



MICHIGAN

OFFICE OF THE AUDITOR GENERAL

AUDIT REPORT

PERFORMANCE AUDIT
OF THE

OFFICE OF RECIPIENT RIGHTS

DEPARTMENT OF COMMUNITY HEALTH

August 2014



Doug A. Ringler, C.P.A., C.I.A.
AUDITOR GENERAL

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Michigan
Office of the Auditor General
REPORT SUMMARY

Performance Audit

Report Number:
 391-0120-13

Office of Recipient Rights

Department of Community Health

Released:
 August 2014

The Office of Recipient Rights (ORR) was created by Section 754, Act 290, P.A. 1995. The mission of ORR is to protect and promote the constitutional and statutory rights of recipients of public mental health services and empower recipients to fully exercise these rights.

Audit Objective		Audit Conclusion	
Objective 1: To assess the effectiveness of ORR's efforts to comply with select sections of the Mental Health Code and select policies and procedures.		Moderately effective	
Findings Related to This Objective	Material Condition	Reportable Condition	Agency Preliminary Response
ORR did not initiate investigations immediately upon receipt of complaints involving alleged abuse or neglect. Also, ORR did not timely complete interventions and investigations (Finding 1).	X		Partially agrees
ORR did not perform a preliminary review for 1 (9%) of the 11 patient deaths that State psychiatric hospitals reported to ORR during the audit period. Also, ORR did not have sufficient documentation to support that ORR performed a preliminary review for 3 (27%) of the 11 patient deaths (Finding 2).	X		Agrees
ORR did not ensure that it provided complete and timely complaint information to all parties as required by the Mental Health Code (Finding 3).		X	Agrees
ORR did not document that it reviewed or timely reviewed incident reports (Finding 4).		X	Agrees
ORR did not perform all required monitoring activities when conducting assessments of community mental health services programs (CMHSPs). Also, ORR needs to improve the process used to document and score assessments of CMHSPs (Finding 5).		X	Agrees

Findings Related to This Objective (<i>Continued</i>)	Material Condition	Reportable Condition	Agency Preliminary Response
ORR did not semiannually review recipient rights data submitted by CMHSPs and licensed private psychiatric hospitals and units to determine trends and patterns. Also, ORR did not semiannually provide a summary of the recipient rights data to CMHSPs and the Department of Community Health (DCH) director (<u>Finding 6</u>).		X	Agrees
ORR did not monitor to ensure that all new DCH employees received recipient rights training within 30 days of employment (<u>Finding 7</u>).		X	Agrees
ORR did not follow Department of Technology, Management, and Budget procurement processes when selecting facilities for the annual recipient rights conferences (<u>Finding 8</u>).		X	Agrees

A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>



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DOUG A. RINGLER, C.P.A., C.I.A.
AUDITOR GENERAL

August 8, 2014

Mr. James K. Haveman, Jr., Director
Department of Community Health
Capitol View Building
Lansing, Michigan

Dear Mr. Haveman:

This is our report on the performance audit of the Office of Recipient Rights, Department of Community Health.

This report contains our report summary; a description of agency; our audit objective, scope, and methodology and agency responses; comment, findings, recommendations, and agency preliminary responses; various exhibits, presented as supplemental information; and a glossary of abbreviations and terms.

The agency preliminary responses were taken from the agency's response at the end of our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a plan to comply with the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

A handwritten signature in cursive script that reads "Doug Ringler".

Doug Ringler, C.P.A., C.I.A.
Auditor General

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Description of Agency

The Office of Recipient Rights (ORR) was created by Section 754, Act 290, P.A. 1995. The mission* of ORR is to protect and promote the constitutional and statutory rights of recipients* of public mental health services and empower recipients to fully exercise these rights. ORR is divided into three units:

1. ORR's Field Unit is responsible for providing direct rights protection and advocacy services to individuals admitted to the five State psychiatric hospitals (Caro Center, Center for Forensic Psychiatry, Hawthorn Center, Kalamazoo Psychiatric Hospital, and Walter Reuther Psychiatric Hospital). ORR has recipient rights offices located at each of the State psychiatric hospitals. These offices investigate and resolve complaints of rights violations at the hospitals; for substantiated complaints, they recommend remedial actions to the hospital directors. For fiscal years 2010-11 through 2012-13 in total, ORR received an average of 3,188 allegations* a year. On average, 125 of the allegations were substantiated each year (see Exhibits 1 through 6 and 8).
2. ORR's Community Rights Unit provides oversight and technical assistance to community mental health services program (CMHSP) and licensed private psychiatric hospital/unit (LPH/U) recipient rights offices. The Mental Health Code requires the establishment of a recipient rights office in each CMHSP and every LPH/U licensed by the Department of Licensing and Regulatory Affairs. The Community Rights Unit creates assessment standards for its on-site review of the CMHSP ORR programs. The Community Rights Unit performs site visits at each CMHSP every three years to ensure that it is meeting the Mental Health Code requirements. For fiscal years 2010-11 through 2012-13 in total, the CMHSPs received an average of 9,809 allegations a year. On average, 3,575 of the allegations were substantiated each year (see Exhibits 7 and 9).
3. ORR's Education and Training Unit develops and presents training to foster consistent implementation of recipient rights protection across the State. The Education and Training Unit provides training to rights staff from the Department of Community Health, LPH/Us, and CMHSPs and their contract agencies; other

* See glossary at end of report for definition.

providers of mental health services; consumers; the Recipient Rights Advisory Committee; and the Recipient Rights Appeals Committee. The Education and Training Unit also oversees the implementation of the annual recipient rights conference.

For fiscal year 2012-13, ORR had operating expenditures of \$2.4 million, of which 96% were personnel costs. As of May 31, 2013, ORR had 18 employees.

Audit Objective, Scope, and Methodology and Agency Responses

Audit Objective

The objective of our performance audit* of the Office of Recipient Rights (ORR), Department of Community Health (DCH), was to assess the effectiveness* of ORR's efforts to comply with select sections of the Mental Health Code and select policies and procedures.

Audit Scope

Our audit scope was to examine the records and processes related to the Office of Recipient Rights. 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 conclusion based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusion based on our audit objective. Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered the period October 1, 2010 through May 31, 2013.

Our audit was not directed toward examining conclusions made by ORR or remedial action taken by the State psychiatric hospitals or expressing an opinion on those conclusions and remedial actions. Also, our audit report includes supplemental information presented as Exhibits 1 through 9. Our audit was not directed toward expressing a conclusion on this supplemental information.

Audit Methodology

We conducted a preliminary survey to gain an understanding of ORR's activities and to establish our audit objective. Our preliminary survey included interviews with various ORR staff; examination and analysis of ORR records; on-site visits to ORR offices at State psychiatric hospitals; and review of applicable laws, policies, and procedures to obtain an understanding of ORR's operations.

* See glossary at end of report for definition.

To accomplish our audit objective, we interviewed DCH staff to obtain an understanding of DCH processes and procedures used to comply with select sections of the Mental Health Code and select policies and procedures. Our review was limited to select sections of the Mental Health Code (Sections 330.1100 - 330.2106 of the *Michigan Compiled Laws*) and select policies and procedures related to timely interventions* and investigations* of apparent or suspected rights violations, status reports, written investigative reports, review of recipient deaths, monitoring of recipient rights activities of community mental health services programs (CMHSPs), notifications, incident reports, training, reporting, procurement of facilities for the annual recipient rights conferences, and travel reimbursement.

We performed an on-site examination of the records of the recipient rights offices at the five State psychiatric hospitals, including a review of a random sample of interventions, investigations, and incident reports* to determine whether ORR included required information in reports and related files and to determine the timeliness of its reviews. Also, we reviewed ORR's records related to recipient deaths reported during the audit period to determine whether ORR timely and sufficiently documented its review of the deaths.

We obtained and analyzed all 40 completed CMHSP assessments during our audit period. Also, we interviewed ORR staff to obtain information regarding ORR's review and dissemination of the data contained in the semiannual reports submitted by CMHSPs and licensed private psychiatric hospitals/units. In addition, we reviewed records related to the procurement of facilities for the annual recipient rights conferences; travel reimbursement; recipient rights training for new DCH employees and members of the Recipient Rights Advisory and Recipient Rights Appeals Committees; required elements of ORR's annual report; and recipient rights information required to be made available to recipients.

When selecting activities or programs for audit, we direct our audit efforts based on risk and opportunities to improve the operations of State government. Consequently, we prepare our performance audit reports on an exception basis.

* See glossary at end of report for definition.

Agency Responses

Our audit report contains 8 findings and 12 corresponding recommendations. DCH's preliminary response indicates that ORR agrees with 11 recommendations and partially agrees with 1 recommendation.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require DCH to develop a plan to comply with the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

COMMENT, FINDINGS, RECOMMENDATIONS,
AND AGENCY PRELIMINARY RESPONSES

EFFECTIVENESS OF ORR'S EFFORTS TO COMPLY WITH SELECT SECTIONS OF THE MENTAL HEALTH CODE AND SELECT POLICIES AND PROCEDURES

COMMENT

Audit Objective: To assess the effectiveness of the Office of Recipient Rights' (ORR's) efforts to comply with select sections of the Mental Health Code and select policies and procedures.

Audit Conclusion: We concluded that ORR's efforts to comply with select sections of the Mental Health Code and select policies and procedures were moderately effective.

Our audit conclusion was based on our audit efforts as described in the audit scope and audit methodology sections and the resulting material conditions* and reportable conditions* noted in the comment, findings, recommendations, and agency preliminary responses section.

