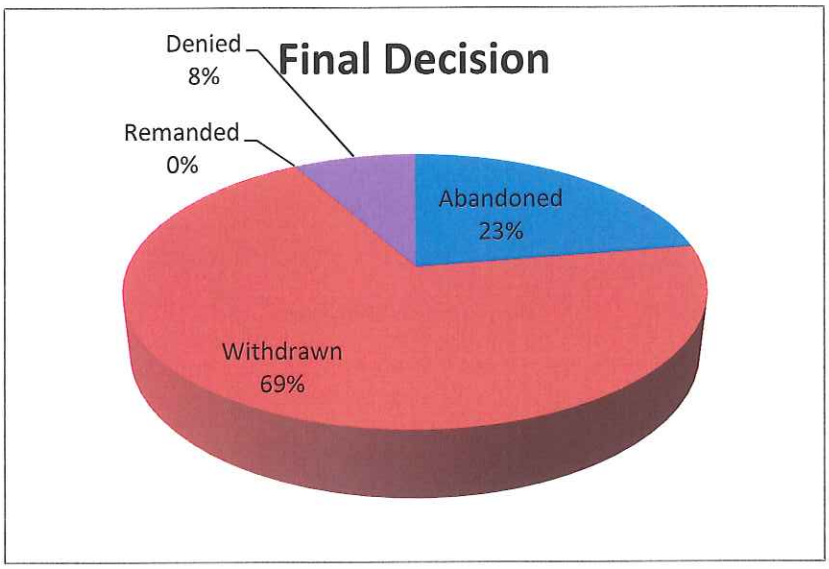
*See Appendix A

A total of 196 founded child abuse assessment reports under appeal that closed in 2011 proceeded through the entire appeal process. The dispositions of those appeals appear within the chart below:



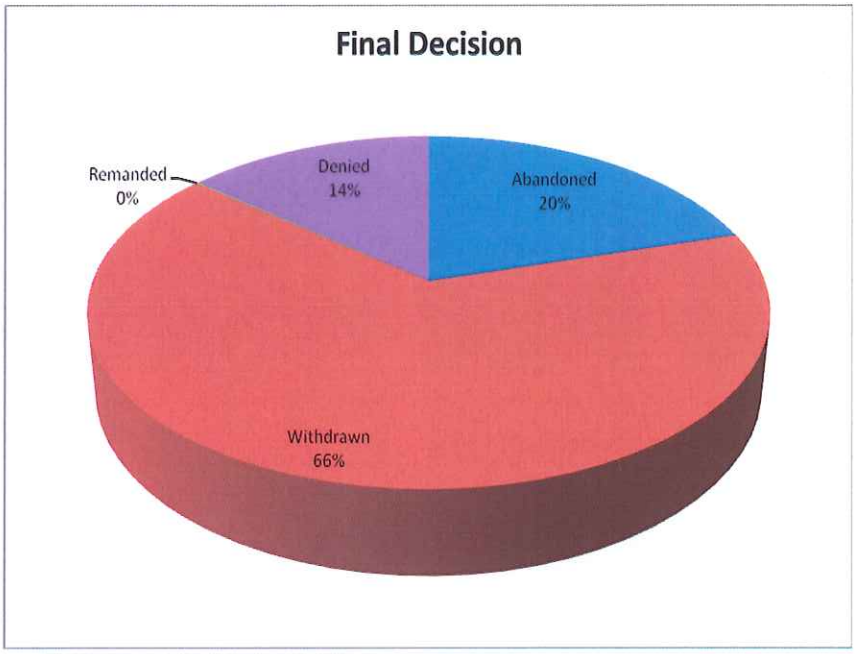
*See Appendix A

Appeals which did not go through the entire process included those with dispositions (final decisions) that were abandoned, withdrawn, remanded, and denied. A total of 1,226 founded child abuse assessment reports under appeal that were closed in 2010 did not go through the entire appeal process. The dispositions of those appeals appear within the chart below:



*See Appendix A

A total of 1,021 founded child abuse assessment reports under appeal that closed in 2011 did not go through the entire appeal process. The dispositions of those appeals appear within the chart below:

