

Department of Personnel & Administration

Office of Administrative Courts

Performance Audit
November 2024
2358P



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November 22, 2024

Members of the Legislative Audit Committee:

This report contains the results of a performance audit of the Office of Administrative Courts (OAC). The audit was conducted pursuant to: (1) Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of state government; (2) Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act; and (3) Section 8-47-101(3)(d)(II), C.R.S., which requires that our performance audits of OAC review certain information with respect to workers' compensation cases. This report presents our findings, conclusions, and recommendations, and OAC's responses.

Kerri L. Hunter



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Report Highlights

Office of Administrative Courts

Department of Personnel & Administration

Performance Audit • November 2024 • 2358P



OFFICE OF THE STATE AUDITOR

C O L O R A D O

Key Concern

The Office of Administrative Courts (OAC) has taken steps to strengthen its operations and services since our 2012 performance audit. Our current audit found that OAC made a number of improvements in recent years to address prior audit findings and enhance its operations. However, OAC could further improve its timeliness of handling workers' compensation cases and Medicaid cases, and aspects of its customer service and administration.

Key Findings

- OAC generally met case and hearing timeliness requirements and goals, which are intended to help ensure parties are not negatively affected by untimely administrative court processes. Specifically:
 - 96 percent of workers' compensation hearings and 94 percent of related orders met the timeliness requirements in statute.
 - Medicaid cases were less timely, with 76 percent of cases involving the general Medicaid population, and 63 percent of cases involving special populations (needing enhanced health care services), meeting OAC's internal timeliness goals.

Cases were typically untimely due to parties requesting delays. For factors in OAC's control, there was some inconsistent case data tracking, case management, and timeliness monitoring, and OAC's timeliness goals for Medicaid hearings may be unrealistic given the complexity of some cases.
- Public perception of OAC and its services has improved since our 2012 audit. Parties in cases, state agencies, and stakeholders that interact with OAC report that they have been mostly satisfied with OAC's customer service. However, OAC could further improve its services and public perception by enhancing its communication with parties, website information and hearing guidance, and methods for collecting and addressing feedback from parties.
- OAC has taken steps to improve its administration since 2012, such as by implementing a new case management system. OAC could make further improvements by improving the quality of its case management data and information, developing more consistent virtual hearing processes, and creating procedures to help ensure Administrative Law Judges (ALJs) apply conflicts of interest standards consistently.

Background

- OAC administers Colorado's centralized, executive branch administrative court system, to provide easily accessible, independent, and cost-effective adjudication of disputes that people served by government programs have related to the government's application of statutes, rules, and regulations.
- Administrative hearings are intended to save the time and expense of litigation in district court. OAC offers in-person hearings in Denver, Colorado Springs, and Grand Junction, and provides virtual hearings.
- In Calendar Year 2023, OAC opened 9,274 cases, completed 1,592 hearings, and served more than 50 state agencies, boards, and other entities. Most cases related to workers' compensation or Medicaid, which were the focus of this audit.
- OAC is administered by the Chief Judge who is also the OAC Director. As of June 2024, OAC had 19 ALJs who presided over hearings, and 20 support staff.

Audit Recommendations Made

12

Responses

Agree: **12**

Partially Agree: **0**

Disagree: **0**



Chapter 1

Overview

The Office of Administrative Courts (OAC), within the Department of Personnel & Administration (DPA), administers Colorado’s centralized, executive branch administrative court system. OAC was created to provide the State with an accessible, independent, and cost-effective process to hear and resolve administrative disputes related to the government’s application of statutes, rules, and regulations. Resolving such disputes in administrative court helps agencies and the public avoid the time and expense of litigation in district court. Administrative Law Judges (ALJs) preside over hearings that include testimony provided by witnesses and the submission of documents.

Overview of OAC Services

OAC adjudicates hearings for more than 50 state agencies, boards, and other entities, such as public school districts and universities, in two categories of cases—workers’ compensation and general services—as follows:

