



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

Making government work better

Official Audit Report – Issued July 9, 2015

Disabled Persons Protection Commission

For the period July 1, 2012 through June 30, 2014





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Making government work better

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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, 2012 through June 30, 2014. 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

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LIST OF ABBREVIATIONS

CMR	Code of Massachusetts Regulations
DDS	Department of Developmental Services
DMH	Department of Mental Health
DPPC	Disabled Persons Protection Commission
MRC	Massachusetts Rehabilitation Commission

EXECUTIVE SUMMARY

The Disabled Persons Protection Commission (DPPC) was created under Chapter 19C of the Massachusetts General Laws and is responsible for the investigation and remediation of abuse of people with disabilities.

In accordance with Chapter 11, Section 12, of the General Laws, the Office of the State Auditor has conducted a performance audit of certain activities of DPPC for the period July 1, 2012 through June 30, 2014. We reviewed these activities to evaluate DPPC's ability to perform its investigative functions in a timely manner and in compliance with applicable laws, rules, and regulations.

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

Finding 1 Page 6	DPPC does not retain signed copies of forms given to alleged abusers to document that they have been advised of their legal rights before they are interviewed regarding an abuse claim. Without such documentation, there is inadequate assurance that alleged abusers understand their rights and legal obligations.
Recommendations Page 6	<ol style="list-style-type: none">1. DPPC should establish policies and procedures to ensure that all alleged abusers are properly advised of their rights and that they sign the Rights of Abuser Form to acknowledge this advisement. DPPC should retain these signed forms in alleged abuse victims' case files as evidence of compliance with 118 Code of Massachusetts Regulations 5.02.2. DPPC should work to amend its regulations to include a requirement that all alleged abusers read and sign the form.
Finding 2 Page 8	DPPC does not always meet its required deadlines to complete investigations, and when an investigation is late, the agency does not always document the reasons for the delay. Delayed investigations could prevent DPPC from promptly implementing remedial action plans to protect abuse victims, and the lack of documented reasons may prevent it from demonstrating its attempts at compliance and from identifying recurring causes for delays.
Recommendations Page 11	<ol style="list-style-type: none">1. DPPC should continue to work with the Department of Developmental Services, the Department of Mental Health, and the Massachusetts Rehabilitation Commission to complete investigations within the required timeframes.2. DPPC should establish and implement the necessary policies, procedures, and related internal controls to ensure that when required filing deadlines are not met, evidence of the reasons for the delay is documented and retained in case files. This could enable DPPC to identify and address the reasons for delays. If a staff shortage is determined to be a contributing factor, DPPC could consider performing a staffing analysis and requesting additional resources to obtain the necessary staff.

OVERVIEW OF AUDITED ENTITY

According to its website, the Disabled Persons Protection Commission (DPPC) was created in 1987 “as an independent state agency responsible for the investigation and remediation of instances of abuse committed against persons with disabilities in the Commonwealth” under Chapter 19C of the Massachusetts General Laws. DPPC’s three commissioners report directly to the Governor and the Legislature.

To carry out its mission of protecting adults with disabilities from abuse and neglect, DPPC performs its own investigations and also 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). According to statistics it provides to the Legislature, DPPC directly investigates fewer than 10% of cases of alleged abuse, which include, among other things, cases involving the Department of Correction and reports of death.

DPPC’s website also states that its jurisdiction includes adults with disabilities between the ages of 18 and 59 who are “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.” DPPC “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).” DPPC received 7,987 and 9,018 reports of abuse in fiscal years 2013 and 2014, respectively (see appendix).

DPPC receives claims of abuse through a 24-hour phone hotline that is operated by DPPC during normal business hours and by an independent contractor after hours. Hotline operators receive, document, and evaluate the information provided by abuse reporters. The operators’ initial duty is to ensure that the alleged victim is in a safe environment and then to evaluate whether the case is in DPPC’s jurisdiction. If so, the case is assigned to the appropriate investigating agency based on the alleged victim’s disability type and whether s/he is already being served by another agency (DDS, DMH, or MRC). In emergency cases, wherein the alleged victim may be in immediate danger, the initial investigation process is supposed to be completed within 24 hours.

