



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued June 16, 2021

Disabled Persons Protection Commission

For the period July 1, 2017 through June 30, 2019





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Making government work better

June 16, 2021

Ms. Nancy Alterio, Executive Director
Disabled Persons Protection Commission
300 Granite Street, Suite 404
Braintree, MA 02184

Dear Ms. Alterio:

I am pleased to provide this performance audit of the Disabled Persons Protection Commission. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2017 through June 30, 2019. My audit staff discussed the contents of this report with management of the agency, whose comments are reflected in this report.

I would also like to express my appreciation to the Disabled Persons Protection Commission for the cooperation and assistance provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMB", written over a light blue circular watermark.

Suzanne M. Bump
Auditor of the Commonwealth

TABLE OF CONTENTS

| | |
|--|-----------|
| EXECUTIVE SUMMARY | 1 |
| OVERVIEW OF AUDITED ENTITY | 2 |
| AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY..... | 6 |
| DETAILED AUDIT FINDINGS WITH AUDITEE’S RESPONSE | 12 |
| 1. The Disabled Persons Protection Commission did not ensure that alleged abusers were always advised of their rights. | 12 |
| 2. DPPC does not always complete its investigations within the required timeframes or document the reasons for not doing so. | 15 |
| 3. DPPC did not ensure that it consistently received final PSPs from providers for victims of alleged abuse. | 19 |
| 4. DPPC did not always identify and properly document individuals who had been identified as alleged abusers in multiple reports..... | 21 |

LIST OF ABBREVIATIONS

| | |
|------|---|
| APS | adult protective service |
| CMR | Code of Massachusetts Regulations |
| DDS | Department of Developmental Services |
| DMH | Department of Mental Health |
| DPPC | Disabled Persons Protection Commission |
| IR | Initial Response |
| MRC | Massachusetts Rehabilitation Commission |
| PSP | protective service plan |
| SPDU | State Police Detective Unit |

EXECUTIVE SUMMARY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of the Disabled Persons Protection Commission (DPPC) for the period July 1, 2017 through June 30, 2019. The objective of our audit was to follow up on the issues identified in our prior audit report (No. 2015-0046-3S) to determine what measures, if any, DPPC had taken to address them, as well as the adequacy of those measures. In addition, we reviewed DPPC's ability to ensure that protective service plans (PSPs) were submitted in a timely manner, its compliance with regulatory requirements for abuse investigations, and its investigation of individuals with a history of abuse allegations.

Below is a summary of our findings and recommendations, with links to each page listed.

| | |
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| Finding 1 Page 12 | DPPC did not ensure that alleged abusers were always advised of their rights. |
| Recommendation Page 13 | DPPC should enhance its policies and procedures by implementing effective monitoring controls to ensure that alleged abusers are made aware of their rights before being interviewed for abuse investigations. |
| Finding 2 Page 15 | DPPC does not always complete its investigations within the required timeframes or document the reasons for not doing so. |
| Recommendations Page 16 | <ol style="list-style-type: none">1. DPPC should enhance its policies and procedures by implementing effective monitoring controls to ensure that investigators complete Initial Responses (IRs) and 19C reports within the required timeframes and that when filing deadlines are not met, evidence of the reasons for the delay is documented, verified, and retained in case files.2. DPPC should continue to work with the Department of Developmental Services, the Department of Mental Health, and the Massachusetts Rehabilitation Commission to complete IRs for emergency cases within 24 hours, IRs for non-emergency cases within 10 days, and 19C reports within 30 days. |
| Finding 3 Page 19 | DPPC did not ensure that it consistently received final PSPs from providers for victims of alleged abuse. |
| Recommendation Page 19 | DPPC should implement effective monitoring controls within its policies and procedures to ensure that providers complete PSPs within required timeframes. |
| Finding 4 Page 21 | DPPC did not always identify and properly document individuals who had been identified as alleged abusers in multiple reports. |
| Recommendation Page 22 | DPPC should establish formal policies and procedures, and develop monitoring controls, to ensure that all staff members identify alleged abusers who have been involved with three or more reports of abuse and document this information in the "Other Pertinent Information" field of the Intake Abuse Form. |

OVERVIEW OF AUDITED ENTITY

The Disabled Persons Protection Commission (DPPC), established in 1987 by Chapter 19C of the Massachusetts General Laws, is an independent state agency responsible for the investigation and remediation of abuse of people with disabilities in the Commonwealth. According to its website, DPPC's mission is "to protect adults with disabilities from the abusive acts or omissions of their caregivers through investigation, oversight, public awareness and prevention." To carry out its mission, DPPC performs its own investigations and oversees and directs investigations conducted on its behalf by the Department of Developmental Services (DDS), the Department of Mental Health (DMH), and the Massachusetts Rehabilitation Commission (MRC). DPPC received 11,900 and 13,102 abuse reports in fiscal years 2018 and 2019, respectively.

DPPC's website states,

The jurisdiction of DPPC includes adults with disabilities between the ages of 18 and 59, who are within the Commonwealth whether in state care or in a private setting and who suffer serious physical and/or emotional injury through the act and/or omission of their caregivers. The DPPC enabling statute fills the gap between the Department of Children and Families (DCF) (through the age of 17) and the Executive Office of Elder Affairs (EOEA) (age 60 and over) statutes.

DPPC's three Governor-appointed commissioners report to the Governor and the Legislature. The commissioners submit an annual report to the Governor and the Legislature outlining actions they have taken; names, salaries, and duties of all employees; money DPPC has disbursed; and other matters related to DPPC's jurisdiction that they deem necessary. The executive director, who reports to the commissioners, takes care of DPPC's day-to-day operations and the oversight of its staff members.

During our audit period, DPPC was located at 300 Granite Street, Suite 404, in Braintree. It had approximately 50 full-time employees as of November 2019, including managers, intake specialists, oversight officers, investigators, and support employees. DPPC had state appropriations of \$3.64 million in fiscal year 2018 and \$4.92 million in fiscal year 2019.

