



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

Making government work better

Official Audit Report – Issued October 9, 2018

Executive Office of Elder Affairs

For the period July 1, 2015 through June 30, 2017





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

Making government work better

October 9, 2018

Ms. Alice Bonner, Secretary
Executive Office of Elder Affairs
1 Ashburton Place, Fifth Floor
Boston, MA 02108

Dear Secretary Bonner:

I am pleased to provide this performance audit of the Executive Office of Elder Affairs. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2015 through June 30, 2017. 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 Executive Office of Elder Affairs 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 horizontal line.

Suzanne M. Bump
Auditor of the Commonwealth

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LIST OF ABBREVIATIONS

ACL	Audit Command Language
APS	Adult Protective Services
CIU	Centralized Intake Unit
CMR	Code of Massachusetts Regulations
DA	district attorney
EOEA	Executive Office of Elder Affairs
OSA	Office of the State Auditor
PSA	protective-service agency

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 Executive Office of Elder Affairs' (EOEA's) Protective Services Program for the period July 1, 2015 through June 30, 2017. In this performance audit, we examined EOEA's process for screening, investigating, documenting, and reporting incidents of elder abuse.

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

Finding 1 Page 16	EOEA and its designated protective-service agencies (PSAs) did not always report incidents of abuse to district attorneys' (DAs') offices for investigation.
Recommendations Page 21	<ol style="list-style-type: none">1. EOEA should develop a guidance manual addressing documentation practices for DA referral and reporting to reflect the requirements of Section 5.18(2)(e) of Title 651 of the Code of Massachusetts Regulations.2. EOEA should establish monitoring controls to ensure that each person involved in the DA referral process complies with its policies and procedures for reporting incidents of alleged abuse to DAs' offices. In particular, during its designation review process, it should evaluate whether PSAs are referring incidents of alleged abuse to DAs' offices as required.3. EOEA should schedule regular meetings with DAs' offices to ensure that reportable conditions that warrant DA referral are reported.
Finding 2 Page 22	EOEA did not always properly document the processing of abuse reports in its Adult Protective Services (APS) system.
Recommendations Page 24	<ol style="list-style-type: none">1. EOEA should implement policies and procedures that include better documentation practices in APS. The policies should also communicate clear personnel responsibilities in APS for each investigation and should include the necessary steps for manually linking abuse reports to corresponding investigations.2. PSA supervisors should document their screening decision rationales in APS and assign a PSA case manager or second PSA supervisor to review each decision before the initiation of an investigation if it is screened in, or an expungement if it is screened out, by the supervisor.

Finding 3 Page 25	EOEA's APS system controls need improvement.
Recommendations Page 27	<ol style="list-style-type: none">1. EOEА should screen and approve new users' access to APS.2. EOEА should establish and implement written system security access policies and procedures, within a control plan, that are specific to employees using APS and include, but are not limited to, the following:<ol style="list-style-type: none">a. approval of access to APS for new users before new accounts are created and use of APS is grantedb. access controls that address entry into the system via password login, as well as lockout of APS users after shorter periods of inactivityc. monitoring of user activity and oversight of intake and investigation logs

Post-Audit Action

In a written response to this report, the Secretary of EOEА indicated that a number of improvements had been, and would continue to be, made in the area of protective services, including the following:

- **Improved case completion compliance.** *In the spring of 2016, EOEА piloted a change requiring that any extensions to required investigation deadlines be approved by EOEА, whereas previously the designated protective services agencies (PSAs) alone would self-approve such extensions.*
- **Strengthened program integrity measures.** *Beginning in November of 2016, EOEА introduced a program integrity initiative where funding to PSAs would be withheld for non-compliance with certain regulatory and contractual requirements. The program initially focused on screening procedures, and was expanded in January 2017 to cover key components of Protective Services.*
- **Strengthened regulatory framework.** *Beginning in January 2017, EOEА modified program regulations that previously required PSAs to obtain an elder's consent to proceed with investigations. EOEА also rescinded a sub-regulatory guidance document issued over a decade ago that required PSAs to obtain an elder's consent prior to communicating with collateral contacts. These directives were delivered to PSAs during a statewide training in February 2017 with full implementation and codification later that year.*
- **The launch of a Central Intake Unit.** *On June 30, 2017, EOEА launched a Central Intake Unit that provides capacity for 100% capture of all protective services reports at a central location. The implementation of centralized intake was designed to simplify the initial reporting process (moving from 21 different phone numbers to one number 24/7/365) and to capture efficiencies of scale. This enabled EOEА to redirect substantial resources to screening, investigation, and the provision of ongoing services when indicated thereby reducing the risk of abuse.*
- **The implementation of a new decisional capacity tool.** *In October 2017, EOEА implemented a decisional capacity screening instrument for use by PSAs (the Interview of*

Decisional Abilities or IDA). Massachusetts is the first [protective-service] program in the country to implement the use of this cutting edge tool statewide. The tool is used to determine if an individual has decisional capacity to refuse intervention. A group of clinicians and researchers from the University of Pennsylvania, Weill Cornell Medical College, and the New York City Elder Abuse Center developed the IDA tool. It is specifically designed for use by [protective-service] workers to assess decisional capacity in the field. Since EOEa launched this project, the University of Southern California, home of the National Center on Elder Abuse, received a grant from the federal government to implement the tool in CA, Vermont, Tennessee, and Georgia have also reached out to EOEa about implementing the tool in their states.

- **Improved access to services.** *By November 2017, EOEa had fully implemented a requirement that all appropriate substantiated investigations are opened for Ongoing Services (i.e. meet with elder, develop service plan, communicate with collateral contacts).*
- **Improved workforce training.** *With the support of a grant from the federal Administration for Community Living . . . EOEa is strengthening the Protective Services workforce by training the entire workforce in 2018 and 2019 using a newly developed, comprehensive, Protective Services curriculum.*
- **Increased funding.** *The funding for the Protective Services Program has increased every year since 2015.*

OVERVIEW OF AUDITED ENTITY

The Executive Office of Elder Affairs (EOEA), established by Section 1 of Chapter 19A of the Massachusetts General Laws, contracts with 20 protective-service agencies (PSAs) located in various regions throughout the Commonwealth that assist EOEA in receiving and investigating reports of alleged elder abuse. These 20 agencies, if necessary, also make referrals so that elderly people can seek other services, including, but not limited to, housing, nutrition, in-home support, caregiver support, and healthcare counseling. According to EOEA's 2016 Annual Report, the office's core mission is to "promote the independence, empowerment, and well-being of older adults, individuals with disabilities, and their caregivers."

EOEA Protective Services

In addition to investigating instances of alleged abuse of elderly people, EOEA's Protective Services Program makes referrals for other services such as adult day care, foster care, medical care through visiting nurse associations or personal care attendants, therapy, family support, and other in-home and out-of-home support to reduce risks to elderly people in the community.