In addition, the Massachusetts State Police Detective Unit reviews all abuse reports submitted to DPPC's 24-hour hotline for indication of criminal activity. Reports identified as potentially criminal are referred to the applicable District Attorney's Office.

According to regulations, cases should be investigated, and an Initial Response Report issued to document potential abuse, within 24 hours for emergencies and 10 days for non-emergencies. Abuse investigations include a visit to the site of the alleged abuse and an interview with the alleged victim. Investigators must complete the Investigation Report within 30 days from the date DPPC referred the report of abuse for investigation. DPPC may extend the filing deadline for good cause. The report must meet the minimum reporting guidelines established by Title 118 of the Code of Massachusetts Regulations. It must state that DPPC has ensured that the designated investigator has properly investigated and evaluated the allegation of abuse and made appropriate recommendations for protective services to remedy the situation where abuse has been found.

In addition to investigating abuse claims, DPPC provides training and education to law enforcement personnel and human-service providers who serve people with disabilities.

DPPC's offices are located in Braintree, Massachusetts.

Recent operating data for DPPC are as follows:¹

Fiscal Year	2010	2011	2012	2013	2014
Appropriation	\$2.22M	\$2.17M	\$2.21M	\$2.31M	\$2.41M
Full-Time Employees	29	28	28	26	27

1. Source: Website of the Office of the State Comptroller.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Chapter 11, Section 12, 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, 2012 through June 30, 2014.

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 properly adhere to established investigative standards?	No; see Finding <u>1</u>
2. Did DPPC investigate all abuse complaints in a timely manner in accordance with established laws, rules, and regulations?	No; see Finding <u>2</u>

To achieve our objectives, we gained an understanding of the internal controls we deemed significant to our audit objectives and evaluated the design and effectiveness of those controls. We relied on certain electronic data files that contained abuse case management information. To assess the reliability of the data, we performed a data reliability assessment of DPPC's case management system, reviewed related documentation, interviewed DPPC personnel compiling the data, and performed checks by tracing source documents to the data management system where applicable. From the analysis conducted, we determined that the data were sufficiently reliable for the purposes of this report.

In addition, we performed the following audit procedures:

- We interviewed DPPC management and staff members and reviewed relevant documents, statutes, and regulations as well as DPPC's policies and procedures.

- We reviewed our prior audit report (No. 2010-0046-7T) to determine whether any weaknesses in internal controls had been identified that pertained to our current audit objectives.
- We obtained and analyzed case abuse investigation reports from data contained in DPPC's case management system developed in house using FileMaker Pro. We compared the information collected in the reports to the information required according to the statute governing abuse investigations to evaluate consistency and completeness.
- We reviewed controls over the collection of information contained in both the Initial Response Report and the Investigation Report by interviewing the deputy executive director and intake/oversight managers to obtain an understanding of the internal controls over assigning abuse calls to investigators and the monitoring of cases as investigations progress. We reviewed the process DPPC had created for the distribution of abuse calls to the appropriate agencies and the tracking of the progress of investigations to ensure that the investigations were performed in a timely and complete manner.
- Using random, non-statistical sampling, we selected and examined abuse claim files to determine whether DPPC had adhered to statutory timelines and content requirements.
- We randomly selected 60 cases from the 17,005 calls received during the audit period to determine whether the required reports were completed within the required time periods. Late reports were reviewed for documentation of cause for tardiness.
- Of the 5,140 cases identified for investigation during our audit period, we selected a random, non-statistical sample of 60 cases to determine compliance with standards for investigation and abuser rights specified in 118 Code of Massachusetts Regulations 5.02.
- Throughout our testing, we used a random selection non-statistical sampling approach to achieve our audit objectives. When a non-statistical judgmental or random selection approach is used, the results cannot be projected to the entire population, but only apply to the items selected.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. The Disabled Persons Protection Commission does not maintain documentation to substantiate that it is informing alleged abusers of certain rights.

During our audit period, 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. Specifically, none of the 60 cases we randomly selected for review (out of 5,140 identified for investigation during our audit period) contained any documentation, such as a signed Rights of Abuser Form, that indicated that the alleged abuser had been advised of his or her rights. Without such documentation, there is inadequate assurance that alleged abusers were made aware of and understood their rights and legal obligations with regard to the investigation.