FileMaker Pro

DPPC's case management system is a customized product called FileMaker Pro. It contains confidential information about alleged abusers' background information, abuse allegations, and investigations.

Screening of Abuse Reports Submitted through DPPC's Hotline

Citizens and mandated reporters¹ can submit abuse reports involving adults with disabilities through a 24-hour phone hotline that is operated by DPPC's Intake Unit from 9:00 a.m. to 3:30 p.m. and by a DPPC-trained independent contractor after hours (from 3:30 p.m. to 9:00 a.m.). Although most abuse reports are submitted through the hotline, they can also be submitted via email, by fax, or in person. The Intake Unit receives, documents, and evaluates the information provided by each reporter regarding the alleged victim, the alleged abuser, and the nature of the incident.

The hotline operator ensures that the alleged victim is in a safe environment and completes an Intake Abuse Form in FileMaker Pro, where the form is assigned a unique case number and will ultimately be screened in or out for investigation. An intake or oversight manager then reviews the completed Intake Abuse Form within a day, evaluates whether the case is within DPPC's jurisdiction, and makes the final screening decision. If the case is within DPPC's jurisdiction, it is screened in and assigned to DDS, DMH, or MRC (depending on the alleged victim's type of disability) to investigate on DPPC's behalf. If it is not, the case is screened out and sent to another state agency, such as the Department of Public Health or the Executive Office of Elder Affairs, depending on the alleged victim's type of disability, age, and location.

In addition, the Massachusetts State Police Detective Unit (SPDU) reviews all abuse reports submitted to DPPC's hotline for indication of criminal activity. If SPDU determines that a possible criminal act has occurred, the report is forwarded to the appropriate district attorney's office for review.

Abuse Investigations and Reports

Intake managers review screened-in cases to determine how best to protect the alleged victims. Each case is assigned to an adult protective service (APS) investigator, as well as a DPPC oversight officer who is responsible for monitoring the progress of the investigation and reviewing the resulting report for compliance with Section 5 of Title 118 of the Code of Massachusetts Regulations (CMR). The APS investigator may be from DPPC's Investigations Unit or may be a DDS, DMH, or MRC investigator investigating on DPPC's behalf. Factors for assigning staff members for investigation and oversight include, but are not limited to, the alleged victim's disability; the type of allegation; DPPC investigator

1. Mandated reporters are obligated to report suspected abuse and/or neglect. They include medical doctors, teachers, police officers, school administrators, and guidance counselors. For a full definition, see Section 1 of Chapter 19C of the General Laws and Section 3.03 of Title 118 of the Code of Massachusetts Regulations.

availability; and whether there have been multiple prior reports regarding the same victim, abuser, or program.

The investigator is required to file a report with DPPC that has two parts: an Initial Response (IR) and an Investigation Report (referred to herein as a 19C report). The IR and 19C report, when fully completed, are designed to ensure that each abuse investigation has met the minimum requirements of 118 CMR 5.02. IRs are used by investigators to document the results of their initial risk assessments and their preliminary investigation findings. Investigators must submit IRs to the DPPC Oversight Unit within 24 hours of assignment for cases determined to be emergencies² and within 10 calendar days for non-emergency³ cases. Cases are administratively closed when facts gathered during the IR phase indicate that abuse did not occur. During our audit period, investigators completed 3,451 IRs.

The 19C report includes information intended to ensure that the investigator used evidence gained through interviews, documentation, and site visits to conclude whether it is likely that abuse occurred. Abuse is substantiated when there is enough evidence to conclude that an act, or neglect, by the alleged abuser resulted in serious physical or emotional injury to the alleged victim. Abuse is unsubstantiated when there is not enough evidence to conclude that the alleged abuser caused serious injury to the victim. The investigator must submit the 19C report, including recommendations about protective services required in order to address the situation and mitigate further risk when abuse is substantiated, to DPPC within 30 calendar days from the date the case was assigned. If the investigator cannot submit a 19C report within this timeframe and can provide a good cause (i.e., an explanation), s/he may request an extension to be approved by DPPC. DPPC's Oversight Unit emails notices to investigative units (once a week to DPPC's Investigations Unit and once a month to external agencies), alerting them to overdue reports. During our audit period, DPPC completed 3,291 19C reports.

If SPDU finds any indication of criminal activity during its review, it refers the case to a district attorney's office. This may result in a criminal investigation; the district attorney's office can request that DPPC delay its investigation until the criminal investigation ends. During that time, DPPC monitors the progress of the criminal investigation, consulting with SPDU and/or the district attorney's office to determine when or whether DPPC's abuse investigation can be initiated or resumed.

2. According to 118 CMR 2.02, an emergency is "a situation involving an allegation of the presence of imminent Serious Physical Injury or Serious Emotional Injury, or both, to a Person with a Disability that requires an immediate response to protect the Person with a Disability from such Serious Physical Injury or Serious Emotional Injury."
3. According to 118 CMR 2.02, a non-emergency is "a situation of alleged Abuse that is not an Emergency."

If the investigator substantiates abuse, the assigned protective agency, such as DDS or DMH, must submit a protective service plan (PSP) to DPPC within 30 days after the 19C report is completed. A PSP includes an assessment of the abuse incident and recommendations to protect the victim from being abused again. PSPs submitted after the due date are classified as overdue by FileMaker Pro. During our audit period, DPPC completed 640 cases with findings of substantiated abuse.

Alleged Abuser Rights

Under 118 CMR 5.02(2), alleged abusers of people with disabilities have certain rights when being interviewed as part of DPPC investigations. Recognizing its obligation to communicate these rights to alleged abusers and to document that it has done so, DPPC has developed a form called the Notice of Alleged Abusers' Rights. Before beginning an interview, the alleged abuser is allowed time to review the form, and the investigator answers any questions the individual has about its contents.

The investigator enters a check in the box on the 19C report, documenting that the form has been provided to the alleged abuser. The investigator is allowed to mail a copy of the form or to advise the alleged abuser of his/her rights over the phone if the investigator cannot do so in person. If the investigator cannot provide notice of the rights to the alleged abuser, the investigator must record the reason in the 19C report. However, the investigator can still conduct the interview. If the investigator cannot interview the alleged abuser, s/he must record the reason in the 19C report.

