

MICHIGAN DEPARTMENT OF CIVIL RIGHTS

**Briefing Document for the House Ethics & Oversight
Committee: Office of Auditor General Performance
Audit Report August 2023**

February 29, 2024

The Michigan Civil Rights Commission and the Michigan Department of Civil Rights

- The Michigan Civil Rights Commission (MCRC) is an eight-member commission that was established by the 1963 state constitution.
- The commission safeguards constitutional and legal guarantees against discrimination.
- The members of the Civil Rights Commission are appointed by the Governor and confirmed by the Senate.
- The Michigan Department of Civil Rights (MDCR) was created in 1965 to support the work of the Michigan Civil Rights Commission.
- MDCR's goal is to eliminate discrimination through education, enforcement, engagement, and equity.
- MDCR currently has offices in Detroit, Lansing, Grand Rapids.
- The MDCR is charged with enforcing the Elliott-Larsen Civil Rights Act (ELCRA) and the Michigan Persons with Disabilities Civil Rights Act (PWDCRA).
- ELCRA and PWDCRA provides protections from illegal discrimination in employment, places of public service, places of public accommodation, education, and housing.
- ELCRA provides protections for several protected classes including sex, race, national origin, and religion. The protected classes under ELCRA and PWDCRA are: race, religion, color, national origin, age, sex, disability, genetic information, marital status, familial status, height, weight, misdemeanor arrest record, sexual orientation, and gender identity or expression.

MDCR TIMELINE: 1994 - Present

- 1994 MDCR had 240+ classified employees.
- 1995 MDCR closed its fully staffed Benton Harbor office.
- 1997 State of Michigan (SOM) had massive statewide layoffs.
- 1999 MDCR had 160+ classified employees.
- 2002 SOM offers early retirement incentive (early out) to classified employees.
- 2004 MDCR had 133 classified employees.
- 2008 SOM offers an early out to classified employees; MDCR had 117 classified employees.
- 2009 SOM had statewide layoffs. MDCR closed its Kalamazoo, and Saginaw offices.
- 2009 MDCR had 95 classified employees.
- 2016 MDCR closed its Flint office.
- 2020 COVID-19 Pandemic; MDCR had 85 classified employees. *
- March 2020 December 2020- SOM statewide hiring freeze implemented.
- January 2021 SOM lifts the hiring freeze and allows departments to hire employees.
- March/
April 2021 MDCR brings on new employees; 2021 – 2022 MDCR had 76 classified employees.
- June 2021 Director John E. Johnson, Jr. is appointed Acting Executive Director.
- July 2021 Director Johnson is appointed as Executive Director.
- July 2021 Director Johnson asks OAG to conduct an audit of MDCR's programs and services.
- August 2021 Current MDCR leadership started.
- 2021- 2022 MDCR averaged 500-600 intakes complaints/month and had an open inventory of 2900 complaints for investigation, including 1400 complaints that were one-year or older (backlog).
- January 2021 MDCR had approximately 76 classified employees. Of these employees, 28 were investigators and 5 were intake workers.
- August 2021 MDCR had approximately 76 classified employees. Of these, were 33 investigators and 5 were intake workers.

June 2022 MDCR had approximately 76 classified employees. Of these, were 34 investigators and 4 were intake workers.

February 2023 MDCR had an approximately 92 employees. Of these, 34 were investigators and 7 were intake workers.

February 2024 MDCR has approximately 124 FTE employees and 2 student assistants. Of these, 90 are Enforcement employees (this includes, but is not limited to 45 investigators; 13 intake workers and 5 staff attorneys and Director of Legal Affairs who is an attorney).

* In 2020, the federal government implemented the Family First Coronavirus Response Act (FFCRA), effective April 1, 2020 – December 31, 2020. FFCRA allowed eligible employees take up to 80 hours of Emergency Paid Sick Leave (EPSL) or Family Medical Leave Act (FMLA) for several reasons including experiencing COVID symptoms, caring for family with COVID, for childcare if unable to work from home, etc. MDCR had 85 employees. Some employees were off work for an extended period due to the Coronavirus because they were ill, or a family member was ill. Also, a number of employees retired or left MDCR or SOM service.