Authoritative Guidance

Under 118 Code of Massachusetts Regulations (CMR) 5.02, alleged abusers of people with disabilities have certain rights when being interviewed as part of a DPPC investigation. Recognizing its obligation to communicate these rights to an abuser and to document that this obligation has been met, DPPC has developed a form called the Rights of Abuser Form that is supposed to be used for this purpose: the alleged abuser signs the form to acknowledge that (s)he has been advised of these rights. Even though DPPC's regulations do not specifically require written evidence that the alleged abuser was advised of his or her rights, documentation procedures are an important control to ensure that DPPC can demonstrate its compliance with regulations.

Reasons for Lack of Signed Forms

Although DPPC developed the Rights of Abuser form to document compliance with 118 CMR 5.02, its personnel noted that its regulation does not specifically require a signed form. The agency does have policies and procedures requiring signed forms for state employees accused of abuse, but not for other alleged abusers.

Recommendations

1. DPPC should take the measures necessary to document that it has informed alleged abusers of their rights in accordance with 118 CMR 5.02. Specifically, DPPC should establish policies and procedures to ensure that all alleged abusers are properly advised of these rights and that they sign the Rights

of Abuser Form to acknowledge this advisement. DPPC should retain these signed forms in alleged abuse victims' case files as evidence of compliance with 118 CMR 5.02.

2. DPPC should work to amend its regulations to include a requirement that all alleged abusers read and sign the form.

Auditee's Response

DPPC respectfully disagrees with the Audit's characterization of the purpose and importance of the M.G.L. c. 19C Interview Advisory Form ("Advisory Form"). Pursuant to 118 CMR 5.02 (2), an alleged abuser has certain rights available during an investigatory interview. As correctly noted in the draft audit report, 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. Pursuant to DPPC Operating Procedure Invest-115, an investigator is only required to seek the completion of an Advisory Form by the alleged abuser when that individual is a state employee. In all other instances, the investigator may request the alleged abuser complete the Advisory Form, but a verbal advisement of these rights to the alleged abuser by the investigator is sufficient. . . .

However, the DPPC will address your recommendations by conducting an assessment of whether 118 CMR 5.02(2) and/or the DPPC's operating procedures require amendments to clarify how an alleged abuser is to be notified of his/her rights based upon the DPPC's regulatory requirements and operational needs.

Auditor's Reply

We acknowledge that DPPC regulations do not specifically require that alleged abusers sign a Rights of Abuser form acknowledging that they have been advised of their rights. However, DPPC is required to provide this information to all individuals involved in an investigation, and therefore we believe it is important that DPPC take measures to document that this essential part of the investigation process has been completed in every case. Furthermore, DPPC's establishment and implementation of a Rights of Abuser form shows that the department also believed it to be an important step to document. While DPPC asserts that a verbal advisement is sufficient, our review of case files revealed no indication that alleged abusers had been advised of their rights either verbally or in writing. Without this form or another record documenting positive confirmation by an interviewee that s/he was notified of his/her individual rights, there is a risk that an allegation may be made to the contrary. Since that department already has policies and procedures requiring signed forms for state employees accused of abuse, we believe it makes sense to apply this requirement to all alleged abusers.

Based on its response, DPPC is looking into this matter and will take measures to address our recommendations.