After the completion of a 19C report containing a finding of substantiated abuse, DPPC mails a redacted copy of the report and a written notice to the person identified as the abuser, informing the abuser of his/her right to respond in writing to DPPC and contest the findings of the report, provided that notifying the abuser will not place the victim at risk of further harm. If the investigator believes notifying the abuser may present further risk to the victim, the investigator may recommend that the abuser not be notified of the case's outcome. In this instance, the investigator must submit a Recommendation to Withhold Abuser Notification Form to a DPPC oversight officer. Upon receipt of the form, the DPPC oversight officer makes a copy and submits it to DPPC's Legal Unit for approval.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of the Disabled Persons Protection Commission (DPPC) for the period July 1, 2017 through June 30, 2019.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is a list of our audit objectives, indicating each question we intended our audit to answer; the conclusion we reached regarding each objective; and, if applicable, where each objective is discussed in the audit findings.

| Objective | Conclusion |
|---|--|
| 1. Did DPPC advise alleged abusers of certain rights during abuse investigations in accordance with Section 5.02 of Title 118 of the Code of Massachusetts Regulations (CMR), Section 5 of Chapter 19C of the General Laws, and DPPC's investigation policy "Invest-137"? | No; see Finding <u>1</u> |
| 2. Did DPPC properly determine jurisdiction for abuse investigations during screening in accordance with 118 CMR 4.03? | Yes |
| 3. Did DPPC ensure that 19C reports and protective service plans (PSPs) were submitted within the timeframes mandated by 118 CMR 5.02(3)(a) and 7.03(3)? | No; see Findings <u>2</u> and <u>3</u> |
| 4. Did DPPC's abuse investigations meet the requirements of 118 CMR 5.02(1)? | Yes |
| 5. Did DPPC conduct investigations of alleged abusers with three reports of suspected abuse as required by its intake, investigation, and oversight policies? | No; see Finding <u>4</u> |

DPPC has made some improvements in the areas reviewed since our prior audit (No. 2015-0046-3S). Specifically, DPPC has assessed its operating procedures related to how alleged abusers are advised of their rights based on its regulatory requirements and operational needs. It has also established and implemented policies and procedures to help ensure that when required filing deadlines are not met, evidence of the reasons for the delays is documented and retained in case files.

To achieve our audit objectives, we gained an understanding of the internal controls we deemed significant to the objectives by reviewing agency policies and procedures and conducting inquiries with DPPC's staff members, management, and shareholders. We tested the controls' operating effectiveness over the following areas: advisement of alleged abuser rights, manager approval of screening decisions during intake, extension requests and notices sent for overdue reports, and 19C report completeness. We identified an issue with DPPC oversight officers' review and approval of investigator responses in 19C reports as an internal control for ensuring that investigators provided an explanation when alleged abusers were not advised of their interview rights in accordance with DPPC's investigation policy "Invest-137" ([Finding 1](#)).

We performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objectives.

Abuser Interview and Petition Rights

To determine whether investigators informed alleged abusers of their interview rights, we selected a statistical random sample of 60 cases from a population of 3,291 cases completed during the audit period, with a 95% confidence level, 5% tolerable error rate, and 0% expected error rate. We reviewed the corresponding 19C reports for evidence that each investigator had noted that the alleged abuser was given a copy of the Notice of Alleged Abuser's Rights or was informed of his/her rights by phone or mail. In instances where notice of rights was not provided, we determined whether an explanation for this was noted in the 19C report.

To determine whether abusers were notified of their right to contest the findings of abuse investigations, we selected a nonstatistical random sample of 50 cases out of a population of 640 cases with substantiated abuse that were completed during the audit period. We verified that notification letters were mailed to abusers. We also verified that DPPC maintained a Recommendation to Withhold Abuser Notification Form approved by DPPC's Legal Unit for instances where DPPC determined that notifying the abuser might pose a risk to the victim. Since we used a nonstatistical approach, we did not project our results to the entire population.

Determination of Jurisdiction for Abuse Investigations

To assess DPPC's determination of jurisdiction for abuse reports screened in for investigation, we selected a random statistical sample of 30 cases from a population of 3,445 cases screened in during the

audit period, with a 95% confidence level, 10% tolerable error rate, and 0% expected error rate. These cases were designated in FileMaker Pro as “screening decision 4B” (cases where the alleged abuser was employed by a state agency, which would require DPPC to conduct the abuse investigation) or “screening decision 4C” (cases where the alleged abuser was not employed by a state agency) based on the relevant sections of Chapter 19C of the General Laws. We reviewed each case’s intake data to determine whether the alleged victim was a person with a disability, whether the alleged abuser was a caretaker of the alleged victim, and whether Intake Department personnel noted that an act or omission of the caretaker resulted in the alleged victim’s injury in accordance with 118 CMR 4.03.

To assess DPPC’s determination of jurisdiction for abuse reports screened out at intake for not meeting the requirements of 118 CMR 4.03, we selected a random statistical sample of 30 cases from a population of 19,342 cases screened out during the audit period, with a 95% confidence level, 10% tolerable error rate, and 0% expected error rate. These cases were designated in FileMaker Pro as “screening decision 4A” or “OUT.” Screening decision 4A includes reports involving a hospital or nursing/long-term-care facility,⁴ referred to the Department of Public Health; reports involving a victim under the age of 18, referred to the Department of Children and Families; and reports involving a victim over the age of 59, referred to the Executive Office of Elder Affairs. We reviewed each case’s intake data to confirm that the reported abuse did not meet the criteria to be screened in for DPPC investigation.

DPPC received 25,002 abuse reports during the audit period.

Initial Response and 19C Report Statutory Timeframes

To determine whether the DPPC Oversight Unit received Initial Responses (IRs) for non-emergency cases within 10 days of reported abuse, we selected a random statistical sample (with a 95% confidence level, 5% tolerable error rate, and 0% expected error rate) of 60 of the 2,925 cases that had not been referred to law enforcement,⁵ within a total population of 3,291 cases completed during the audit period. We compared the IR due date of each case to the IR received date to determine whether any IRs were submitted late.