Our audit efforts disclosed two material conditions and six reportable conditions related to ORR's efforts to comply with select sections of the Mental Health Code and select policies and procedures. In our professional judgment, the material conditions are more severe than a reportable condition and could impair the ability of management to operate in an effective manner and could adversely affect the judgment of an interested person concerning the effectiveness of ORR's efforts to comply with select sections of the Mental Health Code and select policies and procedures. The material conditions related to initiating investigations immediately upon receipt of complaints involving alleged abuse or neglect (Finding 1), timely completing interventions and investigations (Finding 1), performing preliminary reviews of patient deaths (Finding 2), and maintaining sufficient documentation to support preliminary reviews (Finding 2). We considered these conditions to be material based on qualitative factors related to the potential for harm to patients. If ORR does not timely review suspected rights violations, the alleged violations could continue and other recipients could be subjected to the same rights violations.

* See glossary at end of report for definition.

Also, in our professional judgment, the reportable conditions are less severe than a material condition but still represent opportunities for improvement in ORR's processes and internal control*. The six reportable conditions related to providing complete and timely complaint information to all parties (Finding 3), documenting timely reviews of incident reports (Finding 4), monitoring community mental health services programs (CMHSPs) (Finding 5), semiannually reviewing recipient rights data submitted by CMHSPs and licensed private psychiatric hospitals and units and providing a summary of the data to CMHSPs and the DCH director (Finding 6), monitoring to ensure that new DCH employees received recipient rights training (Finding 7), and following Department of Technology, Management, and Budget (DTMB) procurement processes when selecting the facility for the annual recipient rights conference (Finding 8).

In reaching a conclusion on the effectiveness of ORR's efforts to comply with select sections of the Mental Health Code and select policies and procedures, we considered the material and reportable conditions in conjunction with ORR's efforts to comply with the other sections of the Mental Health Code and policies and procedures included within the scope of our audit. We specifically considered the significance of the potential harm to patients. We also considered the significant error rates noted in our testing of the timeliness of ORR's interventions and investigations. We believe that the results of our audit efforts provide a reasonable basis for our audit conclusion for the audit objective.

FINDING

1. Timeliness of Complaint Resolution

ORR did not initiate investigations immediately upon receipt of complaints involving alleged abuse or neglect. Also, ORR did not timely complete interventions and investigations. Without timely initiation and completion of interventions and investigations, alleged rights violations could continue to occur and could impact additional recipients. Also, as time passes, potential evidence, such as video and witness testimony, could be compromised or lost.

For each complaint received by ORR that involves a right protected by the Mental Health Code, ORR performs either an intervention or an investigation. An intervention is when ORR acts on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are clear and the

* See glossary at end of report for definition.

remedy, if applicable, is clear, easily obtainable, and does not involve statutorily required discipline. An investigation is a detailed inquiry into, and systematic examination of, an allegation raised in a rights complaint*. ORR performs investigations for all cases of alleged abuse and neglect.

We selected for review a sample of 248 complaints closed by ORR. Our review disclosed:

- a. ORR did not immediately investigate 5 (7%) of 73 complaints involving alleged abuse or neglect of a recipient involving an apparent or a suspected rights violation. The delays in investigation ranged from 2 to 29 days with an average of 15 days.

Section 778(1) of the Mental Health Code states that ORR shall initiate investigations of apparent or suspected recipient rights violations in a timely and efficient manner. ORR procedure 02-02-03 provides that ORR shall immediately initiate an investigation in cases involving alleged abuse or neglect of a recipient involving an apparent or a suspected rights violation.

- b. ORR did not complete 28 (30%) of 92 investigations within 90 days. The number of days overdue ranged from 1 to 202 days with an average of 45 days overdue:

<u>Days Overdue</u>	<u>Number of Cases</u>
1 - 10 days	12
11 - 20 days	3
21 - 30 days	3
31 - 40 days	1
41 - 50 days	2
51 or more days	7
	<hr style="width: 50%; margin: 0 auto;"/>
	28
	<hr style="width: 50%; margin: 0 auto;"/>

Section 778(1) of the Mental Health Code states that ORR shall complete the investigation within 90 days.

* See glossary at end of report for definition.

- c. ORR did not complete 36 (27%) of 132 interventions within 30 days. The number of days overdue ranged from 1 to 122 days with an average of 14 days overdue. In addition, ORR did not convert these overdue interventions into investigations and issue status reports. Status reports help to keep the complainants* and respondents up to date regarding the status of the ORR complaint review. We noted:

<u>Days Overdue</u>	<u>Number of Cases</u>
1 - 10 days	24
11 - 20 days	7
21 or more days	5
	<hr/>
	36
	<hr/> <hr/>

ORR procedure 02-02-02 provides that ORR shall complete interventions within 30 days of receipt of complaints and states that, if an intervention cannot be completed within 30 days, it will be converted into an investigation and status reports will be required.

ORR informed us that for most of the audit period, it had one rights advisor instead of two assigned to Walter Reuther Psychiatric Hospital (WRPH). As a result, ORR assigned rights advisors from the Hawthorn Center and the Center for Forensic Psychiatry to WRPH on a part-time basis. However, the volume of complaints at WRPH was too large for ORR to process in a timely manner. Also, ORR informed us that untimely interventions and investigations at other hospitals were the result of varying complaint volumes and the staff resources allocated for coverage at WRPH.

RECOMMENDATIONS

We recommend that ORR initiate investigations immediately upon receipt of complaints involving alleged abuse or neglect.

We also recommend that ORR timely complete interventions and investigations.

* See glossary at end of report for definition.

AGENCY PRELIMINARY RESPONSE

ORR agrees that it did not always immediately initiate investigations upon receipt of complaints and did not issue all intervention letters and all reports of investigations within the respective 30- and 90-day requirements. DCH takes this finding very seriously and will ensure that the patients' safety and rights are a top priority. To further address this issue, DCH and ORR are working to ensure that additional controls are implemented and understood by all staff to ensure patient safety and rights protection, such as a review of existing policies and procedures and implementation of new policies and procedures if necessary.

ORR believes that other qualitative factors, such as the nature of allegations, the extent of lateness, and average substantiation rates, should also be considered when assessing this finding overall. In addition, only about 4% of the allegations are found to be substantiated.

Further, ORR informed us:

- a. ORR agrees that there was a delay in the start of these 5 investigations. However, ORR informed us that this delay did not result in any violations continuing to occur, impact to other recipients, or any potential evidence being compromised. Only 1 of the 5 allegations was substantiated and ORR indicated that the hospital's process to immediately safeguard the patient protected the patient from any potential future harm.

ORR indicated the following:

- For case 1, the patient alleged that a staff member humiliated him but could not identify who the staff person was or what the staff person did to humiliate him. Instead, the patient suggested that the ORR rights advisor contact the FBI because the patient believed there was espionage occurring at the facility.
- For case 2, the patient alleged that a staff member chased him and hit him with a metal pipe. The ORR rights advisor reviewed the progress notes for the patient and noted no indications of an incident or any injury to the patient. The ORR rights advisor did not observe any injuries to the patient when interviewing him.

- For case 3, the patient alleged that a staff member raised his voice and used a curse word. Each of the witnesses interviewed indicated that the staff member did not raise his voice or curse.
 - For case 4, an employee alleged that another employee left her assigned work area and her absence constituted a possible neglect situation for one patient. The ORR rights advisor interviewed many employees who were present at the time of the alleged incident and all of the witnesses indicated that the patient was in an area where other staff were present and was not ever placed in risk of any harm. During the investigation, it was uncovered that the employee who alleged the potential neglect had a personal conflict with the employee that she accused.
 - For case 5, an employee alleged that she overheard another employee selling DVDs to a patient. The hospital immediately started its own investigation of the incident and placed the accused employee on administrative leave pending the outcome of the investigation. The accused employee did not have any further contact with any patients and retired within 5 days of the incident. ORR's investigation substantiated the allegation and disciplinary action was recommended.
- b. ORR indicated that rights advisors generally completed the investigative work and notified the facility director of the results within the 90-day time requirements; however, ORR acknowledges that the reports of investigative findings were not always issued within the time requirements. Seven of the reports were issued only 1 day late. Only 5 of the allegations were substantiated and the reports for these allegations were overdue an average of 16 days.

ORR informed us that for approximately 33 months (from January 2011 through September 2013), a rights advisor position was vacant at WRPH, leaving one rights advisor to cover all recipient rights responsibilities. ORR indicated that the volume of complaints, approximately 2,200 allegations, at WRPH was too large for ORR to process timely without two full-time rights advisors. The 11 reports overdue by 25 days or more were all at WRPH. ORR also informed us that it assigned rights staff from Hawthorn Center and the

Center for Forensic Psychiatry to WRPB on a part-time basis in order to assist with the workload. Further, ORR indicated that diversion of these staff to assist at WRPB resulted in interventions and investigations exceeding the 30- and 90-day time requirements at these facilities as well.

- c. ORR agrees that it did not issue intervention reports for 36 interventions within 30 days; however, it disagrees that it should have converted all 36 interventions into investigations. ORR informed us that the work to resolve 27 of these complaints was completed within 30 days and the reports were issued within 14 days of the deadline. ORR concluded that the process of converting these 27 interventions to investigations and sending status reports would not have been the best use of its limited resources because doing so would have further delayed the complainants being notified of the disposition of their complaints and potentially resulted in further delays to other investigations. ORR also indicated that only 1 of the 36 allegations was substantiated and its report was issued 13 days late because the rights advisor waited for the corrective action to be in place before issuing the report. ORR agrees that the remaining 9 interventions for which reports were issued more than 14 days late should have been converted into investigations.

ORR informed us that it will continue to explore other potential controls to ensure its compliance with requirements. ORR also informed us that it will review procedure 02-02-02 and make revisions if necessary.

FINDING

2. Review of Recipient Deaths

ORR did not perform a preliminary review for 1 (9%) of the 11 patient deaths that State psychiatric hospitals reported to ORR during our audit period. Also, ORR did not have sufficient documentation to support that ORR performed a preliminary review for 3 (27%) of the 11 patient deaths. Without sufficient documentation of a preliminary review, ORR cannot ensure that a timely preliminary review was completed. Without performing a preliminary review to assess the circumstances surrounding a patient's death, ORR cannot help ensure that a violation of recipient rights did not cause or contribute to the death. Also, if a violation of recipient rights were to occur, the potential exists that the situation could continue and that other recipients could be subjected to the same rights violation.