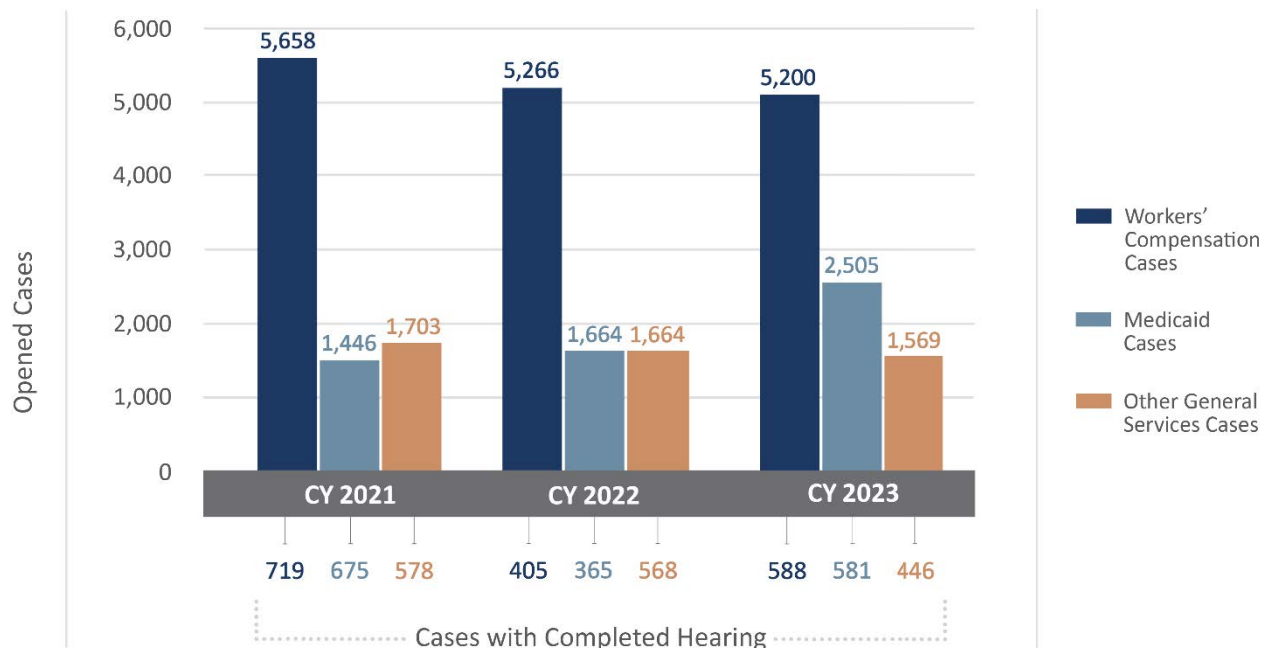
- **Workers’ compensation cases** relate to disputes in workers’ compensation claims between an injured worker and their employer, or their employer’s insurance carrier. These cases typically relate to liability and compensability decisions, employer coverage enforcement, or disability eligibility. Any party to a workers’ compensation claim—the injured worker, employer, or insurance carrier—may appeal a decision made by the Division of Workers’ Compensation (DOWC) within the Department of Labor and Employment to OAC.
- **General services** are all other cases that do not relate to workers’ compensation. In these cases, an appellant is typically appealing a decision made by a state agency, including the Departments of Health Care Policy and Financing (HCPF), Human Services, Labor and Employment, and Regulatory Agencies. Altogether, OAC adjudicates at least 50 different types of cases under the general services umbrella, covering a range of topics, such as Medicaid and other public benefits and services, various professional licenses, and child/adult abuse registry decisions. OAC may also hear non-state agencies’ cases, such as those related to teacher disciplinary actions by school districts and public retirement board decisions.

Trends in OAC Cases and Hearings

As shown in Exhibit 1.1, in Calendar Year 2023, OAC opened 9,274 cases and conducted 1,592 hearings. Most of OAC's cases related to workers' compensation or Medicaid, and the number of cases has remained relatively steady since Calendar Year 2021. After the COVID-19 pandemic and public health emergency, OAC's Medicaid case workload increased due to recipients filing more appeals because the federal government ended a moratorium on disenrolling Medicaid recipients in May 2023, which resulted in some recipients no longer being eligible. For more information on case workload for OAC's ALJs, see Appendix B.

Exhibit 1.1

OAC Opened Cases Compared to Completed Hearings, by Case Type Calendar Years 2021 through 2023



Source: Office of the State Auditor analysis of data provided by the Office Administrative Courts.

As shown in Exhibit 1.1, most cases do not result in a hearing, which could be for a variety of reasons. For example, parties may use the appeals process as a negotiation tool and then settle the case prior to hearing, or a party may fail to provide OAC with complete documentation or decide to withdraw their appeal.

This audit focused on the workers' compensation cases and general services Medicaid cases that OAC adjudicates, which, collectively, represented more than 80 percent of the Calendar Year 2023 cases. All other general services cases were outside the scope of this audit.