4. According to 118 CMR 2.02, a long-term-care facility is “a convalescent home, nursing home, rest home, or charitable home for the aged licensed by the Department of Public Health.”

5. We determined that deadlines were not updated in FileMaker Pro for cases delayed because of ongoing criminal investigations. An analysis of the case data showed that 98% of the 366 IRs (out of 3,291 IRs) for cases completed during the audit period that were referred to law enforcement were submitted after their due dates. Therefore, we exercised auditor judgment to conclude that focusing on cases that were not referred to law enforcement would be a better representation of investigators’ ability to meet statutory timeframes.

To determine whether 19C reports were received within 30 days of reported abuse, we used the previously mentioned sample of 60 of 2,925 cases. We compared the 19C report due date of each case to the 19C report received date to identify 19C reports that were not received within 30 days of the reported abuse. We also calculated updated 19C report due dates for cases that were granted extensions⁶ and compared them to the 19C report received dates to determine whether those reports met the updated deadlines.

We performed an analysis comparing the screen-in dates of cases with substantiated abuse to the completion date of each victim's previous case with substantiated abuse, if present, to produce a subset of 44 cases with substantiated abuse that occurred during ongoing investigations. Through a preliminary review, we identified nine victims, associated with 27 of the 44 cases, that we believed had experienced additional abuse during ongoing investigations.

To determine whether PSPs were received within 30 days of the completion of 19C reports, we selected a random nonstatistical sample of 60 cases from a population of 640 cases with substantiated abuse that were completed during the audit period. We compared each PSP's received date to the due date to determine whether it was received within 30 days of the completed abuse investigation. We performed the same test for all 25 substantiated cases that included criminal prosecutions resulting in guilty verdicts. (The process for submitting PSPs for these cases is the same for those that did not include a criminal prosecution.) Since we used a nonstatistical approach, we did not project our results to the entire population.

Minimum Regulatory Requirements for Abuse Investigations

To test for regulatory compliance, we selected a random statistical sample of 30 of the 3,291 cases completed during the audit period, with a 95% confidence level, 10% tolerable error rate, and 0% expected error rate. We reviewed the 19C reports for evidence that the minimum requirements for abuse investigations had been completed. These requirements are outlined in 118 CMR 5.02(a) through (o):

- (a) an interview with the person with a disability who was allegedly abused. . . .*
- (b) a visit to and evaluation of the site of alleged abuse. . . .*

⁶ DPPC does not update due dates in FileMaker Pro, so cases with extension requests show up as overdue.

-
- (c) a determination of the nature, extent, and cause or causes of the injuries, if possible; or a determination of whether abuse per se exists;*
 - (d) use of the preponderance of evidence standard to substantiate or un-substantiate the existence of abuse leading the investigator to conclude that it is more likely than not that abuse does or does not exist;*
 - (e) a determination or confirmation, if possible, of the identity of the alleged abuser(s), whether named or not named in the Intake. . . .*
 - (f) a determination of the identity of the person(s) who was/were responsible for the health and welfare of the alleged victim(s) when the alleged incident occurred . . .*
 - (g) an initial assessment of the immediate protective services needs of the person with a disability who is the alleged victim of abuse. . . .*
 - (h) an interview with all available witnesses to the abuse. . . .*
 - (i) an interview with the alleged abuser(s), unless such an interview would create additional risk of harm to the person with a disability;*
 - (j) a determination that all relevant physical evidence of the alleged abuse has been preserved . . .*
 - (k) the review and obtaining of copies of all documents which are not plainly irrelevant to the matter under investigation . . .*
 - (l) an interview with the reporter;*
 - (m) a determination in cases in which abuse is not substantiated as to whether the allegation reported to the Commission constitutes a false report . . .*
 - (n) any other tasks that, in the discretion of the Commission, are deemed appropriate and are not plainly irrelevant to the investigation; and*
 - (o) if an investigator does not perform one or more of the requirements in 118 CMR 5.02(1)(a) through (n), the investigator shall detail in the Investigation Report why the requirement was not met and the Commission shall determine whether said requirement(s) is material to the investigation.*

We also determined whether investigators provided an explanation, in accordance with the regulation, for any requirements not met.

Alleged Abusers with Three or More Reports of Abuse

We performed an analysis of all 3,291 cases completed during the audit period to identify alleged abusers investigated for three or more incidents during that period that were not referred to DPPC. We reviewed the associated Intake Abuse Forms to determine whether, for cases designated as “screening decision 4B” (indicating that the caretaker is employed by a state agency) in FileMaker Pro, DPPC had

been assigned as the investigating agency based on the history of multiple reports, in accordance with its intake, investigation, and oversight policies.

Data Reliability

We assessed the reliability of the data obtained from FileMaker Pro by interviewing knowledgeable DPPC personnel about the system. We tested FileMaker Pro's system controls, which included security management, access control, and segregation of duties, and determined whether configuration management and contingency planning policies were in place during the audit period.

We observed DPPC management extracting case data from FileMaker Pro. We then traced a sample of 20 completed cases, out of our dataset of 25,521 cases, to their source documents (Intake Abuse Form, IR, 19C report, Notice of Alleged Abusers' Rights, Investigation Extension Request Form, letter of referral to law enforcement, and/or letter of referral to a district attorney's office) provided by DPPC to assess the accuracy of the data. We performed additional validity and integrity tests, including comparing the total number of completed cases in the dataset to the totals in DPPC's annual reports for fiscal years 2018 and 2019, verifying that there were no missing values in key fields, summarizing abuse reports to ensure that there were no duplicates, testing for report dates outside the audit period, and validating data values for screening decisions.

Based on the results of our assessment, we determined that the data were sufficiently reliable for the purposes of our audit work.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Disabled Persons Protection Commission did not ensure that alleged abusers were always advised of their rights.

In our prior audit, we found that the Disabled Persons Protection Commission (DPPC) did not ensure that required forms were signed to document that alleged abusers were advised of their rights before being interviewed.