OAG Audit Findings and Corrective Action Plan (CAP)

Material Condition

Objective 1: To assess the effectiveness of MDCR's efforts to timely complete civil rights complaint investigations.

- **Finding:** MDCR completed investigations, on average, 19 months after receipt of the complaint, which exceeded a six-month goal.
 - **Corrective Action Plan (CAP):** MDCR will hire additional staff to address the time it takes to complete certified complaint investigations.
 - **As of February 18, 2024,** we have 90 Enforcement staff
 - **45 Civil Rights Investigators**
 - **13 Civil Rights Claims Examiners**
 - **2 Acting Civil Rights Managers for Intake**
 - **7 Civil Rights Managers for Investigations**
 - **7 Administrative Support**
 - **1 Director of Investigations**
 - **3 Deputy Directors of Investigations**
 - **1 Director of Legal Affairs**
 - **5 Staff Attorneys & 1 Legal Student Assistant**
 - **1 Reconsideration Attorney**
 - **1 Mediator**
 - **1 CRIS Support Administrator**
 - **2 Record Center Departmental Technicians**
 - **Still in the process of hiring additional investigative teams.**
 - Seeking to hire 28 additional, limited term enforcement staff.
 - **CAP:** new staff to complete four-to-six-week training so that staff are proficient in their jobs.
 - Training for enforcement staff is developed to address and train on the duties and responsibilities of their jobs.
 - Training manuals and resources have been developed.
 - Training includes, but is not limited to policy and procedures, Civil Rights Information System (CRIS) training, legal jurisdiction and writing, the investigative process, and customer service (from Intake through investigation).
- **Finding:** MDCR's lack of certain actions and periods of investigation inactivity resulted in significant delays in 62% of the investigations reviewed.

- **CAP:** MDCR has revised policies and procedures, including, but not limited to, timeline goals for complaint assignments to investigators, customer contact for interviews, documentation of case progress with CRIS notes in CRIS database, requirements for Civil Rights Managers to monitor their team's case activities.
 - **Revision of policies and procedures:** we are in the final stages of revising policies and procedures. We have also included a breakdown of staff expectations throughout. Policy and procedures will be reviewed for revisions on an annual basis.
 - **Development of Civil Rights Manager (CRM) Resources & Tools:** we have developed CRM checklists for the expectations of reviewing and checking staff's progress in CRIS and during workload reviews.

Reportable Condition

Objective 2: To assess the sufficiency of MDCR's efforts to assign civil rights complaints for investigation, when required. *Please note that the OAG report noted that this objective was "Sufficient, with exceptions."

- **Finding:** MDCR's management did not approve 31% of sampled complaint assignment decisions and did not require secondary approval for appealed complaint assignment decisions.
 - **CAP:** Intake managers are required to review all complaints, including both Summary of Complaints (SOC) and Certified Complaints, that are received from staff. Intake managers are also required to document every review of any complaint in CRIS.
 - If edits are necessary, it is noted in CRIS and documented when a final document has been approved for further processing.
 - All complaints are reviewed and approved by the CRM. For SOCs, periodic system checks will be conducted by a Deputy Director of Investigations and/or Director of Investigations to ensure procedures are being followed, including proper documentation of reviewed complaints.
 - For cases of first impression and/or other designated areas of discrimination, a staff attorney may review and provide legal guidance to staff and document next steps in CRIS.
 - **CAP:** Administrative processes have been reviewed and revised to ensure managers have reviewed and properly followed policy and procedures when addressing complaints.
 - **CAP:** Refresher training will include the mandatory documenting of case management in CRIS.
 - **CAP:** MDCR does not require secondary review and approval of assignment decisions for appealed complaints because these determinations are appealable

to the circuit court having jurisdiction over the matter, per Michigan Civil Rights Commission Rules.

