



# **Department of Commerce's Civil Insurance Complaint Investigations**

**2022  
EVALUATION REPORT**

**Program Evaluation Division**

**OFFICE OF THE LEGISLATIVE AUDITOR**

**STATE OF MINNESOTA**

## Program Evaluation Division

The Program Evaluation Division was created within the Office of the Legislative Auditor (OLA) in 1975. The division's mission, as set forth in law, is to determine the degree to which state agencies and programs are accomplishing their goals and objectives and utilizing resources efficiently.

Topics for evaluations are approved by the Legislative Audit Commission (LAC), which has equal representation from the House and Senate and the two major political parties. However, evaluations by the office are independently researched by the Legislative Auditor's professional staff, and reports are issued without prior review by the commission or any other legislators. Findings, conclusions, and recommendations do not necessarily reflect the views of the LAC or any of its members.

OLA also has a Financial Audit Division that annually audits the financial statements of the State of Minnesota and, on a rotating schedule, audits state agencies and various other entities. Financial audits of local units of government are the responsibility of the State Auditor, an elected office established in the Minnesota Constitution.

OLA also conducts special reviews in response to allegations and other concerns brought to the attention of the Legislative Auditor. The Legislative Auditor conducts a preliminary assessment in response to each request for a special review and decides what additional action will be taken by OLA.

For more information about OLA and to access its reports, go to: [www.auditor.leg.state.mn.us](http://www.auditor.leg.state.mn.us).

## Evaluation Staff

Judy Randall, *Legislative Auditor*

Caitlin Badger  
Gretchen Becker  
Eleanor Berry  
Stephanie Besst  
Sarah Delacueva  
Scott Fusco  
Will Harrison  
David Kirchner  
Kelly Lehr  
Lucas Lockhart  
Ryan Moltz  
Jodi Munson Rodríguez  
Kaitlyn Schmaltz  
Laura Schwartz  
Katherine Theisen  
Caitlin Zandoni-Wells

To obtain reports in electronic ASCII text, Braille, large print, or audio, call 651-296-4708. People with hearing or speech disabilities may call through Minnesota Relay by dialing 7-1-1 or 1-800-627-3529.

To offer comments about our work or suggest an audit, investigation, or evaluation, call 651-296-4708 or e-mail [legislative.auditor@state.mn.us](mailto:legislative.auditor@state.mn.us).



Printed on Recycled Paper



## OFFICE OF THE LEGISLATIVE AUDITOR

STATE OF MINNESOTA • Judy Randall, Legislative Auditor

February 2022

Members of the Legislative Audit Commission:

By law, the Minnesota Department of Commerce is responsible for enforcing insurance laws in Minnesota. The department's Enforcement Division plays a key role in enforcing these laws by responding to consumer questions, investigating consumer and industry complaints, and reviewing regulated businesses' practices.

We concluded that Commerce has typically investigated civil insurance complaints—those related to civil fraud, unfair or deceptive practices, or other noncriminal violations of law—in a timely way. But, the Enforcement Division's lack of comprehensive, written policies has contributed to inconsistent practices. We offer recommendations to both the Department of Commerce and the Legislature.

Our evaluation was conducted by Jodi Munson Rodríguez (evaluation manager), Lucas Lockhart, and Kaitlyn Schmaltz. Commerce cooperated fully with our evaluation, and we thank them for their assistance.

Sincerely,

Judy Randall  
Legislative Auditor



OLA



## REPORT HIGHLIGHTS

# Department of Commerce's Civil Insurance Complaint Investigations

The Department of Commerce has typically investigated complaints related to civil insurance fraud and unfair or deceptive insurance practices in a timely way, but its lack of comprehensive, written policies has contributed to inconsistent practices.

### Key Findings

- Commerce's Enforcement Division largely focuses on *responding* to allegations of insurance fraud or misconduct, rather than on *preventing* insurance fraud or misconduct. (p. 14)
- By law, insurers are required to notify Commerce when they institute or modify their antifraud plan, but the department does not enforce this requirement for all insurers. (p. 16)
- The Consumer Service Center (CSC) and Insurance Enforcement Team (IET) completed most investigations within a reasonable period of time, although some investigations lasted several years. (pp. 33, 37)
- The Enforcement Division has not adopted written policies to guide certain aspects of its civil insurance complaint investigations. Policies it *has* developed reflect some, but not all, key National Association of Insurance Commissioners (NAIC) recommendations. (p. 28)
- IET lacks formal policies to guide its investigations, and based on our review, investigators do not always follow consistent practices. (pp. 35-36)
- CSC has adopted written policies that guide some key aspects of its work, but policies have not been well-communicated to staff and some are not currently in use. (pp. 28, 31)

### Key Recommendations

- The Department of Commerce should (1) ensure all insurance companies notify the department when they institute or modify their antifraud plans, as required by law, and (2) coordinate antifraud plan review efforts across teams. (p. 17)
- The Legislature should review Commerce's responsibilities related to antifraud plans and ensure requirements outlined in law meet the Legislature's expectations. (p. 17)
- The Department of Commerce should (1) adopt policies, informed by NAIC recommendations, that outline investigation and documentation standards for key components of civil insurance investigations; (2) clearly communicate these policies to staff; and (3) ensure investigators consistently follow policies. (p. 43)
- The Department of Commerce should adopt policies that include guidance for: assigning complaints for investigation, prioritizing complaints for investigation, establishing formal timelines for completing key investigative activities, and communicating with complainants and respondents. (pp. 23, 25, 44-45)

### Background

Statutes charge the Department of Commerce with enforcing insurance laws in Minnesota. As part of its responsibilities, Commerce's Enforcement Division responds to consumer questions, investigates consumer and industry complaints, and reviews regulated businesses' practices. When the division discovers violations of Minnesota law, it may pursue administrative action.

Within the division, the Consumer Service Center (CSC) and Insurance Enforcement Team (IET) investigate civil insurance complaints: those related to civil fraud, unfair or deceptive insurance practices, or other noncriminal violations of law. CSC and IET closed about 16,000 complaints in fiscal years 2017 through 2021.

## Summary

Commerce's Enforcement Division engages in some limited proactive activities to prevent and detect insurance fraud. While statutes *allow* but do not *require* Commerce to review insurers' antifraud plans—overviews of insurers' policies and practices to prevent, detect, investigate, and report insurance fraud—three teams within Commerce review some insurance companies' antifraud plans under certain circumstances. At the same time, these reviews are not coordinated across teams, and Commerce officials indicated that current staffing allows them to review the plans of only a small fraction of the insurance companies operating in the state. In addition, state law requires insurers to notify Commerce when they institute or modify antifraud plans. But, the department does not enforce this requirement for all insurers.

Most of the Enforcement Division's insurance-related activities focus on resolving complaints. The division's Consumer Service Center (CSC) and Insurance Enforcement Team (IET) closed an average of 3,200 civil insurance complaints each year in fiscal years 2017 through 2021. Even for complaints in which investigators may have determined that a full investigation was unnecessary—such as complaints outside Commerce's jurisdiction—most received at least a limited investigation. Commerce data indicate that investigators performed at least one investigative activity, such as corresponding with respondents or complainants, for nearly 90 percent of complaints. CSC closed investigations within a median of 35 days and IET closed them within a median of 58 days. IET may pursue administrative action, and it often takes on more complex civil insurance complaint investigations than CSC.

Written policies for civil insurance complaint investigations are important to establish supervisor expectations, provide guidance for investigators, and ensure consistency across investigations. However, IET has not adopted written policies to guide its civil insurance complaint investigations. Officials told us that IET investigators are expected to follow certain practices, such as writing memorandums that outline recommendations for administrative actions. But in our review of a sample of complaint files, investigators did not consistently follow expectations. Despite adopting written policies for CSC's work, our survey of CSC investigators indicated that some investigators are unaware of certain policies. In addition, not all of CSC's written policies are currently in use, and CSC investigators are expected to follow certain practices *not* included in written policies.

## Summary of Agency Response

In a letter dated February 2, 2022, Department of Commerce Commissioner Grace Arnold wrote that she appreciated OLA's "constructive feedback for improving our processes and policies." She noted that Commerce "attempts to strike an appropriate balance between instituting sufficient policies and procedures" and allowing for investigator and/or supervisor discretion to allocate resources in response to "sometimes rapidly changing needs of Minnesotans." The commissioner stated that the department "acknowledges the need to review, refine, and supplement its current operating procedures and policies." She also wrote that Commerce "understands the OLA's concerns about preventing insurance fraud in Minnesota," noting that the licensing process, market conduct exams, and other department activities play "a significant role in preventing fraud." She stated, "In an effort to enhance anti-fraud measures," the department will work on its own processes and with insurance companies primarily regulated in Minnesota "to ensure insurers follow Minnesota anti-fraud plan reporting requirements." Commissioner Arnold signaled support for OLA's recommendation "that the legislature consider and clarify its intent behind requiring Minnesota domiciled insurance companies to notify the Department of its anti-fraud plans."

---

# Table of Contents

---

<b>1</b>	<b>Introduction</b>
<b>3</b>	<b>Chapter 1: Background</b>
3	Insurance Regulation
<b>9</b>	<b>Chapter 2: Enforcement Division</b>
9	Enforcement Division Organization
14	Fraud Prevention Activities
<b>19</b>	<b>Chapter 3: Complaint Characteristics and Intake Process</b>
19	Complaint Characteristics
22	Complaint Intake Process
<b>27</b>	<b>Chapter 4: Civil Insurance Complaint Investigations</b>
28	Policies
31	Investigation Practices
42	Discussion
<b>47</b>	<b>List of Recommendations</b>
<b>49</b>	<b>Agency Response</b>



OLA



---

# List of Exhibits

---

## **Chapter 2: Enforcement Division**

- 10     2.1 Enforcement Division teams specialize in different insurance enforcement activities.

## **Chapter 3: Complaint Characteristics and Intake Process**

- 21     3.1 Investigators closed a variety of civil insurance complaints in fiscal years 2017 through 2021.

## **Chapter 4: Civil Insurance Complaint Investigations**

- 29     4.1 Commerce's policies only partially reflect NAIC recommendations for insurance investigations.



OLA

---

# Introduction

---

Minnesota law outlines requirements insurance providers must meet to protect consumers from harm and ensure the providers are financially solvent.<sup>1</sup> Statutes charge the Department of Commerce with enforcing insurance laws in Minnesota.<sup>2</sup> As part of its responsibilities, Commerce investigates complaints of unfair, deceptive, or fraudulent practices in the insurance industry.

In June 2021, the Legislative Audit Commission directed the Office of the Legislative Auditor (OLA) to evaluate Commerce’s oversight of insurance fraud. Our evaluation focused on civil insurance complaint investigations, which include investigations of civil fraud. OLA has not evaluated the civil insurance complaint investigation process in the past 30 years, and based on our initial research, we determined it was the process on which OLA’s recommendations could have the greatest impact.<sup>3</sup> Our primary research questions were:

- **How does the Department of Commerce identify, deter, and penalize unfair, deceptive, or fraudulent practices in the insurance industry?**
- **How consistently has Commerce addressed complaints related to civil fraud, misconduct, deception, and other unfair practices in the insurance industry?**

We used a variety of research methods to answer these questions. We spoke to Commerce officials and staff and surveyed all civil insurance investigators to learn about Commerce’s investigation policies and practices. We also interviewed representatives from organizations that represent the insurance industry, insurance regulators, and consumers. These organizations included the Insurance Federation of Minnesota, the Midwest Insurance Fraud Prevention Association, the Minnesota Insurance and Financial Services Council, the National Association of Insurance Commissioners, and the University of Minnesota Insurance Law Clinic.

We reviewed relevant laws and department reports, as well as Commerce’s formal policies for civil insurance complaint investigations. We compared Commerce’s policies to guidance developed by the National Association of Insurance Commissioners.

In addition, we analyzed Commerce’s data on civil insurance complaints from fiscal years 2017 through 2021 to determine the characteristics of the complaints Commerce received and the actions that investigators performed. We also reviewed data on market conduct reviews during the same five-year period to understand the extent to which

---

<sup>1</sup> *Minnesota Statutes* 2021, Chapters 59A-79A.

<sup>2</sup> *Minnesota Statutes* 2021, 60A.03, subd. 2.

<sup>3</sup> While OLA has not conducted a program evaluation of the civil insurance complaint investigation process in the past 30 years, the office conducted a related special review. Office of the Legislative Auditor, Special Review, *Minnesota Department of Commerce: Investigation of Auto Glass Insurance Processing by Safelite Solutions, LLC* (St. Paul, 2018).

Commerce has performed these reviews. To determine how consistently Commerce addressed complaints, we reviewed a sample of civil insurance complaint files from Fiscal Year 2021.

Our evaluation focused on Commerce's civil insurance complaint investigations. Therefore, certain issues and topics were out of scope of this review. For example, we did not perform an in-depth review of the Commerce Fraud Bureau or the Market Conduct Exam Team; we provide only high-level information on these teams within Commerce. We also did not evaluate whether investigators correctly resolved complaints. We instead focused on the consistency of the investigation process. Additionally, we did not contact complainants to learn about their experiences with the Commerce complaint investigation process.

---

# Chapter 1: Background

---

Insurance can help pay for unexpected expenses, such as vehicle repairs after an accident or home repairs following a natural disaster. It helps transfer risk from an individual to a company. Most Minnesotans are covered by some form of insurance. For example, state law requires drivers to obtain automobile insurance.<sup>1</sup> As another example, roughly 95 percent of Minnesotans under the age of 65 had health insurance in 2020.

Insurance is a large industry in Minnesota. According to the Department of Commerce—the agency responsible for regulating insurance in Minnesota—more than 1,300 insurance companies did business in the state in 2020. Additionally, in 2019, the insurance market included insurance policies totaling over \$46 billion in premiums. This multibillion-dollar industry can become a target for fraudulent schemes and other forms of abuse, and the Legislature has enacted many laws to protect consumers.

In this chapter, we outline Commerce’s insurance-related responsibilities, which are primarily shared between its Insurance Division and Enforcement Division. We focus on the Enforcement Division’s duties, with a discussion of insurance fraud and the various forms of unfair and deceptive practices Commerce investigates that may result in administrative action or criminal charges.

## Insurance Regulation

---



The commissioner [of commerce] shall have and exercise the power to enforce all the laws of this state relating to insurance, and shall enforce all the provisions of the laws of this state relating to insurance in the manner provided by the laws defining the powers and duties of the commissioner of commerce, or, in the absence of any law prescribing the procedure, by any reasonable procedure the commissioner prescribes.

— **Minnesota Statutes 2021, 60A.03, subd. 2**

Minnesota law outlines requirements that insurance providers in Minnesota must meet to ensure they are financially solvent and treat consumers fairly.<sup>2</sup> By law, Commerce is responsible for enforcing insurance industry requirements, in addition to regulating more than 20 other industries.<sup>3</sup>

### Insurance Regulation Overview

Statutes require Commerce to perform a number of activities related to insurance, including issuing licenses and overseeing insurance providers’ setting of rates and premiums.<sup>4</sup> Statutes also grant Commerce the authority to investigate violations of Minnesota insurance law.<sup>5</sup> Commerce has the authority to enforce more than 20 chapters of statute that apply to different types of insurance, from automobile insurance to life insurance.<sup>6</sup>

---

<sup>1</sup> *Minnesota Statutes 2021*, 169.791, subd. 2.