In our current audit, we found that DPPC did not always ensure that alleged abusers were advised of their rights before being interviewed for abuse investigations. In 7 of the 94 cases in our sample, the alleged abusers were not advised of their rights, and the investigators did not document in the 19C report why this requirement was not met. Two additional cases did not contain justification for not advising the alleged abuser of the interview rights. Without such documentation, there is inadequate assurance that the alleged abusers were made aware of, and understood, their rights and legal obligations regarding the investigations.

Authoritative Guidance

Section 5.02(2) of Title 118 of the Code of Massachusetts Regulations (CMR) states that alleged abusers of people with disabilities have the following rights when being interviewed as part of DPPC abuse investigations:

- a. to be accompanied during an interview by a person of his or her own choice who is 18 years of age or older; provided, that said companion shall not be a supervisor or administrator employed by the alleged abuser's employer, unless requested by the alleged abuser and agreed to by the investigator; or is not otherwise involved or has an interest in the matter under investigation. Other than being present during the interview, said companion shall not participate in the actual conduct of the interview;*
- b. to be informed of the existence of the complaint and the general nature of the allegations. Under no circumstances shall the identity of the reporter be disclosed;*
- c. to be informed that if he or she falls within the category of a mandated reporter, he or she has an obligation pursuant to M.G.L. c. 19C to cooperate in the investigation and truthfully provide to the investigator all information he or she may possess that is relevant to the matter under investigation; and*
- d. to be informed that his or her refusal to be interviewed or to otherwise cooperate in the investigation will be made a part of the report, and that if the person is an employee of a state agency, unless his or her response to a question could be used against him or her*

in a criminal proceeding, his or her failure to cooperate shall be reported to the person's supervisor and to the appropriate public agency for possible disciplinary action under that agency's regulations or pursuant to the provisions of any relevant collective bargaining agreement or any other contract.

Accordingly, DPPC's investigation policy "Invest-137" states,

- 2. Prior to commencing an interview of an individual being considered as an [alleged abuser], the 19C investigator will provide the individual with a copy of the DPPC Notice of Alleged Abuser's Rights During DPPC Investigation Interview. . . .*
- 4. The investigator will enter a check in the box on the 19C Investigation Report Form documenting that the DPPC Notice of Alleged Abuser's Rights During DPPC Investigation Interview was provided to the [alleged abuser].*

According to 118 CMR 5.02(1)(i), each investigation should include an interview with the alleged abuser. According to 118 CMR 5.02(1)(o), if an investigator cannot fulfill one or more of the requirements in 118 CMR 5.02, the investigator must provide an explanation in the 19C report for a DPPC oversight officer to review and approve.

Reasons for Noncompliance

DPPC had not implemented effective monitoring controls to ensure that alleged abusers were advised of their rights before being interviewed for abuse investigations.

Recommendation

DPPC should enhance its policies and procedures by implementing effective monitoring controls to ensure that alleged abusers are made aware of their rights before being interviewed for abuse investigations.

Auditee's Response

First, DPPC reiterates from the previous audit (2015-0046- 3S) its disagreement with the audit's characterization of the requirement of 118 CMR 5.02 (2). Pursuant to 118 CMR 5.02 (2), an alleged abuser has certain rights available during an investigatory interview. That regulation does not require the alleged abuser receive written notification of these rights, nor does it require the alleged abuser sign a form acknowledging he/she has been advised of these rights.

Second, DPPC did in fact implement effective monitoring and controls to ensure alleged abusers were advised of their rights. In response to a recommendation made in the previous audit, DPPC created policy and procedure Invest-137. Pursuant to Invest-137, the DPPC added a checkbox to the 19C Investigation Report Form where the investigator documents that the "DPPC Notice of

Alleged Abuser's Rights During DPPC Investigation Interview" was provided to an alleged abuser and also added a field to its database to track this information. Because there is no statutory or regulatory requirement that the alleged abuser receive written notification of their rights or that the alleged abuser signs an acknowledgment form, a verbal advisement of these rights to the alleged abuser by the investigator is sufficient. . . .

DPPC's new database is a customized relational database that went live on July 1, 2020, and DPPC continues to work to tailor the new database to best meet the needs of DPPC operations. Regarding the notice of alleged abuser rights, DPPC developed a uniform web-based investigations form which forces the investigator to indicate for each named alleged abuser whether he/she was advised of rights during a DPPC investigation interview, and if not, a required field to explain why that did not occur. Therefore, DPPC has already updated its operations to improve the clarity of the notification of rights process.

Auditor's Reply

We recognize that DPPC regulations do not require an alleged abuser to sign a Notice of Alleged Abuser's Rights. However, DPPC's investigation policy "Invest-137" states,

2. *Prior to commencing an interview of an individual being considered as an [alleged abuser], the 19C investigator will provide the individual with a copy of the DPPC Notice of Alleged Abuser's Rights During DPPC Investigation Interview.*

This policy further requires 19C investigators to document that notification of the alleged abuser's rights has been completed by checking the associated box on the 19C Investigation Report Form. Our testing in this area did not involve reviewing 19C files to determine whether there were signed Notices of Alleged Abuser's Rights in the sampled files. Rather, we deemed 19C investigators checking the appropriate box on the 19C Investigation Report Form sufficient to indicate that they had provided the Notice of Alleged Abuser's Rights to the alleged abuser. As previously stated, we determined compliance using DPPC's investigation policy "Invest-137." As discussed in a meeting with DPPC, we also accepted an investigator's notation in the 19C report of verbal advisement via phone call to be sufficient evidence that alleged abusers had been advised of their interview rights.

DPPC asserts that it has implemented effective monitoring controls, but as noted above, we found nine instances where a 19C investigator neither indicated that the alleged abuser had been advised of his/her interview rights nor provided an explanation of the reason for this for the DPPC Oversight Unit to review. Had the monitoring controls been effective, the issues discussed in this finding would have been identified.

Based on its response, DPPC is taking measures to address our concerns on this matter.