EOEA administers its Protective Services Program from its central office in Boston and from the 20 designated PSAs across the Commonwealth. EOEA enters into contracts with PSAs to process reports of alleged abuse of elderly people. During our audit period, contracted PSAs working with EOEA to provide protective services were responsible for receiving and screening reports, investigating alleged abuse of elderly people, and educating mandated reporters¹ on their legal responsibilities in reporting alleged abuse of elderly people. Section 16(c) of Chapter 19A of the General Laws permits EOEA to designate PSAs to assist it in receiving and processing reports of alleged abuse of elderly people:

Subject to appropriation, the department shall designate at least one local agency to act on behalf of the department with a geographic area as defined by the department. The department may designate any public agency or private nonprofit organization which has the capacity to implement a service plan through direct access to social, health and mental health services.

While the aforementioned law allows EOEA to designate some protective-service responsibilities to PSAs, Section 16(c) of Chapter 19A of the General Laws requires EOEA to "monitor assessments,

1. Section 15(a) of Chapter 19A of the General Laws lists the various professionals, including, but not limited to, "any physician, physician assistant, . . . dentist, . . . social worker, policeman, [or] firefighter," who are required to "immediately make a verbal report" to EOEA or a PSA if they have "reasonable cause to believe that an elderly person is suffering from or has died as a result of abuse."

evaluations and the provision of protective services by designated local agencies.” To accomplish this, EOEa has established a Protective Services Program director position and four regional Protective Services Program manager positions.

EOEA had an annual appropriation of approximately \$4 billion for fiscal year 2016 and approximately \$4.2 billion for fiscal year 2017.² The Protective Services Program had an annual appropriation of approximately \$23 million for fiscal year 2016 and \$28 million for fiscal year 2017. EOEa’s database system of record contains 10,435 unique reports of abuse that were screened in for investigation for fiscal year 2016 and 14,598 unique reports that were screened in during fiscal year 2017.³

EOEA’s Adult Protective Services System

The Adult Protective Services (APS) system is a Web-based database system that EOEa uses as its system of record to document reports of alleged abuse of elderly people. EOEa also uses the system to maintain case notes, referrals, and inquiries, as well as to run a variety of general and administrative reports on incidents, abuse reports, and investigations of alleged abuse of elderly people. PSA caseworkers use APS to query pending notifications for action, cases, investigations, and other tasks. Additionally, PSA supervisors document their screening decisions in APS before initiating investigations. Abuse reports received by PSAs are transcribed into APS by PSA caseworkers.

Protective-Service Designation Reviews

According to our discussion with EOEa management, every three years, the Protective Services Program director, along with the four managers, conducts a general review of the PSAs contracted with EOEa. EOEa management stated that the Protective Services Program director and managers visit the sites of the designated PSAs to ensure that the agencies comply with Section 5 of Title 651 of the Code of Massachusetts Regulations (CMR) and the applicable General Laws based on standards used by EOEa in conjunction with that regulation. The designation review reports show that these standards comprise the areas of intake, screening, investigation, ongoing services, documentation, and supervision. According to our discussion with the Protective Services Program director, instances of significant noncompliance with the standards may lead EOEa to assess a PSA as “ineffective” in its abuse-report

2. The current EOEa appropriation/budget is approximately \$583.5 million. Prior appropriations included funding for MassHealth programs that have since been formally apportioned to MassHealth in the Commonwealth’s budget.

3. These reports were not expunged from APS (see Other Matters for more information on expungement).

processing, and as a result, the agency may be subject to termination as a designated agency. EOEa then contracts with a different local agency.

According to the Protective Services Program director, during a designation review, EOEa reviews 50 abuse investigations and 25 abuse reports from APS for compliance and effectiveness of abuse-report processing. The director further stated that EOEa evaluates compliance and effectiveness of the entire abuse-reporting process, from the time a report of alleged abuse is received by a PSA to the time the risks of abuse are alleviated and the case is closed. Eight designated PSAs that were contracted with EOEa underwent designation reviews during the audit period.

Abuse-Report Referral

Abuse reports are received by PSAs in a variety of ways, such as telephone, email, Web intake reports, walk-ins at EOEa and the PSAs, fax, and mail. Section 15 of Chapter 19A of the General Laws requires certain professionals whose work directly involves elderly people to notify EOEa if they believe that an elderly person is suffering from abuse. This law designates such professionals as mandated reporters, who are required to make an immediate verbal report and a subsequent written report to EOEa or its designated PSAs within 48 hours when they have reasonable cause to believe that a person who is 60 or more years old is suffering from, or has died as a result of, abuse.

Elder Abuse Hotline

During the audit period, EOEa contracted with a third-party vendor to provide an Elder Abuse Hotline for verbal reports of alleged abuse of elderly people by telephone at 1-800-922-2275. The hotline worked in two different ways. During business hours (9:00 a.m. through 5:00 p.m. Monday through Friday), all calls made to the hotline were routed to the appropriate local PSAs based on callers' area codes using an interactive voice response system. This "mirroring" function needed to be activated and deactivated by the hotline's telephone service provider when it transitioned between business and non-business hours.

Outside business hours, when the 20 local PSAs were closed, the hotline was available, but the mirroring function was disabled and the hotline was staffed by PSA and hotline employees.

On June 30, 2017, EOEA implemented a new system, the Centralized Intake Unit, for receiving reports of alleged abuse of elderly people 24 hours per day, seven days per week. EOEA anticipates that the new system will provide a streamlined way of receiving reports of alleged abuse by telephone.

Screening of Abuse Reports

Upon receipt of a verbal or written report (whichever is received first), PSAs are required to ensure that all reports of alleged abuse of elderly people are evaluated immediately by a PSA supervisor or designated backup supervisor. For this task to be performed, the supervisor must screen the abuse report. According to 651 CMR 5.09, screening reports requires a PSA supervisor to “determine the immediacy and severity of the alleged harm or risk, and the appropriate initial response.” The purpose of screening reports is as follows:

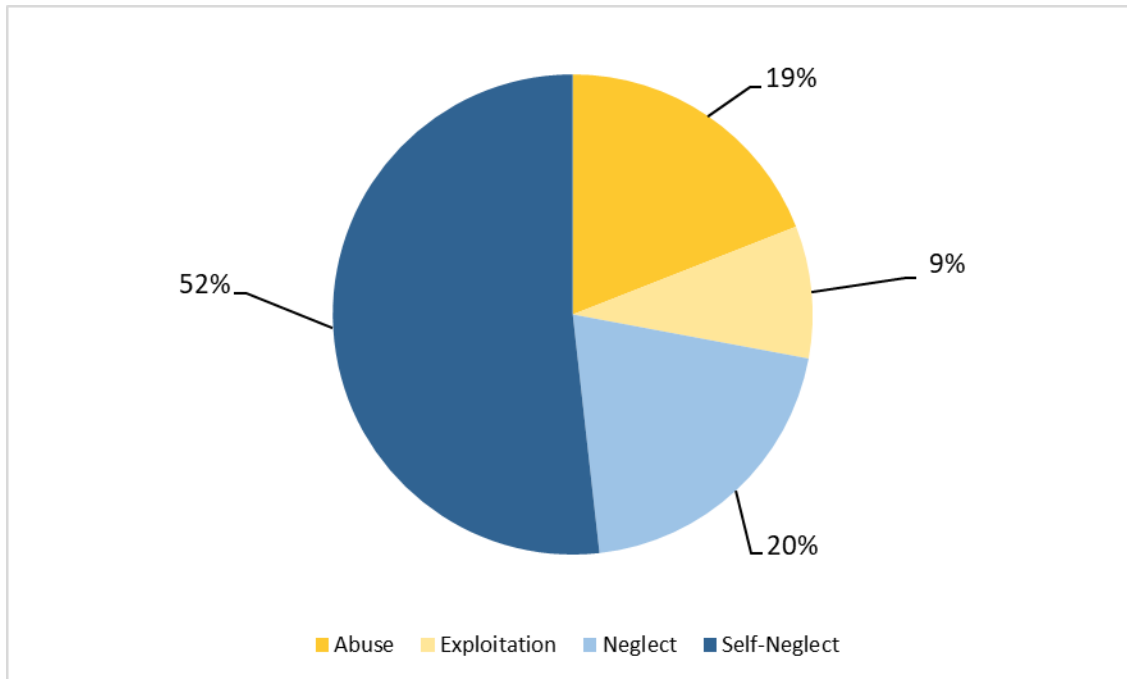
- (a) To determine whether the allegation constitutes a Reportable Condition to the Protective Services Program/Agency, and*
- (b) To determine whether or not an Emergency, Rapid Response, or Routine response is needed.*