<sup>2</sup> Some types of insurance, such as Medicare, are regulated by the federal government, rather than the State of Minnesota.

<sup>3</sup> *Minnesota Statutes 2021*, 60A.03, subd. 2.

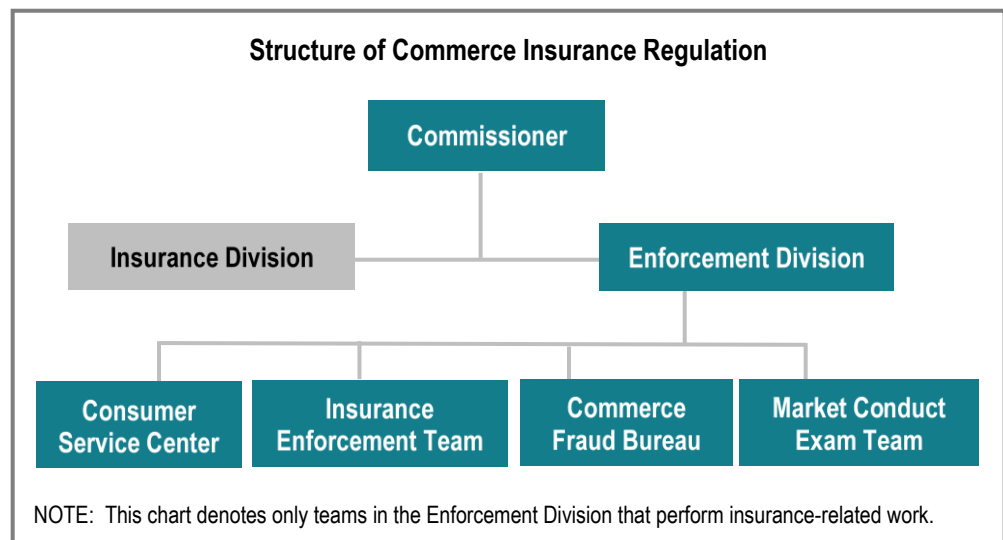
<sup>4</sup> *Minnesota Statutes 2021*, Chapter 60A.

<sup>5</sup> *Minnesota Statutes 2021*, 45.0135 and 45.027.

<sup>6</sup> *Minnesota Statutes 2021*, Chapters 59A-79A.

Commerce has two divisions that perform most insurance-related work: (1) Insurance Division and (2) Enforcement Division.

1. The **Insurance Division** completes regulatory and administrative tasks. For example, Commerce reports that it administers a licensing program for over 165,000 insurance licensees that are authorized to operate in Minnesota. The division also ensures that insurance providers are financially sound, meaning that each provider has sufficient capital to operate an insurance business in Minnesota. In addition, the Insurance Division reviews proposed insurance policy rates to ensure these rates are consistent with Minnesota law.
2. The **Enforcement Division** has the authority to investigate both criminal and civil violations of Minnesota insurance law.<sup>7</sup> Staff within the Enforcement Division may investigate consumers, insurance providers, and others for suspected violations related to insurance laws. The Enforcement Division primarily investigates insurance-related complaints and performs some proactive measures to reduce unfair or deceptive practices in the insurance industry. The Enforcement Division has the authority to pursue administrative action in cases of civil violations of insurance law and recommend criminal charges in cases of criminal violations of insurance law.<sup>8</sup> There are four teams within the Enforcement Division that perform insurance-related work: the Consumer Service Center (CSC), the Insurance Enforcement Team (IET), the Commerce Fraud Bureau, and the Market Conduct Exam Team, as shown in the box below. We provide more information about the work of each of these Enforcement Division teams in Chapter 2.



<sup>7</sup> *Minnesota Statutes* 2021, 45.0135, subd. 2b; and 45.027, subd. 1.

<sup>8</sup> *Minnesota Statutes* 2021, 45.0135, subds. 2b(4) and 9; 45.027, subds. 5, 5a, 5b, 6, 7, 8, and 11; and 60A.052.

## Insurance Fraud

One of the Enforcement Division's main roles is to investigate reports of unfair, deceptive, or fraudulent insurance practices. In basic terms, the National Association of Insurance Commissioners (NAIC) states that **“insurance fraud occurs when an insurance company, agent, adjuster or consumer commits a deliberate deception in order to obtain an illegitimate gain.”**<sup>9</sup> Minnesota law defines activities that constitute criminal or civil insurance fraud. There is significant overlap between the statutory definitions of criminal and civil insurance fraud, as shown in bold text in the boxes below.

Criminal Insurance Fraud	Civil Insurance Fraud
<p><b>Presenting false information about a material fact, or concealing material information concerning insurance:</b></p> <ul style="list-style-type: none"> <li>• Policy applications</li> <li>• Rates</li> <li>• Claims</li> <li>• Payments</li> <li>• License applications</li> <li>• Company financial condition</li> </ul> <p>As well as:</p> <ul style="list-style-type: none"> <li>• Accepting insurance risks for an insolvent insurer</li> <li>• Removing assets or materials from an insurer (in connection with the presentation of false information)</li> <li>• Diverting, misappropriating, embezzling or converting insurance-related funds.</li> </ul> <p>— Summary of excerpts of <i>Minnesota Statutes 2021, 609.611, subd. 1</i></p>	<p><b>Presenting false information about a material fact, presenting misleading information, or committing a material or misleading omission concerning insurance:</b></p> <ul style="list-style-type: none"> <li>• Policy applications</li> <li>• Rates</li> <li>• Claims</li> <li>• Premiums</li> <li>• Payments</li> </ul> <p>— Summary of <i>Minnesota Statutes 2021, 60A.951, subd. 4</i></p>

## Investigations

While there are similarities between the definitions of criminal and civil insurance fraud, some examples of fraud, such as embezzlement, may only be included within the definition of criminal insurance fraud. Criminal and civil insurance fraud are investigated differently by separate teams within Commerce's Enforcement Division. Typically, investigators within IET investigate civil insurance fraud while the Commerce Fraud Bureau, a law enforcement agency, investigates criminal fraud.<sup>10</sup> By law, the Commerce Fraud Bureau has the authority to make arrests and recommend

<sup>9</sup> National Association of Insurance Commissioners, “Insurance Fraud,” [https://content.naic.org/cipr\\_topics/topic\\_insurance\\_fraud.htm](https://content.naic.org/cipr_topics/topic_insurance_fraud.htm), accessed August, 18 2021.

<sup>10</sup> Law enforcement agencies other than the Commerce Fraud Bureau may investigate criminal fraud within their jurisdiction.

criminal charges for cases of criminal insurance fraud.<sup>11</sup> Statutes also give Commerce the authority to pursue administrative action, such as suspending or revoking licenses and/or imposing monetary penalties in cases of civil insurance fraud, which Commerce exercises through IET.<sup>12</sup>

Example of Criminal Insurance Fraud Investigation		Example of Civil Insurance Fraud Investigation	
<b>Issue</b>	Individual stole a death-benefit check from a victim by falsifying information	<b>Issue</b>	Insurance agent misrepresented information about a client on a life insurance application
<b>Charges</b>	(1) Theft by swindle (maximum sentence 20 years and/or \$100,000)  (2) Insurance fraud (maximum sentence 5 years and/or \$10,000)	<b>Administrative Action Taken</b>	(1) \$2,500 civil penalty (2) 6-month license suspension
<b>Party that Investigated</b>	Commerce Fraud Bureau	<b>Party that Investigated</b>	Insurance Enforcement Team

While the term “insurance fraud” refers to specific offenses defined in law, statutes also provide Commerce with authority to investigate unfair or deceptive practices and any other violations of Minnesota insurance law.<sup>13</sup>

Statutes list many unfair or deceptive practices; some examples are shown in the box to the right.<sup>14</sup> Statutes also provide other examples of misconduct that Commerce may investigate, including an insurance provider failing to comply with any order from Commerce, or filing an application for an insurance license with incomplete or false information.<sup>15</sup> The Enforcement Division may investigate insurance providers for these unfair or deceptive practices, as demonstrated in the following boxes.

#### Examples of Unfair or Deceptive Insurance Practices

- Misrepresenting or falsely advertising insurance products
- Discriminating based on sex or marital status
- Making false entries with the intent to deceive examiners or public officials
- Improperly canceling or refusing to renew insurance policies
- Improperly refusing to refund premiums

<sup>11</sup> *Minnesota Statutes* 2021, 45.0135, subds. 2a and 2b.

<sup>12</sup> *Minnesota Statutes* 2021, 45.0135, subd. 9; 45.027, subds. 5, 5a, 5b, 6, 7, 8, and 11; and 60A.052. If, during a complaint investigation, IET investigators find evidence that there was a violation of Minnesota law, they may recommend administrative action. Administrative actions must be approved by the Assistant Commissioner for the Enforcement Division.

<sup>13</sup> *Minnesota Statutes* 2021, 45.027; 60A.03; 60A.951, subd. 4; 72A; and 609.611, subd. 1.

<sup>14</sup> *Minnesota Statutes* 2021, 72A.20.

<sup>15</sup> *Minnesota Statutes* 2021, 45.027; and 60A.052, subd. 1.



Example of Investigation of Unfair or Deceptive Practices		Example of Investigation of Other Violations of Insurance Laws	
Issue	Insurance company filed erroneous rates for crop/hail insurance	Issue	Insurance company failed to renew license on time
Administrative Action Taken	(1) \$5,000 civil penalty (2) Required company to publish correct rates in its policy manual and utilize these rates	Administrative Action Taken	(1) \$1,000 civil penalty
Party that Investigated	Insurance Enforcement Team	Party that Investigated	Insurance Enforcement Team

Our evaluation primarily focused on the Enforcement Division’s investigations of unfair or deceptive practices, civil fraud, or other noncriminal violations of state insurance law. We refer to complaints related to these issues as “civil insurance complaints.” These investigations typically begin with a consumer submitting a complaint to Commerce. Investigators generally review the complaint, contact the complainant and respondent (the subject of the complaint), review relevant laws, and perform other investigation work to determine whether a violation of Minnesota law occurred. We provide more information about the investigation process in Chapters 3 and 4.



OLA

---

# Chapter 2: Enforcement Division

---

The mission of the Department of Commerce's Enforcement Division is to protect Minnesota consumers and monitor market conduct in over 20 industries, including insurance. Enforcement Division staff respond to consumer questions; investigate consumer and industry complaints related to unfair, deceptive, or fraudulent business practices; and conduct examinations of regulated businesses to ensure they are operating in compliance with Minnesota law. When it discovers activity in violation of Minnesota law, the division can initiate administrative action or pursue criminal charges in collaboration with local law enforcement, county prosecutors, or others.

In this chapter, we describe the expenditures, organization, and legal authority of the Enforcement Division as it pertains to the insurance industry. We also discuss the division's fraud prevention efforts and offer recommendations to improve those efforts.

## Key Findings in This Chapter

- Four teams within Commerce's Enforcement Division hold primary responsibility for enforcing laws prohibiting unfair, deceptive, or fraudulent practices in the insurance industry.
- The Enforcement Division largely focuses on responding to allegations of insurance fraud or misconduct, rather than on preventing fraud or misconduct.
- By law, insurers are required to notify Commerce when they institute or modify their anti-fraud plan, but the department does not enforce this requirement for all insurers.

---

## Enforcement Division Organization

---

The Enforcement Division works to enforce the laws that regulate the insurance industry in Minnesota. From fiscal years 2017 through 2021, the Enforcement Division expended an average of \$19.2 million each year on insurance-related work. Nearly 60 percent of these expenditures related to salaries. General Fund appropriations funded roughly two-thirds of the Enforcement Division's insurance-related expenditures. Most of the remaining funding came from two miscellaneous accounts.<sup>1</sup>

---

**Four teams within Commerce's Enforcement Division hold primary responsibility for enforcing laws prohibiting unfair, deceptive, or fraudulent practices in the insurance industry.**

---





As shown in Exhibit 2.1, the division's insurance-related work is divided among four teams: the Consumer Service Center (CSC), the Insurance Enforcement Team (IET), the Commerce Fraud Bureau, and the Market Conduct Exam Team.<sup>2</sup>

---

<sup>1</sup> The two primary miscellaneous accounts that support the Enforcement Division's insurance-related work are the Examination Revolving Fund and the Insurance Fraud Prevention Account, established by *Minnesota Statutes* 2021, 60A.03, subd. 6; and 45.0135, subd. 6, respectively. A separate workers' compensation fraud prevention account provided funding for an additional 1 percent of the Enforcement Division's insurance-related expenditures in fiscal years 2017 through 2021.

<sup>2</sup> The Enforcement Division has other teams responsible for enforcing laws related to industries other than insurance, including real estate, money transmission, and debt collection and management.

## Exhibit 2.1: Enforcement Division teams specialize in different insurance enforcement activities.

	 <b>Consumer Service Center</b>	 <b>Insurance Enforcement Team</b>	 <b>Commerce Fraud Bureau</b>	 <b>Market Conduct Exam Team</b>
<b>Primary Responsibilities</b>	<ul style="list-style-type: none"> <li>Route questions and complaints to appropriate team or agency</li> <li>Answer insurance questions</li> <li>Conduct simple investigations regarding violations of civil insurance laws</li> </ul>	Conduct complex investigations of civil insurance fraud, unfair and deceptive practices, and other violations of insurance law	Conduct criminal investigations of criminal insurance fraud and related offenses	Conduct in-depth reviews of insurance providers' operations to ensure equitable treatment of policyholders and compliance with insurance laws
<b>Enforcement Activity</b>	None <sup>a</sup>	Administrative actions <sup>a</sup>	Recommend charges to state, local, and federal prosecutors	Administrative actions
<b>Primary Sources of Activity</b>	Consumer and insurance industry questions and complaints	Consumer and insurance industry complaints	Industry fraud reports	<ul style="list-style-type: none"> <li>Insurance Enforcement Team complaint data</li> <li>Enforcement activity of other states' insurance regulators</li> <li>Insurance industry trends</li> <li>Concerns of Commerce Commissioner, legislators, and Governor</li> </ul>
<b>Staffing</b>	7 Investigators 1 Intake specialist	9 Investigators	15 Special agents 4 Analysts	2 Examiners Private contractors

NOTE: Only Department of Commerce Enforcement Division staff with responsibilities pertaining to insurance are shown above; Enforcement Division teams with primary responsibility for industries other than insurance are excluded.

<sup>a</sup> CSC and IET may issue a warning to respondents, typically for minor violations in which investigators have not made an official finding of a violation.

SOURCE: Office of the Legislative Auditor.

The four teams responsible for enforcing insurance laws largely derive their work from different sources. CSC and IET's investigations focus on complaints about industry misconduct and civil fraud, primarily submitted by consumers, whereas insurance company reports of alleged criminal fraud drive most Commerce Fraud Bureau investigations. The Market Conduct Exam Team does not directly respond to consumer complaints or industry fraud reports, but it sometimes draws upon insurance complaint data to select providers for review.

## Consumer Service Center (CSC)

CSC is the most public-facing team in the Enforcement Division and serves as a call center, consumer educator, and civil insurance complaint investigations team.

CSC team members respond to insurance-related questions and complaints from consumers, the insurance industry, and other divisions within Commerce.<sup>3</sup>



### Civil Insurance Complaints:

Complaints related to unfair, deceptive, or fraudulent insurance practices or other practices that may violate Minnesota's insurance law, but are not strictly criminal in nature.