- The Reconsideration Attorney at MDCR submits monthly reports outlining the reconsideration requests for both SOCs and Investigative cases. The Director of Enforcement reviews the reports and may follow-up with the Reconsideration Attorney and check CRIS for further review and information.
- **Finding:** MDCR did not have a process to reconcile all emailed civil rights complaints and did not have a process to track and monitor all incoming telephone contacts
 - **CAP:** MDCR has revised policy and procedures, including the requirement that staff log all incoming telephone contacts. The staff have been advised and trained that all telephone calls be kept on a log and sent to either the Civil Rights Manager and/or a Deputy Director of Investigations for weekly review.
 - **CAP:** MDCR's policies and procedures have been updated to include the management of the Service Center E-Mail box. This email box is checked twice, minimally, on a daily basis.
 - Please note that when the Intake administrative support staff are at full capacity, the email box will be monitored consistently throughout the day, including any messages that automatically go to the "junk" folder. The junk mailbox folder shall be reviewed daily to ensure the staff as reviewed and evaluated all email messages into the department.
 - The CRM and/or Deputy Director of Investigations will go in daily to check that messages have been opened and properly addressed and/or moved to the appropriate complaint processing stage in CRIS.
- **Finding:** MDCR did not document its verbal intake interview with the Claimant for 15% of applicable complaints reviewed; interview documentation serves as MDCR's account and record of the claimant's allegations and the basis of MDCR's intake decision.
 - **CAP:** New employee training and follow-up training for all Enforcement staff will be conducted to ensure an intake interview form is filled out and uploaded into the CRIS database as a final draft. If a legal basis and/or jurisdiction for a complaint cannot be identified, a note shall be entered into CRIS, and the allegations shall be contained in the SOC.
 - **CAP:** Administrative processes have been reviewed to ensure proper policy and procedures are being followed. The CRM ensures that the Intake Interview form is uploaded before approving an SOC and making a note in CRIS. Deputy Directors of Investigation will randomly check files in CRIS to ensure policy and procedures are being followed and that CRIS notes are placed into the case.
 - **CAP:** Refresher training will include the importance of utilizing and uploading all intake interview questionnaires for verbal intake calls made over the phone.

- **Finding:** MDCR had a key goal of outstanding customer service, it did not establish a formalized process for receiving, documenting, addressing, and analyzing customer service complaints.
 - **CAP:** Assign staff members the responsibility to receive, document, and address customer service complaints, including complaint resolution.
 - MDCR is working on a process when there are additional customer service concerns and the tracking of such concerns.
 - **CAP:** Develop and implement final policies and procedures that efficiently address and respond to various customer service complaints.
 - Policy and procedures dictate the chain of command when there are customer complaints regarding the service they receive from staff.
 - **CAP:** Incorporate training sessions for all staff, including newly hired, regarding customer service issues, which may include but is not limited to the process of directing customer service complaints, how to handle customer complaints, and best practices in customer service.
- **Finding:** MDCR did not request DTMB to remove or disable CRIS access in a timely manner for 37% of the CRIS users who permanently or temporarily departed employment.
 - **CAP:** MDCR has already implemented an onboarding and off-boarding form that is used when a staff member is hired for a position or leaving MDCR as an employee. This is sent to the Data Systems Management Administrator and Management Services to cross check when staff gain access and are removed from CRIS.
 - **CAP:** A biannual review of CRIS users is conducted and at the beginning of each calendar year and then again in July.

Additional information and answers to Committee's inquiries/questions

Six-month goal to complete investigations

- This goal was mentioned in a strategic plan from previous administration(s) and there is no data analysis or information to support that a six-month time period to complete the investigative process from Intake through Investigation is reasonable.

The number of complaints that come into our department for evaluation

- Customers come to our department to file complaints; however, MDCR has limited jurisdiction to investigate complaints of unlawful discrimination under the Elliott-Larsen Civil Rights Act and the Persons with Disabilities Civil Rights Act. Therefore, many complaints are not jurisdictional for our department to investigate, which leads to the issuance of an SOC versus the drafting of a Certified Complaint for investigation.