ORR procedure 02-03-02 states that, upon learning of the death of a recipient, ORR shall immediately conduct a preliminary review of the circumstances surrounding the death. When there is no reason to suspect a violation of recipient rights caused or contributed to the death, ORR shall complete a review of recipient death form and include review comments. When there is reason to suspect a violation of the recipient's rights caused or contributed to the death, ORR shall file a complaint on the recipient's behalf, complete the review of recipient death form, and start an investigation.

For the 1 patient death for which ORR did not perform a preliminary review, ORR informed us that the psychiatric hospital notified ORR that the patient had died at a medical hospital but that the psychiatric hospital did not submit documentation related to its review of the patient death. Subsequent to our review, ORR completed the death review and indicated that ORR did not suspect any rights violations.

For the 3 patient deaths for which ORR did not have sufficient documentation to support that it performed a preliminary review, ORR indicated that it received documentation from the hospital supporting that the hospital had reviewed the circumstances related to the patient deaths. Based on the documentation of the hospital's review, ORR did not suspect any rights violations. ORR informed us that it did not complete the review of recipient death form because staff were unaware that the policy applied in situations in which ORR did not suspect any rights violations.

ORR also informed us that it did not suspect any rights violations in the 4 deaths because either the patients had been at a medical hospital for more than 48 hours at the time of death or the attending physicians were able to determine a natural cause of death (such as a stroke or a heart attack) at the hospital at the time of death.

RECOMMENDATIONS

We recommend that ORR perform preliminary reviews of all patient deaths that State psychiatric hospitals report to ORR.

We also recommend that ORR maintain sufficient documentation to support that ORR performed preliminary reviews of all patient deaths.

AGENCY PRELIMINARY RESPONSE

ORR agrees that for the one incident identified, subsequent to the phone call notifying it of the patient's death and the circumstances surrounding it, ORR did not immediately obtain additional documentation from the State hospital. ORR reviewed the reports forwarded to it by the facility, such as the mortality report for all 4 cases; however, ORR acknowledges that in the one instance this was not done timely. ORR indicated that in all 4 cases ORR's preliminary review ensured that the circumstances surrounding the patient's death were not a result of a violation of the recipient's rights. Since all 4 deaths occurred at a medical hospital more than 48 hours after hospitalization or the attending physicians were able to determine that the recipient died of natural causes (such as a stroke or a heart attack), ORR concluded that there were no rights violations. However, ORR acknowledges that the rights advisor should have completed the review of recipient death form for these 4 deaths. DCH takes this finding very seriously and will ensure that the patients' safety and rights are a top priority. To further address this issue, DCH and ORR are working to ensure that additional controls are implemented and understood by all staff to ensure patient safety and rights protection, such as a review of existing policies and procedures and implementation of new policies and procedures if necessary.

ORR informed us that procedure 02-03-02 was revised on June 10, 2013 to require that the facility rights advisor report, upon notification by the facility, all deaths and forward copies of all completed review of recipient death forms to the ORR field manager.

FINDING

3. Complaint Notifications

ORR did not ensure that it provided complete and timely complaint information to all parties as required by the Mental Health Code. Our review of 248 randomly selected complaint cases disclosed:

- a. ORR did not send acknowledgment letters to 9 (4%) of the 248 complainants within 5 business days of receipt of the complaint. ORR sent the 9 acknowledgment letters from 1 to 40 days late with an average of 13 days late. Timely acknowledgment letters help to keep the complainants up to date regarding the status of the ORR complaint review.

Section 776 of the Mental Health Code provides that acknowledgment of the receipt of the complaint shall be sent to the complainant within 5 days of receipt.

ORR informed us that the acknowledgment letters were late primarily because WRPB had only one rights advisor from January 2011 through September 2013, which resulted in a large backlog of complaints, and because of increased caseloads at the Kalamazoo Psychiatric Hospital.

- b. ORR did not complete 72 (36%) of 198 required investigation status reports. Status reports help to keep the complainants and respondents up to date regarding the status of the ORR complaint review.

Section 778(4) of the Mental Health Code provides that ORR shall issue a written status report every 30 days during the investigation. ORR informed us that status reports were not completed because of staff noncompliance with ORR procedures and because ORR's complaint system only notifies staff that 30-day and 60-day status reports are due. If an investigation continues and a 90-day (or later) status report is required, the complaint system does not automatically notify staff.

- c. ORR did not timely complete 25 (20%) of 126 investigation status reports:

<u>Days Overdue</u>	<u>Number of Reports</u>
1 - 5 days	19
6 - 10 days	4
11 - 20 days	2
	<u>25</u>

Timely status reports help to keep the complainants and respondents up to date regarding the status of the ORR complaint review.

Section 778(4) of the Mental Health Code provides that ORR shall issue a written status report every 30 days during the investigation.

ORR informed us that status reports were late primarily because WRPB had only one rights advisor from January 2011 through September 2013, which resulted in a large backlog of complaints, and because of increased caseloads at the Kalamazoo Psychiatric Hospital.

- d. ORR did not ensure that 7 (8%) of 92 written investigative reports contained substantive information related to the investigative findings.

Without providing the hospital with detailed information related to the investigative findings, ORR may be omitting information needed by the hospital directors to determine if they agree with ORR's findings and conclusions and to determine if they need to implement any remedial action. Also, ORR may be omitting information that should be included in the hospital's summary report to the complainant. A complainant may appeal a conclusion made by ORR on the grounds that the investigative findings of ORR are not consistent with the facts, laws, rules, policies, or guidelines. If the detailed investigative finding information is not included in the summary report, DCH may be restricting the complainant's ability to file a comprehensive appeal based on the results of the investigative findings.

Section 778 of the Mental Health Code provides that written investigative reports are required to include investigative findings. In addition, ORR procedure 02-02-03 provides that information relating to such things as what relevant documents have been identified and reviewed; whether or not the complainant, accused, recipient, and all potential witnesses were interviewed; and how the witnesses obtained their knowledge of the event be included in the investigative findings section of the written investigative report.

All 7 of the reports identified were from WRPB. ORR informed us that WRPB had only one rights advisor from January 2011 through September 2013, which resulted in a large backlog of complaints for which the rights advisor had completed the investigative work, concluded that the allegations were not substantiated, and had not yet prepared the written investigative report. ORR management informed us that it analyzed these backlogged cases and concluded that it would close these cases using an administrative closing process to provide more timely feedback to the complainant. As a result, for

all of these cases in which the allegations were not substantiated and no remedial action was required by the hospital director, ORR chose to use an abbreviated report format to communicate the investigative findings to the hospital director.

- e. ORR did not provide the Recipient Rights Advisory Committee (RRAC) or DCH with a summary of remedial action taken on substantiated complaints. Also, ORR did not provide DCH with a summary of complaint data.

If ORR does not provide summary complaint data and remedial action taken to RRAC and DCH, it could adversely affect the ability of management to make policy decisions.

Section 754(6)n of the Mental Health Code provides that, at least quarterly, ORR shall provide summary complaint data and a summary of remedial action taken on substantiated complaints to RRAC and DCH.

ORR informed us that it did not provide summary complaint data to DCH or a summary of remedial action taken on substantiated complaints to DCH and RRAC because ORR was unaware of this requirement.

RECOMMENDATION

We recommend that ORR ensure that it provides complete and timely complaint information to all parties as required by the Mental Health Code.

AGENCY PRELIMINARY RESPONSE

ORR agrees with the finding and has implemented corrective action:

- a. ORR notes that 4 of the complaints did not involve a protected rights issue and none of the remaining 5 complaints were substantiated. ORR informed us that the ORR field manager has reiterated to staff the importance of sending acknowledgement letters within the statutory time frames.

- b. and c. Each complaint potentially has multiple required status reports: a 30-day status report; a 60-day status report; and, if the report of investigative findings is not issued within 90 days, a status report at 90 days and every 30 days thereafter until the report of investigative findings is issued. As a result, the 72 missing and 25 late reports described in the finding related to only 29 complaints from 26 recipients. Only 3 of the complaint allegations were substantiated. ORR indicated that for approximately 33 months (from January 2011 through September 2013), a rights advisor position was vacant at WRPB, leaving one rights advisor to cover all recipient rights responsibilities. ORR also indicated that the volume of complaints, approximately 2,200 allegations, at WRPB was too large for ORR to process timely without two full-time rights advisors. This resulted in 61 missing reports and 9 late reports related to 16 complaints at WRPB. ORR assigned rights staff from Hawthorn Center and the Center for Forensic Psychiatry to WRPB on a part-time basis in order to assist with the workload. ORR informed us that the diversion of these staff to assist at WRPB resulted in investigation status reports being late or not completed at these facilities as well. ORR also informed us that the ORR field manager has reiterated to staff the importance of completing status reports within statutory time frames.
- d. ORR informed us that it analyzed the backlog of cases at WRPB and concluded that it would close these cases using an administrative closing process to provide more timely feedback to the complainants. As a result, for all of these cases in which the allegations were not substantiated and no remedial action was required by the hospital director, ORR chose to use an abbreviated format to communicate the investigative findings to the hospital director. ORR indicated that all complainants were provided with a summary report from the hospital director and given their appeal rights as required. ORR also indicated that the ORR field manager has reiterated the importance of ensuring that all required elements are contained within the report of investigative findings.

- e. ORR indicated that it will provide a summary of complaint data quarterly, together with a summary of remedial action taken on substantiated complaints, to DCH and RRAC.

ORR informed us that it will continue to explore other potential controls to ensure its compliance with requirements.

FINDING

4. Incident Reports

ORR did not document that it reviewed or timely reviewed incident reports. Without timely reviews of incident reports, there is an increased risk that rights violations could continue and that other recipients could be subjected to the same rights violations.

State psychiatric hospitals use incident reports to report all types of events involving patients that do not necessarily involve rights violations. ORR rights advisors then review incident reports to determine if there has been a possible rights violation that requires an intervention or an investigation by ORR.