If a question or complaint is insurance-related, not particularly complex, and likely does not involve a violation of Minnesota law, CSC investigates the question or complaint and attempts to resolve it. For example, since raising rates is a standard insurance practice, CSC would likely be responsible for responding to a complainant who is upset that their automobile insurance rate increased. A CSC investigator would review the complainant's policy, ensure that the rate increase was within the amount allowed by law and policy terms, and if the insurance company acted legally, educate the complainant. But, if CSC's investigation uncovered a possible violation of rate regulations, it could refer the complaint to IET for further investigation and potential administrative action.

## Insurance Enforcement Team (IET)

Like CSC, IET conducts civil investigations of insurance-related complaints. IET investigates complaints that are typically more complex than those investigated by CSC and are more likely to involve an allegation of civil fraud, unfair or deceptive practices, or some other violation of Minnesota law. For example, IET, rather than CSC, would typically investigate a consumer allegation that an insurance company misrepresented the cash-value of a universal life insurance policy or deceptively described a policy's scope of coverage in marketing materials. Unlike CSC, IET may pursue administrative action.<sup>4</sup>

Like CSC, statutes allow IET to conduct investigations, "examine the books, accounts, records, and files of every licensee, and of every person who is engaged in any activity" regulated by Commerce, and to require regulated persons "to report all sales or

---

<sup>3</sup> When CSC staff receive questions and complaints concerning industries other than insurance, they typically refer these questions and complaints to the most appropriate Enforcement Division team; Commerce division; or state, local, or federal agency.

<sup>4</sup> If, during a complaint investigation, IET investigators find evidence that there was a violation of Minnesota law, they may recommend administrative action. The Assistant Commissioner for the Enforcement Division must approve administrative actions.

transactions that are regulated.”<sup>5</sup> IET can also issue subpoenas, and compel evidence and testimony under oath from persons, regardless of whether they are licensed by Commerce. Failure to respond to IET requests can result in court-imposed penalties.

When an IET investigator uncovers a violation of Minnesota insurance law, IET can negotiate a settlement, which may include monetary penalties and license suspension, or pursue more formal action.<sup>6</sup> IET investigators are required to have insurance industry experience and a thorough knowledge of insurance laws and industry practices. We discuss the volume and characteristics of complaints handled by CSC and IET in recent years in Chapter 3.

## Commerce Fraud Bureau

The Commerce Fraud Bureau is a law enforcement agency within the Enforcement Division that is responsible for investigating offenses related to criminal insurance fraud.<sup>7</sup>

Statutes direct the bureau to “review notices and reports of insurance fraud submitted by authorized insurers, their employees, and agents or producers...[and] respond to notifications or complaints of suspected insurance fraud generated by other law enforcement agencies, state or federal governmental units, or any other person.”<sup>8</sup> A Commerce official indicated that the bureau receives an overwhelming majority of fraud reports through the Online Fraud Reporting System maintained by the National Association of Insurance Commissioners. While the Online Fraud Reporting System is available to the public on the Commerce Fraud Bureau’s website, insurance providers are the most frequent users of the system to report suspected criminal fraud.<sup>9</sup>

By law, if the bureau “has reason to believe that insurance fraud has been or is being committed,” it “shall...initiate inquiries and conduct investigations.”<sup>10</sup> According to a Commerce official, bureau staff evaluate all complaints submitted to the bureau, but not all complaints receive a full investigation. This official told us the decision to conduct a full investigation depends upon a number of factors, including whether an allegation involves a criminal violation, the existence and scale of a financial loss resulting from the alleged crime, the quality of the information and evidence in the complaint, and whether the case is likely to be pursued by prosecutors.

---

<sup>5</sup> *Minnesota Statutes* 2021, 45.027, subd. 1.

<sup>6</sup> By law, IET can pursue settlements that allow involved parties to avoid more formal complaint resolutions, including a lengthier administrative hearing process. *Minnesota Statutes* 2021, 14.59.

<sup>7</sup> While statutes do not define insurance fraud strictly in terms of Minnesota’s criminal code, interviews with Enforcement Division staff indicate that the bureau only conducts criminal investigations. *Minnesota Statutes* 2021, 45.0135 and 609.611. The scope of the Commerce Fraud Bureau’s authority to conduct noninsurance investigations was the subject of an Office of the Legislative Auditor special review. Office of the Legislative Auditor, Special Review, *Department of Commerce Fraud Bureau* (St. Paul, 2022).

<sup>8</sup> *Minnesota Statutes* 2021, 45.0135, subd. 2b.

<sup>9</sup> The Online Fraud Reporting System is distinct from Commerce’s Consumer Complaint Portal, the online form used to submit complaints related to unfair or deceptive practices or other noncriminal violations of Minnesota insurance law.

<sup>10</sup> *Minnesota Statutes* 2021, 45.0135, subd. 2b.

By law, the bureau is like any other law enforcement agency. It can conduct investigations, gather evidence, make arrests, and prepare charges. However, the bureau often exercises these police powers in cooperation with, rather than independently of, other law enforcement agencies. Further, the bureau does not prosecute crimes, but must present charges to county attorneys, the Minnesota Attorney General, or federal prosecutors who make the final decision as to whether to move forward with prosecution. In fiscal years 2016 through 2020, the bureau received, on average, roughly 2,900 case referrals each year. During the same five-year period, the Commerce Fraud Bureau investigations resulted in a total of 595 state and federal criminal charges.

## Market Conduct Exam Team

The Enforcement Division's Market Conduct Exam Team is responsible for examining the business practices of insurance providers to ensure they are operating, at a company-wide level, in a way that is fair, equitable, and compliant with Minnesota law. As we discussed above, CSC and IET often conduct investigations into specific



### Market Conduct Exams

A review of an insurer's operations and management conducted to ensure the (1) equitable treatment of policyholders; and (2) compliance with applicable statutes and regulations. Exams can include one or more of the following topics: claim handling; policy rate and form filings; marketing and sales practices; advertising materials; policyholder service; underwriting and rating; complaint handling; licensing; nonforfeitures; and grievance policies.

— **National Association of Insurance Commissioners Market Regulation Handbook 2020, p. 182**

allegations of wrongdoing against individuals and companies. In contrast, the Market Conduct Exam Team oversees large investigations that can cover one company or groups of companies and address systemic or recurrent issues that affect all or a significant portion of policyholders. Aggregated complaint data and industry trends, in addition to individual complaints or reports of wrongdoing, can drive the selection of exam subjects and the scope of examination activities.

By law, the Market Conduct Exam Team “may examine the affairs and conditions of any foreign or domestic insurance or reinsurance company...at any time and for any reason related to the enforcement of the insurance laws, or to ensure that companies are being operated in a safe and sound manner and to protect the public interest...”<sup>11</sup>

Market conduct exams can be comprehensive or focused on a specific issue. They may be limited to Minnesota or involve multistate cooperation. They commonly last at least one year. Exams often include intensive reviews of insurance company transactional data, policies, rates, sales documents, and claims practices. At the state level, in Fiscal Year 2021, the exam team closed one exam, managed seven ongoing exams, and monitored four settlement agreements associated with previously completed exams.<sup>12</sup>

Like IET, if the Market Conduct Exam Team uncovers violations of Minnesota law, it can negotiate a settlement agreement with the subject of the exam, which may include monetary penalties and license suspension, or pursue more formal action.

<sup>11</sup> *Minnesota Statutes* 2021, 60A.031, subd. 1.

<sup>12</sup> The exam team also participated in some multistate exam activities.

## Fraud Prevention Activities

---

The National Association of Insurance Commissioners (NAIC) is a national standard-setting organization, coordinating body, and center of expertise and analysis for insurance commissioners. While NAIC describes responding to and investigating complaints as a “valuable service” that helps protect consumers, it also recommends more proactive measures to prevent and detect insurance fraud.<sup>13</sup> Insurance fraud is estimated to cost billions of dollars annually, raises rates for consumers, and can undermine insurers’ financial stability. Therefore, a proactive approach to insurance fraud prevention can benefit both insurance providers and consumers.

---

**The Enforcement Division largely focuses on responding to allegations of insurance fraud or misconduct, rather than on preventing fraud or misconduct.**

---

Despite engaging in limited activities to proactively prevent and detect fraud, a Commerce official described the Enforcement Division as “primarily a reactionary body.” CSC and IET specialize in responding to consumer and insurance industry complaints and questions. Similarly, the Commerce Fraud Bureau devotes most of its resources to investigating industry-submitted reports of alleged criminal fraud.

The Enforcement Division engages in some limited, proactive fraud prevention and detection activities. However, Commerce could more effectively promote a proactive approach to fraud prevention. We discuss these issues in the following sections.

## Examination as Prevention

The Market Conduct Exam Team may take a more proactive approach to enforcement than other Enforcement Division teams. This may allow the Market Conduct Exam Team to identify fraud and unfair or deceptive market practices at a company level before those practices result in individual complaints. It can take this proactive approach because, by law, the exam team can conduct comprehensive exams that cover all aspects of an insurance provider’s operations.<sup>14</sup> If the team uncovers new or unexpected issues or concerns during an exam, such as institutional fraud or deception, it can expand the scope of its examination activities to include the new issue or concern. Further, the Market Conduct Exam Team can start with an issue or concern of their choosing and then select insurance providers for examination based upon that issue or concern, among other factors.<sup>15</sup>

---

<sup>13</sup> *Consumer Complaint White Paper* (Washington, DC: National Association of Insurance Commissioners, 2000), 3.

<sup>14</sup> *Minnesota Statutes* 2021, 60A.031, subd. 2a.

<sup>15</sup> Discussions with Commerce officials and regulators from other states also inform the Market Conduct Exam Team’s choice of which companies to examine and what aspects of market conduct to evaluate. On occasion, the concerns of legislators or the Governor’s Office may guide the exam team’s choices of who or what to examine.



For example, if elected officials in Minnesota or insurance regulators in other states raise concerns about illegal kickbacks and excessive prices for a specific type of homeowners' insurance, the Market Conduct Exam Team can analyze market data to determine which Minnesota insurance companies have the greatest market share in that specific type of insurance. The team could review those companies' regulatory filings, reports from other states, and/or their complaint histories both in Minnesota and nationally. Based on this research, the Market Conduct Exam Team could then select one or more of these companies for an exam, even in the absence of a specific kickback or excessive pricing allegation by a Minnesota complainant. In contrast, most IET and CSC investigations involve a particular allegation and the specific company or individual named in a complaint.

Although the Market Conduct Exam Team can take a proactive approach to enforcement, the impact of their examination activities is limited due to their small size. As shown in Exhibit 2.1, the team consists of only two examiners who often hire private contractors to aid in exam work. As discussed above, the team closed one in-state exam in Fiscal Year 2021, a year in which more than 1,300 insurance companies were licensed in Minnesota. Absent a significant increase in exam team resources or a reduction in the size of Minnesota's insurance industry, the team's activities can include only a fraction of Minnesota insurance companies in a given year.

## Antifraud Plans

In its *Insurance Fraud Prevention Model Act*, NAIC recommends that states require insurers to "have antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent insurance acts. Antifraud initiatives may include: ...An antifraud plan submitted to the commissioner."<sup>16</sup> NAIC considers antifraud plans to be "a best practice for all insurers" that can "encourage insurers to take a proactive approach to fighting fraud."<sup>17</sup> In line with this NAIC guidance, Minnesota statutes require that "an insurer shall institute, implement, and maintain an antifraud plan" that establishes



### Antifraud Plan

An overview of an insurer's policies and practices concerning the prevention, detection, investigation, and reporting of all aspects of suspected insurance fraud.

— NAIC *Antifraud Plan Guideline*, p. 3

"procedures to: prevent insurance fraud; ...report insurance fraud to appropriate law enforcement authorities; and...cooperate with the prosecution of insurance fraud cases."<sup>18</sup> Further, law requires insurers to "within 30 days after instituting or modifying an antifraud plan...notify the commissioner in writing."<sup>19</sup>

<sup>16</sup> *Insurance Fraud Prevention Model Act* (Washington, DC: National Association of Insurance Commissioners, 2003), MO-680-6. NAIC model laws provide guidance for state lawmakers on how to update their insurance laws so that they are consistent with the laws of other states.

<sup>17</sup> *Antifraud Plan Guideline* (Washington, DC: National Association of Insurance Commissioners, 2021), GL-1690-1. NAIC also recommends that market conduct examiners review insurers' antifraud plans and activities during exams. Interviews with the Market Conduct Exam Team confirmed that some exams include reviews of antifraud plans or related procedures, but, as we discuss above, Market Conduct Exam Team activities include only a fraction of Minnesota insurers each year.

<sup>18</sup> *Minnesota Statutes* 2021, 60A.954, subd. 1.

<sup>19</sup> *Ibid.*

---

**By law, insurers are required to notify Commerce when they institute or modify their antifraud plan, but the department does not enforce this requirement for all insurers.**

---

Commerce staff confirmed that there is no clear process for following up with insurers that fail to notify Commerce of their antifraud plans, and, as a result, Commerce cannot consistently take administrative action when insurers fail to follow the antifraud plan notification requirements found in law. In addition, although law requires that insurers *notify* Commerce about their antifraud plans, there is no statutory requirement for insurers to *submit* their plans to Commerce or for Commerce to *review* their plans.

Three teams in two Commerce divisions review some insurance companies' antifraud plans under certain circumstances. An Insurance Division official told us they review antifraud plans during financial examinations of resident Minnesota insurers that typically occur once every three or five years, depending on the type of company.<sup>20</sup> However, since only about 4 percent of the insurance companies licensed in Minnesota hold a resident license, the Insurance Division examines antifraud plans for only 4 percent of insurance companies once every three or five years.<sup>21</sup> Similarly, while the Enforcement Division's Market Conduct Exam Team can review antifraud plans during its market conduct examinations, the team conducts only a limited number of exams each year. In addition, the team does not necessarily include antifraud plan reviews in every market conduct exam.

While statutes do not require insurers to submit antifraud plans or for Commerce to collect antifraud plans, some insurance companies do submit their plans to the department. When this occurs, the plans are routed to the Commerce Fraud Bureau. A Commerce official estimated that the bureau had received antifraud plans from less than one-quarter of the insurance companies licensed in Minnesota. The official added that while Commerce Fraud Bureau staff may contact some insurers when they do not submit a plan, the bureau lacks the staff to ensure all licensed insurers have filed an antifraud plan with Commerce.

Overall, Commerce's reviews of antifraud plans and related notifications are not coordinated across teams, and Commerce officials indicated that current staffing allows them to review the plans of only a small fraction of the insurance companies licensed in the state.

---

<sup>20</sup> Minnesota statutes define "resident" insurance providers as individuals or companies who claim that their principal place of residence or principal place of business is in Minnesota. *Minnesota Statutes* 2021, 60K.37. Statutes define nonresident insurance providers as individuals or companies who hold a resident license in a "home state" other than Minnesota. *Minnesota Statutes* 2021, 60K.39. By law, an insurance provider's "home state" is the District of Columbia or state or territory of the United States where it maintains a principal place of residence or business and is licensed as an insurance provider. *Minnesota Statutes* 2021, 60K.31, subd. 4.

<sup>21</sup> By law, nonresident insurance provider licensees are exempt from Minnesota prelicensing education and examination requirements if they hold a valid license in their home state and the other state grants similar exemptions for providers whose home state is Minnesota. *Minnesota Statutes* 2021, 60K.40; and 60K.53. Commerce officials indicated that nonresident insurers' home state regulators may review antifraud plans during home state licensing and/or examination processes.