According to 651 CMR 5.02, a reportable condition is one or more of the following (see Authoritative Guidance under Finding 1 for detailed descriptions):

- (a) Abuse;*
- (b) Physical Abuse;*
- (c) Sexual Abuse;*
- (d) Emotional Abuse;*
- (e) Neglect;*
- (f) Self-neglect; and*
- (g) Financial Exploitation.*

The chart below shows the four unique types of abuse allegations and the percentage of each that was reported during the audit period.

Reported Abuse Allegation Types



More than half the incidents of abuse reported to PSAs during the audit period were incidents of alleged self-neglect.

If the PSA supervisor determines that an emergency exists, the supervisor must immediately screen in the report and assign it to a PSA caseworker for investigation. The emergency needs of the allegedly abused elderly person must be assessed within 24 hours after EOEa or a PSA receives the abuse report. If the PSA supervisor determines that a report is related to a rapid-response situation, the supervisor must immediately assign the report to a PSA caseworker for investigation, and the needs of the allegedly abused elderly person must be assessed within 72 hours after EOEa or a PSA receives the report. Finally, a routine response with a reportable condition, or any other nonemergency report, must be immediately assigned to a PSA caseworker for investigation, and the investigation must be completed within 30 calendar days.⁴ If a PSA caseworker determines that there is no reasonable cause to believe⁵ that the allegations of abuse constitute a reportable condition, the report is screened out, and a PSA

4. In spring 2016, EOEa piloted and implemented a change that required that extensions of investigation deadlines of elder-abuse allegations be approved by EOEa. Before the change, designated PSAs would approve their own extensions.

5. According to 651 CMR 5.02, "reasonable cause to believe" is "a basis for judgment that rests on specific facts, either directly observed or obtained from reliable sources, that supports a belief that it is more probable than not that a particular event took place or a particular condition exists."

supervisor concludes that an investigation of the allegations is not necessary. All reports of alleged abuse must undergo screening. Reports that are screened out undergo expungement, which means that the report, along with any other supporting information, is removed from EOEAs and its designated PSAs' records in the APS database one year and one day after the report and its supporting records are entered in the system (see Other Matters for further discussion).

Investigation of Alleged Abuse

PSAs are required to investigate information from reports of alleged abuse of elderly people. Investigations include in-person visits to the residences of elderly people who are the alleged victims of abuse and may include meeting with appropriate service agencies and, according to Section 18(a) of Chapter 19A of the General Laws, "individuals who have knowledge of the elderly person's situation including the person filing the report." The law also states that if a PSA's investigation determines that the elderly person is suffering abuse, the PSA must "evaluate the elderly person's functional capacity, situation, and resources" before developing a service plan that addresses the provision of protective services and specific objectives to aid the elderly person and collaterals⁶ in preventing, eliminating, and/or alleviating the risks of abuse. The PSA can also hire medical professionals or social workers to visit an elderly person's home to assess the person's functional capacity. In some unique circumstances, such as domestic-violence disputes, PSA caseworkers can meet with an elderly person away from their home as long as the meeting is face to face.

At the conclusion of an investigation, if a PSA caseworker determines that there is no reasonable cause to believe that a reportable condition exists, they conclude, with approval from the PSA supervisor, that the allegations are unsubstantiated. This means that at the completion of an investigation, there is not sufficient evidence to conclude that the alleged abuse occurred. Unsubstantiated reports of abuse are subject to expungement. However, 651 CMR 5.12(1)(b) states that at the completion of an investigation, "where appropriate, the Protective Services Caseworker shall provide information and referral to the Elder regarding social, health, legal, or other services."

Before January 13, 2017, when 651 CMR 5.00 was revised, elderly people could refuse investigations according to 651 CMR 5.11. However, because of changes to 651 CMR 5.00 as of January 13, 2017, elderly people can no longer refuse investigations by PSA caseworkers. Elderly people can refuse to

6. According to EOEAs, collaterals are people who are involved in alleged-abuse investigations, including, but not limited to, family members, caregivers, witnesses, reporters of alleged abuse, alleged-abuse perpetrators, and other professionals.

participate in investigations, but the PSAs still perform them. After an investigation is conducted, in accordance with 651 CMR 5.11, elderly people have always had the choice to refuse services (e.g., home care or Meals on Wheels) if they possess the “decisional capacity”⁷ to do so.

Referrals to District Attorneys’ Offices

EOEA and its designated PSAs must report allegations of serious abuse to the district attorney’s (DA’s) office that covers the county where abuse occurred⁸ if EOEA or a PSA determines that an elderly person has suffered abuse. At the conclusion of an investigation, if a reportable condition other than death is substantiated and meets the conditions of 651 CMR 5.19(2) for reporting to a DA, then EOEA or the PSA must submit a referral to a DA’s office within 48 hours. Under 651 CMR 5.02 before January 13, 2017, reportable conditions other than death that required a DA referral included, but were not limited to, “brain damage,” “fracture of a bone,” “sexual assault,” “unreasonable” bedsores, “serious bodily injury as the result of a pattern of repetitive actions,” “financial exploitation” involving potential “criminal” behavior, and any other injury that was deemed “non-trivial.” If it was determined that the elderly person died because of the abuse, EOEA or the PSA was required to make an immediate referral to a DA’s office, and a written follow-up notice had to be made available to the DA’s office as soon as possible.

Eight PSAs underwent designation reviews by EOEA during the audit period. The scope of each designation review requires EOEA to evaluate compliance with the protective-service standards established in 651 CMR 5. Within these standards, there are particular areas of EOEA’s alleged-abuse report processing that include mandated DA referrals. One standard that EOEA uses as part of its designation review of its contracted PSAs is whether reports of substantiated claims of elder abuse were made to the DA in a timely manner.