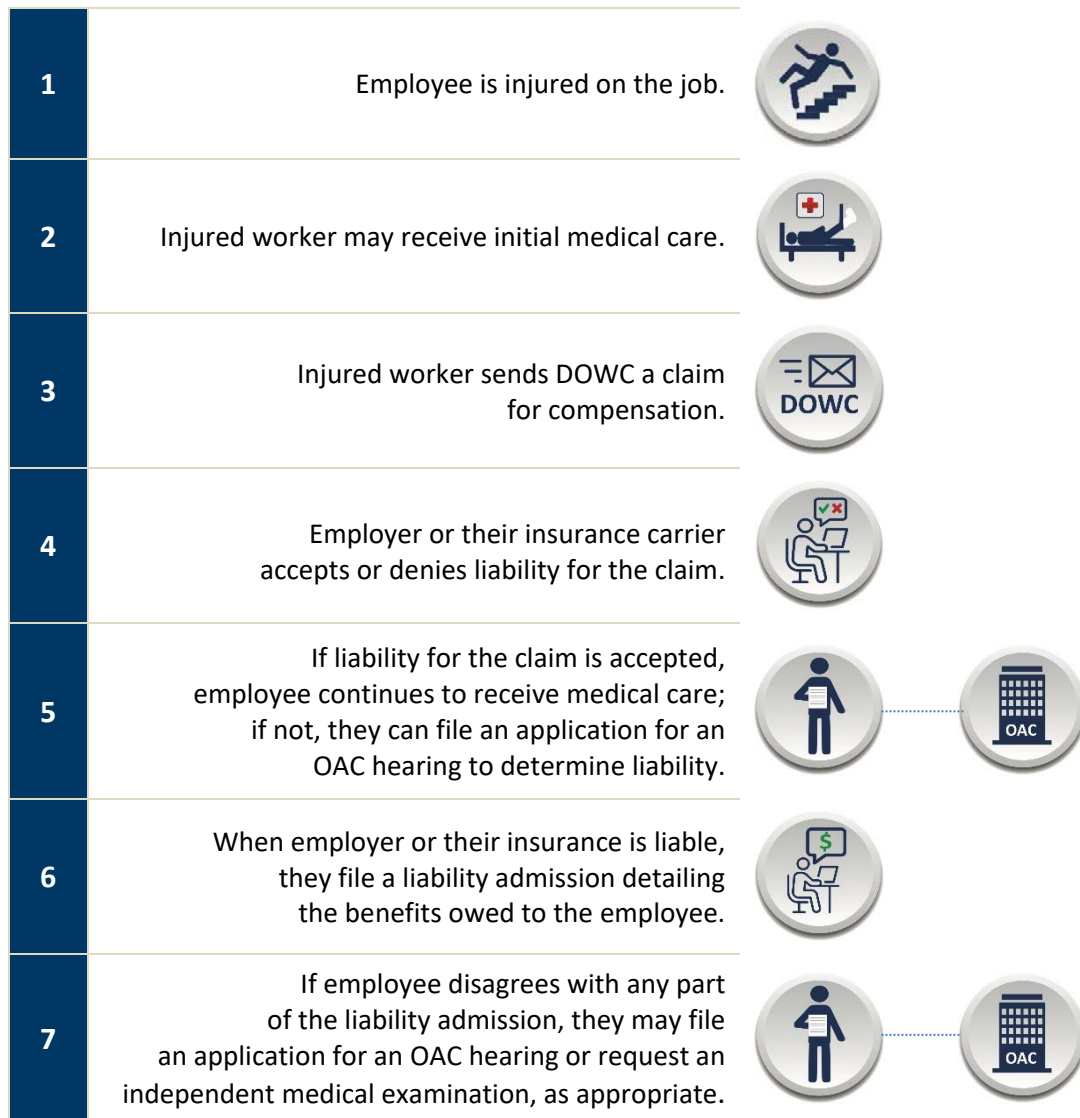
Workers' Compensation Cases

Under the Workers' Compensation Act of Colorado [Section 8-40-101, C.R.S., et seq.], most Colorado employers are required to have workers' compensation insurance or be self-insured. Generally, employers are liable to compensate their employees for lost wages, disfigurement, and other reasonable and necessary expenses and medical treatment incurred as a result of an injury on the job. When any person in Colorado gets injured on the job, they have the right to file a claim for compensation with DOWC, and DOWC facilitates the delivery of benefits to the injured worker from their employer and employer's insurance carrier.

After DOWC receives a claim for workers' compensation, the employer or their insurance carrier may accept or deny liability for all or part of the claim. If the injured worker disagrees with the response or compensation proposed by their employer or their employer's insurance carrier, they may file an application for a hearing with OAC, or they may request a settlement conference facilitated by OAC or DOWC. Additionally, if any party has a dispute with the claim at any point in the life of the claim, a hearing may be requested to resolve the dispute. For example, there could be disagreement about whether the employer is liable for the injury, a particular treatment is medically necessary, the injury caused total or partial disability, or the amount of lost wages owed. For workers' compensation cases, it is common for the parties to be represented by an attorney, although either party may represent themselves.

Exhibit 1.2 shows a simple summary of the appeals process for a typical workers' compensation case.

Exhibit 1.2
Disposition of a Typical Workers' Compensation Claim






Source: Office of the State Auditor summary of information provided by the Division of Workers' Compensation and Office of Administrative Courts.

Once an OAC ALJ issues a decision on a case, either party may challenge the decision by further appealing to the Industrial Claim Appeals Office (ICAO) within the Department of Labor and Employment, and the Colorado Court of Appeals within the Judicial Branch. Exhibit 1.3 compares OAC to these two appellate bodies. A case may also be appealed to the Colorado Supreme Court, but that type of appeal is rare. Appendix A summarizes the number and results of appellate reviews of OAC decisions.

Exhibit 1.3

OAC Compared to the Typical Appellate Bodies for Workers' Compensation Cases

Office of Administrative Courts (OAC)	Industrial Claim Appeals Office (ICAO)	Court of Appeals
 <p>An OAC ALJ presides over a hearing and issues a written order. Parties may introduce evidence and call witnesses, and rules of procedure apply.</p>	 <p>An ICAO panel of at least 2 ALJs reviews the case record from the OAC hearing, and issues a written order. No new evidence may be introduced.</p>	 <p>A Court of Appeals panel of 3 judges review the case record, and issues a written order. No new evidence may be introduced.</p>

Source: Office of the State Auditor summary of information provided by the Industrial Claim Appeals Office, and Colorado Court of Appeals.

At these appellate levels, the court or panel can decide to uphold the decision made at the prior level, modify the decision, remand the case back to OAC, or reverse the decision.