2. DPPC does not always complete its investigations within the required timeframes or document the reasons for not doing so.

Our prior audit revealed that, contrary to state regulations, DPPC did not always complete Initial Responses (IRs) and 19C reports within established timeframes. Also, for investigations where IRs and/or 19C reports did not meet deadlines, the investigators did not document explanations for the unmet deadlines in the case files.

During our current audit, we found that 38 (63%) of the 60 IRs we randomly selected for review, out of a population of 2,925 cases completed and not referred to law enforcement during the audit period, were completed after the 10 days allowed by regulation. On average, DPPC completed these 60 IRs in 19 days. When IRs are not completed within required timeframes, DPPC cannot ensure prompt implementation of remedial action plans to address potential abuse.

Also, DPPC did not consistently complete 19C reports within required timeframes. Specifically, 51 (85%) of the 60 19C reports for cases we statistically sampled for testing, out of a population of 2,925 cases completed and not referred to law enforcement during the audit period, were not completed within required timeframes. Based on the results of our testing, we project—with a 95% confidence level—that at least 2,152 of the 2,925 completed 19C reports were not completed within the 30 days allowed by regulation. On average, DPPC completed the 60 19C reports in 70 days.

Finally, 1,874 (56%) of the total 3,291 abuse investigations that were completed after their deadlines, and were not referred to law enforcement, during the audit period, did not have documented explanations for the unmet deadlines in the case files. Delays can put victims at risk of further abuse; in fact, we identified six individuals whose abuse investigations (10 investigations in total) were completed after their due dates and who experienced further substantiated abuse during their ongoing abuse investigations.

Authoritative Guidance

The requirements for abuse investigation reports are detailed in 118 CMR 5.02(3)(a):

The . . . "Initial Response" . . . shall be submitted to the Commission by the investigator . . . within ten calendar days for non-emergency reports of abuse. . . .

The . . . "Investigation Report" . . . shall be submitted to the Commission by the investigator within 30 calendar days from the date the report of abuse was referred by the Commission for investigation.

DPPC's investigation policy "Invest-109" states that if an investigation cannot be completed within the 30 days allowed by regulation,

The investigator must complete and submit a DPPC Investigation Extension Request Form . . . to the DPPC oversight manager. . . . This form must provide information that establishes good cause for the need of an extension.

Reasons for Noncompliance

DPPC had not implemented effective monitoring controls to ensure that investigators completed IRs and 19C reports within the required timeframes or that, when required filing deadlines were not met, evidence of the reasons for the delay was documented, verified, and retained in case files.

DPPC also stated that approximately 94% of abuse investigations were conducted by the Department of Developmental Services (DDS), the Department of Mental Health (DMH), or the Massachusetts Rehabilitation Commission (MRC). DPPC officials told us that DPPC worked closely with these agencies to resolve investigations and develop protective service plans (PSPs). However, they stated that the necessity of coordinating and recording information from more than one agency, along with DPPC's limited resources, continued to cause delays in meeting deadlines. They also stated that the complexity and number of investigations had increased during the audit period.

Recommendations

1. DPPC should enhance its policies and procedures by implementing effective monitoring controls to ensure that investigators complete IRs and 19C reports within the required timeframes and that when filing deadlines are not met, evidence of the reasons for the delay is documented, verified, and retained in case files.
2. DPPC should continue to work with DDS, DMH, and MRC to complete IRs for emergency cases within 24 hours, IRs for non-emergency cases within 10 days, and 19C reports within 30 days.

Auditee's Response

DPPC accepts that it does not always complete its investigations within the required timeframes but disagrees with the finding that DPPC does not document the reason for doing so. As stated in the response to the previous audit, DPPC must first emphasize that tardiness of an Initial Response ("IR") or Investigation Report ("19C Report") does not correlate to continued risk to an alleged victim. The assessment of risk to the victim is the DPPC's highest priority. It is a process

which begins at the intake of a report, continues through investigation, and does not conclude until completion of post-investigation protective services monitoring by our oversight officers. The DPPC also places the highest priority on emergency situations, and under no circumstances does the DPPC tolerate delays in risk assessments in situations deemed emergencies.

Staffing and resources within the DPPC and Executive Office of Health and Human Services referral agencies have long been contributing factors in DPPC's ability to timely complete investigations, as have the complexities of investigations and the need to prioritize high risk investigations. In our effort to secure critically needed funds to support DPPC's continuously increasing caseload, DPPC has doggedly and finally successfully promoted its mission to the Legislature and the Administration resulting in a long needed increase in appropriation in the last budgetary session. However, with this increase in appropriation came a massive undertaking of designing and implementing an Abuser Registry. To that end, DPPC has filed bills to amend the DPPC's statute as well as noticed for comment proposed amendments to its regulations, which include a proposed regulatory amendment to extend the investigation timeline from 30 to 45 days—a still aggressive but more realistic goal. Also, DPPC will continue to work with its own investigations unit as well the investigations units at the Department of Developmental Services (DDS), Department of Mental Health (DMH) and the Massachusetts Rehabilitation Commission (MRC), to ensure that investigations are completed as timely as possible.

To more specifically address Finding Two, following recommendations in the previous audit, DPPC created a new Extension Request process whereby documentation of the reason for an extension of a timeframe for an IR or 19C Report was required to be provided by the investigator. Although this process proved ineffective due to the difficulty of relying upon referral agencies to adhere to a new administrative process, DPPC's Quality Assurance Unit categorized and documented the reason for delays based upon available information. As previously mentioned and in conjunction with the design of a new database, DPPC created web-based investigations forms and coordinated with its three partner agencies to work on the same report form in the web portal. These forms are automatically directed to DPPC when submitted by the investigations manager and as a result the entire process has been digitized and streamlined. There is a built-in workflow where oversight officers can communicate directly with the investigators and supervisors.