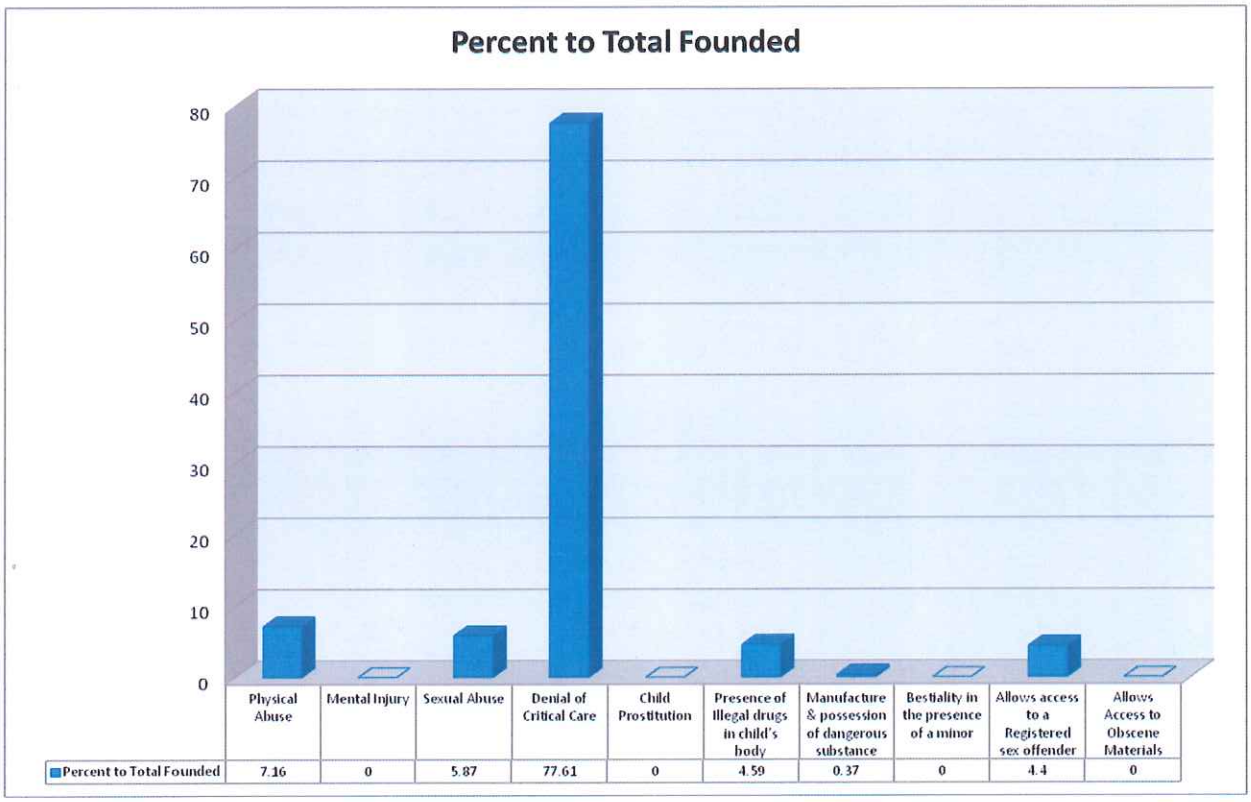


*See Appendix A

The Reason for the Placement:

The majority of appeals for founded child abuse assessments in 2010 were associated with the abuse category for denial of critical care. The disposition of each abuse category appears within the graph below:

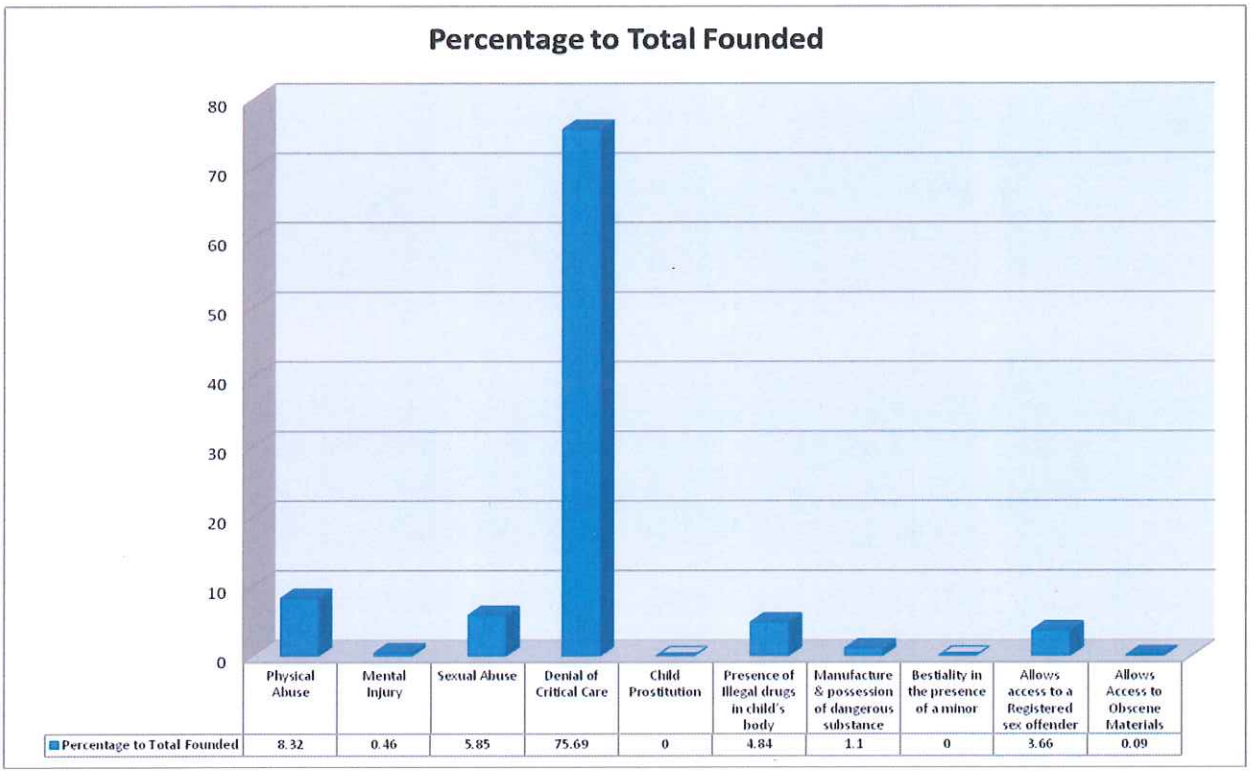
- Denial of Critical Care, 78%
- Physical Abuse, 7%
- Sexual Abuse, 6%
- Presence of Illegal Drugs in a Child's Body, 5%
- Allows Access to a Registered Sex Offender, 4%
- Manufacture and Possession of a Dangerous Substance, <1%



No appeals associated with the abuse categories mental injury, child prostitution, bestiality in the presence of a minor, or "allows access to obscene materials" were completed in 2010. The obscene material category became effective on July 1, 2010.

Again in 2011, the majority of appeals completed for founded child abuse assessments were associated with the abuse category of denial of critical care. The disposition of each abuse category appears within the graph below:

- Denial of Critical Care, 76%
- Physical Abuse, 8%
- Sexual Abuse, 6%
- Presence of Illegal Drugs in a Child's Body, 5%
- Allows Access to a Registered Sex Offender, 4%
- Manufacture and Possession of a Dangerous Substance, **1%**
- Mental Injury <1%
- Allows Access to Obscene Materials <1%



No appeals associated with the abuse categories of child prostitution or bestiality were completed in 2011.

The Length of Time for an Appeal:

To identify the length of time for an appeal, the workgroup used the data set of founded child abuse assessments which proceeded through the entire appeal process. As stated previously, these appeals had a proposed decision and included dispositions that were modified, reversed, affirmed, or dismissed.

It should be noted that cases which were identified as "loops" were not included in the analyzed data set. Any appeal where the process must be "re-started" due to legal considerations is referred to as a loop or loop back case. One example of a loop is when an appeal is sent back for re-adjudication as the result of a review. These cases are considered outliers.

In order to give a full picture of the appeals process, eight separate data points were identified, which highlight different stages of the appeal process. The following data points show the length of time for founded child abuse assessments with appeals that closed in 2010 and 2011:

1. **Days for DHS Intake**. The time it takes for the DHS appeals unit to accept, analyze, certify, or deny an incoming appeal, from the date it is filed to the date it is certified to DIA.

   The average in 2010, 23 days

   The average in 2011, 13 days

2. **Days Certified to DIA to Prehearing**. The time it takes for the prehearing to occur, from the date the appeal is certified to DIA to the date of the prehearing. Please note, 2010 was the first year in which AIS was utilized and unfortunately this data point was not captured for 2010. However, by the second year, 2011, the tracking was fully implemented for this data point.