Medicaid Cases

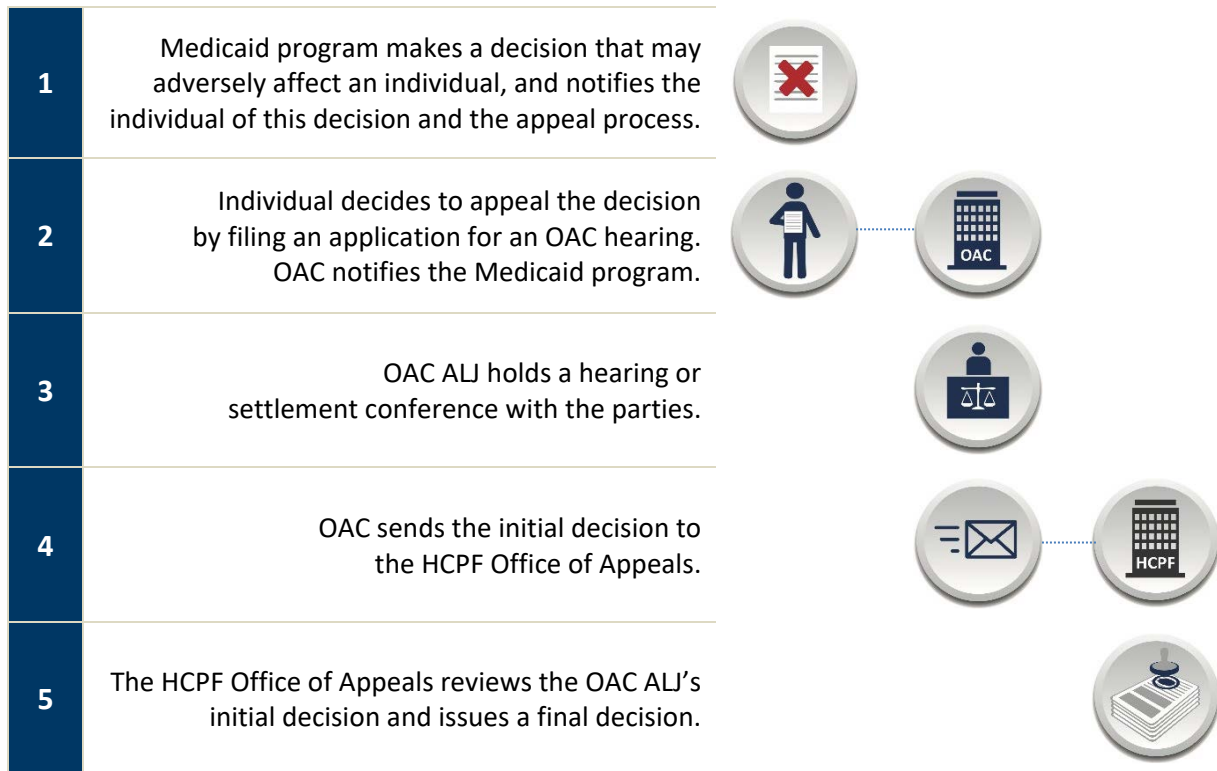
Federal regulations require state Medicaid programs to have procedures for applicants, beneficiaries, and providers to appeal program decisions that may affect them, and provide opportunities for fair appeal hearings [42 CFR 431.152 and 431.205]. Colorado's Medicaid program is administered by HCPF. When HCPF, its contractors, or county health departments make a determination that adversely affects an individual or a service provider, the affected party may appeal the decision.

Most Medicaid appeals are initiated by individuals who are disputing program decisions related to their eligibility or services. Medicaid service providers may also appeal a program decision, such as HCPF's decision to deny payment for a good or service that a provider has rendered. An individual or provider may appeal a Medicaid program decision by filing an application for a hearing with OAC. For Medicaid cases, it is common for the appellant to be self-represented, although some may receive assistance from a nonprofit advocacy group, friend, or family member. It is uncommon for a Medicaid appellant to be represented by legal counsel. For provider appeals, the Attorney General's Office represents HCPF during adjudication. For individual appeals, after an OAC ALJ has reviewed evidence and held a hearing, they issue a dispositive order known as an "initial decision" to the HCPF Office of Appeals. The HCPF Office of Appeals reviews the initial decision, considers any exceptions or concerns that the appellant has submitted to them, and then issues a "final order"

notifying the appellant of the disposition of the appeal. For provider appeals, OAC issues the final decision; the HCPF Office of Appeals does not review these decisions.

Exhibit 1.4 shows a simple summary of a typical Medicaid appeal filed by an individual.

Exhibit 1.4
Disposition of a Typical Medicaid Individual Appeal



Source: Office of the State Auditor summary of information provided the Office of Administrative Courts and the Department of Health Care Policy and Financing.

Case Management and Hearing Processes

OAC adjudicates cases through a series of procedural steps, which are summarized in Exhibit 1.5 and below. These steps can take more or less time depending on the type and complexity of a case. For example, some cases may require multiple hearings and/or submissions of evidence from the parties. Various timeliness expectations for these steps are discussed in Chapter 2.

Exhibit 1.5 OAC Procedural Steps for Cases and Hearings



Source: Office of the State Auditor summary of information provided by the Office of Administrative Courts.