Seven of the eight PSAs had submitted at least one referral to a DA’s office. The table below shows each of the seven agencies’ compliance scores, assessing timeliness in reporting to their local DAs’ offices. For

-
7. According to 651 CMR 5.02, decisional capacity is the “Elder’s ability to: (a) understand and appreciate the nature and consequences of decisions, including the benefits and risks of and alternatives to any proposed Protective Services; and (b) reach an informed decision while free from any apparent duress, intimidation, coercion, use of force, or threat of force by another.”
 8. According to Section 18 of Chapter 19A of the General Laws, EOEA and its designated PSAs must report their determination of serious abuse in the “county where the abuse occurred within forty-eight hours.” In addition, Section 16(b) of Chapter 19A of the General Laws states that if EOEA or one of its designated PSAs has “reasonable cause to believe that an elderly person has died as a result of abuse, the death shall be reported immediately to the district attorney of the county in which the abuse occurred.”

example, Agency 1 was timely in referring reports to a DA's office for half of the total reports reviewed by EOEА. Among the seven agencies evaluated, the average compliance score for timely referrals to DAs' offices was 38%.

Timely DA Referral Designation Review Scores

Agency	Score*
1	50%
2	67%
3	0%
4	50%
5	25%
6	25%
7	50%

* The results in this table were taken from the seven designation review reports completed by EOEА. The reports were provided to us by the director of EOEА's Protective Services Program.

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 Executive Office of Elder Affairs (EOEA) for the period July 1, 2015 through June 30, 2017.

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 where each objective is discussed in the audit findings.

Objective	Conclusion
1. Did EOEA effectively and efficiently administer its Protective Services Program to ensure that it achieved its stated objectives of mitigating or alleviating risks of abusive situations and preventing the reoccurrence of abuse of elderly people by doing the following?	
a. adequately documenting each report of abuse in the Adult Protective Services (APS) system	Partially; see Finding <u>1</u>, Finding <u>3</u>, and Other Matters
b. ensuring that the decision to screen each abuse report in or out was properly reviewed and authorized	No; see Findings <u>2</u> and <u>3</u>
c. ensuring that each case was reviewed and authorized by supervisors at a protective-service agency (PSA) before it was terminated	Partially; see Findings <u>2</u> and <u>3</u>

We gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls for management oversight over the abuse report process.

We compared the number of abuse reports that were received by the Elder Abuse Hotline and were screened in to the number of reports that were screened in by EOEA's Centralized Intake Unit (CIU) after

it was established in June 2017. We noted that the number of screened-in abuse reports increased after the CIU was established (see Appendix).

We reviewed data expungement reports in APS and asked EOEa management about the process of expunging or removing screened-out reports and unsubstantiated abuse allegations from APS.

We assessed the reliability and completeness of APS, which was provided by EOEa. As part of the assessment, we reviewed existing APS information that had not been expunged from the system, tested selected system controls, and interviewed knowledgeable IT personnel and the Protective Services Program director about the data and the significance thereof. In addition, we performed validity tests and traced APS's front-end data, which we accessed directly by logging in to the system, to APS's back-end warehouse data, which were obtained by our data analytics team, to verify each data field reviewed in the system. We tested for missing key data and scanned for duplicate records. Based on the assessment conducted, we determined that the data, though incomplete because of expungement practices, were sufficiently reliable for the purpose of this report.

Documentation of Key Case Information

We determined whether PSAs adequately documented key content for each case investigation as required by Section 5.10 of Title 651 of the Code of Massachusetts Regulations (CMR). We performed a statistical, nonjudgmental test of 170 alleged abuse incidents, not projected to the test population of 44,384⁹ alleged abuse incidents, to ensure that the PSAs complied with the documentation requirements of 651 CMR 5.10 when writing case notes in APS. Specifically, 651 CMR 5.10(1) states that investigations must document the following:

- (a) The identity of the allegedly Abused Elder;*
- (b) The nature, extent, and cause(s) of the alleged serious physical or emotional injury or Financial Exploitation;*
- (c) The identity of the person(s) or support system of Caretakers alleged to be responsible for the alleged injuries.*

To test EOEa's compliance with this regulation, we verified that the name of each elderly person who was allegedly abused was included in the documentation in APS, along with detailed descriptions of

9. These 44,384 alleged abuse incidents are associated with an unduplicated total of 14,682 people.

alleged incidents, identities of alleged perpetrators, determinations by PSAs, and other key information in support of the PSAs' case conclusions.

Screening and Investigation Duties

Using Audit Command Language (ACL) data analytics, we performed a classification analysis¹⁰ on all 193 PSA employees in APS who screened abuse reports, as well as a classification analysis on all PSA caseworkers who were assigned to investigate reported incidents of alleged abuse after screening. We performed this analysis to ensure segregation of duties between screening abuse reports and investigating alleged incidents of abuse. According to 651 CMR 5.09,

Upon receipt of an oral or written report (whichever is received first), a Protective Services Agency shall ensure that all reports are evaluated immediately by a Protective Services Supervisor or designated backup supervisor, in order to determine the immediacy and severity of the alleged harm or risk, and the appropriate initial response.

We tested to determine, from a population of 193 workers who performed screenings during the audit period, whether each person who determined whether to screen in an abuse report for investigation was at or above supervisor level. We reviewed APS and queried each of the 193 workers' roles to ensure that they were supervisors authorized to screen in abuse reports for investigation.

Investigation and Approval of Investigation Closure

Using ACL data analytics, we selected a random statistical sample of 200 alleged abuse incidents out of 44,384 total alleged abuse incidents during the audit period, downloaded from APS; we did not project our sample to the test population. We analyzed the incidents in detail to determine whether allegations of abuse were investigated by caseworkers and whether the closure of each investigation was authorized by a PSA supervisor.

Report Screening

We filtered the APS data we obtained to focus solely on abuse reports that were screened out by PSA supervisors, to ensure that supervisors took the appropriate steps to screen all reports and, when screening reports out, adequately documented their rationales in APS. We selected a random statistical sample of 50 abuse reports that were screened out during the audit period, out of a test population of 2,089, to ensure that there were no reportable conditions that should have warranted investigations of

10. According to the ACL Analytics User Manual, "Classifying groups the records in a table based on identical key field values, and counts the number of records in each group."

elder abuse but were not reported in APS by EOEa or its designated PSAs. We did not project our sample to the test population. In addition to our analysis of the APS data, we also reviewed each designation review report prepared by EOEa to determine whether PSA supervisors appropriately documented their screening decisions in APS.

We joined abuse report data and investigation data into a single consolidated data set to verify that every investigation report had a matching screened-in abuse report. We analyzed the data in APS to ensure that each alleged abuse report in APS that was screened in could be matched to its associated investigation in APS. (The associated investigation is manually linked in APS to the alleged-abuse report after it is received by EOEa and/or PSAs, when the incident is initially reported and screened in.)

Serious Reportable Conditions and Fatalities

Using ACL data analytics, we filtered incident data derived from investigations from APS to review a population of 190 incidents of alleged elder abuse from the audit period in which an elderly person died while a PSA was investigating their alleged abuse. We tested the population of 190 fatalities to ensure that EOEa or its designated PSAs made referrals to district attorneys' (DAs') offices when required in accordance with Sections 16(b) and 18(a) of Chapter 19A of the General Laws, 651 CMR 5.02, and 651 CMR 5.19. In addition, if a DA referral was necessary, we reviewed cases in APS for documentation that the referral was made.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Executive Office of Elder Affairs and its designated protective-service agencies did not always report incidents of abuse to district attorneys' offices for investigation.