---

## RECOMMENDATIONS

**The Legislature should review Commerce's responsibilities related to antifraud plans and ensure requirements outlined in law meet the Legislature's expectations.**

**The Department of Commerce should:**

- **Ensure all insurance companies notify the department when they institute or modify their antifraud plans, as required by law.**
  - **Coordinate antifraud plan review efforts across teams.**
- 

Minnesota statutes reflect, at least in part, most key recommendations in NAIC's *Insurance Fraud Prevention Model Act*, including provisions concerning antifraud plans. However, the Legislature should consider whether Minnesota's statutory requirements for antifraud plans reflect NAIC's more detailed *Antifraud Plan Guideline*.<sup>22</sup> Further, the Legislature should evaluate the importance of the plans to insurance companies, law enforcement, and Minnesota consumers. Currently, statutes *require* that all insurers institute and maintain antifraud plans that meet certain requirements and notify Commerce when they institute and modify their antifraud plans.<sup>23</sup> However, these same statutes *allow*, but do not require, Commerce to review antifraud plans and/or examine insurers' efforts to implement their antifraud plans.<sup>24</sup> The Legislature should consider whether these requirements reflect the importance of these plans and provide sufficient guidance to the department. If not, the Legislature should consider revising these statutes.

Currently, Commerce does not enforce key antifraud plan notification requirements found in law, and therefore, Commerce staff are not well-positioned to evaluate the fraud prevention activities of most insurance companies operating in Minnesota. At a minimum, Commerce should take steps to ensure that all insurance companies, including those with nonresident licenses, file notifications when they institute a new antifraud plan or modify an existing plan, as required by statutes. Further, Commerce should coordinate its antifraud plan activities across the department and clearly define who is responsible for receiving, reviewing, and storing antifraud plan notifications. Like any other insurance law, Commerce should follow up with and, if necessary, initiate administrative action against insurers who fail to meet the antifraud plan notification requirements found in law.

As stated above, Commerce is not required to review insurance companies' antifraud plans, but three separate teams in the department currently do so under certain circumstances. We recognize that resource constraints may prevent Commerce from conducting a detailed examination of antifraud plan implementation by all insurers, but when examinations do occur, they should be coordinated across teams and guided by a strategy that makes the most of the department's limited resources.

---

<sup>22</sup> *Antifraud Plan Guideline* (Washington, DC: National Association of Insurance Commissioners, 2021).

<sup>23</sup> *Minnesota Statutes* 2021, 60A.954, subd. 1.

<sup>24</sup> *Minnesota Statutes* 2021, 60A.954, subd. 2.



OLA

---

# Chapter 3: Complaint Characteristics and Intake Process

---

In this chapter, we focus on the Consumer Service Center (CSC) and Insurance Enforcement Team (IET), the Department of Commerce teams primarily responsible for reviewing and investigating complaints related to unfair or deceptive practices and civil fraud in the insurance industry. While they have similar functions, we explained in Chapter 2 that CSC and IET also have somewhat different responsibilities. Given the volume of complaints these teams handle, it is important that they have in place an efficient intake system to triage complaints and direct them to the appropriate investigators.

We begin this chapter by describing the volume and characteristics of civil insurance complaints handled by CSC and IET in recent years. We then describe CSC's intake policies for reviewing and routing complaints to the appropriate entity and analyze CSC and IET complaint investigation prioritization practices. We offer recommendations to clarify existing policies and create additional policies to ensure efficient practices.

## Key Findings in This Chapter

- The Consumer Service Center has established a policy for assigning civil insurance complaints for investigation, but policies are not sufficiently detailed and do not reflect current practices.
- Investigators prioritize some civil insurance complaint investigations over others, but written policies (1) do not establish prioritization criteria or timeframes for completing investigations and (2) differ from NAIC recommendations.<sup>a</sup>
- The Consumer Service Center and Insurance Enforcement Team performed at least some investigatory work on the majority of civil insurance complaints closed in fiscal years 2017 through 2021.

<sup>a</sup> NAIC refers to the National Association of Insurance Commissioners.

---

## Complaint Characteristics

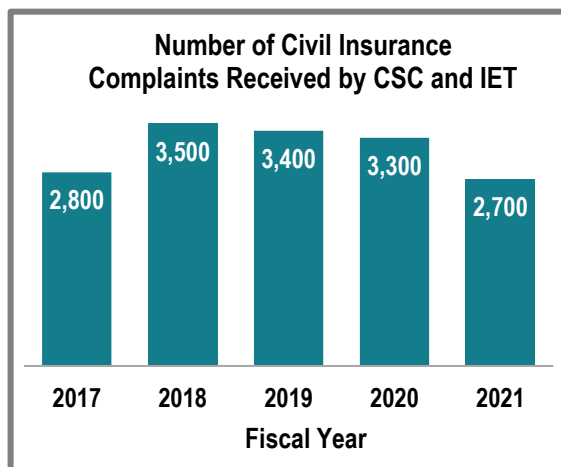
---

To understand the volume and characteristics of civil insurance complaints handled by CSC and IET, we reviewed department data for both complaints *received* and complaints *closed* in fiscal years 2017 through 2021.<sup>1</sup>

---

<sup>1</sup> We use the term “closed” to include both complaints for which CSC or IET completed full investigations and those for which they determined an investigation was not necessary or feasible.

CSC and IET received a total of about 15,700 civil insurance complaints in fiscal years 2017 through 2021. These teams received a high of roughly 3,500 complaints in Fiscal Year 2018 and a five-year low of about 2,700 in Fiscal Year 2021. Commerce officials speculated that the recent decrease in complaints was due to changes in consumers' behavior during the COVID-19 pandemic.



CSC and IET *closed* about 16,000 civil insurance complaints in fiscal years 2017 through 2021.<sup>2</sup> We reviewed data on these complaints to understand their characteristics.

---

**Insured individuals most frequently submitted the civil insurance complaints closed in fiscal years 2017 through 2021, and complaints most often pertained to claim handling issues, such as delays.**

---

Insured individuals submitted about 66 percent of all civil insurance complaints closed by CSC and IET in fiscal years 2017 through 2021, as shown in Exhibit 3.1. About 18 percent of investigations listed Commerce as the complainant, and third parties submitted about 7 percent of complaints. The remaining roughly 9 percent of complaints were submitted by a variety of others, including health insurers and insurance agents. Investigators list Commerce as the complainant if the complaint is submitted anonymously or if Commerce initiates the investigation. As an example, the department may initiate an investigation if the Insurance Division indicates that a company has done business in Minnesota without a proper license. Third-party complainants are those who make complaints against an insurance provider that is not their own. For instance, in a car accident, one driver may file a complaint against the other driver's automobile insurance company.

**6%**

**of all insurance complaints closed in fiscal years 2017-2021 involved civil fraud or forgery allegations.**

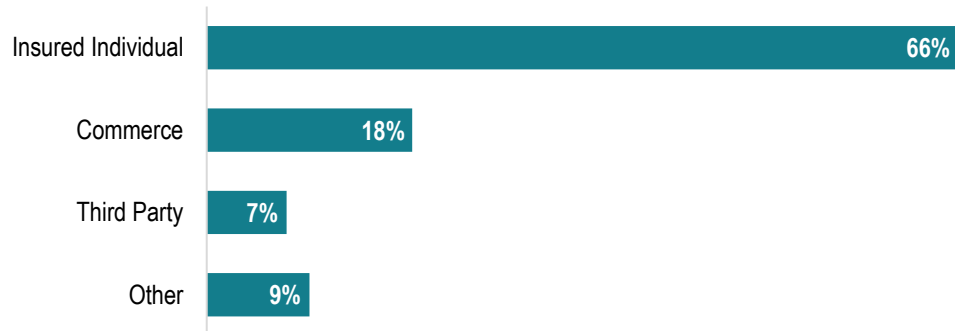
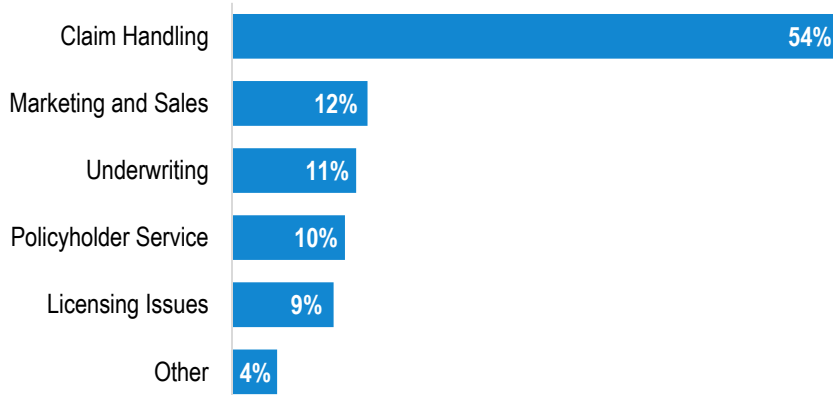
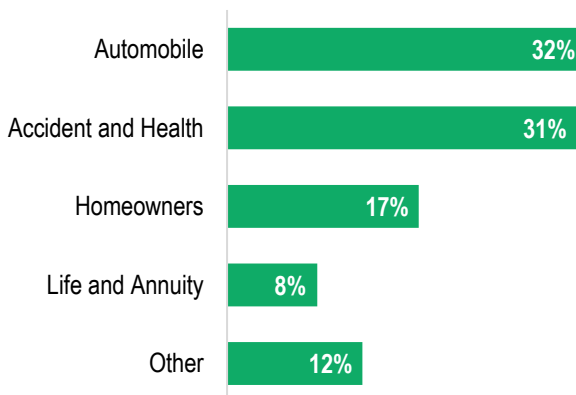
Commerce typically places complaints into one of five broad categories based on the topic of the complaint: claim handling, licensing, marketing and sales, policyholder services, and underwriting. More than half of all complaints closed in fiscal years 2017 through 2021 related to claim handling, as shown in Exhibit 3.1. The majority of these were regarding claim denials and delays. About six percent of complaints across all five categories pertained to allegations of civil fraud or forgery.

As shown in Exhibit 3.1, complaints closed by CSC and IET in fiscal years 2017 through 2021 were most commonly related to automobile and accident and health insurance.

---

<sup>2</sup> The total number of complaints received and the total number of complaints closed differed during our review period; this can occur when complaints are received in one fiscal year and closed in a following year.

---

**Exhibit 3.1: Investigators closed a variety of civil insurance complaints in fiscal years 2017 through 2021.****Complainant****Complaint Category****Type of Insurance**

NOTE: These graphs present characteristics of the roughly 16,000 complaints that Consumer Service Center and Insurance Enforcement Team investigators closed in fiscal years 2017 through 2021.

SOURCE: Office of the Legislative Auditor, analysis of Department of Commerce data.

---

## Complaint Intake Process

---

Consumers, insurers, and others submit complaints to Commerce using multiple methods. For complaints closed in fiscal years 2017 through 2021, complainants submitted roughly three-fourths of their complaints through an online form on the department's website. The remainder of complaints were referred from other state agencies or teams within Commerce, or submitted by e-mail, phone, or other methods.<sup>3</sup> In the sections below, we describe Commerce's intake process: receiving complaints, assigning complaints to investigators, and prioritizing complaints for investigation.

### Complaint Receipt

As the Enforcement Division's most public-facing team, one of CSC's duties is responding to insurance-related telephone calls. If possible, CSC staff try to resolve the caller's question or complaint immediately, by providing requested information or educating the caller about an insurance law or product; giving the caller information about who they should contact if their complaint is out of Commerce's jurisdiction; or informing the consumer that no further action will be taken due to the nature of their complaint.

When CSC staff cannot resolve a question immediately, staff direct the caller to submit a complaint using Commerce's online complaint form or by e-mail, physical mail, or fax. If requested by a caller, CSC staff can enter complaint details into Commerce's online complaint form on the consumer's behalf. Once CSC receives a complaint, the CSC intake specialist reviews the complaint to ensure it contains sufficient detail to be routed to the correct team.

### Complaint Assignment

CSC's intake specialist is responsible for reviewing, triaging, and assigning complaints to the correct team or division for investigation.

---

**The Consumer Service Center has established a policy for assigning civil insurance complaints for investigation, but policies are not sufficiently detailed and do not reflect current practices.**

---

CSC policy directs the intake specialist to route complaints under Commerce's jurisdiction to the appropriate team and refer those not under its jurisdiction to an entity with authority to address the complaint. The policy specifies deadlines and the order in which the intake specialist should process and route particular types of complaints.<sup>4</sup> In addition, the policy requires the intake specialist to route insurance-related complaints to CSC or IET, but does not make it clear how the intake specialist should decide whether to assign a complaint to CSC or IET. For example, the policy directs the intake specialist to

---

<sup>3</sup> CSC staff accepted in-person questions and complaints prior to the COVID-19 pandemic. A Commerce official told us that Commerce should have the capability to receive in-person questions and complaints once pandemic-related restrictions are lifted.

<sup>4</sup> For instance, policy directs the intake specialist to give "first priority" to questions and complaints that may need further research, managerial consultation, or outreach to determine where they should be routed.



assign “homeowners, auto, health, life, long-term care or other insurance issues related to claims or rates” to CSC, while also directing the intake specialist to route “all insurance complaints including life, health, auto, and homeowners” to IET. Policy provides no further detail or criteria for routing insurance-related questions and complaints.

Given this lack of guidance, the CSC intake specialist relies on their professional judgement and informal guidance from department officials to make routing decisions between civil investigation teams. In interviews, officials said they expected IET to investigate more complex insurance-related complaints or those involving potential legal violations such as civil fraud, deception, or misconduct. They also indicated that CSC investigates simpler insurance-related complaints. Despite the importance of these expectations for routing complaints to CSC and IET, complaint complexity and alleged legal violations are not identified as criteria to consider in CSC’s policy for assigning complaints.

Our interview with the intake specialist revealed that they do not always follow CSC policy when assigning complaints. For example, the intake specialist indicated that they process and route complaints in reverse of the order established by policy. Rather than processing CSC complaints last, as directed by policy, the intake specialist stated that they process CSC complaints first, because CSC gets a higher volume of complaints than other teams.

---

## RECOMMENDATIONS

### The Department of Commerce should:

- **Add detail to its policy regarding the importance of complaint complexity and legal considerations when assigning complaints for investigation.**
- **Either (1) ensure intake staff follow the current policy for assigning civil insurance complaints for investigation, or (2) update the policy to align with managerial expectations.**

---

Commerce officials should clearly communicate in policy their expectations for assigning complaints for investigation. The policy should be updated to include all the important criteria to consider when assigning cases for investigation. Given that it is typically IET rather than CSC that pursues administrative action on complaints, officials’ expectation that the intake specialist assigns complex complaints or those that may involve legal violations to IET seems appropriate. However, complaint complexity and potential for legal violations should be clearly defined and explicitly listed as important criteria for assigning cases in CSC policy.

The alignment of written policy, managerial expectations, and practices encourages consistency across staff as well as consistency over time. If CSC staff and department officials believe there is a more efficient or effective order to process complaints than

the order found in policy, officials should update the policy to reflect the preferred practice. Alternatively, if the order to process complaints found in policy is most efficient or effective, then staff should be trained on current policy and officials should ensure that assignment practice follows policy.