   The average in 2010, not available

   The average in 2011, 61 days

3. **Day Prehearing to Hearing**. The time it takes for the hearing to occur, from the date of the prehearing to the date of the hearing. It is important to note this number is impacted by the fact that all parties involved with the appeal determine this date. As indicated above, 2010 was the first year in which AIS was utilized and unfortunately this data point was also not captured for 2010. However, by the second year, 2011, the tracking was fully implemented for this data point.

   The average in 2010, not available

   The average in 201, 151 days

4. **Days to Hearing**. The total time it takes for the hearing, from the date the appeal is filed to the date of the hearing. This number is also impacted by the fact that all parties involved with the appeal determine this date.

   The average in 2010, 206 days

   The average in 2011, 289 days

5. **Days to Proposed Decision**. The time it takes for a proposed decision, from the date of the hearing to the date of the proposed decision.

   The average in 2010, 65 days

   The average in 2011, 38 days

6. **Days to Review Requested**. The time it takes between the proposed decision date and the date a review is requested. It is important to note, the parties are allowed 10 days after the date of the proposed decision to request a review.

   The average in 2010, 8 days

   The average in 2011, 9 days

7. **Days for Review**. The time used by the DHS to conduct an appeal review, from the date the review was requested to the date of the final decision. It is expected that this number will decrease with the law change that took effect July 1, 2012, making the proposed decision the final decision after 45 days if there is not a final decision made prior to that time.

   The average in 2010, 210 days

   The average in 2011, 288 days

8. **Total Days for Appeal**. The total time it takes for a hearing, from the date the appeal is filed to the date of the final decision. It is important to note that the average days for appeals where a review was requested will naturally be higher than the appeals where a review was not requested due to the extra step in the process for those cases that are reviewed.

   The average in 2010, 388 days

   The average in 2011, 369 days

Reasons for Outliers:

New cases are certified by DHS on a daily basis. Upon receipt, DIA reviews the new case files. Cases involving child abuse appeals are immediately pulled and provided to the DIA scheduler responsible for maintaining the child abuse calendars. Typically, the new cases are placed on a judge's calendar and scheduled for a prehearing conference within two to three days. The prehearing conference is scheduled at the request of the attorney general's office. As the data shows, this process happens fairly quickly.

The prehearing conference also includes a discussion of any need for an expedited hearing for appellants whose employment is affected by placement on the child abuse registry. Those appellants who need an expedited hearing date are given an expedited hearing.

The date for the hearing is determined by all the parties at the prehearing conference. Because the date for the hearing is completely controlled by the parties, this part of the

appeal process tends to take quite a bit longer. There are a number of variables that the parties discuss and consider in determining the hearing date, including the time necessary to complete discovery, the trial schedules of the attorneys involved in the case, the schedules of all of the other parties involved, and whether there is also a matter pending as either a juvenile or criminal case.

Throughout the entire appeals process, parties also have the opportunity to request continuances for any number of reasons. These continuances add to delay in the process and can greatly influence the timeline of an appeal.

Any appeal where the process must be "re-started" due to legal considerations is referred to as a loop or a loop back case. As mentioned in the report, all of these types of cases were considered outliers.

Conclusion:

Of all of the cases on the child abuse registry with appeals completed in 2010 and 2011 that proceeded through the entire appeal process, 27 percent and 33 percent were reversed or modified, while 67 percent and 73 percent were affirmed or dismissed. Of those appeals completed in 2010 and 2011 that did not go through the entire appeal process, 66 percent and 69 percent were withdrawn. The majority of cases withdrawn are the result of a settlement which is agreed to by all parties during the prehearing conference. Prehearing conferences in 2011 occurred within 61.3 days. As a result of these efforts at the prehearing conference, a large percentage of cases do not go to hearing and are closed much earlier in the appeal process.

When reviewing types of abuse, annual child abuse statistics continue to show that denial of critical care is the leading type of abuse in all child protective assessments, at nearly 80 percent. Therefore, it was not surprising to find that almost 80 percent of the cases appealed on the registry in 2010 and 2011 were cases of denial of critical care.

The Workgroup was encouraged by the timeliness of the work being performed, particularly in the areas in which the DHS and the DIA have control. As the data indicated, the number of days between the date of the prehearing and date of the actual hearing make up one of the largest amounts of time for an appeal. This length of time is dictated by all parties involved and is not an area DIA and/or DHS believes can be reduced due to all parties' entitlement to "due process".