We reviewed 190 incidents of alleged elder abuse investigated by PSAs during the audit period and found that the Executive Office of Elder Affairs (EOEA) did not report seven incidents of serious abuse to district attorneys' (DAs') offices as required. The seven incidents involved elderly people who had died at some point during investigations that took place between September 2015 and August 2017. They occurred in five different counties.¹¹ An additional six incidents of abuse were reported to DAs' offices but did not have adequate and verifiable documentation in their case files in the Adult Protective Services (APS) system. Without making referrals to DAs' offices and adequately documenting referrals in APS, EOEA and its designated protective-service agencies (PSAs) cannot be certain that they have taken the necessary steps to ensure appropriate investigation and prosecution of alleged perpetrators of abuse and mitigation of risks of abuse.

According to the APS case notes, the seven incidents of serious abuse involved such things as "serious neglect," "stage 4 bed sores," and emotional abuse by an alleged perpetrator "for the last ten years." According to one case file, the alleged perpetrator also made threats to kill the elderly person. The elderly person whose life was threatened was quoted in APS as stating that she was "fearful to return home." Another elderly person who was an alleged abuse victim was bedridden with a "fractured hip" and "bed sores." That elderly person was reported in APS as having untreated bed sores that "went right down to the bone." These sores led to an infection, and the reporter of the incident, who was an emergency medical technician, was documented in APS as "surprised" by the alleged perpetrator's "lack of care" for the elderly person. According to APS, because of the lack of care, the elderly person's "hair was so matted that it was pulling on her scalp" and she had "not bathed." This was reported as an incident of caregiver neglect on the part of the elderly person's son that was substantiated by the PSA but was never reported to a DA's office by EOEA or the PSA.

Six other cases, separate from the aforementioned seven cases that had not been referred to DAs' offices, were noted in APS as having had a referral forwarded to a DA's office by the PSAs. Although it was noted in APS that PSAs had made DA referrals for all six incidents, EOEA was not able to provide any

11. The counties were Norfolk, Middlesex, Suffolk, Bristol, and Essex.

DA referral forms that it had forwarded to the DAs' offices. Referral forms consist of information such as the location of the DA's office, the date the referral was forwarded, and attached case summary notes in APS.

Authoritative Guidance

Section 14 of Chapter 19A of the Massachusetts General Laws defines "abuse" as follows:

An Act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for him one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community.

Section 18(a) of Chapter 19A of the General Laws requires EOEa to notify the appropriate DA's office within 48 hours when a PSA caseworker determines "that the elderly person has suffered serious abuse."

Section 5 of Title 651 of the Code of Massachusetts Regulations (CMR) was updated during our audit period, as of January 13, 2017. The updates included slight changes to the language that addresses and defines reportable conditions of abuse under 651 CMR 5.02.

The version that was in place before the update applied to five of the seven incidents discussed above that should have been referred to DAs' offices. That version defined reportable conditions as follows:

Abuse. *An act or omission which results in serious physical or emotional injury to an elderly person or financial exploitation of an elderly person; or the failure, inability or resistance of an elderly person to provide for himself or herself one or more of the necessities essential for physical and emotional well-being without which the elderly person would be unable to safely remain in the community; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof . . .*

1. *Physical Abuse:* *The non-accidental infliction of serious physical injury to an Elder or the threat of serious physical injury in which the Protective Services Agency has Reasonable Cause to Believe that an individual may have the intent and capacity to carry out the threatened serious physical injury.*

Serious physical injury shall be determined by consideration of the following factors:

- (a) *the Elder's physical condition;*

- (b) the type, size, shape, number and location of physical injuries;*
- (c) the circumstances under which the injury occurred including the potential for serious injury in the actual incident;*
- (d) the emotional impact on the Elder;*
- (e) the potential for escalation of Abuse. . . .*

3. *Emotional Abuse:* *The non-accidental infliction of serious emotional injury to an Elder. Emotional Abuse must establish a relationship between abusive actions, behaviors, or language and a resulting effect on the emotional state or functioning of the Elder.*

Serious Emotional Injury includes:

- (a) An extreme emotional reaction or response such as a severe state of anxiety, fear, depression or withdrawal;*
- (b) Development of post-traumatic stress disorder including but not limited to symptoms resulting from being forced to engage in sexual relations by force, threat of force or duress;*
- (c) Symptoms of an extreme emotional reaction or response resulting from threats to kill, harm or financially exploit.*

4. *Neglect:* *The failure or refusal by a Caretaker to provide one or more of the necessities essential for physical well-being, such as food, clothing, shelter, personal care, and medical care, which has resulted in or where there is substantial reason to believe that such failure or refusal will immediately result in serious physical harm to an Elder.*

Neglect shall be determined by consideration of each of the following factors:

- (a) the Elder's ability to meet her/his own needs.*
- (b) a history of dependence on a Caretaker as defined in 651 CMR 5.02.*
- (c) the Elder's Capacity to Consent.*
- (d) the expectation or desire of the Elder of continuing to receive care provided by the Caretaker.*
- (e) the seriousness of physical harm resulting from Neglect shall be determined by consideration of 650 CMR 5.02(4)(a) through (e) under the definition of Physical Abuse.*

5. *Financial Exploitation:* *The non-accidental act or omission by another person without the consent of the Elder causing substantial monetary or property loss to the Elder or substantial monetary or property gain to the other person which gain would otherwise benefit the Elder, but for the act or omission of the other person. Financial exploitation may result from consent obtained as a result of misrepresentation, undue influence, coercion or threat of force by the other person.*

The new guidance, effective after January 13, 2017, applied to the other two of the seven incidents in question. The updated version of 651 CMR 5.02 defines reportable conditions as follows:

Abuse. An act or omission, including Emotional Abuse, Financial Exploitation, Neglect, Physical Abuse, Sexual Abuse, and/or Self-neglect, which results in Serious Physical Injury or emotional injury to an Elder, or Financial Exploitation of an Elder; provided, however, that no person shall be considered to be abused or neglected for the sole reason that such person is being furnished or relies upon treatment in accordance with the tenets and teachings of a church or religious denomination by a duly accredited practitioner thereof. . . .

Neglect. The failure or refusal by a Caretaker to provide one or more of the necessities essential for physical well-being, such as food, clothing, medication, shelter, personal care, and medical care, which has resulted in Serious Physical Injury to an Elder; or a Reasonable Cause to Believe that such failure or refusal will immediately result in Serious Physical Injury to an Elder.