We selected a random sample of 130 incident reports that did not result in an intervention or an investigation. Our review disclosed:

- a. ORR did not document that it reviewed 62 (48%) of the 130 incident reports.

ORR procedure 02-03-03 required ORR to review all incident reports to ensure that recipient rights were protected and that sufficient corrective action has been provided to address the situation and prevent its reoccurrence. Procedure 02-03-03 also required ORR to document its review by initialing the incident report.

ORR indicated that staff were not documenting their review of all cases because of the large volume of incident reports received.

- b. ORR could not provide documentation that it reviewed the remaining 68 (52%) of the 130 incident reports within 72 hours of receipt.

ORR procedure 02-03-03 required ORR to review all incident reports within 72 hours of receipt. Procedure 02-03-03 also required ORR to date stamp the incident report upon receipt and date the incident report after ORR completed its review.

ORR informed us that staff did not document the date of review for all of the incident reports because of the large volume of incident reports.

RECOMMENDATION

We recommend that ORR document that it timely reviews incident reports.

AGENCY PRELIMINARY RESPONSE

ORR agrees that its staff did not date stamp or initial the incident reports to document that the reports were reviewed appropriately and within the required timelines. ORR informed us that the ORR field manager reiterated to all staff the requirements to date stamp all incident reports upon receipt and initial and date all incident reports upon review. In addition, DCH and ORR are working to ensure that additional controls are implemented and understood by all staff to ensure patient safety and rights protection, such as a review of existing policies and procedures and implementation of new policies and procedures if necessary.

FINDING

5. Community Mental Health Services Program (CMHSP) Assessments

ORR did not perform all required monitoring activities when conducting assessments of CMHSPs. Also, ORR needs to improve the process used to document and score assessments of CMHSPs. We reviewed all 40 of the CMHSP assessments completed by ORR during our audit period. Our review disclosed:

- a. ORR did not review at least one substantiated and/or not substantiated neglect complaint file during 6 (15%) of the 40 assessments reviewed. Reviewing substantiated and not substantiated neglect case files helps ORR to ensure that CMHSPs are appropriately investigating allegations of neglect.

ORR procedure 03-01-01 states that ORR should review at least one substantiated and one not substantiated neglect file during each assessment.

ORR staff informed us that they did not review all the required types of files because the 2.5 days scheduled for the assessments are not always enough time to perform all required activities.

- b. ORR did not maintain documentation to support that it notified the CMHSP regarding sufficiency of the corrective action for 4 (11%) of 35 assessments that ORR identified as requiring corrective action. If ORR does not respond to the CMHSP regarding the sufficiency of corrective action, the CMHSP could continue to perform actions that do not protect the rights of mental health services recipients.

ORR procedure 03-01-01 requires ORR to respond to the CMHSP regarding the sufficiency of corrective action submitted.

ORR informed us that it misplaced the documentation showing its response to the CMHSP regarding the sufficiency of corrective action.

- c. ORR needs to improve the process used to document and score the assessments of CMHSPs by revising the scoring methodologies, procedures, and templates used during the process. An improved process would help to ensure consistency and clarity throughout the process. Our review of the process disclosed that the templates were not self-explanatory, did not contain instructions, and were at times duplicative and that the process to summarize the various templates could lead to potential inconsistencies.

ORR procedure 03-01-01 states that the purpose of the on-site assessment is to ensure that the CMHSP rights system is in compliance with minimum standards established by DCH for the protection and promotion of recipient rights and to ensure a uniformly high standard of rights protection in the State.

RECOMMENDATIONS

We recommend that ORR perform all required monitoring activities when conducting assessments of CMHSPs.

We also recommend that ORR improve the process used to document and score assessments of CMHSPs.

AGENCY PRELIMINARY RESPONSE

ORR agrees that there are opportunities for improvement in performing and documenting the CMHSP assessments.

ORR indicated that its Community Rights Unit has revised ORR procedure 03-01-01 with more current guidance to ensure that ORR staff perform all necessary monitoring activities when conducting the assessments in order to accurately and consistently determine the CMHSPs' compliance with certification standards. ORR also indicated that the ORR director of community and field operations has reiterated to staff the importance of following ORR procedures and maintaining all documentation.

ORR informed us that in January 2014, its Community Rights Unit reviewed and revised the processes used to document and score the assessments. ORR also informed us that the revised scoring tools and documents were implemented in the first 2014 rights system assessment performed in March.

FINDING

6. Semiannual Recipient Rights Data

ORR did not semiannually review recipient rights data submitted by CMHSPs and licensed private psychiatric hospitals and units to determine trends and patterns. Also, ORR did not semiannually provide a summary of the recipient rights data to CMHSPs and the DCH director. The recipient rights data consists of summary data by protected right category, including complaints received, number of allegations filed, number of allegations investigated, number of substantiated rights violations, and remedial action taken on substantiated rights violations. Without reviewing this information on a semiannual basis, DCH is not in compliance with the Mental Health Code and is not timely identifying issues that may be affecting recipients of mental health services that ORR could address through training or consultation. In addition, ORR is not providing timely information to CMHSPs and the DCH director to assist in making policy and other management decisions.

Section 754(6)(l) of the Mental Health Code provides that ORR shall review semiannual recipient rights data submitted by CMHSPs and licensed hospitals to determine trends and patterns and provide a summary of the data to CMHSPs and the DCH director.

On an annual basis, ORR did review recipient rights data submitted by CMHSPs. Annually, DCH included this information in its annual report and made this information available to CMHSPs and the DCH director. However, ORR informed us that it was unaware that the Mental Health Code required ORR to do this on a semiannual basis.

RECOMMENDATIONS

We recommend that ORR semiannually review recipient rights data submitted by CMHSPs and licensed private psychiatric hospitals and units to determine trends and patterns.

We also recommend that ORR semiannually provide a summary of the recipient rights data to CMHSPs and the DCH director.

AGENCY PRELIMINARY RESPONSE

ORR agrees that it did not prepare a formal trend and pattern analysis of the recipient rights data provided midway through the fiscal year and did not provide a summary of the midyear data to the CMHSPs and the DCH director.

ORR informed us that its information and referral specialist compiles the semiannual rights data submitted by the CMHSPs and licensed hospitals, reviews the data, and follows up on questionable items. ORR also informed us that historically, it has only prepared a detailed analysis of the data on an annual basis as the midyear data is less comparable because of timing differences. ORR indicated that it will explore methods to analyze the midyear data to satisfy the requirement of determining trends and patterns. ORR also indicated that it will implement a process to provide a summary of the midyear data to the CMHSPs and the DCH director starting with the 2014 data.

FINDING

7. New Employee Recipient Rights Training

ORR did not monitor to ensure that all new DCH employees received recipient rights training within 30 days of employment. Our review of 26 randomly selected DCH central office and State psychiatric hospital employees hired during our audit period disclosed that DCH did not provide recipient rights training to 2 DCH central office employees.

If DCH employees do not receive training in the protection of recipient rights, there is an increased risk that an employee will violate a recipient's right or fail to report a rights violation.

Section 754(6)(j) of the Mental Health Code provides that ORR shall ensure that all individuals employed by DCH receive DCH approved training related to recipient rights protection within 30 days of employment.

When a new central office employee is hired, the Human Resources Division sends an e-mail to the new employee and the employee's supervisor notifying them that the employee needs to take the DCH on-line recipient rights training. ORR and the Human Resources Division did not put additional processes in place to monitor compliance because they anticipated that the employees' supervisors would ensure that the employees took the required training. New State psychiatric hospital employees are required to attend extensive in-person recipient rights training during their new employee orientation. DCH policy 10.3.2 assigned responsibility for this to the hospital directors and, as a result, ORR did not monitor the training records of hospital staff to ensure that the hospital staff completed the training during orientation.

RECOMMENDATION

We recommend that ORR monitor to ensure that all new DCH employees receive recipient rights training within 30 days of employment.

AGENCY PRELIMINARY RESPONSE

ORR agrees that it did not monitor that all new DCH employees receive recipient rights training within 30 days of employment. The 2 employees were central office staff employed outside the Behavioral Health Administration and would likely not have had any interaction with recipients during their brief employment. ORR informed us that it has implemented a monitoring process to ensure that new employees complete the training within the first 30 days of employment.

FINDING

8. Contract Procurement

ORR did not follow Department of Technology, Management, and Budget (DTMB) procurement processes when selecting facilities for the annual recipient rights conferences. Following DTMB procurement processes would help to ensure that ORR selects a location that is the most cost effective and best meets its needs and would help to ensure the propriety of its selection process.

Our review disclosed:

- a. ORR did not use Bid4Michigan* or obtain a waiver from using Bid4Michigan when procuring a facility for the four conferences held in fiscal years 2010-11 through 2013-14.

DTMB Administrative Guide policy 0510 requires the use of the Bid4Michigan system to competitively bid for products and services greater than \$10,000. The DTMB procurement director can grant exceptions to the use of the Bid4Michigan system.

ORR informed us that it was not aware of the requirement to use the Bid4Michigan site for the procurement of a conference facility.

- b. ORR did not competitively bid the fiscal year 2010-11 conference or obtain the DTMB procurement director's approval to use a method other than competitive bidding.

DTMB Administrative Guide policy 0510 requires approval from the DTMB procurement director to use a procurement method other than competitive bidding to establish fair and reasonable pricing.

ORR informed us that it did not competitively bid the fiscal year 2010-11 conference because the facility used for the previous year conference agreed to waive approximately \$1,820 in fees associated with the prior year conference if ORR held the fiscal year 2010-11 conference at the same facility.

* See glossary at end of report for definition.

- c. ORR did not maintain adequate supporting documentation of its contracting activities. We noted:

- (1) ORR did not maintain documentation to support that ORR competitively bid the fiscal year 2011-12 conference or that it appropriately evaluated any of the responses received.