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

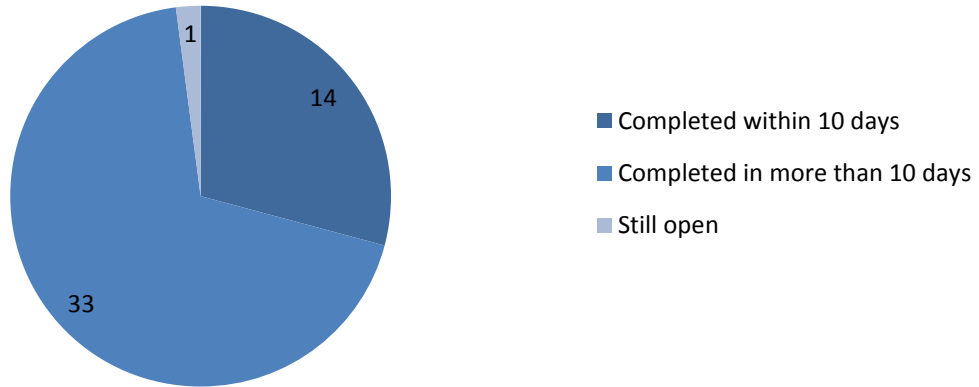
DPPC's investigations are required to be completed within established timeframes, but the agency does not always meet this requirement. Without completing investigations promptly, DPPC cannot promptly implement remedial action plans to address any issues it finds. These plans are a significant part of protecting victims of abuse, and accordingly, timely completion is necessary to prevent further abuse. In addition, with no documented evidence of reasons for unmet filing deadlines for investigations, DPPC cannot substantiate that it granted deadline extensions only for good cause and may not be able to identify recurring problems that result in deadlines not being met.

Timely completion of investigations is critical so that DPPC can intervene quickly if abuse is still occurring.

Under its regulations, DPPC is required to make sure all investigations are completed within specific timeframes, which can be extended for good cause. For each alleged case of abuse against a person with disabilities, DPPC establishes a file that contains an Investigation and Evaluation Report. Each report is composed of two distinct parts: the Initial Response and the Investigation Report. Our review of 60 randomly selected investigations revealed that 12 had been dismissed rather than progressing to an Investigation Report. Of the remaining 48, only 14 (29%) had the Initial Response completed within the required 10-day timeframe. The Initial Response was completed after the 10-day timeframe for 33 investigations (69%), and 1 investigation (2%) was still open as of the date of our testing. The 33 late Initial Responses were completed between 1 and 378 days after the due date; the median² delay past the due date was 16 days. Thus, Initial Responses were completed from 11 to 388 days after the call of alleged abuse was first received, and the median duration was 26 days.

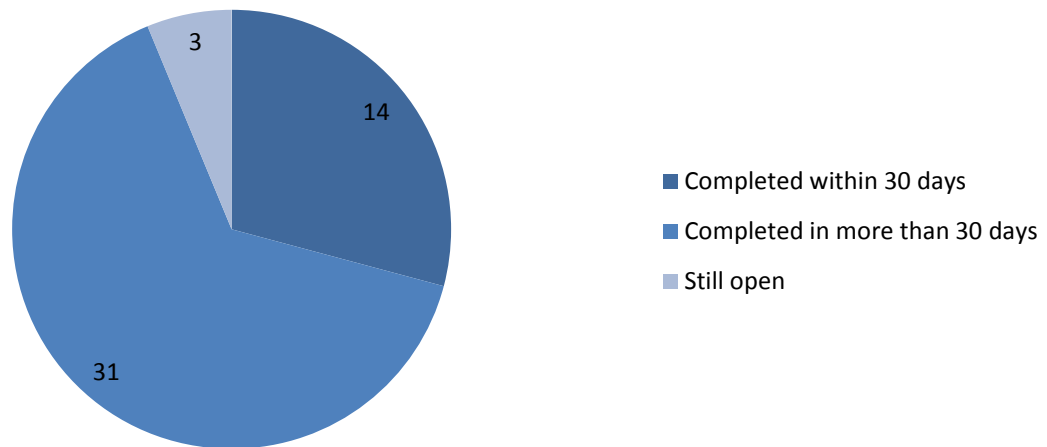
2. The median is the midpoint of a group of numbers. In a group that contains outliers, or observations that are significantly higher or lower than the majority (and may represent measurement errors), it can be used to provide a more accurate representation of the majority of the group.

Initial Response Reports Reviewed



Investigation Reports were also sometimes completed late. Of the above 48 investigations, only 14 (29%) had their Investigation Reports completed within the 30-day required timeline; the reports for 31 (65%) were completed after 30 days; and 3 (6%) were still open as of the date of our testing. The 31 late reports were completed in 3 to 390 days and were overdue by a median of 106 days. Thus, Investigation Reports were completed 33 to 420 days after the call of alleged abuse was first received, and the median duration was 136 days.