Procedural Steps

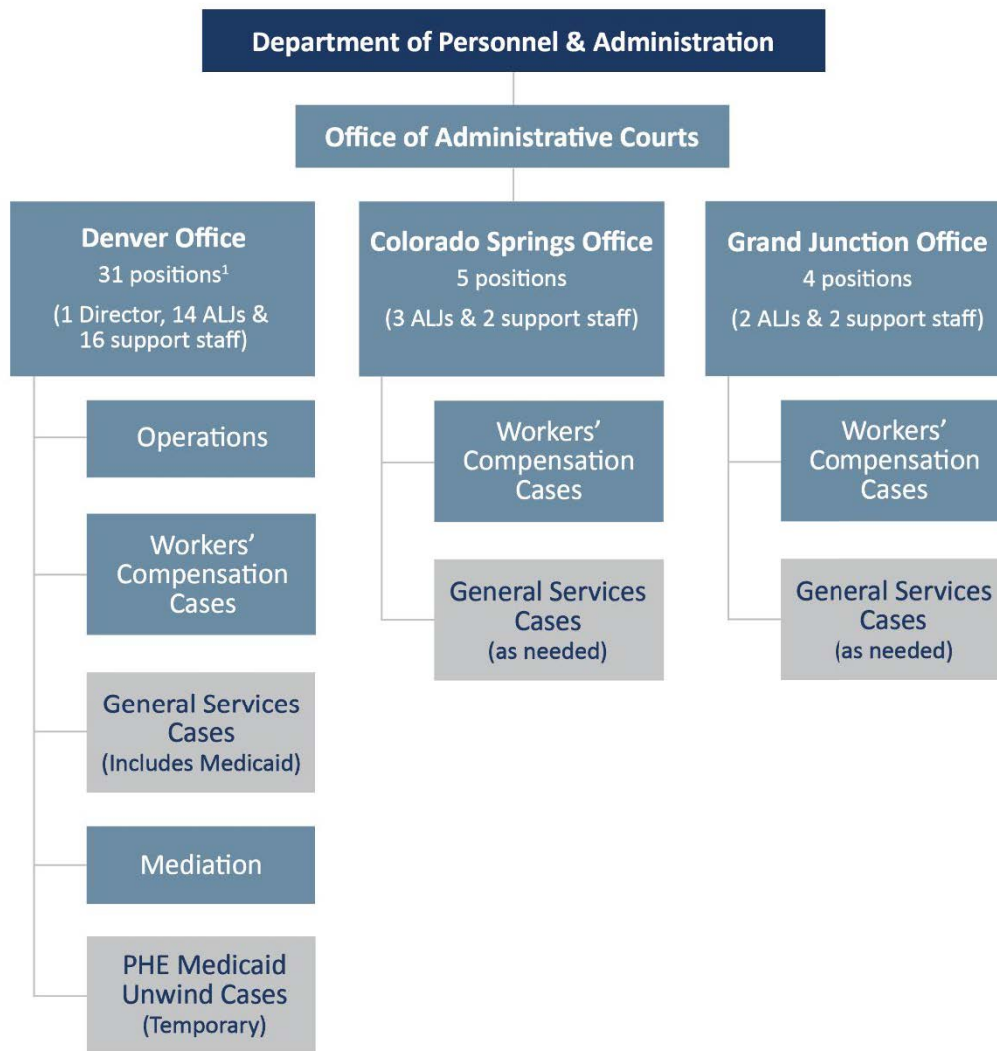
- **Hearing application is submitted** to OAC by mail, fax, email, or through an online e-filing system. An OAC clerk reviews the application for completeness and enters the information into OAC’s case management system, called Salesforce.
- **Hearing is scheduled** by an OAC clerk who adds each case to a docket calendar and notifies the parties of the scheduled date. Clerks typically schedule multiple hearings for the same day and timeslot, called “trailing dockets,” so that ALJs can hear one case after the other.
- **Parties submit evidence and documents** that clerks track in OAC’s Salesforce system. Parties may settle or withdraw their case at this point, or OAC may dismiss a case if the appellant fails to provide required information prior to the hearing.
- **At the hearing**, parties present their evidence and the basis for their appeal. Hearings may be virtual, in-person, or a hybrid of both methods, depending on what the parties request.
- **ALJ issues the decision**, either at the end of the hearing or at a later date, based on additional information, such as position statements, that the ALJ receives from parties after the hearing. ALJs enter their decisions into Salesforce, and clerks notify the parties of the decision.

OAC uses its web-based Salesforce system to store data on cases and hearings, issue communications to parties, schedule hearings, and record time that ALJs work on cases. Salesforce was initially implemented in 2018, and in the summer of 2024, OAC began working on migrating to an updated version of the system software. OAC also uses Google Drive to track case-related documents and evidence.

Administration

DPA oversees the OAC’s exercising of its duties, functions, budgeting, and purchasing, and DPA’s Executive Director appoints OAC’s Chief Judge, who is also the OAC Director that oversees day-to-day operations. As of June 30, 2024, OAC had 40 staff and ALJs across three locations—a main office in Denver, one regional office in Colorado Springs, and one regional office in Grand Junction. The size of each office is driven by the types and number of cases heard by the office. Exhibit 1.6 shows an organizational chart of OAC, its locations, work activities, and staffing.

Exhibit 1.6
OAC Organizational Chart



Source: Office of the State Auditor summary of information provided by the Office of Administrative Courts.

¹ Includes 1 temporary ALJ and 5 temporary support staff in the Public Health Emergency (PHE) Medicaid Unwind Unit.

As shown in Exhibit 1.6, the Denver office houses the most staff and has the following primary functions— operations; units that hear most workers’ compensation and general services cases, and provide mediation to resolve disputes prior to hearings if parties request this service; and a public health emergency (PHE) Medicaid unwind unit that was created temporarily for Fiscal Year 2024 in order to process an increase in Medicaid eligibility cases. The Colorado Springs and Grand Junction offices mostly hear workers’ compensation cases, but ALJs from these two offices may occasionally adjudicate general services cases, including Medicaid cases, as needed.