Neglect shall be determined by consideration of each of the following factors:

- (a) the Elder's ability to meet his or her own needs.*
- (b) a history of dependence on a Caretaker.*
- (c) the Elder's Decisional Capacity and Functional Capacity.*
- (d) the expectation or desire of the Elder of continuing to receive care provided by the Caretaker.*

Additionally, according to the current version of 651 CMR 5.19,

- 1. If the Department or its Protective Services Agency has Reasonable Cause to Believe that an Elder has died as a result of Abuse, the death shall be reported immediately to the District Attorney of the County in which the Abuse occurred. Written notification on a form provided by the Department shall be forwarded to the District Attorney as soon as possible. . . .*
- 2. If a Reportable Condition is substantiated and an Investigation results in a determination that the Elder has suffered a Reportable Condition(s) other than death, the Department or Protective Services Agency shall report such determination within 48 hours to the District Attorney of the County where the Abuse occurred for further investigation. Conditions Reportable to the District Attorney by a Protective Services Agency pursuant to M.G.L. c. 19A, §§ 16(b) and 18(a) shall include, but not be limited to, the following:*
 - (a) Brain damage;*
 - (b) Loss or substantial impairment of a bodily function or organ;*
 - (c) Fracture of a bone;*
 - (d) Any serious or intentional burns;*

- (e) Disfigurement;*
- (f) Sexual assault, rape, sexual misuse or sexual exploitation;*
- (g) Serious Physical Injury as the result of a pattern of repetitive actions;*
- (h) Soft tissue swelling, skin bruising or tears, depending on such factors as the Elder's physical condition, circumstances under which the injury occurred, and the number and location of bruises;*
- (i) Significant, unexplained weight loss;*
- (j) Symptoms resulting from the use of medications or chemical restraints or the withholding of life sustaining medications;*
- (k) Any other non-trivial injury;*
- (l) Pressure ulcers that pose a serious medical risk for the Elder;*
- (m) Financial exploitation which involves possible criminal conduct, including but not limited to, the crimes of larceny by stealing, larceny by false pretenses, larceny from the person, larceny by embezzlement, larceny by check, forgery, uttering and extortion, and which possible criminal conduct substantially and seriously affects the financial situation of the Elder;*
- (n) Threats of Abuse in which a Protective Services Agency has Reasonable Cause to Believe that an individual may have the intent and apparent ability to carry out the following:*
 - 1. threat to kill the Elder;*
 - 2. threat to physically harm the Elder as described in 651 CMR 5.19(2)(a) through (k).*

The language in the list of reportable conditions changed when the regulation was updated on January 13, 2017, but the list still applied to all seven of the incidents that the Office of the State Auditor (OSA) and EOEA agreed should have been referred to DAs' offices.

Finally, 651 CMR 5.18(2) applies to the six DA referral forms that EOEA could not provide to us:

Case record documentation shall include, but not be limited to . . .

- (e) Supporting documentation such as reports, evaluations, and Investigations obtained from case managers, nurses, doctors, lawyers, psychotherapists, police officers, coroners, and other professionals.*

Reasons for Noncompliance

EOEA has not established fully adequate monitoring controls to ensure that its PSA caseworkers perform effective assessments of allegations of abuse of elderly people, that all substantiated cases of serious

abuse are reported to DAs' offices when required, and that adequate documentation is maintained in APS for all DA referrals. In addition, although 651 CMR 5.19 establishes a case documentation requirement for DA reporting, EOEa has not established specific guidance or criteria that covers what should actually be documented in APS when a DA referral needs to be made.

Regarding the six instances of abuse that were reported to DAs' offices but lacked adequate and verifiable documentation, EOEa management stated that they believed that the caseworker notes in the files represented adequate documentation of the referrals.

In addition, in its response to our draft report, the auditee stated,

EOEA management indicated that various DA offices have declined to take action after a case has been referred.

However, even if this is the case, it does not release EOEa from its regulatory responsibility of referring all cases to the appropriate DA's office when it has identified reportable conditions through its investigation.

Recommendations

1. EOEa should develop a guidance manual addressing documentation practices for DA referral and reporting to reflect the requirements of 651 CMR 5.18(2)(e).
2. EOEa should establish monitoring controls to ensure that each person involved in the DA referral process complies with its policies and procedures for reporting incidents of alleged abuse to DAs' offices. In particular, during its designation review process, it should evaluate whether PSAs are referring incidents of alleged abuse to DAs' offices as required.
3. EOEa should schedule regular meetings with DAs' offices to ensure that reportable conditions that warrant DA referral are reported.

Auditee's Response

EOEA takes all cases of non-compliance with the DA Referral requirement seriously. EOEa believes that any finding relating to these 7 cases identified (out of 190 sampled records) is important and we will continue working closely with all PSA's to review policies for DA referrals and ensure full compliance with this requirement.

Recommendation 1

EOEA had already begun work on this issue in 2015 prior to the start of the SAO Audit. Protective Services training had been suspended by the prior administration in 2009. In 2015 EOEa had prioritized the reinstatement of comprehensive training for Protective Service Agencies (PSA)'s

and received a federal grant to develop a comprehensive curriculum and to retrain the entire Protective Services workforce. This comprehensive training continues during State Fiscal Year 2019 and includes specifics on identifying investigations for DA Referral, how to submit the DA Referral, and how to properly document the matter in the Adult Protective Services (APS) Information Technology System of Record. The DA Referral training includes written materials and is consistent with the SAO's Recommendation. EOEa will update its training materials into a manual to be published during FY19.

Additionally, between July 19, 2018 and August 1, 2018, the EOEa Director of Protective Services contacted every PSA directly and reviewed the requirements for DA referral with both the protective services agency director and the Aging Services Access Point (ASAP) Executive Director. Moreover, these requirements were reviewed with the Protective Services network at a statewide meeting for all Protective Services agencies.

Recommendation 2

EOEA had already commenced work on internal monitoring controls prior to the start of the . . . Audit. EOEa is currently updating APS, the Protective Services Information Technology System of Record that launched in 2009. EOEa staff has been gathering feedback as a result of PSA site visits and is implementing several changes beginning in the Spring of 2019, including an electronic DA Referral form.

Recommendation 3

EOEA believes that more regular communication with DA offices might be beneficial. As such, EOEa has planned for additional communication with individual DAs to engage in more regular and frequent interaction regarding Protective Services issues, including the DA Referral process.

Auditor's Reply

Based on its response, EOEa is taking measures to ensure that it properly reports this information to DAs' offices.

2. EOEa did not always properly document the processing of abuse reports in APS.

During our audit, we identified a number of issues with the way EOEa documented the processing of abuse reports in APS. These included the following:

- When analyzing the data in APS, we identified 669 abuse reports that EOEa had determined required investigation but that were not linked to any corresponding investigation information in APS. According to EOEa officials, the investigation information regarding these 669 reports was expunged from APS because EOEa staff members found the allegations to be unsubstantiated. Although EOEa can retain investigation information that it deems unsubstantiated for three years, it destroyed these investigation records within a year and a day after their corresponding reports were originally filed. Without the case records, there is

inadequate assurance that all of these cases were properly investigated and the most appropriate decisions were made by PSAs (see Other Matters).