Investigation Reports



For investigations where the Initial Response and/or Investigation Report did not comply with reporting deadlines, the case files did not document an explanation or good cause for the unmet deadlines.

Authoritative Guidance

According to 118 CMR 5.02, emergency cases must be acted on immediately, Initial Responses for non-emergency cases must be completed after 10 days, and Investigation Reports for non-emergency cases must be completed after 30 days. These regulations apply both to DPPC and to the other agencies that perform investigations on its behalf.

The regulation does allow DPPC to extend the deadline for any individual case if the commission is shown good cause. In the case files we examined, we did not see any evidence that deadlines had been extended; rather, the reports were simply completed late. However, we believe that documenting reasons for delays serves the same purpose as documenting reasons for extensions: it can demonstrate that DPPC is making efforts to complete investigations promptly and can help identify recurring issues that are causing delays.

Reasons for Unmet Deadlines

According to quarterly statistics DPPC has provided to the Legislature, approximately 90% of abuse investigations are 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 works closely with these three agencies to resolve investigations and develop action plans. However, they stated that the necessity of coordinating and recording information from more than one agency, along with the complexity and increased number of investigations and DPPC's limited resources, caused the delays in meeting the statutory deadlines. Complaints received by the DPPC hotline increased from 6,894 in fiscal year 2010 to 9,018 in fiscal year 2014, a 31% increase over that five-year period, during which staffing levels did not change.

DPPC stated that investigators at the agencies had large caseloads. They added that many investigations were identified as low risk, resulting in investigations not being completed within the required timeline.

In addition, DPPC does not have policies, procedures, and related internal controls that require and ensure that reasons for unmet or extended deadlines are documented and retained in case files.

Recommendations

1. DPPC should continue to work with DDS, DMH, and MRC to complete emergency investigations within 24 hours, Initial Responses within 10 days, and Investigation Reports within 30 days.
2. DPPC should establish and implement the necessary policies, procedures, and related internal controls to ensure that when required filing deadlines are not met, evidence of the reasons for the delay is documented and retained in case files. This could enable DPPC to identify and address the reasons for delays. If a staff shortage is determined to be a contributing factor, DPPC could consider performing a staffing analysis and requesting additional resources to obtain the necessary staff.

Auditee's Response

Regarding Finding Two, that the DPPC does not always meet its required deadlines to complete investigations and does not always document the reason for delays, the DPPC accepts and supports this finding. However, the DPPC must emphasize that tardiness of an Initial Response or Investigation 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. Additionally, in terms of the procedures currently utilized to address delays in investigations, the DPPC documents all 19C investigations that are deferred pending the completion of a criminal investigation by law enforcement; generates and sends monthly Dunning notices to referral agencies on overdue investigations; and oversight officers routinely document the reason for investigation delays in the DPPC's database.

With regard to Finding Two, Recommendation Two, staffing and resources within the DPPC and Executive Office of Health and Human Services referral agencies has long been a contributing factor in the DPPC's ability to timely complete investigations, as have the complexities of investigations and the need to prioritize investigations based upon the assessed risk to the alleged victim. See Office of the State Auditor; Audit No. 2010-0046-7T, pg. 7 [quoted below].

We note that each agency [MRC, DMH, and DDS] performs a crucial role in the investigative process providing valuable input to assist DPPC in finalizing investigations and in developing action plans. The increased number of cases, combined with the complexity of some of the cases, along with resource limitations, has increased the difficulty of DPPC to finalize investigations and develop action plans within the 30-day period.

In our effort to secure critically needed funds to support the DPPC's continuously increasing caseload, the DPPC has consistently and actively promoted its mission to the legislature and the Administration by such measures as providing testimony at budget hearings, outreach to legislators and Administration staff, and seeking support from both public and private agencies aligned with the DPPC's mission, including District Attorney's Offices and non-profits representing the interests of persons with disabilities. The DPPC will seek to incorporate into its ongoing

staffing analysis your recommendation that the DPPC document the reason for delays in an investigation as a means to highlight the causes (e.g., staff shortages, resources), as the DPPC actively seeks any and all means available to support its efforts to obtain additional funding to protect the vulnerable population it serves.