## Case Prioritization

In its 2020 *Market Regulation Handbook* investigation guidelines, the National Association of Insurance Commissioners (NAIC) recommends that state regulators “discuss establishing priorities for investigations to more efficiently address problems in a regulator’s state insurance marketplace” in order to “maximize an insurance department’s investigative resources.”<sup>5</sup>

In addition to establishing investigation priorities, NAIC recommends that the priority levels be based on specific criteria, including the extent to which the complaint involves consumer harm and the complaint history of the insurance professionals involved in the complaint. NAIC guidelines also associate higher priority levels with shorter timeframes for completing investigations. For example, NAIC recommends that investigations involving multiple or elderly victims, high dollar losses, or a high risk of continuing harm be assigned a high priority and completed within 60 days. In contrast, they recommend that a case involving little or no harm to consumers be assigned a low priority and be completed within 270 days.

---

**Investigators prioritize some civil insurance complaint investigations over others, but written policies (1) do not establish prioritization criteria or timeframes for completing investigations and (2) differ from NAIC recommendations.**

---

While CSC policy directs the intake specialist to prioritize some complaints over others when *assigning* complaints to investigators, it does not establish clear priority levels for *investigating* complaints. One CSC investigator said that they were not aware of a “hard” prioritization system for CSC investigations, and complaints investigated by CSC are typically not assigned a prioritization level in the case management system.

The same CSC investigator said that a Commerce official may call or e-mail staff to tell them to prioritize certain complaints over others. But the investigator indicated that the investigation process would not be significantly different for a higher priority complaint, other than trying to complete investigatory work as soon as possible. This ad hoc form of prioritization is not mentioned in written policy.

IET also lacks a policy that explains how investigators should prioritize complaints. Commerce data and staff confirmed that a Commerce official typically assigns a low, medium, or high priority level to complaints, a practice in line with NAIC recommendations. However, the Commerce official responsible for assigning priority

---

<sup>5</sup> *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019), 37. NAIC’s handbook is meant to assist states in developing investigation policies rather than offering a set of mandatory policies that must be adopted.

levels said they use professional judgment to assign priority levels, rather than relying on established, harm-based criteria, as recommended by NAIC.

Like CSC investigators, IET investigators stated that their investigative process is largely the same regardless of a complaint's priority level, but they try to work on higher priority cases first. One investigator said, "Although a high priority complaint takes priority, the medium and low priority complaints aren't too far behind in timeliness. Each complaint is important."

---

## RECOMMENDATION

**The Department of Commerce should develop written policies for prioritizing complaints for investigation. The policy should include timelines and criteria based on potential risk or harm to consumers.**

---

Both CSC and IET could benefit from written prioritization policies. As CSC and IET develop prioritization criteria, they should use NAIC recommendations as a guide. At a minimum, prioritization policies should include harm-based criteria to guide the assignment of prioritization levels. This should allow CSC and IET to more efficiently allocate investigative resources in ways that protect vulnerable populations and discourage forms of market conduct that are the most harmful to Minnesota consumers.

A prioritization policy should also clearly communicate how different priority levels should affect investigators' work, including how they manage their workload and collect evidence. Policy could set timelines for key investigation milestones that vary according to priority level. For instance, the maximum amount of time an investigation file can go without an update could be shorter for a high priority complaint as compared to a low priority complaint.

## Workload

Prioritization is particularly important in the event of unanticipated increases in complaint volumes or decreases in investigation staff. This is because most complaints—even those that do not warrant a full investigation—require at least some investigatory work.

---

**The Consumer Service Center and Insurance Enforcement Team performed at least some investigatory work on the majority of civil insurance complaints closed in fiscal years 2017 through 2021.**

---

Department data indicate that investigators performed at least one investigative activity on nearly 90 percent of the roughly 16,000 civil insurance complaints CSC and IET closed in fiscal years 2017 through 2021. Investigatory activities include sending e-mails or letters to complainants or respondents (the subjects of complaints), interviewing respondents, conducting research about relevant laws, and consulting with peers and supervisors. We describe the investigative process more thoroughly in Chapter 4.

While some complaints require investigators to perform numerous investigation activities, even those that can be closed quickly may require a limited investigation. For example, as we explained previously, policy directs staff to determine whether Commerce has jurisdiction over a complaint and, if not, refer the complainant to the appropriate entity. In this instance, an investigator may need to perform some investigatory work to determine the entity with jurisdiction over the complaint and contact the complainant to inform them before closing the case. An investigator told us they may also close a case if the complaint involves a consumer and insurance company disputing the facts of the case. In this case, the investigator may have to contact both the complainant and respondent to determine that the dispute described in the complaint involved a question of fact, and therefore, is outside Commerce's authority.<sup>6</sup>

Investigators indicated that there are times it can be difficult to conduct investigatory work for all complaints that require it. For example, an investigator estimated that one spike in complaints increased their caseload by about 25 percent. They said it is the nature of complaint-driven work—investigators cannot control or predict spikes in complaints. Others indicated that decreases in staffing can make their caseloads unmanageable. When these situations arise, establishing formal prioritization policies can help ensure the most urgent complaints are investigated first, thereby reducing the potential for harm to consumers.

---

<sup>6</sup> For example, if the consumer and insurance provider disagree about whether there was a hailstorm on a certain day, this would be considered a "question of fact," and Commerce could not determine who is correct. An investigator told us this type of determination must be made by a court.

---

# Chapter 4: Civil Insurance Complaint Investigations

---

The Department of Commerce receives complaints involving a wide variety of allegations. Complainants may allege that an automobile insurance company mishandled a claim related to an accident, an agent selling crop insurance filed incorrect rates, or a consumer provided inaccurate information on an application for life insurance, for example. These varied issues can require investigators to use different investigative methods and sources of information in order to determine whether the respondent (the subject of the complaint) violated Minnesota laws. Therefore, some flexibility in carrying out investigations is important in order for investigators to efficiently complete their work.

At the same time, it is important for Commerce to establish clear, well-communicated standards investigators are expected to follow in their investigations. Formal policies that establish standards can help ensure that all investigations meet expectations for quality and thoroughness. They can also ensure that complainants and respondents receive consistent information and services.

In this chapter, we review Commerce's policies for civil insurance complaint investigations and compare them to recommended practices in the industry. We review the Consumer Service Center's (CSC's) and Insurance Enforcement Team's (IET's) practices to determine how consistently investigators perform and document their work, and we offer recommendations for adopting additional formal policies and modifying certain practices to ensure consistency in the department's handling of civil insurance complaints.

## Key Findings in This Chapter

- The Department of Commerce's policies for investigating civil insurance complaints reflect some, but not all, key NAIC recommendations.<sup>a</sup>
- Consumer Service Center policies have not been well-communicated to staff and some are not currently in use.
- The Insurance Enforcement Team lacks formal policies to guide its investigations, and based on our review, investigators do not always follow consistent practices.

<sup>a</sup> NAIC refers to the National Association of Insurance Commissioners.

## Policies

---

Written policies are important to establish supervisor expectations, provide guidance for investigators, and encourage consistency across investigations. However, Commerce has not developed written policies to guide all of its civil insurance complaint investigations:

- The Enforcement Division has not adopted divisionwide investigation policies, although it is in the process of drafting policies.<sup>1</sup>
- IET has not adopted formal, written policies to guide its investigations.
- CSC has adopted written policies that guide some key aspects of its work.

In order to determine the extent to which CSC's policies and the draft Enforcement Division policies reflect recommended practices for complaint investigations within the insurance industry, we compared them to relevant recommendations and guidance from the National Association of Insurance Commissioners (NAIC) *Market Regulation Handbook 2020*.<sup>2</sup> Our analysis included 43 recommendations based on NAIC guidance that we grouped into four categories: **investigation activities**, **communication practices**, **data practices**, and **investigation closing and enforcement activities**.<sup>3</sup>

---

### The Department of Commerce's policies for investigating civil insurance complaints reflect some, but not all, key NAIC recommendations.

---

As shown in Exhibit 4.1, CSC policies at least partially address more than half of the 18 NAIC recommendations in the first category, **investigation activities**. For example, NAIC recommends that investigators document all investigative activity in case files.<sup>4</sup> In line with this recommendation, CSC policies direct investigators to track investigative activities on all cases so that if Commerce leadership requires "immediate access to the actions taken on any particular complaint...that detailed notes be available."<sup>5</sup> In other areas, CSC policies differ from NAIC recommendations. While NAIC recommends that investigators search internal databases and files, including licensing and investigation records, as well as relevant NAIC databases, CSC policies provide no guidance regarding which internal and external databases investigators should search during their investigations.<sup>6</sup>

---

<sup>1</sup> If implemented, the Enforcement Division's draft *Enforcement Operations Manual* would guide investigations concerning all Commerce-regulated industries, including insurance.

<sup>2</sup> NAIC's *Market Regulation Handbook 2020* is meant to assist states in developing investigation policies rather than offering a set of mandatory policies that must be adopted. *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019).

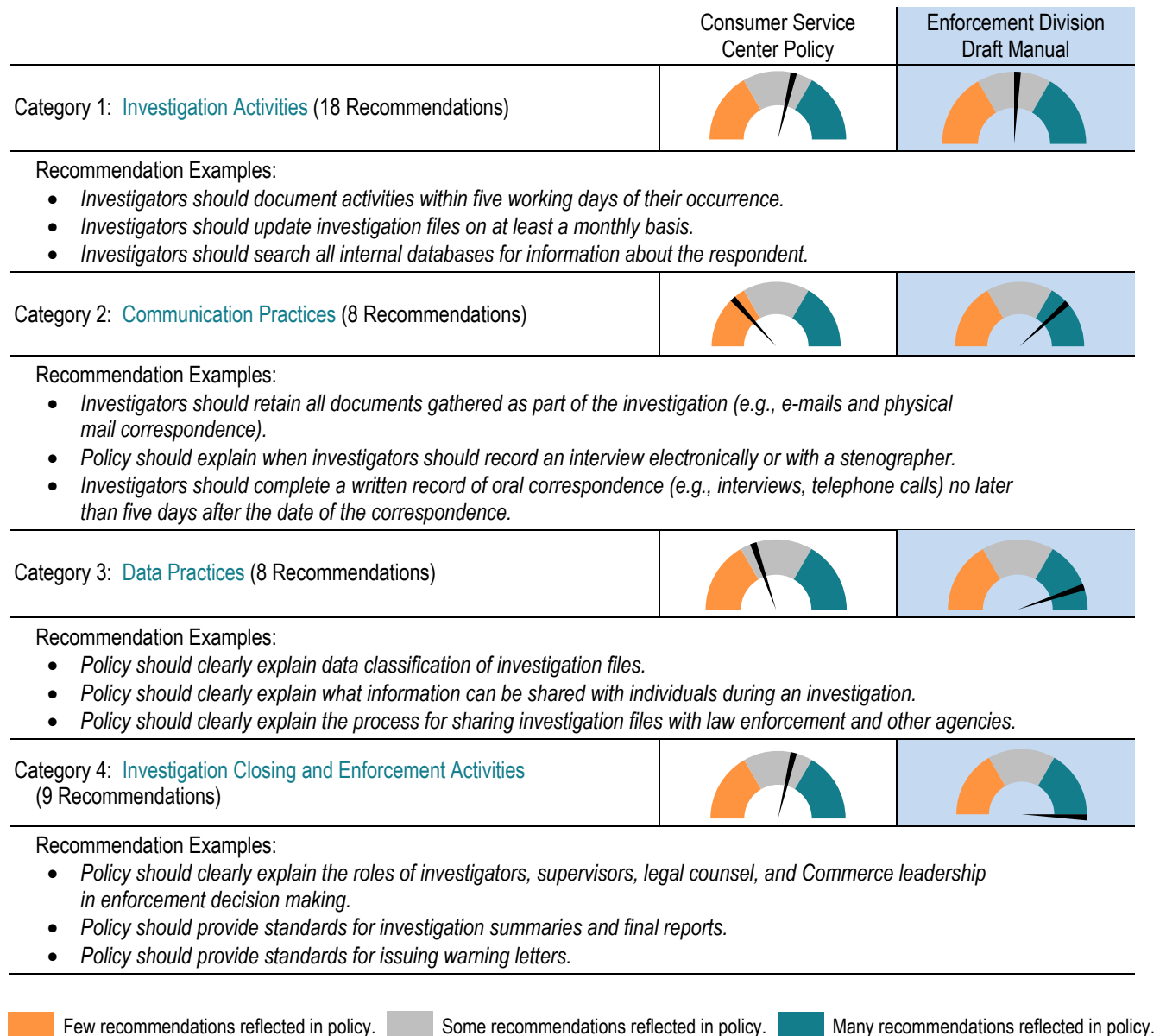
<sup>3</sup> *Ibid.*, 23-37. In addition to NAIC guidance, some recommendations also drew upon Minnesota insurance laws and data practices requirements.

<sup>4</sup> *Ibid.*, 28.

<sup>5</sup> Minnesota Department of Commerce, Enforcement Division, *Consumer Service Center – Policies & Procedures*, revised May 10, 2018, 11.

<sup>6</sup> *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019), 24-25.

## Exhibit 4.1: Commerce's policies only partially reflect NAIC recommendations for insurance investigations.



NOTES: Shaded dials represent draft policies not currently in use. We grouped recommendations based on the National Association of Insurance Commissioners (NAIC) guidance that we reviewed into the four categories shown above. Dials represent the percentage of recommendations in a given category that were reflected in Commerce policies in whole or in part.

SOURCES: *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2020); Minnesota Department of Commerce, Enforcement Division, *Assigning Incoming Inquiries & Complaints*, revised January 7, 2019; Minnesota Department of Commerce, Enforcement Division, *Consumer Service Center – Policies & Procedures*, revised May 10, 2018; and Minnesota Department of Commerce, Enforcement Division, *Enforcement Operations Manual Draft*, July 22, 2021.

CSC policies reflect fewer recommended practices related to the second and third categories: **communication** and **data practices**. Of the 16 recommendations we evaluated across the two categories, CSC policies address only 5 in whole or in part. For instance, NAIC recommends creating a written record of oral correspondence.<sup>7</sup> However, CSC policies provide minimal guidance on how to document the content of oral statements. CSC policy directs investigators to “document the call in [the case management system] as an action item phone call. Enter relevant comments in the Comment section” when informing complainants of an investigation outcome by phone.<sup>8</sup> But, CSC policies provide no guidance concerning what details are “relevant” or whether the investigators should document relevant details from phone calls that do not concern investigation outcomes. Similarly, as Exhibit 4.1 shows, CSC policies do not fully reflect several NAIC recommendations regarding data practices.

CSC policies reflect, at least in part, five of nine recommendations concerning the fourth category, **investigation closing and enforcement activities**. For example, NAIC recommends distinct roles for investigators, supervisors, legal counsel, and insurance commissioners in the enforcement process, which CSC policies do in part.<sup>9</sup> CSC policy language also reflects, in part, NAIC guidance concerning summary reports. However, CSC policies do not include other recommendations regarding closing investigations and enforcement, such as providing investigators with standards for drafting warning letters to the subjects of investigations.<sup>10</sup>

While CSC policies do not address many NAIC recommendations, the draft Enforcement Division policies, if implemented, would address additional NAIC recommendations and provide added clarity to investigators. For example, NAIC recommends that investigators become familiar with the confidentiality provisions of the insurance code.<sup>11</sup> The draft Enforcement Division policies discuss when some types of investigative data can be released to the public and what data should not be shared outside of Commerce.<sup>12</sup> Further, as NAIC recommends, the draft Enforcement Division policies discuss electronically recording interviews and administering oaths prior to interviews.<sup>13</sup> Neither element is mentioned in CSC policies. As shown in Exhibit 4.1, the draft Enforcement Division policies reflect more NAIC recommendations than CSC policies in three of the four categories we assessed.