- During our audit period, according to APS, 30 EOEa employees screened reports of alleged abuse of elderly people even though the employees were not authorized to conduct these screenings and make related decisions because they were not at or above supervisor or screener level. OSA determined through a record review that these screenings were actually conducted by 30 employees who were authorized to screen reports but, according to EOEa officials, "erroneously selected" different screener names from a dropdown list in APS. Because APS is EOEa's system of record for documenting reports of alleged abuse of elderly people, it is essential that all information in this system be accurate in order for EOEa management to effectively manage this process.
- PSA supervisors who made screening decisions did not document in APS their decisions and rationales for screening reports in or out. When a screening decision is made, there is no separate individual who reviews the screening decision or screening notes. The screening of reports is a vital decision, as it determines whether an elderly person who has allegedly been abused will have the allegations investigated by a PSA. Without having these decisions documented in APS, reviewers cannot determine whether the appropriate assessments were made, and there is a risk that the alleged abuse, which may be serious and threatening, will not be addressed by PSAs.

Authoritative Guidance

According to 651 CMR 5.18(2)(a), case record documentation should include, but is not limited to, "intake information regarding reports and collateral contacts in accordance with 651 CMR 5.08 and 5.09."

Per our discussion with EOEa management, if an abuse report is screened in for investigation, the caseworker assigned to the investigation must link the investigation to the report in APS.

According to 651 CMR 5.09,

Upon receipt of an oral or written report (whichever is received first), a Protective Services Agency shall ensure that all reports are evaluated immediately by a Protective Services Supervisor or designated backup supervisor, in order to determine the immediacy and severity of the alleged harm or risk, and the appropriate initial response.

According to 651 CMR 5.09(2), when making screening decisions, the PSA supervisor determines "whether there is a Reportable Condition and the level of response needed, in accord with 651 CMR 5.09(1)(a) and (b)."

According to 651 CMR 5.18(1)(a)(7), PSA caseworkers shall "make casework decisions with supervisory consultation."

The current version of 651 CMR 5.18(2)(d) states,¹²

(d) Progress notes shall be added to the case file immediately following the decision to screen in the report and shall include, but not be limited to . . .

- 4. Documentation of facts to support casework decisions including options weighed, supervisory input, and rationales for decisions made.*

Reasons for Noncompliance

EOEA did not have monitoring controls over the abuse-reporting process. Specifically, screening PSA supervisors' decisions about abuse reports were not reviewed or overseen by PSA managers or other PSA supervisors.

Additionally, the Protective Services Program director at EOEA told us that caseworkers and supervisors often forgot to manually link investigations that were created in APS to their associated abuse reports.

Recommendations

1. EOEA should implement policies and procedures that include better documentation practices in APS. The policies should also communicate clear personnel responsibilities in APS for each investigation and should include the necessary steps for manually linking abuse reports to corresponding investigations.
2. PSA supervisors should document their screening decision rationales in APS and assign a PSA case manager or second PSA supervisor to review each decision before the initiation of an investigation if it is screened in, or an expungement if it is screened out, by the supervisor.

Auditee's Response

Recommendation 1

EOEA issued guidance on the proper protocol for linking intakes to investigations on July 20, 2018, and is implementing an ongoing [quality assurance] process throughout the protective services system by June 30, 2019. With respect to documentation practices in APS, EOEA is implementing several new electronic forms beginning in Spring 2019 that will promote easier tracking within the APS system.

12. The previous version stated, "Progress notes shall begin immediately following the decision to screen in a report."

Recommendation 2

PSA supervisors should document screening decisions in APS; EOEAs existing policy requires that the rationale for the screening decision is documented. EOEAs will address this issue within the larger training sessions that are referenced in Finding 1, Recommendation 1 of this report. With respect to assigning a PSA case manager or second PSA supervisor to review each decision or a supervisor for expungement of screened-out cases, EOEAs will review supervisory processes and make adjustments where feasible, including improvements to documenting the processes.

Auditor's Reply

Based on its response, EOEAs is taking measures to address our concerns in this area.

3. EOEAs APS system controls need improvement.

EOEA has not established adequate access controls and other security controls over APS. These deficiencies place the sensitive data stored in APS at a high risk of unauthorized access and/or improper disclosure.

When assessing the controls that EOEAs had established over APS, we found the following issues:

- EOEAs management does not have authorization controls to approve access to APS for new users when new accounts are created. Therefore, there is a high risk that the system can be accessed by people who are not authorized or approved to use the system or are not employed by EOEAs.
- EOEAs does not have adequate logical access controls in place over APS that would lock a user out of APS after a number of failed login attempts. Failed login attempts do not lock users out of the system, irrespective of the number of login attempts.
- EOEAs does not have multifactor authentication procedures¹³ in place for logging into the system. Without access controls over login attempts, a person could conduct brute-force cracking¹⁴ to gain unauthorized access to APS. Without multifactor authentication, a user could log into APS without having to answer a set of security questions to validate that they are an authorized user.
- EOEAs does not have an effective system lockout feature that is implemented after a certain number of failed login attempts or periods of user inactivity. After a period of user inactivity in APS, users are locked out and have to log back in; however, the period is approximately five hours. If a user is away from their computer, a person who attempts to gain unauthorized access has enough time to obtain or manipulate data containing sensitive and personal information.

13. Under this type of procedure, a person is required to provide two or more pieces of evidence (e.g., password, fingerprint scan) to validate their identity and gain access to the system.

14. Brute-force cracking is continual trial and error to try to log into a computer system to gain unauthorized access.

- EOEА does not properly monitor intake and investigation event logs. EOEА performs as-needed reviews of event logs for intakes and investigations in APS that record user activity at a specific date and time; however, routine reviews would be more likely to uncover some of the deficiencies identified in Finding 2, such as abuse reports that are not linked to investigations.

Authoritative Guidance

The Executive Office of Technology Services and Security's Enterprise Information Security Policy states,

Agencies are required to implement policies, associated procedures and controls that protect the agency's information assets, including but not limited to personal information and IT Resources from all threats, whether internal or external, deliberate or accidental.

Section AC-2E of National Institute of Standards and Technology Special Publication 800-53¹⁵ states that organizations should "require approvals by [organization-defined personnel or roles] for requests to create system accounts."

Section AC-7 of that publication states that information systems should "enforce a limit of . . . consecutive invalid logon attempts by a user."

Section AC-11 states that information systems should "prevent further access to the system by initiating a device lock after [an organization-defined time period] of inactivity or upon receiving a request from a user." A best practice for this criterion would be to implement a device lock on a user's computer after 15–30 minutes of user inactivity, as opposed to the five hours currently allowed in APS.

Section AU-6 states that organizations should "review and analyze system audit records [at an organization-defined frequency] for indications of [organization-defined inappropriate or unusual activity]."

Finally, Section IA-1 states that organizations should do the following:

a. Develop, document, and disseminate . . .

1. An identification and authentication policy that:

(a) Addresses purpose, scope, roles, responsibilities, management commitment, coordination among organizational entities, and compliance; and . . .

15. This document provides practices and guidance for security and privacy controls to protect information and people from errors, security threats, and other threats.

2. *Procedures to facilitate the implementation of the identification and authentication policy and associated identification controls.*

Reasons for Inadequate Controls

EOEA officials told us they had contracted with a vendor to develop and maintain APS and had depended on the vendor to establish the security of the system. However, EOEA did not manage the vendor to ensure that the system security expectations were met.

EOEA's policies and procedures do not adequately address APS system identification and authentication risks and controls.