ORR informed us that it wanted to hold the fiscal year 2011-12 conference in northern Michigan and that ORR determined only three hotels in the area could accommodate the conference. In addition, ORR informed us that it contacted the three hotels directly for pricing and details; however, ORR did not maintain any documentation of the information obtained or the evaluation of the responses.

- (2) ORR did not maintain adequate documentation to support that ORR appropriately evaluated the request for proposal responses for the fiscal year 2012-13 and 2013-14 conferences.

ORR informed us that the absence of a standardized methodology/procedure for evaluating and documenting its evaluation of solicitation responses contributed to the lack of adequate documentation.

DTMB Administrative Guide procedure 0510.01 requires ORR to retain documentation of the bid process, including solicitation documents, responses, and evaluation summaries.

- d. ORR did not receive DTMB approval for meal costs that exceeded the State maximum for 1 (33%) of 3 conferences.

DTMB Standardized Travel Regulation 6.8B provides that, if meal rates exceed the maximum set by DTMB, ORR must obtain prior DTMB approval.

ORR informed us that it did not fully understand when DTMB had to approve conference meal costs that exceeded the State maximum.

RECOMMENDATION

We recommend that ORR follow DTMB procurement processes when selecting facilities for the annual recipient rights conferences.

AGENCY PRELIMINARY RESPONSE

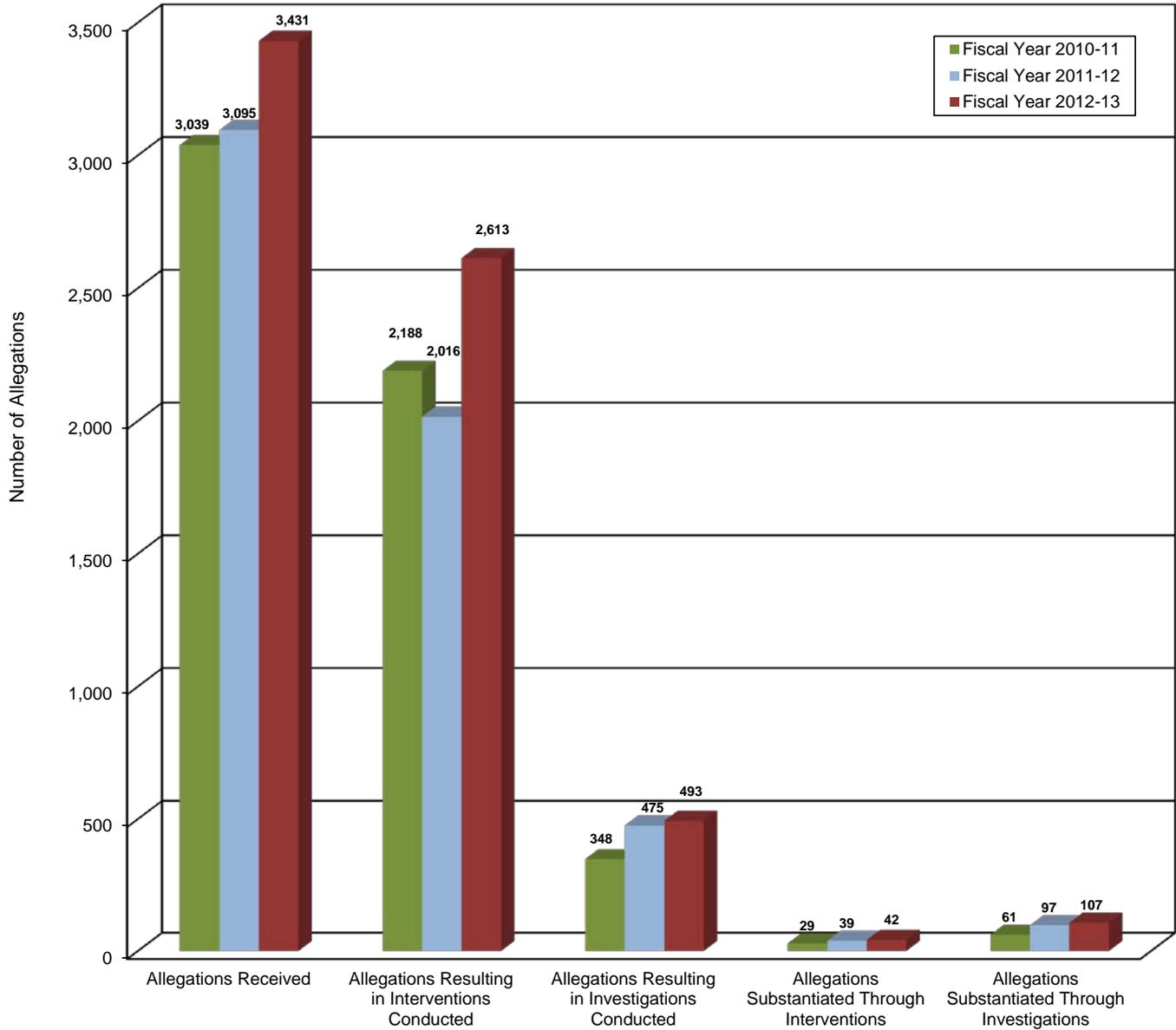
ORR agrees that it did not always follow DTMB procurement processes when selecting facilities for the annual recipient rights conferences. ORR informed us that it believed it selected the most cost effective and best location to fit its needs and, since the conference was fully funded by attendee fees, it did not need to follow DTMB procurement processes. ORR also informed us:

- a. ORR agrees that it did not use Bid4Michigan or obtain a waiver from using Bid4Michigan for the four conferences. DCH believed that conferences fully funded by attendee fees were not subject to the DTMB purchasing rules in effect for commodities and services and hence did not use the Bid4Michigan system. ORR indicated that it will work with the Grants and Purchasing Division to develop procedures for using the Bid4Michigan system for future conferences.
- b. ORR agrees that it did not competitively bid the fiscal year 2010-11 conference because ORR believed it was more cost effective to hold the conference at the same facility as the previous year. As noted in the finding, the facility used for the previous year's conference agreed to waive approximately \$1,820 in fees, resulting in additional cost savings.
- c. ORR agrees that adequate detail may not have been maintained to support its contracting activities. ORR informed us that it has enhanced the fiscal year 2014-15 conference bid evaluation spreadsheet to capture additional evaluation criteria. In addition, ORR indicated that it will work with the Grants and Purchasing Division to develop procedures for using the Bid4Michigan system for future conferences, which will provide documentation of the entire bidding and evaluation process.
- d. ORR agrees that it did not receive prior DTMB approval for meal costs that exceeded the State maximum for one conference. ORR indicated that it has received prior DTMB approval for meal costs that exceeded the State maximum for subsequent conferences and plans to continue to do so.

SUPPLEMENTAL INFORMATION

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

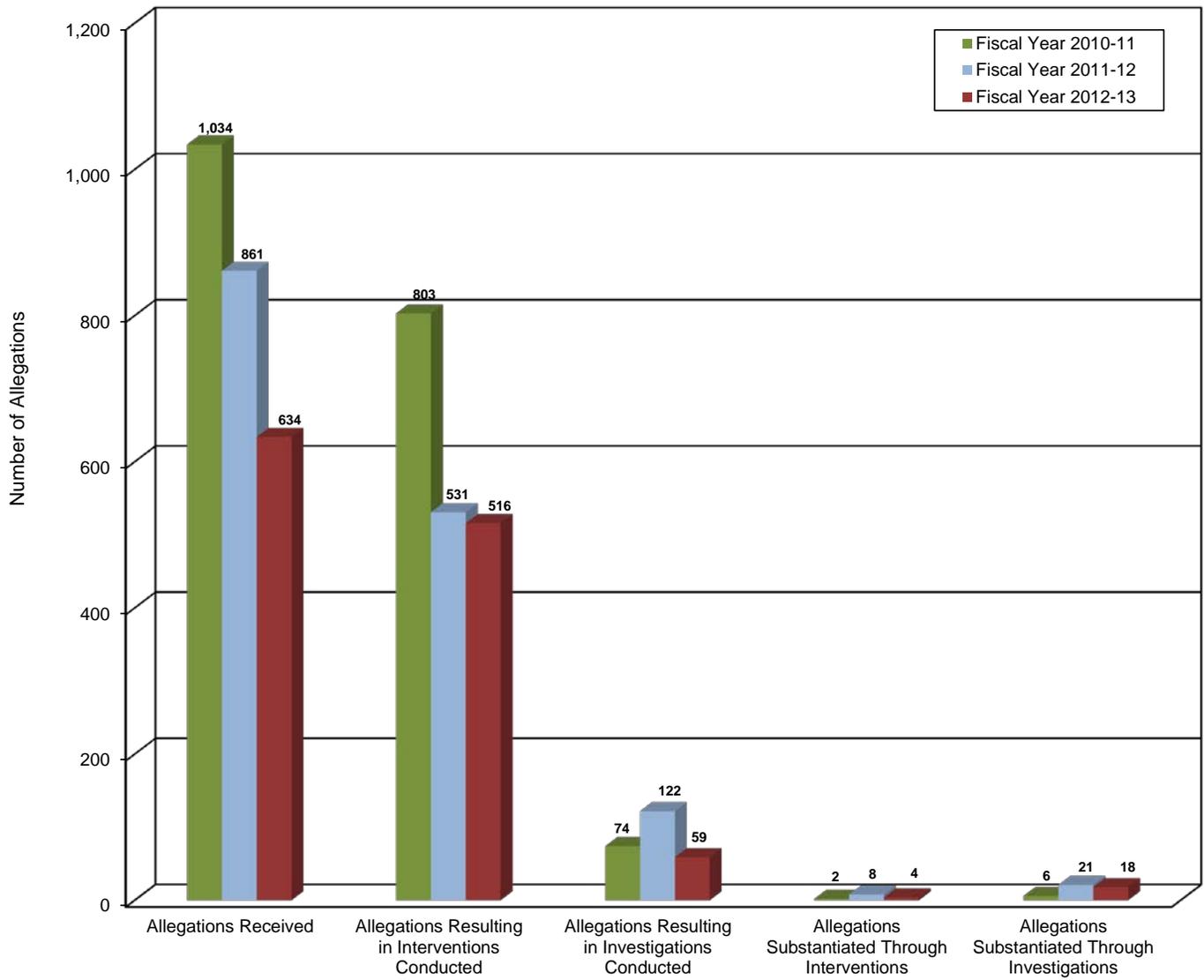
State Psychiatric Hospitals Combined
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