With its database enhancements, DPPC has increased monitoring of timeframes by focusing on systemic issues, including ad hoc outreach and notices to all four investigative agencies, following identification of patterns of overdue IRs or 19C Reports; and assessed and continued with the process of oversight officers routinely documenting the reason for investigation delays in the DPPC's database. Additionally, DPPC updated its Investigations Timeframes policy, Invest-109, in July 2020, and instituted a periodic case status request process. Throughout the investigative process, the status and location of an investigation report is tracked in DPPC's database in a portal designed specifically for this process where it is monitored by oversight officers.

Most troublesome with regard to the finding related to timeframes is the audit's assertion that through a preliminary review, nine victims were identified as believed by the auditor to have experienced additional abuse during an ongoing investigation. First, as we understand the government standards of an audit review process pursuant to M.G.L. c. 11, sec 12, findings are

not based upon preliminary reviews but rather upon an analysis of specific data. DPPC met with the audit team on November 4, 2020 and discussed what we believe to be the nine cases to which the audit report refers. DPPC staff reviewed with the audit team each case and determined that although these alleged victims were involved in simultaneous investigations, in each instance the specific risk issues were immediately identified and addressed throughout the entire DPPC process. The statement in the audit report that nine victims were believed by the auditor to have experienced additional abuse during an ongoing investigation is misleading as it suggests fault on the part of the DPPC which is absolutely incorrect. The Commission is also charged with ensuring that protective services are provided to persons with a disability in the least restrictive and most appropriate manner possible, balancing protection with freedom. Unfortunately, persons with disabilities are extremely vulnerable to abuse from a variety of sources for a variety of different reasons. Some may experience a separate incident of abuse, despite the fact that protective services related to an ongoing investigation were in place—that was the situation in each of these nine cases as discussed during the November 4, 2020 meeting.

Auditor's Reply

DPPC contends that it documents the reasons for delays in 19C investigations. However, our testing determined that this was not always the case. According to DPPC's investigation policy "Invest-109," the investigator must submit an Investigation Extension Request Form when an investigation cannot be completed within 30 days. This form must establish good cause for the need of an extension. As stated previously, approximately half the cases completed during the audit period were submitted late and did not have Investigation Extension Request Forms. Although DPPC did state that it would no longer use this form, our testing involved assessing compliance with the requirements that were in place during our audit period, and we found significant issues in this area.

We do not dispute DPPC's assertion that "DPPC also places the highest priority on emergency situations, and under no circumstances does the DPPC tolerate delays in risk assessments in situations deemed emergencies." However, during our audit, we asked DPPC officials to show us examples of cases it deemed emergencies so that we could assess the timeliness of its IRs and the included risk assessments. According to the data extract DPPC provided to us, of the 3,291 cases completed during the audit period, there was only 1 with an "Urgency" designation of "Emergency," and its IR and 19C report were completed after their due dates.

Regarding the victims of additional abuse, our comment that delays in processing of abuse investigations could put victims at risk of further abuse is accurate and is not disputed by DPPC. As previously noted, some individuals did experience additional abuse while previous investigations were ongoing and overdue.

Based on its response, DPPC is taking measures to address our concerns on this matter.

3. DPPC did not ensure that it consistently received final PSPs from providers for victims of alleged abuse.

During our audit period, DPPC did not ensure that it consistently received final PSPs from its providers within 30 days of the completion of abuse investigations. Specifically, 41 of the 60 PSPs tested, from a population of 640 substantiated abuse investigations completed during the audit period, were not received within the required timeframes. On average, the 60 PSPs were submitted in 65 days. As a result, victims might have experienced delays in receiving recommended social services, counseling, and/or psychiatric services. Plans for victims of criminal abuse were sometimes delayed as well; PSPs were not submitted on time for 13 (52%) of 25 cases with substantiated abuse that included a criminal prosecution and guilty disposition result.

Authoritative Guidance

Section II(f) of DPPC's oversight policy "Oversight-308" states, "Protective service plans not received within 30 days of the completion of the 19C investigation will be considered overdue."

Reasons for Late PSPs

DPPC had not implemented effective monitoring controls within its policies and procedures to ensure that providers submitted PSPs within regulatory timeframes and in compliance with DPPC's own policies and procedures. DPPC management told us in an interview that protective action can be, and sometimes is, taken at the time of intake or IR. Although we acknowledge this, PSPs are required following the substantiation of abuse in completed abuse investigations.

Recommendation

DPPC should implement effective monitoring controls within its policies and procedures to ensure that providers submit PSPs within required timeframes.

Auditee's Response

Although PSPs are required in substantiated cases of abuse, the DPPC is dependent upon the [protective service, or PS] agencies to file the final plans with the DPPC and as a result, cannot and does not wait to ensure the safety of alleged victims in the interim. PSPs typically merely serve to document those services already put in place during the investigation and those services that are underway but not yet completed. Therefore, the tardiness or absence of receipt of a PSP

document from the PS agency does not correlate to continued risk to an alleged victim. As detailed above, the assessment of risk to the victim is the DPPC's highest priority. Protective services are put in place as soon as they are determined to be necessary, most often prior to the receipt of a PSP. Frequently this occurs during investigations. . . .

Furthermore, DPPC disagrees with the audit's pure speculation that . . . victims might have experienced delays in receiving recommended social services, counseling and/or psychiatric services and that plans for victims of criminal abuse were ultimately delayed as well. There exists no data to support this conclusion. Protecting alleged victims is the heart of what the DPPC does which is why the specious suggestion that the DPPC is failing in this area suggests a complete misunderstanding of the operation of the DPPC. However, with recent increase in staffing, DPPC's Oversight Unit is now able to be more aggressive in its follow up with the PS agencies with regard to verification of protective services.

Particularly confusing and misleading is the audit's statement that PSPs were not submitted on time for 13 of 25 cases with substantiated abuse that included criminal prosecution and "guilty disposition result." As explained during the course of the audit, the [adult protective service, or APS] and criminal processes are distinctly different. Although joint investigations between APS and law enforcement are encouraged, each process has its own distinct standards and burdens of proof. Therefore, it is unclear the correlation being made between protective services rendered by an APS agency and a guilty disposition in a criminal court.