Funding

OAC is funded by the agencies for which it adjudicates cases. Appellants are not assessed a fee for requesting and using OAC’s administrative hearing services. In Fiscal Year 2024, OAC was appropriated \$8.2 million, which included \$7.9 million in reappropriated funds from state agencies for the adjudication of cases on their behalf, and about \$330,000 in cash funds from non-state agencies for adjudicatory services. OAC’s costs are allocated proportionately to each agency based on their usage of OAC services in the most recent fiscal year, and non-state agencies are billed for their actual usage of ALJ time on a monthly basis. In Fiscal Year 2024, OAC’s billing rate was \$211.76 per hour.

Audit Purpose, Scope, and Methodology

The Colorado Office of the State Auditor (OSA) conducted this performance audit pursuant to: (1) Section 2-3-103, C.R.S., which authorizes the State Auditor to conduct audits of all departments, institutions, and agencies of the state government; (2) Section 2-7-204(5), C.R.S., which requires the State Auditor to annually conduct performance audits of one or more specific programs or services in at least two departments for purposes of the SMART Government Act; and (3) Section 8-47-101(3)(d)(II), C.R.S., which requires that OSA performance audits of OAC review the five specific areas that are noted below with the report section where each area is discussed:

- The time elapsed from the date of hearings until the ALJ renders decisions (Finding 1);
- The time elapsed from the point at which the case file is complete and ready for an ALJ decision, until the decision is rendered (Finding 1);
- The number of decisions reversed upon appeal to ICAO and the Court of Appeals, respectively (Appendix A);
- ALJ workload or number of cases assigned to each ALJ (Appendix B); and
- The public perception of the quality of OAC’s performance with respect to workers’ compensation matters (Finding 2).

Audit work was performed from October 2023 to October 2024. We appreciate the cooperation and assistance provided by the management and staff of OAC and DPA during this audit.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

The audit objectives were to assess OAC's (1) management of workers' compensation and Medicaid cases, including the timeliness of cases and hearings; and (2) administration and oversight practices for ensuring effective and compliant operations. As part of these objectives, we also reviewed reversed decisions, ALJ workload, and public perception of OAC's performance. The audit scope did not include OAC's management of non-state agencies' cases or general services cases that did not relate to Medicaid.

To accomplish our audit objectives, we performed the following audit work:

- Reviewed federal laws and regulations; state statutes and regulations; internal OAC guidelines, policies, and procedural rules; and DPA's Performance Management Plans for Fiscal Years 2023 through 2025.
- Interviewed OAC management and staff, as well as staff from HCPF, DOWC, ICAO, and the Court of Appeals to understand administrative appeals processes in Colorado.
- Analyzed OAC's Salesforce case data and documentation for Calendar Years 2021 through 2023, which included some activity on these cases through February 2024, and assessed the reliability of the data.
- Assessed trends in case timeliness, as well as ALJ and paralegal workload, for Calendar Year 2023. This included reviewing Salesforce case data through February 2024, which provided information on hearings, orders, and time billed by ALJs and paralegals.
- Observed 23 hearings for workers' compensation or Medicaid cases that were held either virtually or in-person.
- Administered a survey questionnaire of the OAC's 17 ALJs who were adjudicating cases at the time of our audit, to gather information on their practices and perceptions. We received responses from 16 ALJs.
- Assessed OAC's public-facing guidance, including its website, publications, communication notices, and forms sent to parties. We also reviewed information on DOWC's and HCPF's websites, and some of their communications to parties involved in OAC cases.
- Assessed OAC complaint management processes and documentation for the 12 complaints that OAC received from September 2022 through March 2024.

- Assessed OAC processes to mitigate ALJ conflicts of interest, and financial disclosure forms that ALJs submitted to the OAC Director/Chief Judge for Calendar Year 2023.
- Reviewed the results of OAC surveys from November 2022 and February 2023, which gathered information from parties who participated in virtual hearings, as well as reviewed the results of DOWC customer service surveys from 2020 through 2024, which gathered feedback on the appeals process.
- Analyzed available ICAO data on its review of OAC decisions and any reversals of those decisions. ICAO records were for Calendar Year 2023. We also interviewed ICAO staff to understand their appellate review process.
- Analyzed available HCPF data on its final decisions for Medicaid appeal cases adjudicated by OAC from January 1, 2023 through March 25, 2024, as well as HCPF data on Medicaid appeal cases that were open longer than 90 days between May 2023 and June 2024, which were data that HCPF reported to the federal Centers for Medicare & Medicaid Services. We also had limited discussions with HCPF’s Office of Appeals staff to understand their review process.
- Interviewed stakeholders, such as nonprofit advocacy organizations and attorneys who have represented state agencies or appellants in workers’ compensation and Medicaid cases. These stakeholders included the Attorney General’s Office, Workers’ Compensation Education Association, Colorado Center on Law and Policy, Colorado Cross-Disability Coalition, Colorado Legal Services, and Family Voices Colorado.
- Identified best practices for government operations and court management by reviewing publications, such as the *Standards for Internal Control in the Federal Government* (Green Book) published by the U.S. Government Accountability Office; *Creating a User-Friendly Court Structure and Environment* published by the National Association of Court Management; and *Elements of Judicial Excellence* published by the National Center for State Courts.
- Reviewed the websites and public guidance published by administrative court systems in 10 other states—Arizona, California, Michigan, New Mexico, New York, Oregon, Texas, South Carolina, Washington, and Wisconsin.