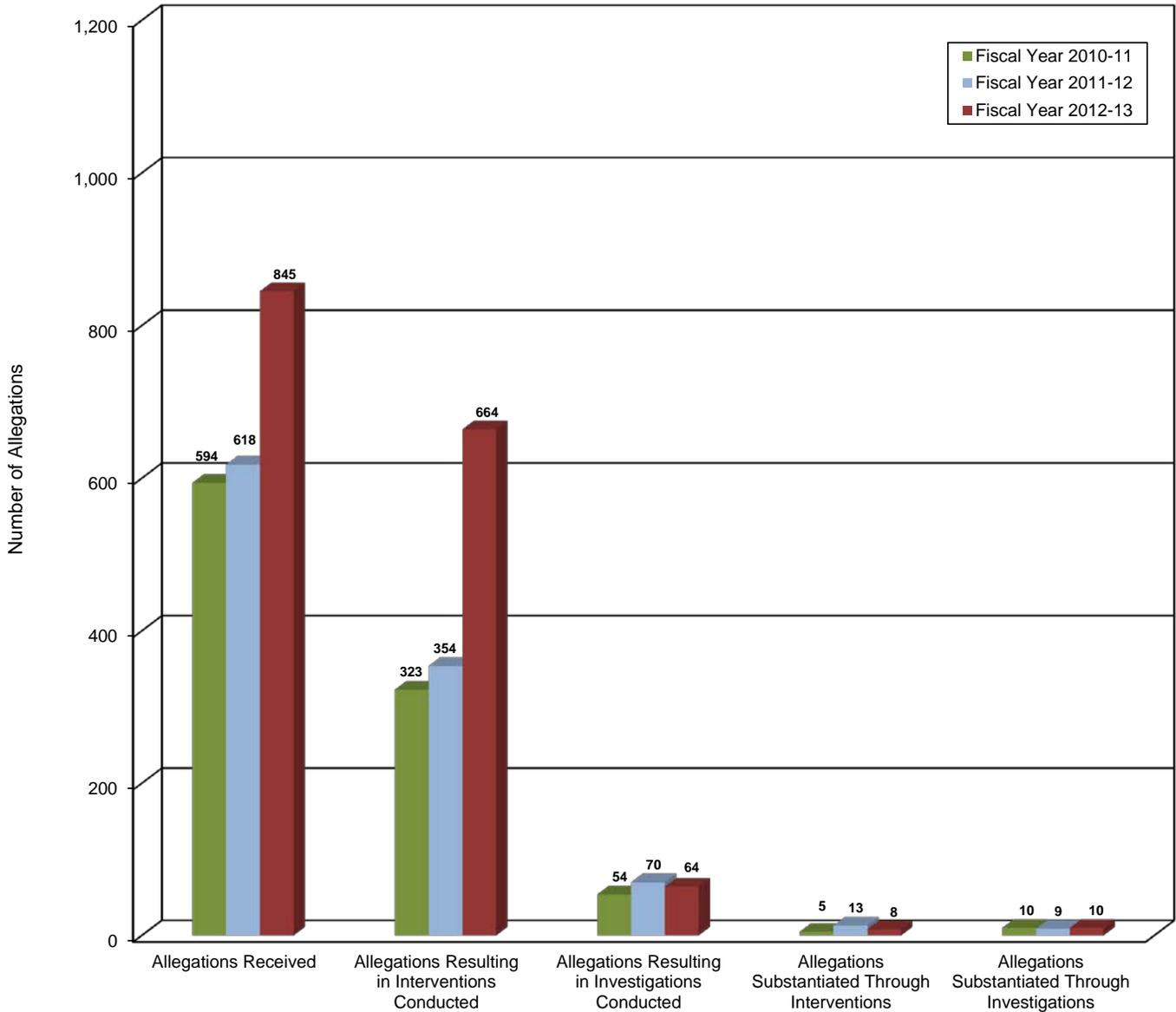
Caro Center
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

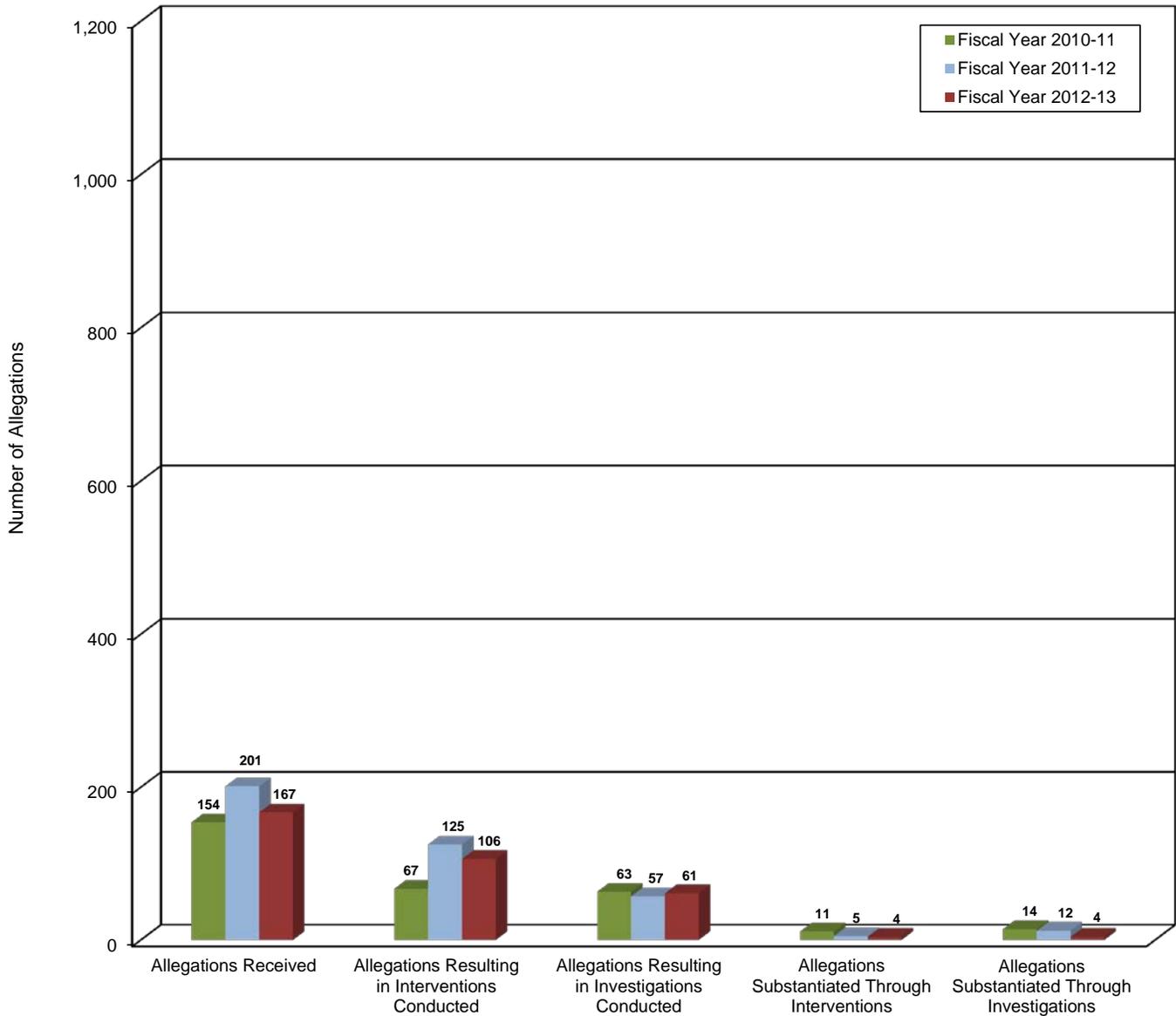
Center for Forensic Psychiatry
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