The number of days for review (from the date a review is requested to the date of the final decision) also makes up a large amount of time for an appeal. DHS and/or DIA believe this amount of time can and will be reduced due to implementing strategies recommended by a legislated 2011 workgroup. Based on recommendations in 2011 by

the Child Abuse Registry Workgroup (pursuant to the direction of Section 7 of House File 562) the length of this time is expected to decrease significantly. The specific recommendations that will impact the decrease include:

- The DHS director agreed to add a staff position to process appeals from the proposed administrative law judge decisions filed with and taken by the DHS to the director.
- The Iowa Code amendment that any proposed decisions made after July 1, 2012, will be the final decision after 45 days if there is not a final decision made prior to that time.

In addition to the implemented changes to decrease the days for review, a number of other recommendations made by the workgroup under House File 562 will also assist in decreasing not only the length of time for the overall appeal process, but the number of cases on appeal overall. The specific recommendations that will impact this decrease include:

- Attorney general's office and the DIA's implemented procedure to expedite appeals in cases where employment is at risk, offering the parties the opportunity to have an appeal heard as quickly as six weeks after notification of the appeal.
- Attorney general's office agreed to temporarily shift resources to add additional assistant attorneys if necessary to prevent back logs and delays in expedited appeals (those having employment implications).
- Code amendment allows the contested case hearing process to be limited to the alleged perpetrators who have been adversely affected by a founded child abuse disposition.
- Code amendment allows the presiding officer to stay the hearing until the conclusion of the adjudicatory phase of a pending juvenile or district court case relating to the data or findings.
- Differential Response Workgroup recommendations to create an alternate response to accepted reports of suspected child abuse. Less serious cases when safety of a child is not compromised would be linked to appropriate services, not result in a "finding" and not be eligible for placement on a central abuse registry.
- Child Abuse Registry Workgroup recommendations regarding type and severity of abuse in determining the length of time a person is placed on the Child Abuse Registry.

References:

1. State of Iowa General Assembly, House File 2226
2. Iowa Code Chapters 217 and 232
3. 441 IAC 7 and 175
4. DHS Policy and Procedure Manual, Title 1-E and 17-B
5. Appeals Information System (AIS) data
6. Statewide Tracking of Assessment Reports (STAR) system data

Roster of Workgroup Members:

Name	Organization	Title
Julie Allison	Iowa Department of Human Services, Division of Adult, Children & Family Services	Bureau Chief of Child Welfare & Community Services
Jean Davis	Iowa Department of Inspections and Appeals, Administrative Hearings Division	Chief Administrative Law Judge
Adeel Fazil	Iowa Department of Human Services, Division of Data Management	Business Systems Analyst
Ruth Kraber-Lendt	Iowa Department of Human Services, Division of Data Management	Information Technology Specialist 5
Tony Montoya	Iowa Department of Human Services, Division of Field Operations	Child Protective Policy Specialist
Shankar Raman	Iowa Department of Human Services, Division of Data Management	Information Technology Specialist 4
Matthew Rensch	Iowa Department of Human Services, Division of Data Management	Bureau Chief of Child Welfare Information Systems
Roxanne Riesberg	Iowa Department of Human Services, Division of Adult, Children & Family Services	Child Protective Program Manager
Harry Rossander	Iowa Department of Human Services	Bureau Chief of Policy Coordination
Diane Stahle	Iowa Department of Justice, Office of the Attorney General	Assistant Attorney General
Kevin Wright	Iowa Department of Human Services, Division of Field Operations	Management Analyst

Appendix A,
Definitions for Appeal Dispositions:

Affirmed – A decision by the Administrative Law Judge that determines the action under appeal was found to be correct.

Reversed – A decision by the Administrative Law Judge that determines the action under appeal was found to be incorrect.

Dismissed – A decision by the Administrative Law Judge that determines the action under appeal will end due to a legal basis.

Modified – A decision by the Administrative Law Judge that determines the action under appeal was changed.

Withdrawn – A decision by the appellant to voluntarily end an appeal.

Abandoned – A decision to end the appeal as the result of the appellant or the appellant's authorized representative's failure, without good cause, to appear at the hearing.

Denied – A decision by the Department of Human Services Appeals Section that determines an appellant will not be granted a hearing in accordance with the applicable rules, state statutes, or federal regulations.

Remanded – A decision by the Administrative Law Judge to return the case to the DHS county office for further action.