Recommendations

1. EOEA should screen and approve new users' access to APS.
2. EOEA should establish and implement written system security access policies and procedures, within a control plan, that are specific to employees using APS and include, but are not limited to, the following:
 - a. approval of access to APS for new users before new accounts are created and use of APS is granted
 - b. access controls that address entry into the system via password login, as well as lockout of APS users after shorter periods of inactivity
 - c. monitoring of user activity and oversight of intake and investigation logs

Auditee's Response

Recommendation 1

Currently, the responsibility of screening and approving APS user access rests with the PSA's, since they are the employers of the new users and are best positioned to determine the appropriateness of granting APS access. Once a PSA determines that a new user should access APS, a written request (utilizing a standardized form) is submitted to EOEA and the access to APS is established.

*EOEA's Protective Services Program Regional Managers will review APS new user access requests **prior to APS access being granted**. EOEA expects to implement this new process in the fall of 2018.*

Recommendation 2

On June 25, 2018, EOEA implemented and communicated to the PSA's that individuals will be locked-out of the APS system after 3 failed log-in attempts (requiring contact with an APS System

Administrator in order to have access restored), and that the APS system idle time will be reduced to 1 hour from the present 2 hour period for which re-logging-in will be required. As such, we believe no further corrective action is required.

Auditor's Reply

Based on its response, EOEA is taking measures to address our concerns in this area.

OTHER MATTERS

The Executive Office of Elder Affairs (EOEA) expunges, or removes, unsubstantiated allegations investigated and abuse reports screened out, along with associated case notes of alleged abuse of elderly people and other corresponding documentation, from the Adult Protective Services (APS) system one year and one day after the determination is made by a supervisor at the protective-service agency (PSA). APS does keep a report on expungement of abuse reports and investigations that includes basic case information such as the intake or investigation identification, the PSA, and the date the PSA received the report of alleged abuse, but excludes any personally identifiable information involved in the case.

Section 23(b) of Chapter 19A of the Massachusetts General Laws states,

If the department, any designated agency, or any other agency obligated to make an assessment under this chapter determines that the allegations in a report cannot be substantiated, it shall within 3 years of such determination, either (i) destroy said report and any other records containing personal data created because of the receipt of said report or (ii) physically remove therefrom all personal identifiers; provided, however, that the department, the designated agency or any other agency obligated to make assessments may create and hold whatever statistical records it needs for purposes of planning and reporting.

Further, Section 5.20(11) of Title 651 of the Code of Massachusetts Regulations (CMR)¹⁶ states,

The Department and Protective Services Agencies shall expunge all Personal Data within its control regarding a Data Subject where a report of alleged Abuse cannot be substantiated. The Holder shall, within three months of such determination:

- (a) Destroy said report and any other records containing Personal Data created because of receipt of said report; or*
- (b) Physically remove therefrom all personal identifiers; provided however, that the agency holding Personal Data obligated to investigate may create and hold whatever statistical records it needs for purposes of planning and reporting.*

We believe that there is a significant risk that allegations of serious abuse could be expunged from APS because of a determination that a report was unsubstantiated, when in fact the report could have

16. This regulation was amended as of January 13, 2017, resulting in a change that allows EOEA and the PSAs to expunge “all Personal Data” within three years of determining unsubstantiated allegations of elder abuse per 651 CMR 5.20(12) of the amended CMR.

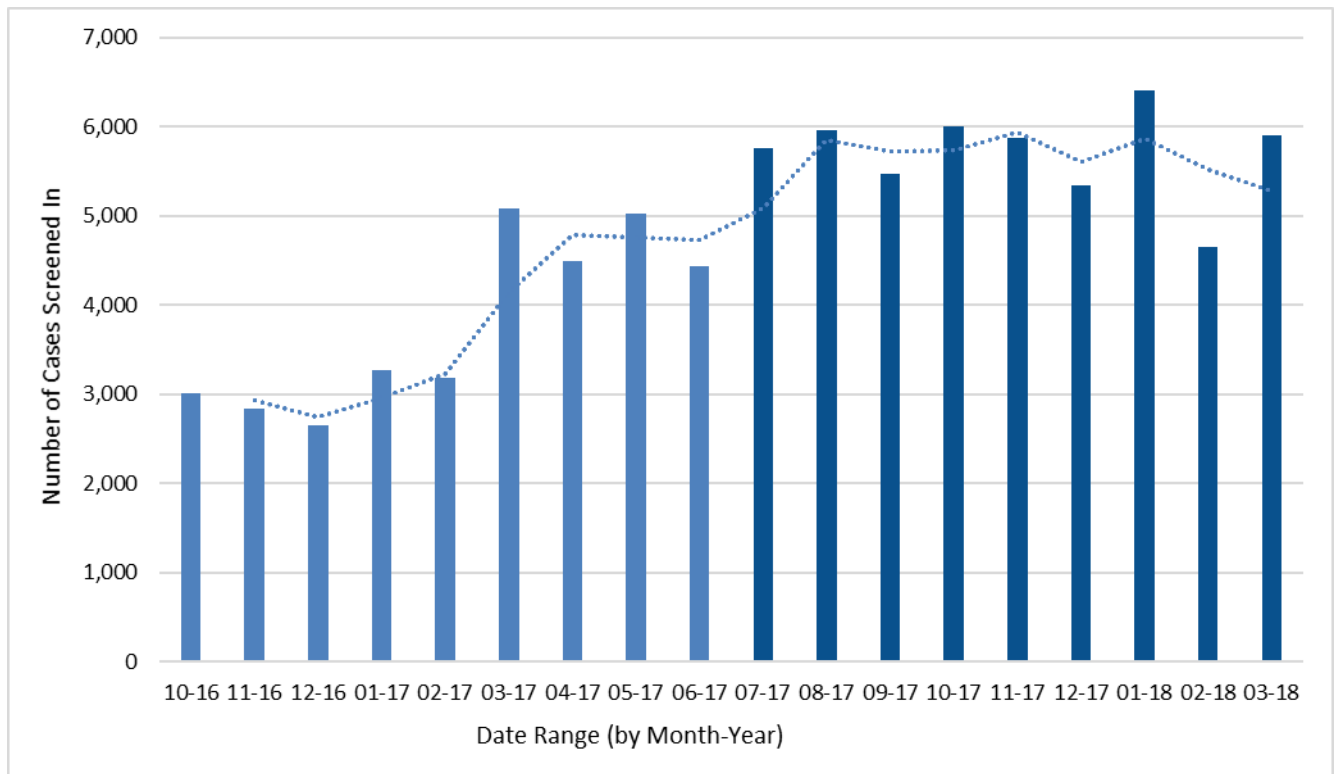
warranted an investigation. Additionally, the expungement of this information could hinder EOEAs ability to identify repeat offenders or victims.

We recommend that EOEAs work with the state Legislature to consider extending the length of required retention for unsubstantiated investigation information and screened-out report information in APS.

In its response to this issue, EOEAs stated, “EOEAs will explore the merits of extending existing timeframes.”

APPENDIX

Number of Screened-in Cases: Elder Abuse Hotline Data Compared to Centralized Intake Unit Data



Note: The Centralized Intake Unit was implemented for receipt of abuse reports as of June 30, 2017.