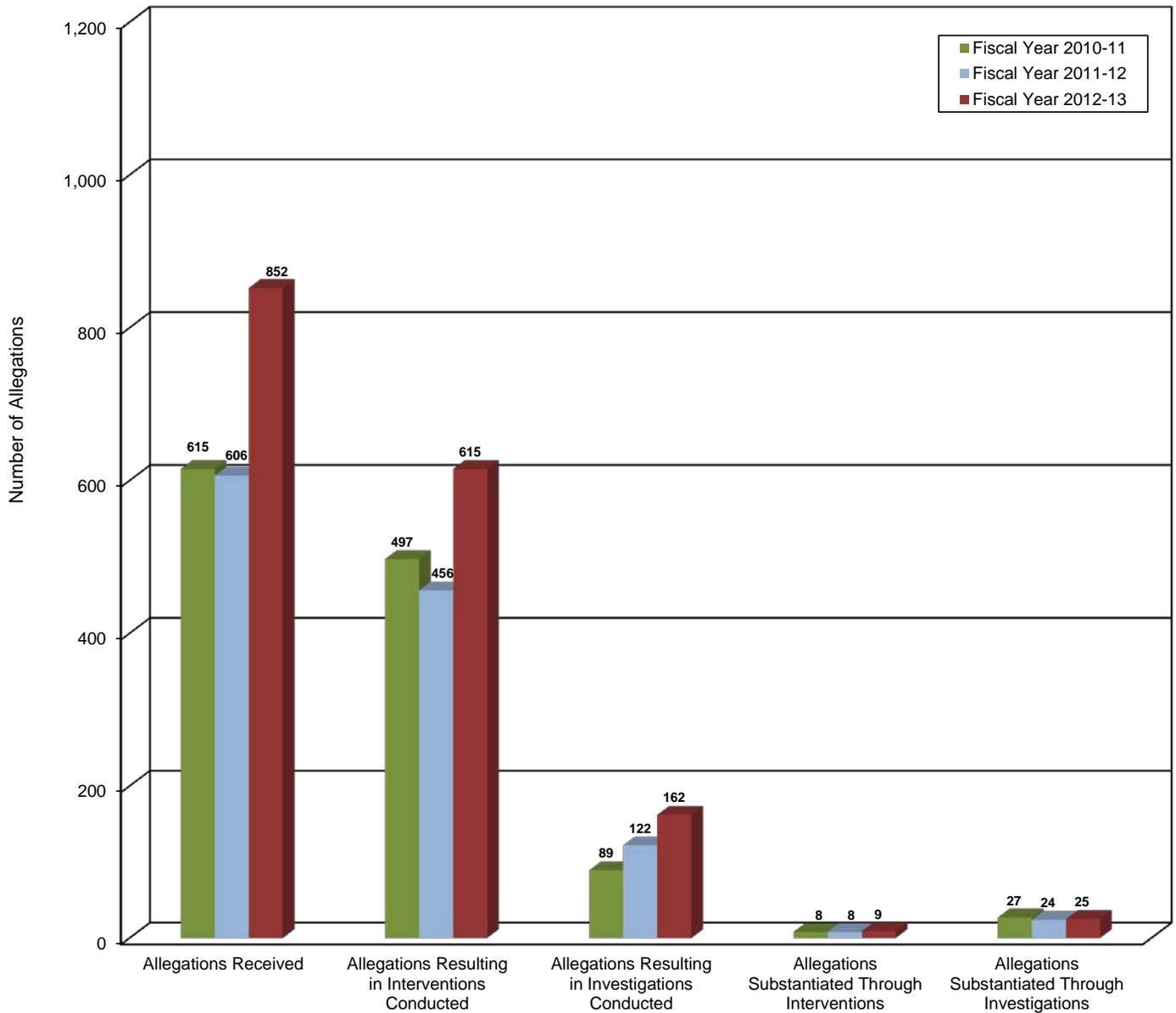
Hawthorn Center
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

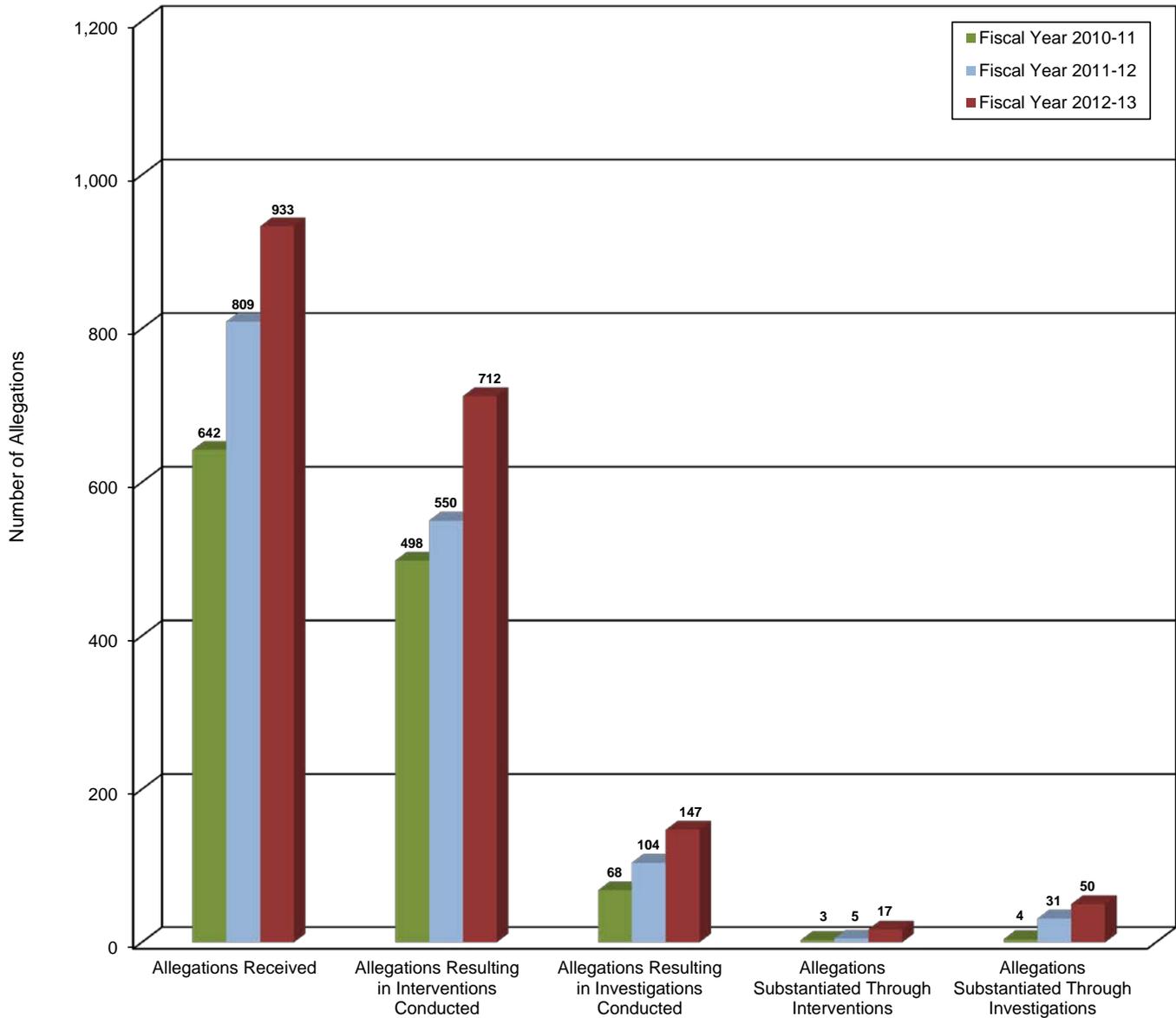
Kalamazoo Psychiatric Hospital
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

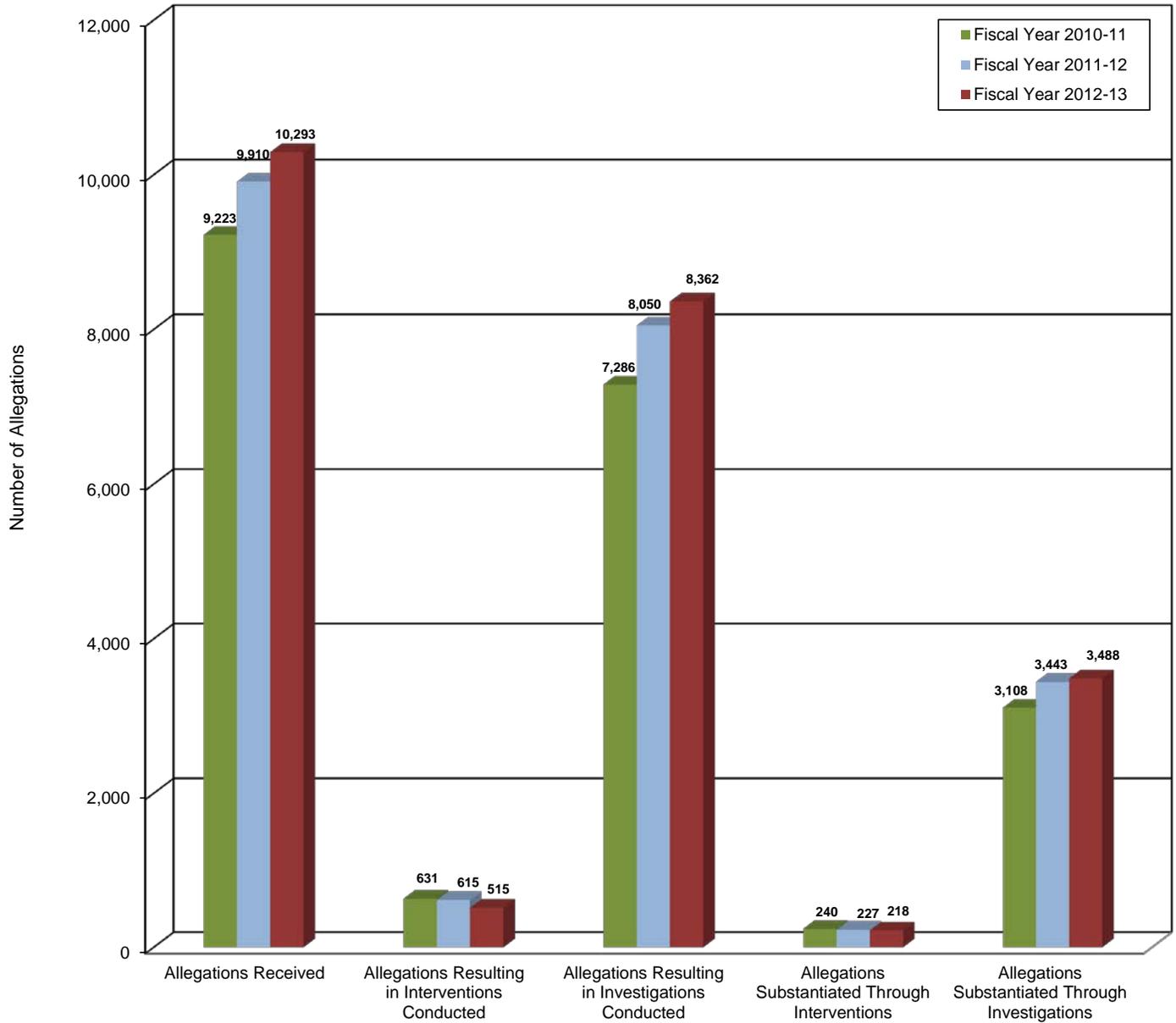
Walter Reuther Psychiatric Hospital
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