Auditor's Reply

We acknowledge that DPPC takes measures to ensure the safety of alleged victims during 19C investigations. Our concern is that DPPC has not implemented effective monitoring controls to ensure that providers submit PSPs to it within regulatory timeframes and in compliance with its policies and procedures.

In its response, DPPC asserts, "PSPs typically merely serve to document those services already put in place during the investigation and those services that are underway but not yet completed." However, this description is not consistent with the description in DPPC's "Oversight-308" policy:

Upon receipt, the oversight officer will review the protective service plan to determine if the intended or completed actions adequately protect the victim. It is important to assess not only the actions, but also the timeframe for completion when determining the adequacy of the plan.

This suggests that services provided, as well as services yet to be provided, need to be approved by DPPC for adequacy. A delay in a provider's submission of a PSP delays DPPC's review and approval of services, regardless of actions taken during the active investigation. In the opinion of the Office of the State Auditor, victims could have experienced delays in receiving recommended social services, counseling, and/or psychiatric services.

We are aware that criminal investigations and DPPC's civil investigations are different. Our office takes a risk-based approach to developing audit topics. We chose to look at PSP timeliness for substantiated abuse cases with criminal activity including assault, battery, and rape. Our intent was to determine whether PSPs for victims of these types of abuse were submitted on time. We did not state or imply that services had not been rendered. In fact, results for our testing of compliance with investigation requirements were positive, as previously noted.

4. DPPC did not always identify and properly document individuals who had been identified as alleged abusers in multiple reports.

DPPC did not always identify individuals who had been identified as alleged abusers in three or more reports of suspected abuse and document this information in the corresponding case files. In our testing of the 3,291 cases DPPC completed during our audit period, we found seven individuals who each had three or more reports of suspected abuse, but whose corresponding case files did not reflect this information: DPPC staff members had not documented it in the "Other Pertinent Information" field of the Intake Abuse Form. All seven cases had been referred by DPPC to other state agencies for investigation; however, the only information that DPPC provides to the agencies conducting this type of investigation is a copy of the individual's Intake Abuse Form. As a result, the agencies conducting investigations of these seven individuals may not have had all the information necessary to conduct thorough and effective investigations.

Authoritative Guidance

Section B(3)(1)(7) of DPPC's intake policy "Intake-204" describes the criteria for assigning abuse reports for investigations involving alleged abusers with multiple reports:

After two (2) previous complaints have been investigated and a third report is made, the DPPC should conduct the 19C investigation of the third report.

However, it also indicates that DPPC can refer the matter to other agencies for investigation if it does not have the resources to conduct the investigation.

DPPC told us that to comply with this policy, it had informal procedures in place requiring staff members to manually search for alleged abusers by name and determine whether they had prior cases. According to these informal procedures, if any prior history of abuse is found, it should be noted in the "Other Pertinent Information" field of the Intake Abuse Form.

Reasons for Issue

DPPC did not have formal policies and procedures in place that required staff members to identify alleged abusers who were involved with three or more reports of abuse and document this information in the "Other Pertinent Information" field of the Intake Abuse Form. In addition, there were no monitoring controls in place to ensure that DPPC's informal process was consistently followed.

Recommendation

DPPC should establish formal policies and procedures, and develop monitoring controls, to ensure that all staff members identify alleged abusers who have been involved with three or more reports of abuse and document this information in the "Other Pertinent Information" field of the Intake Abuse Form.

Auditee's Response

The DPPC would first like to clarify the process. The screening process is typically a multi-layered review with each reviewer responsible for identifying risk, jurisdictional criteria, and checking the database for any relevant history for the alleged abuser or alleged victim. The Intake Unit strives to be cautious in documenting only relevant information on an Intake Form so as not to bias an investigation. This process relies heavily on judgment of the screener, with a safety net being that investigators, oversight officers, and sometimes investigative and oversight supervisors will also review any related cases as part of the investigatory process. Based upon confidentiality considerations and integrity of the investigatory process, DPPC has made a conscious decision to rely upon training and judgment of its screeners. To that end, DPPC appreciates the audit's recommendation and will assess in what way we might more effectively ensure that this process is deeply embedded in the job function.

To the extent that the audit suggests that the DPPC is not adhering to its own policy of assigning a DPPC investigator to cases where two previous complaints against an alleged abuser have been investigated, the clear caveat in the policy is that this is resource dependent. As explained to the audit teams and simply stated here, inadequate resources were the reason for not assigning such cases to the DPPC. . . .

However, as explained above, the DPPC's new relational database has enhanced features such as unique People Records which house all data elements and related information about individuals involved in DPPC investigations. This feature will assist screeners and oversight officers in conducting historical review of information. DPPC reserves the right to determine what information to include on an Intake Form to best meet its mission requirements of protecting persons with disabilities from abuse and neglect [through] objective . . . and unbiased investigations.

Finally, [the DPPC executive director] understand[s] and appreciate[s] the value and importance of an external review process regarding State agency operations and will work diligently to

continue to enhance the timeliness and efficiency of the DPPC investigation process as we strive to protect persons with disabilities throughout the Commonwealth.

Auditor's Reply

Our testing of individuals with two previous complaints was based on DPPC's intake policy "Intake-204," which states,

After two (2) previous complaints have been investigated and the third report is made, the DPPC should conduct the 19C investigation of the third report.

We are aware that case assignment depends on DPPC's available resources and noted this in the "Authoritative Guidance" section of the finding. DPPC states that reviewers check its database for any relevant history. However, we determined that alleged abusers' histories of previous complaints were not mentioned on Intake Abuse Forms. Without documentation substantiating that a search of an alleged abuser's history was performed, it is unclear whether DPPC personnel were aware of the previous abuse investigations. Therefore, we could not determine whether abuse history was considered when cases were referred to external agencies instead of DPPC's own Investigation Unit.

When we discussed the matter with DPPC management, they indicated that DPPC did not feel it was important to require its intake staff to note that a history search had been performed. We respectfully disagree, since there is no guarantee that the agency to which DPPC has assigned an investigation will properly identify an alleged abuser's previous substantiated abuse investigations.

We acknowledge that DPPC is taking measures to address our concerns on this matter.