We relied on random, risk-based sampling to support our audit work and understand why some cases typically had longer timeframes or delays. The sample included 42 randomly selected cases—20 workers’ compensation cases and 22 Medicaid cases—that began in Calendar Year 2023 and did not meet one or more timeliness expectations or requirements. Because the sample was risk-based and nonstatistical, the results cannot be projected to the population of all cases. However, the sample results are valid for assessing OAC’s operations and processes, and along with the other audit work performed, provide sufficient, reliable evidence as the basis for our findings, conclusions, and recommendations.

As required by auditing standards, we planned our audit work to assess the effectiveness of those internal controls that were significant to our audit objectives. Details about the audit work supporting our findings and conclusions, including any deficiencies in internal control that were significant to our audit objectives, are described in the remainder of this report.

OAC and DPA reviewed a draft of this report. Obtaining the views of responsible officials is an important part of the OSA's commitment to ensuring that the report is accurate, complete, and objective. The OSA was solely responsible for determining whether and how to revise the report, if appropriate, based on OAC's and DPA's comments. The written responses to the recommendations and the related implementation dates were the sole responsibility of OAC and DPA.

Chapter 2

Office of Administrative Courts Operations

The resolution of disputes through an administrative hearing process rather than through litigation in civil courts is used extensively for matters involving government agencies at both the federal and state levels. Disputes handled through the administrative hearing process relate to government agencies' decisions, rules, and regulations in the operation of public programs. The Office of Administrative Courts' (OAC) purpose is to provide an easily accessible, independent, and cost-effective administrative court adjudication system that serves state agencies and members of the public who access or participate in government programs [Department of Personnel & Administration's Performance Management Plans, Fiscal Years 2023 through 2025].

Our audits of OAC in 2008 and 2012 found that OAC needed to improve key areas of its operations, including its case management practices, case information system and data, and communication to the public and parties. Our current audit found that OAC made a number of improvements in recent years to address prior audit findings and enhance its operations. For example, OAC management implemented a new case management information system called Salesforce in 2018, and strengthened administrative processes by documenting and updating some of its procedures when the current Director/Chief Judge took their position in 2022. Furthermore, state agencies, stakeholders, and parties told us that OAC has improved the services it provides, such as by increasing the timeliness of cases and administrative support to parties. For example, representatives from both the Division of Workers' Compensation (DOWC) and Industrial Claims Appeal Office (ICAO), within the Department of Labor and Employment, told us that OAC has significantly improved its workers' compensation hearing and decision timeliness in recent years, and they do not hear complaints from parties for untimely OAC decisions like they did in the past. These groups also told us that they were generally satisfied with improvements OAC has made in its customer service and communication, which OAC achieved, in part, by expanding its administrative support positions and reducing some paper-based processes.

Although OAC has taken steps to strengthen its operations and services, and we found that it generally complied with applicable requirements, we identified three areas in which OAC should take additional steps to improve further—the timeliness of cases, customer service, and administration of cases and hearings. We have audit findings in each of these areas.

The rest of this chapter contains the results of our audit work, and our findings and recommendations to OAC.

Finding 1—Case and Hearing Timeliness

In Calendar Year 2023, OAC opened 5,200 workers' compensation cases with disputed worker claims, and 2,505 Medicaid appeal cases. Because the nature of cases varies, we use different terms to refer to them. In workers' compensation cases, either an injured worker, or their employer and insurer, is disputing all or part of the worker's injury claim. For Medicaid cases, typically an individual Medicaid applicant or recipient is appealing a decision or adverse action, such as denial of health benefits or a service, that has been made by the Department of Health Care Policy and Financing (HCPF), a county health department, or a contractor or other entity that makes Medicaid decisions on behalf of HCPF. In some Medicaid cases, service providers appeal HCPF decisions, such as decisions to deny payment for service.

There are many steps in the life of a case that can affect the number of days that it takes for OAC to process a case and for an Administrative Law Judge (ALJ) to issue a decision. Additionally, parties may withdraw cases or settle at any point in the process so most cases opened with OAC do not progress to a hearing. Typically, after someone submits a hearing application, an OAC clerk enters the application into Salesforce, which is OAC's case management software system. Next, the clerk either works with each party to schedule the hearing or selects a hearing date, depending on the case type, and then generates the notice of hearing, which is sent to all parties. Clerks also record case documents, pleadings, and evidence that the parties submit, and process judicial motions. The ALJs conduct hearings, review evidence, and issue decisions through different types of "orders." These steps are logged in Salesforce, and some trigger automated workflow processes that route tasks, such as OAC's preparation and sending of notices of scheduled hearings and issued orders, to the appropriate staff. Salesforce also reminds staff about outstanding tasks on cases, and can be used to produce reports that allow OAC management and supervising ALJs to follow up when cases appear to be stalled in the process.

Statute [Section 8-47-101(3)(d)(II), C.R.S.] requires our audits of OAC to review the timeliness of cases in 2 areas:

1. The time elapsed from the date of hearing to the date the ALJ issues a decision; and
2. The time elapsed from the date the case file is complete and the ALJ could issue a decision to the date the ALJ issues a decision.

Additional case events that affect the overall case timeline include the number of days that parties take to submit evidence and other pleadings; the hearing date that the parties choose; hearing extensions requested by parties and granted by ALJs; the extent to which the ALJ asks parties to submit additional documentation after the hearing; and the timeline for submission of that documentation.

OAC has established procedures and internal expectations to help ensure cases, hearings, and decisions are timely for all case types, while also allowing flexibility to ensure that parties have access to due process. For example, OAC management instructs clerks to prioritize processing applications and creating the associated Salesforce case file in a timely manner, and ALJs are instructed to exercise discretion in determining if a continuance to a hearing is needed, because it can extend the timeline of the case.