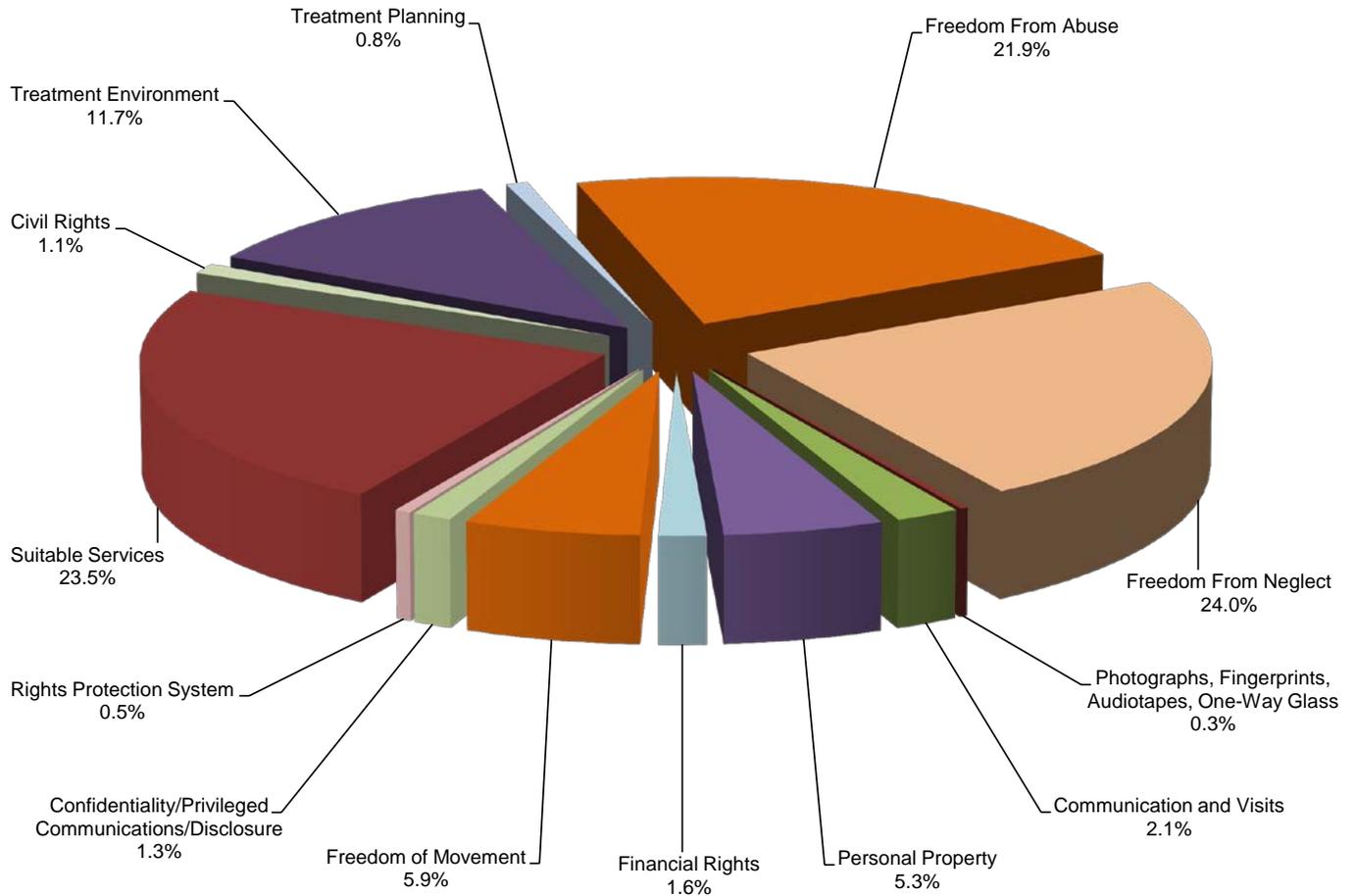
Community Mental Health Services Programs
Recipient Rights Allegations Received, Interventions and Investigations Conducted, and Allegations Substantiated
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

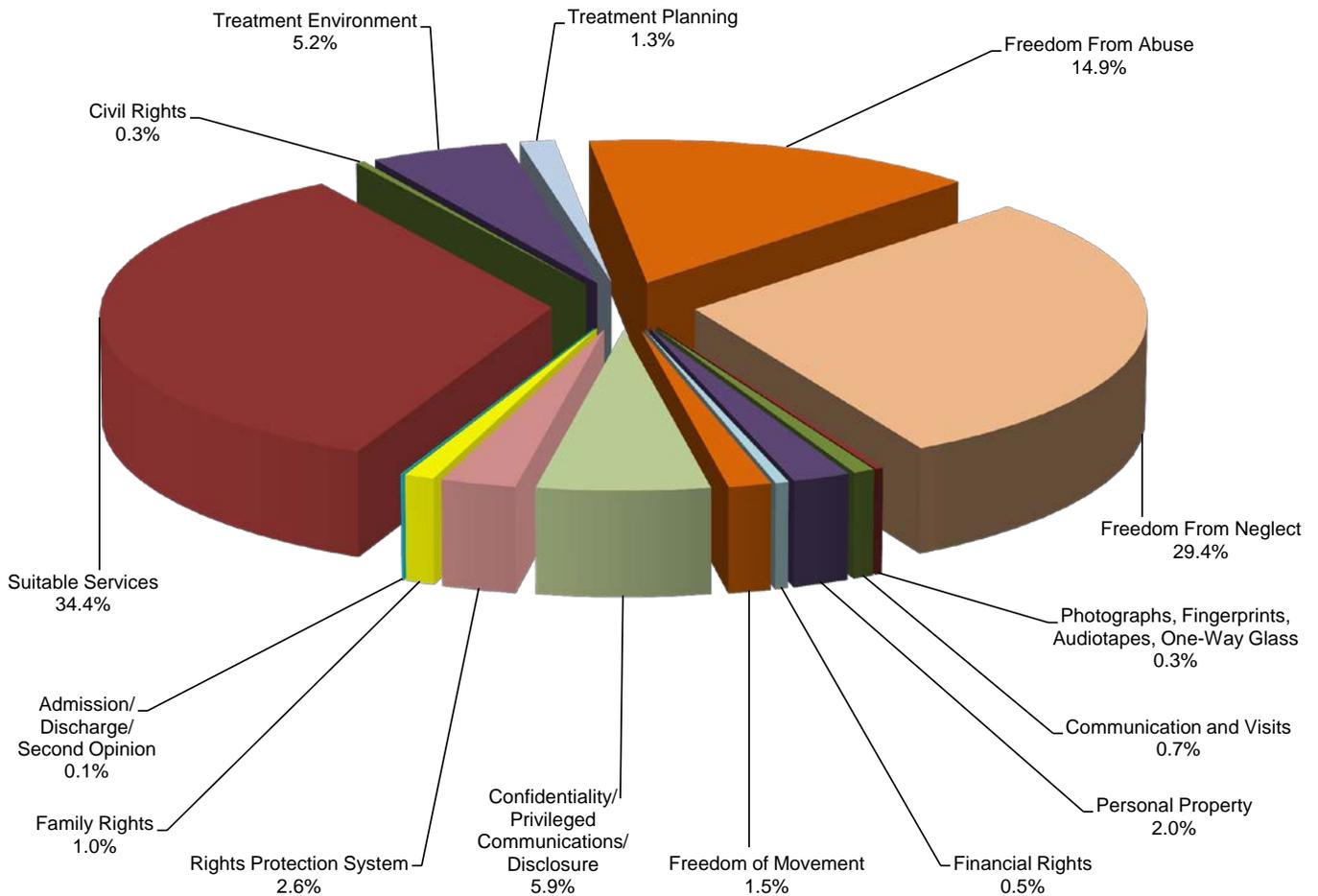
Total Recipient Rights Allegations Substantiated at State Psychiatric Hospitals by Protected Rights Category
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

OFFICE OF RECIPIENT RIGHTS
Department of Community Health

Total Community Mental Health Services Program Recipient Rights Allegations Substantiated by Protected Rights Category
Fiscal Years 2010-11 Through 2012-13



Source: Prepared by the Office of the Auditor General from data obtained from the Office of Recipient Rights.

GLOSSARY

Glossary of Abbreviations and Terms

allegation	An assertion of fact made by an individual that has not yet been proved or supported with evidence.
Bid4Michigan	A bid system implemented by DTMB Purchasing Operations for faster and easier posting and notification of bid information to the public. This system provides instant on-line access to all bids, requests for information, requests for proposal, quotes, addenda, and awards.
CMHSP	community mental health services program.
complainant	An individual who files a rights complaint.
DCH	Department of Community Health.
DTMB	Department of Technology, Management, and Budget.
effectiveness	Success in achieving mission and goals.
incident report	A mechanism to document and report events of an unusual nature involving patients. Events requiring an incident report include, but are not limited to, patient deaths, serious injuries to patients, medication errors, manual holds, known or suspected abuse or neglect of a patient, patient suicide attempts, unauthorized leave of absence, etc.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and monitoring program performance. Internal control serves

as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.

intervention	To act on behalf of a recipient to resolve a complaint alleging a violation of a code protected right when the facts are clear and the remedy, if applicable, is clear, easily obtainable, and does not involve statutorily required disciplinary action.
investigation	A detailed inquiry into, and systematic examination of, an allegation raised in a rights complaint.
LPH/U	licensed private psychiatric hospital/unit.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
ORR	Office of Recipient Rights.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

recipient	An individual who receives mental health services from DCH, from a CMHSP, or from a provider that is under contract with DCH or a CMHSP.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
rights complaint	A written or oral statement that meets the requirements of Section 776 of the Mental Health Code.
RRAC	Recipient Rights Advisory Committee.
WRPH	Walter Reuther Psychiatric Hospital.