Auditor's Reply

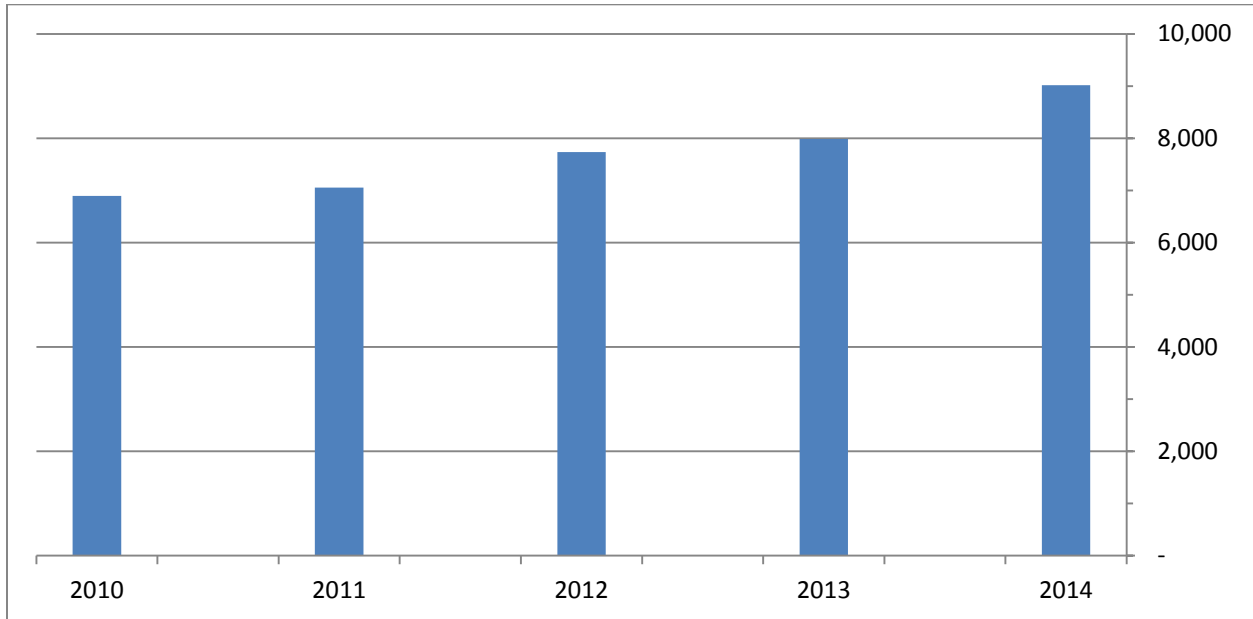
We concur with DPPC's position that the safety of alleged victims should be its highest priority. DPPC's response indicates that it continues to monitor the potential safety risk throughout the investigation, from its earliest response to the post-investigation protective-services monitoring. As caseloads increase for each investigator, the demands of ongoing case monitoring will escalate correspondingly. Therefore, it is imperative that cases be closed as soon as possible and that action plans for protective services be implemented quickly to avoid backlogs.

Our review of case files revealed limited documentation regarding case status, lacking detailed descriptions of causes of delays or tasks required to be completed and the resulting estimated time needed to complete cases. In addition, although dunning notices were issued to referral agencies on overdue investigations, DPPC records did not indicate any follow-up with these agencies or document the reason for the delays or estimated completion dates. However, based on the DPPC's responses, we believe the agency is taking appropriate measures to address the concerns we identified.

Lastly, we encourage the outreach that DPPC has undertaken to bring its mission to the attention of various levels of state government. As the caseloads under DPPC's oversight grow, it is especially important that DPPC continually identify and assess operational functions it deems essential to achieving its objectives and actively seek the resources it needs.

APPENDIX

Alleged Abuse Calls Received by Intake Operators³



The number of alleged abuse calls received by the agency hotline intake staff has increased 31% since fiscal year 2010, while staffing levels have been static.

3. Source: 2014 Disabled Persons Protection Commission Annual Report.