At the same time, as noted in Exhibit 4.1, the draft Enforcement Division’s policies would not address all NAIC recommendations if implemented. For example, the draft

---

<sup>7</sup> *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019), 14 and 28.

<sup>8</sup> Minnesota Department of Commerce, Enforcement Division, *Consumer Service Center – Policies & Procedures*, revised May 10, 2018, 14.

<sup>9</sup> *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019), 26-27, 32, and 36-37.

<sup>10</sup> *Ibid.*, 19 and 81.

<sup>11</sup> *Ibid.*, 28.

<sup>12</sup> Minnesota Department of Commerce, Enforcement Division, *Enforcement Operations Manual Draft*, July 22, 2021, 26-29.

<sup>13</sup> *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019), 14 and 30.



policies do not require that investigators complete summaries of interviews within five days.<sup>14</sup> We offer recommendations to improve investigation policies for CSC, IET, and the Enforcement Division as a whole at the end of this chapter.

## Investigation Practices

---

As we noted in Chapter 2, both CSC and IET conduct investigations into complaints of deceptive or unfair practices and civil fraud in the insurance industry. We also noted that they have somewhat different roles. CSC has a greater focus on assisting complainants by providing education or attempting to resolve disputes; IET may pursue administrative action against those who do not comply with Minnesota laws.<sup>15</sup> As separate teams, they have different policies and practices, and we examined these to determine the extent to which policies were clear and practices were consistent. While the previous section compared policies to recommended practices, in this section we focus more on teams' actual practices. Where relevant policies exist, we also compared practices to those policies.

Although CSC and IET are separate teams, we identified common areas for improvement. We offer recommendations for both teams at the end of this chapter.

### Consumer Service Center (CSC)

We explained in Chapter 2 that CSC is responsible for answering consumer questions about insurance and handling simple insurance investigations. As its name suggests, the team focuses on customer service. CSC policies note that, even if there is no violation of Minnesota law, the investigator's goal should be to help resolve the complaint.

---

#### **Consumer Service Center policies have not been well-communicated to staff and some are not currently in use.**

---

We surveyed all seven CSC investigators and asked them whether the team has written policies that outline key aspects of their work, including when to contact complainants, which investigative activities to perform, and when to conclude an investigation. We received a mix of "Yes," "No," and "Not Sure" responses to each of the questions we asked, even though CSC has adopted policies regarding some of these activities (as noted in Exhibit 4.1). These responses indicate that, even for activities for which CSC has adopted policies, at least some investigators are unaware of them.

CSC's supervisor explained that, while the written policies are available for investigators to refer to, not all of the policies are currently in use. Further, current team expectations have not been communicated in a uniform way. The CSC supervisor told us that they communicate expectations verbally or through e-mail and that team

---

<sup>14</sup> *Market Regulation Handbook 2020 Volume I-IV* (Washington, DC: National Association of Insurance Commissioners, 2019), 28.

<sup>15</sup> If, during a complaint investigation, IET investigators find evidence that there was a violation of Minnesota law, they may recommend administrative action. The assistant commissioner of Commerce for the Enforcement Division must approve proposed administrative actions.

leaders train new staff on current expectations. In addition, the supervisor indicated that CSC investigators are expected to follow certain practices *not* included in the written policies; these practices are communicated verbally.

### **Investigative Activities**

CSC policies provide limited direction to investigators on how to conduct investigations. For example, policy directs investigators to conduct “preliminary substantive analysis of the issues” prior to contacting respondents but do not indicate what that analysis should entail. Policy also requires investigators to document their acknowledgement of the complaint, the response from the respondent, and closing letters. These policies indicate that—at a minimum—CSC investigators are expected to review the complaint, correspond with the complainant, contact respondents regarding the complaint, and review respondents’ replies during the course of their investigation.

---

### **Consumer Service Center policies set limited expectations that investigations include communication with complainants and respondents, and investigations generally followed these expectations.**

---

CSC staff confirmed that investigations typically rely on communication with complainants and respondents. One CSC investigator told us that, in general, their first step after receiving a complaint is to send an acknowledgement e-mail to the complainant. Then, they send the respondent, typically an insurance company, an e-mail that includes a copy of the complaint, any documents submitted by the complainant, a notice of Commerce’s statutory authority, and the insurance provider’s responsibility to respond to Commerce’s requests. Another investigator told us that they then review the insurance provider’s handling of issues and ensure that their actions were in accordance with regulations and insuring agreements. An investigator said some complaints require significant “back and forth” with the insurance provider.

Department data also confirmed that CSC investigations rely heavily on communication with those involved in the complaint. Investigators contacted individuals involved in the complaint—through e-mails, letters, or phone calls—in 98 percent of the investigations closed in fiscal years 2017 through 2021. Investigators conducted file reviews—which include reviewing the original complaint and respondents’ replies—on more than 60 percent of complaints closed in the past five fiscal years. Investigators recorded other actions—such as research beyond documents in the complaint file, coworker consultations, or interview preparation—on about 15 percent of complaint investigations.

Based on our review, CSC investigations typically met basic guidelines in policies. But, due to the lack of detail in CSC’s policies and the inconsistent way in which informal expectations are communicated, it was ultimately unclear the extent to which these activities conform to more detailed expectations.

## Timeliness

CSC policies establish timelines within which investigators are expected to complete certain actions. For example, policy indicates that investigators should contact complainants within five business days of complaint receipt to acknowledge the complaints and record the communication in the case management system. For complaints closed by CSC investigators in fiscal years 2017 through 2021, we determined how many days after opening the complaint investigators recorded their first communication.<sup>16</sup>

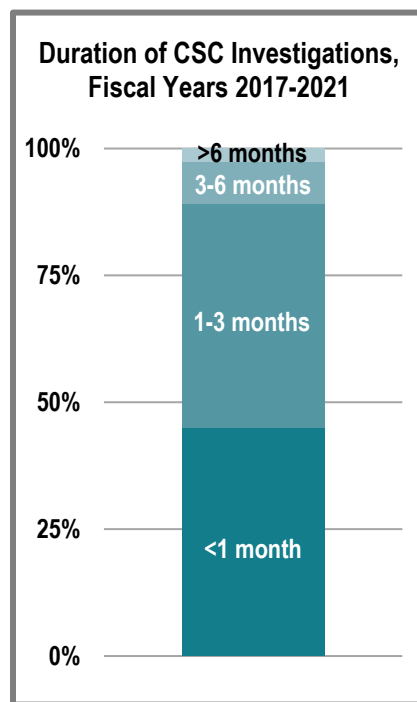
---

**Based on our analysis, investigators did not contact complainants within the required timeframe for more than one-quarter of complaints.**

---

For about 70 percent of complaints, investigators recorded their first contact within one week—which, including weekends, may fall within the required five business days. However, for the remaining roughly 30 percent of cases, investigators did not record any communication related to the complaint for more than seven calendar days. Investigators recorded their first e-mail, letter, or phone call an average of nine calendar days after opening the complaint.<sup>17</sup>

CSC policies do not establish a timeframe within which investigators must complete investigations, but about 45 percent of the investigations in the five-year period we reviewed concluded within one month. In fiscal years 2017 through 2021, CSC took a median of 35 days to complete investigations, with investigations lasting from less than one day to several years. A Commerce official told us that investigation durations vary, indicating that some complaints require more investigation than others.



## Communication and Data Practices

CSC policies establish some expectations for investigators' communication with complainants and respondents. For example, they are expected to provide complainants with specific information, including the investigator's name and e-mail address, as well as information about the complaint investigation process at the beginning of an investigation. Most required information is included in an acknowledgement letter template.

---

<sup>16</sup> Because the data did not indicate who the investigator contacted, we could not determine which communications were with complainants, rather than others involved in the case. For this reason, we treat our calculations as estimates.

<sup>17</sup> We were able to perform this analysis for about 98 percent of complaints closed by CSC in fiscal years 2017 through 2021. The remaining complaints did not record sufficient data on investigative activities to perform the analysis.

At the same time, as we noted in Exhibit 4.1, policies did not address several recommended communication practices, nor did they clearly lay out expectations for identifying and protecting private and not public data. The Minnesota Government Data Practices Act clearly states that data collected as part of a civil investigation are generally not public while the investigation is active.<sup>18</sup> However, statutes are less clear on data that can be shared once the investigation has closed. Statutes classify data collected for inactive civil investigations as public, but also restrict access to certain information, particularly when the complaint respondent is licensed by Commerce.<sup>19</sup> For example, statutes state that “the nature or content of unsubstantiated complaints” is private when the respondent is a licensee.<sup>20</sup>

---

**Consumer Service Center policies do not provide sufficient direction to investigators regarding their communications with individuals involved with an investigation.**

---

CSC policies simply direct investigators to review complaint files before closing them “to ensure compliance with the Minnesota Government Data Practices Act and other data privacy regulations.” Policies do not offer further information about how investigators should classify documents or identify protected information in compliance with the Act. We asked investigators whether they had received training on how the Minnesota Government Data Practices Act applies to their work, and all seven indicated that they had. However, the Act is complex and CSC’s written policies on data privacy are unclear, so it is uncertain whether investigators have the knowledge and resources to appropriately respond to complainants. The lack of detail related to data privacy in policies may lead to investigators sharing more information than is permitted, given that CSC policies state, “Even if there is no apparent violation...it should be the [investigator’s] goal to assist the consumer.... In some cases, the [investigator] must clearly detail why the complaint cannot be resolved.”

In our survey of CSC investigators, we asked them the extent to which it was clear what information they can and cannot share with complainants and, separately, with respondents. All seven investigators responded that it was clear what information they can and cannot share with complainants and respondents. But, they reported different practices related to *when* they contacted complainants. Policies state that it is important that complainants receive “periodic” updates. However, one investigator indicated that they did not typically contact complainants during the course of an investigation, another investigator stated that they only contacted the complainant if they needed more information, and a third indicated that the frequency of communication depended on the specific complaint.

---

<sup>18</sup> *Minnesota Statutes* 2021, 13.39, subd. 2(a).

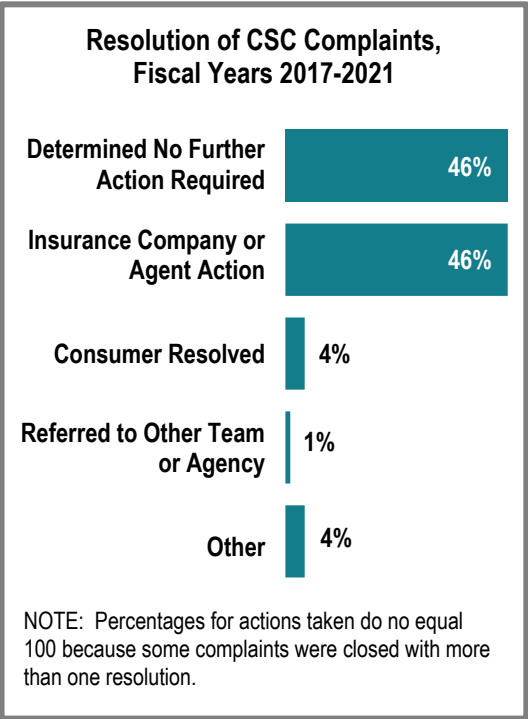
<sup>19</sup> *Minnesota Statutes* 2021, 13.39, subd. 3; and 13.41, subd. 2(a).

<sup>20</sup> *Minnesota Statutes* 2021, 13.41, subd. 2(a).

Closing Complaints

CSC policies provide only broad guidance on when to close a complaint. For example, policy states that investigators may take steps to close a complaint “once a good faith effort has been made to resolve complainant’s issue....” As we indicated in Chapter 2, CSC investigators generally do not take administrative action on complaints. If they believe the complaint involves a violation of Minnesota law—and may, therefore, require administrative action on the part of Commerce—CSC investigators typically

refer the complaint to IET. Investigators typically close complaints when they determine that no action is necessary or the insurance company or agent takes action to resolve the issue.



For nearly half of the roughly 9,600 complaints that CSC closed in fiscal years 2017 through 2021, investigators indicated that no administrative action on the part of Commerce or action on the part of the insurance company was required. These included complaints in which complainants did not submit sufficient information or did not respond to requests for information, complaints outside of Commerce’s jurisdiction, and other complaints in which Commerce investigators could not assist the complainant. An equal percentage of complaints were resolved by the insurance company taking action, such as resolving a claim delay or extending insurance coverage. The remaining complaints were resolved in a variety of ways, including complainants withdrawing the complaint or filing suit, or CSC referring the complaint to another team within Commerce or to another agency.

Insurance Enforcement Team (IET)

IET handles complex complaints related to unfair or deceptive practices, civil insurance fraud, and other potential violations of Minnesota insurance law. As previously explained, it also has the authority to take administrative action when a complaint involves violations of insurance law.

The Insurance Enforcement Team lacks formal policies to guide its investigations.

In contrast to the team-specific formal policies CSC has for several aspects of its work, IET has none. While the Enforcement Division as a whole is drafting policies that will apply to all teams in the division, IET does not have formal, team-specific policies. IET utilizes templates for key aspects of its work, such as acknowledgement letters to the complainant and letters requesting information from respondents, but otherwise IET has few written policies to guide its work and ensure consistent handling of complaints.

## Investigative Activities

In the absence of formal policies to guide the team's investigations, we analyzed department data, reviewed a sample of investigation files, and surveyed all IET investigators to determine how consistently investigators completed and documented investigative activities. During complaint investigations, IET investigators typically gather evidence, interview or correspond with respondents and complainants, review relevant statutes, and perform other investigative activities in order to determine if a violation of Minnesota law occurred.

---

### **Based on our review, Insurance Enforcement Team investigators do not always follow consistent practices.**

---

We analyzed the activities IET staff recorded for each complaint investigation closed in fiscal years 2017 through 2021 and found that they did not consistently record their activities in the case management system. For example, although all complaints in the system were assigned to a staff member for investigation, about three quarters of complaints did not include the date on which they were assigned. In addition, the IET supervisor told us that investigators are expected to acknowledge every complaint, either by letter or telephone call, but investigators did not record any contact—no letters, e-mails, or telephone calls—for about one-third of complaints closed in the five-year period.

We also reviewed 28 IET complaint investigation files and observed that documentation practices differed across files and did not always reflect expectations that Commerce officials described to us. Investigators are typically expected to acknowledge complaints, but 3 out of 17 files that should have an acknowledgment letter lacked this letter or other record of contact with the complainant.<sup>21</sup> Investigators are also typically expected to send a request for information to the respondent upon file assignment.<sup>22</sup> However, 6 of the 28 files we reviewed lacked a request for information to the respondent. It was unclear whether investigators did not reach out to the complainant or respondent at the beginning of an investigation or whether they did reach out but did not consistently record these actions in the file.