Backlog of Certified Complaints in Investigation

- Backlog of cases is defined by our department as any case that is over a year old.
- The delay in assignments to staff was due to the number of cases that staff currently held, which was close to 100. However, we no longer have a pool of cases and cases are assigned to an investigator after the intake process is completed.
- The difference between our process and other comparable federal or other state agencies outside of Michigan is that our timeliness begins from the time a complaint enters our department versus the time a certified complaint enters the investigative process and is assigned to an investigator.
- In the beginning of FY 23, MDCR had the following backlog of cases and we've made the following progress:
 - 2018 cases = 63 and cleared them to 0 in December 2023
 - 2019 cases = 344, since January 2024, balance of 27
 - 2020 cases = 428, since January 2024, balance of 136
 - 2021 cases = 615, since January 2024, balance of 377

Snapshot picture of complaints that come into MDCR

- **Intake:**
 - Intake complaints received 1941 in FY 24 first quarter = avg 648 complaints/month
 - Intake complaints received for January 2024 =738
 - FY 24: 1st quarter to move a complaint from Intake into investigation is 34 days with a total number of 561 cases. However, this is a positive decrease from FY 23 where the 1st quarter average days to move from Intake into investigation was 63 days with the total cases being lower, at 287. Therefore, we are showing a decrease in time to move complaints from Intake to Investigation and almost double the cases being moved.
- **Investigations** as of January 31, 2024, there were 2899 open investigations.
 - 504 investigations were completed for FY 24 first quarter.
 - 1277 backlogged cases (January 31, 2024), decrease from 1327 (December 2023)
 - Currently, we are addressing the backlog of cases, which drives the average number of days in investigation; however, we also completed 499 cases in our first FY 24 quarter, vs the average from FY 23 at 337 cases.

Inactivity based on information in the CRIS database

- Although the audit concluded a lack of progress on cases, this addressed the inconsistency of CRIS notes being completed by staff. We are working to train and reiterate the importance of CRIS notes for any movement and updates on cases. In addition, checks are being completed, per policy, by managers at workload review meetings to ensure that case notes are up to date in CRIS.

Investigator Case Loads

- We currently have 45 investigators, including nine that began in February 2024. The case assignments are still around 80-100/per investigator, not including the new group of nine, who are in training. In addition, another round of investigator hiring is scheduled for March 2024.
- Team concept to address case closure expectations. Investigators have a monthly and quarterly case closure expectation. They work with their assigned team, including a manager to ensure that the entire team meets quarterly case closure expectations.
- MDCR hired a mediator to also address certified complaints where both parties hope to resolve the matter. In addition, we are discussing collaborations with the Dispute Resolution Centers across the state, to mediate our MDCR-only complaints where the parties are open to resolution and settlement.

Private cause of action vs administrative cause of action

- Customers may choose the venue in which they would like to address their allegations of unlawful discrimination. Therefore, they may choose to either file with the court having jurisdiction over the matter or file with MDCR. However, customers may not do both. If a party has already filed in court before filing with MDCR on the same matters, the complaint will not go to investigation. If a party files with us and chooses to file in court after our investigation has started, the MDCR investigation will be closed.

OAG sample showed that 76% of complaints were dismissed

- Complaints may be dismissed for various reasons, which include, but are not limited to an insufficient finding of unlawful discrimination, settlement agreements (both MDCR and third party), withdrawals for no longer wishing to pursue the matter, issues being addressed in court, etc.

Staffing Challenges

- Hiring for limited term positions has been challenging as far as number of qualified and interested parties, leading us to conduct multiple rounds of interviews. In addition, due to the limited term status of positions, several offerings to applicants have been denied, due to the uncertainty of limited term positions.
- Do we want to add the challenges of building new teams with limited qualified staff for managers?