Similarly, we heard from a Commerce official that when IET investigators recommend administrative action on a complaint, they must write a memorandum outlining their recommendations. This memorandum must be reviewed and approved by the IET supervisor and the assistant commissioner. Yet, the files for 4 of 14 investigations we reviewed that resulted in administrative action lacked this memorandum. Two of these files that lacked a memorandum did contain evidence of review, such as an e-mail approving an investigator's work.

---

<sup>21</sup> In our review of 28 investigative files, we determined that only 17 would require an acknowledgement letter. The Department of Commerce was listed as the complainant in 11 cases. Investigators list Commerce as the complainant if the complaint is submitted anonymously or if Commerce initiates the investigation. In these cases, an acknowledgement letter to the complainant would not be necessary, because the complainant was Commerce itself.

<sup>22</sup> A Commerce official told us that IET investigators do not contact respondents at the beginning of an investigation that may involve agent misconduct when alerting the agent in question could negatively affect the investigation.

Statutes give the commissioner the authority to conduct investigations to determine whether any person has violated Minnesota insurance law and charge for investigations.<sup>23</sup> An official told us that IET's expectation is that investigators request an "investigation order" when they have reason to believe that a violation occurred. Investigation orders are required to bill investigation costs to respondents. Of the 14 files we reviewed that resulted in administrative action, 8 included an investigation order and 6 did not. A Commerce official told us that investigators within IET utilize different practices when it comes to requesting an investigation order, and it is an ongoing process to ensure IET investigators request investigation orders consistently. Therefore, some respondents who have violated Minnesota insurance laws may be charged for IET's investigative work, while others may not.

### **Timeliness**

Without policies in place, IET has not established formal timelines for completing key investigative activities, such as beginning an investigation, sending an acknowledgement letter to the complainant after receiving the complaint, or sending a request for information to the respondent.

Nevertheless, most IET investigators indicated that they follow at least some timelines. In our survey of all IET investigators, we asked if they have formal deadlines for any investigation milestone. Despite having none in formal policy, eight out of nine IET investigators told us that they have formal deadlines for at least one investigation milestone. Seven of these investigators told us that they must contact the complainant within two days. In addition, several of these investigators told us that they are expected to send a request for information to the respondent or another source within two days of receiving the complaint. Investigators did not state that there are any formalized deadlines within which an investigation must be completed, but four investigators said that no file may remain inactive for 60 days. Most investigators told us management informed them of these deadlines through team meetings or through e-mail. A Commerce official told us that management periodically shares these timelines with investigators but have not recorded them in a formal policy.

Commerce staff told us that each investigation is unique and, therefore, it would be difficult to create a general workplan that would fit all investigations. A Commerce official told us that some investigations may last a few weeks, while others may last more than a year, depending on the complexity of the case and the investigative activities required.

---

### **The Insurance Enforcement Team generally completed investigations within a reasonable period of time, but some investigations lasted multiple years.**

---

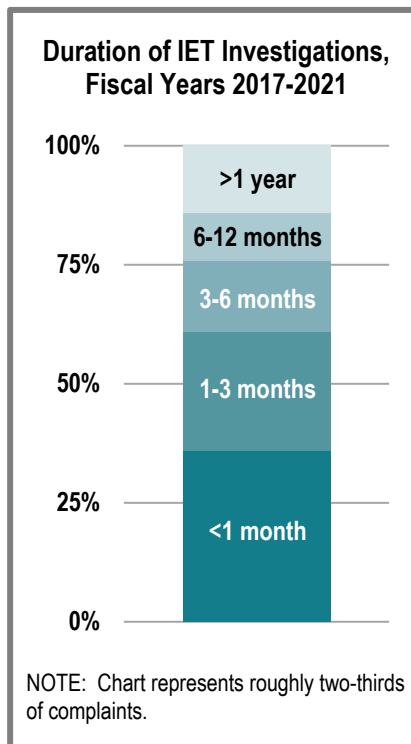
In our opinion, the timeframes within which investigators began investigating the majority of complaints were reasonable. For example, we examined the amount of time between a complaint's opening and the first investigative activity recorded in the file. Due to data inconsistencies we mentioned above, we were unable to calculate this

---

<sup>23</sup> *Minnesota Statutes* 2021, 45.027, subd. 1 (1) and (8).

timeframe for about 30 percent of the investigations IET closed in fiscal years 2017 through 2021. For the remaining 70 percent, investigators recorded an investigative action a median of two days after the case was opened.

IET also generally completed investigations within a timely manner. From fiscal years 2017 through 2021, complaint investigations closed within a median of 58 days. However, some investigations lasted an extended period of time; about 14 percent of cases were open for more than one year, as the box to the right shows. The duration of investigations ranged from less than one day to several years. A Commerce official told us that some investigations may last more than a year because the administrative hearing process can last a long period of time. The same official said it would be highly irregular for a case to last longer than a few years.



## Communication and Data Practices

During the course of investigations of insurance-related complaints, investigators typically communicate with respondents and complainants. However, IET has not implemented a formal written policy on what information investigators can share during the course of and after an investigation. Investigators within IET must comply with the Minnesota Government Data Practices Act.<sup>24</sup> We explained in the previous section that the Act is complex, and it therefore requires some interpretation. Investigators' ability to communicate appropriately and effectively with complainants in particular is further complicated by the department's recent changes in informal expectations.

Commerce staff reported that the amount of information investigators share with complainants when the department does not pursue administrative action has recently changed. According to Minnesota law, when Commerce takes administrative action against a respondent, that action is considered public and can be shared with the complainant.<sup>25</sup> However, the information investigators can share when Commerce does not pursue administrative action is less clear. Some IET investigators told us that, until recently, they typically shared more specific information with the complainant after concluding an investigation. But, they indicated that, based on advice from Commerce's legal counsel, this practice has changed.

Commerce's legal counsel reviewed and suggested revisions to the templates IET utilizes when sharing information with complainants and respondents; in general, these templates provide a limited amount of information. For example, there is a template closing letter for complainants when the department does not pursue action on the

<sup>24</sup> *Minnesota Statutes* 2021, 13.01, subds. 1 and 2.

<sup>25</sup> *Minnesota Statutes* 2021, 13.03; and 13.41, subd. 5.





Recently the Enforcement Team was provided new templates from Legal Services.... Some of the templates provided create a poor customer experience for stakeholders. For example, the closing letter to complainant template is very generic. It may upset a complainant that took the time to submit a well-thought out complaint only for the Department to send a generic letter stating it is closing the file without further explanation. The consumer could think that the Department is not exercising the level of care that it should or taking their concerns seriously.

— IET Investigator

complaint. The template informs complainants only that the investigation has closed without formal disciplinary action, without providing additional information. Some staff expressed concerns about the legal guidance and its impact on IET's ability to communicate effectively with those involved in the complaint. Some IET investigators told us that they wished they could share more information with complainants or respondents than the templates allow, as the box to the left illuminates. One official told us that the current templates do not capture the efforts that investigators take to investigate a complaint.

---

### The Insurance Enforcement Team does not provide complainants with consistent information after investigations.

---

In our survey of investigators, we asked IET investigators to what extent it is clear to them what information they can and cannot share with complainants. Five investigators told us that it was clear to them and four said it was somewhat clear to them.

Additionally, all nine investigators indicated that they received training on how the Minnesota Government Data Practices Act applies to their work. Despite this, in written responses, investigators indicated that they share different types of information with complainants. For example, five of the nine investigators indicated they follow the guidance developed by legal counsel and only share the information in the template described above. However, one investigator said that they generally share information about basic facts of the case and the investigation, and another investigator said that they provide information on statutes and whether violations were substantiated. In addition, a Commerce official told us that investigators do not follow the guidance in every case and that in some cases, investigators may provide more information in the closing letter or contact the complainant by phone.

### Closing Complaints

We explained in Chapter 1 that statutes provide Commerce with the authority to take administrative action when an investigation reveals violations of Minnesota insurance laws. In Chapter 2, we noted that IET carries out this responsibility. As shown in the box to the right, when IET determines that administrative action is appropriate, the department can issue a warning letter or pursue more serious administrative actions that can include monetary penalties and/or the loss or suspension of



#### Administrative Actions

**Cease and Desist Order:** order requiring a person to cease and desist from violations of law

**Civil Penalty:** monetary fine up to a specified amount based on number of violations or value of loss

**Licensing Action:** denial, suspension, or revocation of license or authority

**Warning:** letter to respondent identifying alleged violation of law

— *Minnesota Statutes 2021*,  
45.0135, subd. 9; and  
45.027, subds. 5a, 6, and 7

licenses.<sup>26</sup> A Commerce official told us that the department typically offers respondents a settlement, and they are generally able to come to an agreement. If the department and respondent do not agree on a settlement, Commerce may send the complaint to the Attorney General's office for a hearing at the Office of Administrative Hearings.<sup>27</sup>

When investigators determine that a complaint does not involve a violation of law, investigators may close complaints with a variety of other outcomes. For instance, the insurance company or customer may resolve the complaint.

#### Example of Settlement Agreement

Complainant alleged that an insurance agent issued a fake insurance policy. IET investigators corroborated the information and alleged the agent had violated Minnesota law. Commerce offered to settle; agent waived their right to a hearing and signed a consent order with the following penalties:

- (1) Insurance license revoked
- (2) \$10,000 civil penalty

### **Investigators determined that administrative action was not required for the majority of civil insurance complaints in fiscal years 2017 through 2021.**

Of the roughly 6,300 civil insurance complaints IET closed in the past five fiscal years, IET took administrative action on less than 20 percent.<sup>28</sup> This included \$2.9 million in civil penalties and fines during the five-year period—an average of \$584,000 each year.<sup>29</sup> More than one-half of the complaints on which Commerce took administrative action during fiscal years 2017 through 2021 were related to licensing issues, including failure to comply with continuing education requirements or failure to notify Commerce of an address change. Nearly 30 percent were regarding marketing and sales issues, such as fraudulent practices or misrepresentation.

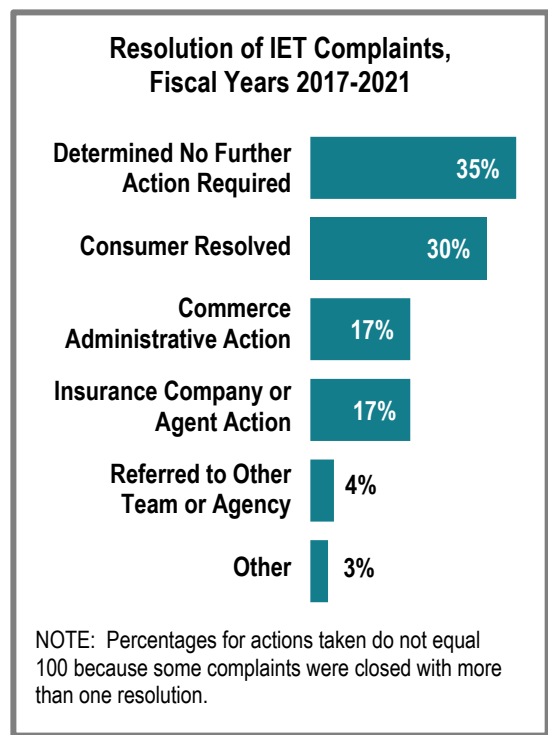
The largest percentage of complaints—about 35 percent—were closed in fiscal years 2017 through 2021 when investigators determined no further action was required. Some were closed due to barriers in Commerce's ability or authority to investigate the complaints. These included complaints that were not under Commerce's jurisdiction, those for which Commerce did not receive sufficient information to conduct a full investigation, and those in which the consumer did not respond to Commerce's communications. In other circumstances, respondents provided sufficient information

<sup>26</sup> *Minnesota Statutes* 2021, 14.59, provides parties with the option to pursue an informal disposition of a contested case through arbitration, stipulation, agreed settlement, consent order, or default.

<sup>27</sup> *Minnesota Statutes* 2021, 45.027, subds. 5a(b) and 7(b)(1); and 16D.17. When agreeing to a settlement, respondents may negotiate with Commerce officials on actions taken, and those actions are limited to what is expressly written in the agreement (consent order). In addition, only the consent order is made public. If a respondent contests Commerce's findings, Commerce issues an order detailing its investigative findings, and the respondent can request a hearing. The administrative law judge renders a decision, and the commissioner imposes a penalty, if appropriate. The hearing record is typically classified as public data. *Minnesota Statutes* 2021, 13.01, subd. 3; and 13.41, subd. 5.

<sup>28</sup> Commerce's data was not sufficiently detailed to determine what type of administrative action the department took in the majority of complaints.

<sup>29</sup> This total does not include a total of about \$272,000 in fines that were collected on 20 complaints closed by CSC in fiscal years 2017 through 2021.



for the investigator to determine that the complaint could be closed or that the company’s actions did not violate laws.

For about 17 percent of cases, Commerce recorded that the insurance company or agent had taken actions that resolved the complaint, such as reconsidering a claim, resolving delays, or extending insurance coverage. Commerce reported assisting consumers with recovering millions of dollars each year through its complaint investigation and resolution efforts. For about 30 percent of complaints, the *consumer* resolved the complaint in ways such as filing a lawsuit or withdrawing the complaint.<sup>30</sup>

IET has not adopted policies that direct investigators how and when to close a civil insurance complaint. While the draft Enforcement Division policies detail some administrative procedures investigators should follow for certain types of complaint resolution, these draft policies provide little information about how to determine which resolution is most appropriate.

While the IET supervisor told us they review certain aspects of each investigator’s complaint files two to three times per year, they do not review evidence investigators gathered to evaluate case resolutions. The supervisor described the review as more perfunctory.

**The process for determining how and when to close a complaint was not consistently documented in files we reviewed.**

IET did not consistently document decisions related to complaint resolutions in the 28 files we reviewed. The team’s supervisor told us that, for complaints that *did not involve* administrative action, they largely ensure consistency in the decision-making process through conversations with investigators. As we discussed previously, the supervisor told us that investigations that *did involve* administrative action should contain decision memorandums, but in our file review we found that was not always the case. Therefore, it was not always clear what process the investigator and wider team took to determine appropriate action on any given complaint investigation.

In our survey, we asked investigators how they determined when to recommend administrative action.<sup>31</sup> Five IET investigators told us they consult supervisors or teammates to determine whether they should recommend administrative action. Two

<sup>30</sup> Due to issues with the data, percentages should be treated as estimates. For example, although Commerce officials told us that only IET imposes penalties on complaint respondents, data showed that for more than 20 complaints closed by CSC, the department imposed an administrative action.

<sup>31</sup> We used the term “enforcement action” in our survey, as that is the term used within the Enforcement Division. For readability, we use the term “administrative action” throughout the report.

investigators said they consider previous violations. One investigator said, "...there is not a one size fits all approach as to when to recommend an enforcement action because each case is unique."

## Discussion

In this chapter, we have noted some areas in which policies are unclear or practices are inconsistent. At the same time, it is important to note that there appears to be high morale among investigators. In our survey, investigators indicated that they felt that their team performs high-quality, fair, and well-researched investigative work. For example, eight investigators commented that they felt their team performs good work or achieves positive outcomes. Three investigators indicated that they felt their team provides high-quality customer service, such as navigating stressful situations well or educating consumers.



Our team is invaluable. Millions of dollars in claims being paid or refunds being generated have gone out to various Minnesota consumers due to Investigators handling various complaints over the years. Although the Department cannot compel a licensee to pay claims, the Department's involvement often leads to pending claims being paid. Investigators have held licensees who have violated Minnesota law accountable when appropriate and have generated a great deal of money in civil penalties over the years as well.

— IET Investigator

In addition, despite the high volume of complaints, most investigators told us they felt their caseload was at least somewhat manageable. In our survey, 7 of the 16 investigators told us their caseload is manageable, 7 said it is somewhat manageable, and 2 said it is somewhat unmanageable. Both the IET and CSC investigators we interviewed told us they feel they get sufficient support from their supervisors. In our survey, the majority of investigators also told us that they consulted with their supervisors about various aspects of their work, including when to conclude an investigation and when to pursue administrative action.

While most investigators showed a fairly positive attitude towards their work, we believe it could be improved by making some changes, which we describe below.

## Investigative Activities

IET has not adopted formal team-specific policies for their work. While CSC has created some policies for its investigators, we discovered that CSC's policies have not been consistently enforced by management, and some staff were unaware of their existence. Further, we determined that these policies do not reflect some NAIC recommendations. For example, NAIC recommends that investigators create a written record of *every* interview, but CSC policies do not.

The Enforcement Division has drafted additional policies that would pertain to both IET's and CSC's work. These would at least partially address a number of NAIC's recommendations. However, these policies have not yet been finalized or implemented, and they also do not address some key aspects of investigators' work.

---

## RECOMMENDATIONS

### The Department of Commerce should:

- **Adopt policies informed by NAIC recommendations that outline investigation and documentation standards for key components of civil insurance investigations.**
  - **Clearly communicate these policies to staff.**
  - **Ensure investigators consistently follow these policies.**
- 

Clear, formal policies would help to ensure that investigators know what is expected of them and that complainants and respondents are treated equitably regardless of which team or individual investigator handles their complaint. We described several instances in this chapter in which investigators either did not perform key investigative activities, such as corresponding with complainants, or did not document those activities. Without proper documentation, it is unclear how management can review investigators' performance and ensure that they complete their work according to expected standards. And without clear communication standards, investigators may leave complainants waiting for long periods of time, unsure whether Commerce has taken action on their complaint.

Commerce officials should finalize policies for key aspects of investigators' work, including what information investigators are required to gather, what information to include in correspondence with complainants and others involved in the investigation, and when to recommend administrative actions. While doing so, they should consult NAIC recommendations and use these to inform policies. This will help ensure their policies address key aspects of the investigative process.

Policies should also clearly set standards for documenting investigative activities and other details about investigations in the case management system. We noted previously that staff did not always document key activities, such as the date of investigation assignments, in the system. We also found that staff did not always enter the source of the complaint, how the complaint was resolved, or other key information. Setting standards to ensure high-quality data can help supervisors better monitor investigators' work and analyze trends in complaints the teams receive.

After finalizing policies, officials should clearly communicate their expectations that investigators conduct their work according to policies and regularly review investigators' work to ensure their compliance. As we noted previously, the IET supervisor told us they perform a perfunctory review of investigators' work. The CSC supervisor told us that they monitor investigators' work throughout the year, but they do not review a specific number of files or meet with investigators on a set schedule. Regular supervisory review will help to ensure all investigators perform their work in line with established standards, which in turn will promote consistent customer services for complainants and treatment for respondents.

## Timeliness

In this chapter, we noted that CSC did not meet deadlines for contacting complainants for more than one-quarter of complaints. However, we also explained that, while IET has not established formal deadlines for beginning investigations after assignment, data showed that investigators began activity on most complaints relatively quickly. The median time it took to complete investigations was reasonable in our professional opinion, although some investigations were open for multiple years.

---

### RECOMMENDATION

**Commerce should establish formal timelines for completing key investigation activities, as well as written policies for reviewing complaints that are open for an extended period of time.**

---

We appreciate that Commerce officials have made efforts to establish some informal timelines. But, adopting formal expectations for timelines within which investigators are expected to complete key tasks, such as requesting information from respondents and recording updates on cases, will help ensure complaint investigations move forward in a timely manner. They will also help management hold investigators accountable to consistent standards and—with improved data input in the case management system—allow them to identify when timelines are consistently missed. This could indicate caseloads are becoming unmanageable, or that certain investigators need additional training or assistance.

While we recognize that some complaint investigations will take longer than others, Commerce should have in place a formal mechanism for regularly reviewing progress on cases that are open for an extended period of time, such as one year. While both IET and CSC supervisors told us they engage in ad hoc reviews of investigators' work, we also identified a number of cases that were incorrectly identified as open cases within Commerce's case management system. Some had actually been closed—potentially for years—and some had been assigned to investigators that no longer worked for Commerce. Without clear timelines and a policy for regularly reviewing cases to ensure compliance with those timelines, cases could fall through the cracks and remain unresolved.

## Communication

Part of CSC's core job—consumer service—is in the title of that team's name. As we noted in previous sections, CSC's current policies encourage investigators to assist the consumer and share with them why the complaint cannot be resolved if there is no apparent violation of law. This is in contrast to IET's current practices. We explained that Commerce's legal counsel has provided IET investigators with a form letter simply stating that the department will not be pursuing administrative action to send when investigators determine that no violation of law has occurred.

While it is encouraging that all investigators told us that they have received training on how the Minnesota Government Data Practices Act applies to their work, the Act is quite complicated with regard to investigative data. We believe that additional guidance would be helpful to promote effective, efficient communication, particularly between investigators and complainants.

---

## RECOMMENDATION

### **Commerce should establish policies for the frequency and content of communications with complainants and respondents.**

---

We recognize that each complaint has unique aspects and no policy will perfectly address each situation. However, we are concerned that there are differences in practices between IET and CSC, as well as within IET. We think it is important that the complainant understands whether their complaint was investigated and why the investigation concluded in the way it did. By being as transparent as the law allows, investigators can promote confidence in the work they perform. At the same time, we appreciate Commerce's dedication to protecting not public data. The divisionwide draft policies explain data classifications and other important aspects of the Act. However, the policies do not include other important pieces of information—such as how the Act treats information about respondents that are licensed by Commerce differently than other respondents.

We recommend that Commerce adopt consistent policies for communicating about civil insurance investigations that balance transparency and caution. For example, templates could potentially include the laws relevant to the issues raised in the complaint and an example of what would constitute a violation of those laws. They could also include a complainant's right to request public information. As another example, initial communication could contain more general information about the steps investigators typically take when investigating a complaint. Some of these steps could better inform complainants about investigations without violating law.



OLA



---

# List of Recommendations

---

- The Legislature should review Commerce’s responsibilities related to antifraud plans and ensure requirements outlined in law meet the Legislature’s expectations. (p. 17)
- The Department of Commerce should:
  - Ensure all insurance companies notify the department when they institute or modify their antifraud plans, as required by law.
  - Coordinate antifraud plan review efforts across teams. (p. 17)
- The Department of Commerce should:
  - Add detail to its policy regarding the importance of complaint complexity and legal considerations when assigning complaints for investigation.
  - Either (1) ensure intake staff follow the current policy for assigning civil insurance complaints for investigation, or (2) update the policy to align with managerial expectations. (p. 23)
- The Department of Commerce should develop written policies for prioritizing complaints for investigation. The policy should include timelines and criteria based on potential risk or harm to consumers. (p. 25)
- The Department of Commerce should:
  - Adopt policies informed by NAIC recommendations that outline investigation and documentation standards for key components of civil insurance investigations.
  - Clearly communicate these policies to staff.
  - Ensure investigators consistently follow these policies. (p. 43)
- Commerce should establish formal timelines for completing key investigation activities, as well as written policies for reviewing complaints that are open for an extended period of time. (p. 44)
- Commerce should establish policies for the frequency and content of communications with complainants and respondents. (p. 45)



OLA

---

February 2, 2022

Judy Randall  
Legislative Auditor  
Office of the Legislative Auditor  
140 Centennial Building  
658 Cedar Street  
St. Paul, MN 55155  
**Via E-Mail** - [Legislative.Auditor@state.mn.us](mailto:Legislative.Auditor@state.mn.us)

Dear Ms. Randall,

Thank you for the opportunity to comment on the Office of the Legislative Auditor's ("OLA") evaluation report of the Department of Commerce's (the "Department") Civil Insurance Complaint Investigations. The Department appreciates the time and effort that OLA's staff dedicated to understanding the Department's civil insurance investigations, as well as the constructive feedback for improving our processes and policies.

The Department's Enforcement teams work diligently to prevent, detect, investigate, and respond to violations of Minnesota's insurance laws. The Department's Consumer Services Center ("CSC") provides intake for complaints, consumer education, and attempts to resolve less complex questions or complaints. When that is not possible, it refers matters to the Insurance Enforcement Team ("IET"). IET investigators are experienced insurance industry experts. All IET investigators either have, or are working towards, an Associate Professional in Insurance Regulation accreditation, and two investigators are currently enrolled in an advanced accreditation program.

The volume of insurance enforcement work is great. In 2021, the Department's Consumer Services Center (CSC) and the Insurance Enforcement Team (IET) received 36,757 calls related to insurance issues.<sup>i</sup> During the same period, these teams opened 5,263 investigation files and closed 5,022 files. The teams' combined efforts resulted in over \$28 million being returned to Minnesota consumers from 2017 - 2021.

The Department attempts to strike an appropriate balance between instituting sufficient policies and procedures while also allowing for some investigator and/or supervisor discretion in prioritizing and allocating resources to sufficiently address the sometimes rapidly changing needs of Minnesotans. For example, in response to complaints related to Covid-19 and the civil unrest in Minneapolis in the spring and summer of 2021, the Department chose to reprioritize investigative resources to respond to those crises. However, the Department acknowledges the need to review, refine, and supplement its current

operating procedures and policies. The Department is also committed to increasing training and communication to ensure that CSC and IET staff are appropriately trained in their policies and procedures. We will use the recommendations contained in this report to guide our continued improvement processes.

The Department understands the OLA's concerns about preventing insurance fraud in Minnesota. The Department believes that the licensing process, financial solvency exams, and market conduct exams play a significant role in preventing fraud. Additionally, the Department believes that individual enforcement actions also play a role in fraud prevention. Not only do enforcement actions prevent wrongdoers for engaging in further acts of fraud, but they also serve as a deterrent to others from engaging in similar fraudulent practices.

In an effort to enhance anti-fraud measures, the Department is committed to working with insurance companies primarily regulated in Minnesota and will refine our cross-team processes to ensure insurers follow Minnesota anti-fraud plan reporting requirements. The Department also supports the OLA's recommendations that the legislature consider and clarify its intent behind requiring Minnesota domiciled insurance companies to notify the Department of its anti-fraud plans, and whether more robust reporting such plans would better benefit Minnesotans.

The Department appreciates the time and effort that the OLA dedicated to undertaking a detailed review of its insurance related investigatory processes and policies. The Department is committed to continued improvements to best protect the public interest; advocate for Minnesota consumers; ensure a strong, competitive, and fair marketplace; strengthen the state's economic future; and serve as a trusted public resource for consumers and businesses.

Sincerely,



Grace Arnold  
Commissioner

---

<sup>i</sup> Commerce Department Annual Customer Satisfaction Memorandum pursuant to Minn. Stat. § 45.022  
[https://www.lrl.mn.gov/mndocs/mandates\\_detail?orderid=2200](https://www.lrl.mn.gov/mndocs/mandates_detail?orderid=2200).

## **Forthcoming OLA Evaluations**

*Emergency Ambulance Services*

*Minnesota Department of Education's Role in Addressing the Achievement Gap*

*Petroleum Remediation Program*

*Unemployment Insurance Program: Efforts to Prevent and Detect the Use of Stolen Identities*

## **Recent OLA Evaluations**

### **Agriculture**

*Pesticide Regulation*, March 2020

*Agricultural Utilization Research Institute (AURI)*, May 2016

*Agricultural Commodity Councils*, March 2014

### **Criminal Justice and Public Safety**

*Driver Examination Stations*, March 2021

*Safety in State Correctional Facilities*, February 2020

*Guardian ad Litem Program*, March 2018

*Mental Health Services in County Jails*, March 2016

*Health Services in State Correctional Facilities*, February 2014

*Law Enforcement's Use of State Databases*, February 2013

### **Economic Development**

*Minnesota Investment Fund*, February 2018

*Minnesota Research Tax Credit*, February 2017

*Iron Range Resources and Rehabilitation Board (IRRRB)*, March 2016

### **Education (Preschool, K-12, and Postsecondary)**

*Collaborative Urban and Greater Minnesota Educators of Color (CUGMEC) Grant Program*, March 2021

*Compensatory Education Revenue*, March 2020

*Debt Service Equalization for School Facilities*, March 2019

*Early Childhood Programs*, April 2018

*Perpich Center for Arts Education*, January 2017

*Standardized Student Testing*, March 2017

*Minnesota State High School League*, April 2017

*Minnesota Teacher Licensure*, March 2016

*Special Education*, March 2013

### **Environment and Natural Resources**

*Public Facilities Authority: Wastewater Infrastructure Programs*, January 2019

*Clean Water Fund Outcomes*, March 2017

*Department of Natural Resources: Deer Population Management*, May 2016

*Recycling and Waste Reduction*, February 2015

*DNR Forest Management*, August 2014

*Conservation Easements*, February 2013

*Sustainable Forest Incentive Program*, November 2013

### **Financial Institutions, Insurance, and Regulated Industries**

*Department of Commerce's Civil Insurance Complaint Investigations*, February 2022

### **Government Operations**

*Office of Minnesota Information Technology Services (MNIT)*, February 2019

*Mineral Taxation*, April 2015

*Councils on Asian-Pacific Minnesotans, Black Minnesotans, Chicano/Latino People, and Indian Affairs*, March 2014

### **Health**

*Office of Health Facility Complaints*, March 2018

*Minnesota Department of Health Oversight of HMO Complaint Resolution*, February 2016

*Minnesota Health Insurance Exchange (MNSure)*, February 2015

*Minnesota Board of Nursing: Complaint Resolution Process*, March 2015

### **Human Services**

*DHS Oversight of Personal Care Assistance*, March 2020

*Home- and Community-Based Services: Financial Oversight*, February 2017

*Managed Care Organizations' Administrative Expenses*, March 2015

*State-Operated Human Services*, February 2013

*Medical Assistance Payment Rates for Dental Services*, March 2013

### **Jobs, Training, and Labor**

*State Protections for Meatpacking Workers*, 2015

*State Employee Union Fair Share Fee Calculations*, July 2013

### **Miscellaneous**

*Board of Cosmetology Licensing*, May 2021

*Minnesota Department of Human Rights: Complaint Resolution Process*, February 2020

*Public Utilities Commission's Public Participation Processes*, July 2020

*Economic Development and Housing Challenge Program*, February 2019

*Minnesota State Arts Board Grant Administration*, February 2019

*Board of Animal Health's Oversight of Deer and Elk Farms*, April 2018

*Voter Registration*, March 2018

*Minnesota Film and TV Board*, April 2015

### **Transportation**

*MnDOT Workforce and Contracting Goals*, May 2021

*MnDOT Measures of Financial Effectiveness*, March 2019

*MnDOT Highway Project Selection*, March 2016

*MnDOT Selection of Pavement Surface for Road Rehabilitation*, March 2014

*MnDOT Noise Barriers*, October 2013



**OFFICE OF THE LEGISLATIVE AUDITOR**  
CENTENNIAL OFFICE BUILDING – SUITE 140  
658 CEDAR STREET – SAINT PAUL, MN 55155