What was the purpose of the audit work and what work was performed?

The purpose of our audit work was to assess the timeliness of workers' compensation and Medicaid cases that are adjudicated by OAC, and its processes for ensuring that these hearings and orders are completed in a timely manner. Because OAC's procedures and internal timeliness expectations vary somewhat by case type, we focused the audit analysis on the 2 case types that OAC handles most often—workers' compensation and Medicaid cases. We reviewed OAC's electronic case records maintained in Salesforce for the 7,705 total workers' compensation and Medicaid cases for Calendar Year 2023, which included data on their related hearings, orders, and hours that ALJs recorded working. Because state Medicaid regulations specify different case timing requirements for different Medicaid populations, we also looked at cases for the general Medicaid population compared to special populations, to the extent that OAC had this type of case information. "Special populations" are those that need the more intensive health care services of long term care, home support services, and/or services for people with developmental disabilities. Additionally, to generally understand why some cases had longer timeframes or delays, we reviewed a random sample of 42 cases that began in Calendar Year 2023 and did not meet one or more timeliness expectations or requirements, as follows:

- 20 workers' compensation cases, which included 16 completed cases that did not meet one or more of the key timeliness requirements described in the next section, and 4 cases for which a party requested review of the ALJ's decision by the ICAO. OAC handles 4 types of workers' compensation cases—merits, disfigurement, indigency determination, and investigation. Merits cases can cover a range of disputes related to injured worker claims, the compensability of claims, and the types of benefits to award or deny the worker; whereas disfigurement cases relate to claims involving awards for a worker's disfigurement; indigency determination cases relate to an ALJ's determination of whether or not the injured worker claimant is financially indigent for the purposes of paying for an independent medical exam needed to determine their medical impairment; and investigation cases mainly relate to employers who do not have workers' compensation insurance. Our sample reviewed merits cases because, for 2023, we determined that all disfigurement cases met the timeliness requirements, and there were no completed indigency determinations or investigation hearings that year.

- 22 Medicaid cases that did not meet one or more key timeliness requirements or goals. The sample included 20 cases for individuals appealing Medicaid program decisions. The sample also included 2 provider appeal cases, which we reviewed because those types of cases have different processes from individual cases.

The sample selection was risk-based, meaning more cases were selected from the Medicaid cases because OAC's data showed that Medicaid cases were generally less timely than workers' compensation hearings. For the 42 sampled cases, we reviewed the Salesforce data, such as for notices of hearings sent to parties; pleadings, motions, exhibits, and other documentation submitted by parties; the hearing details; OAC staff and ALJ notes and relevant emails; any complaints received about these cases; and ALJ decisions and orders.

To understand case management and hearing practices, we attended 23 virtual and in-person hearings for workers' compensation and Medicaid cases; interviewed OAC management, the 4 supervising ALJs, clerks, and key administrative staff; and conducted a survey questionnaire of the 17 ALJs who were actively working on cases as of June 2024. We received responses from 16 of the 17 ALJs surveyed, for a response rate of 94 percent. We interviewed staff from HCPF and the Division of Workers' Compensation, as well as stakeholders, such as nonprofit advocacy organizations and attorneys, that represent workers' compensation and Medicaid appellants, and other hearing parties. We interviewed HCPF's Office of Appeals management and staff to understand their processes for reviewing OAC's initial decisions on Medicaid cases and for issuing final agency decisions. We analyzed HCPF's available data on appeal cases, including the number of OAC decisions that HCPF upheld, overturned, and remanded from January 1, 2023 through March 25, 2024.

How were the results of the audit work measured?

Colorado's Code of Regulations (CCR) outline OAC's procedural rules for hearings and case management practices, as well as standards of conduct for ALJs [1 CCR 104], which establish expectations for ALJs to handle cases promptly and efficiently, and for the ALJ supervisors to take reasonable measures to ensure that ALJs are prompt and efficient. In addition, each type of case that OAC adjudicates has unique timeliness requirements for OAC's case management and ALJ decision-making. Workers' compensation cases must follow statutory requirements outlined in the Workers' Compensation Act of Colorado (Act), Medicaid cases must follow federal and state statutes, and both of these case types must follow the rules in state regulations. Generally, Medicaid has few timeliness requirements for the hearing process, although appeals filed by individuals have some requirements, which vary based on whether or not the individual is part of a special population that requires more intensive Medicaid services and support. Additionally, OAC has established some internal goals for ensuring ALJs hear cases and issue their decisions in a timely manner. Exhibit 2.1 summarizes the key timeliness requirements and goals for workers' compensation and Medicaid cases from OAC's internal goals, the Colorado Revised Statutes (C.R.S.), the CCR, and the U.S. Code of Federal Regulations (CFR).

Exhibit 2.1

OAC Timeliness Requirements and Goals for Workers’ Compensation and Medicaid Cases, by Case Event

Case Event	Case or Appeal Type	Timeliness Requirement or OAC Internal Goal ¹
OAC Processes Application in Salesforce	Workers’ Compensation	5 Days – Clerks should create the case file within 5 days of receiving the hearing application [OAC goal ²].
	Medicaid Individual	1 Business Day – Clerks should create the case file within 1 business day of receiving the hearing application [OAC goal ³].
	Medicaid Provider	No requirement
OAC Schedules Hearing	Workers’ Compensation	30 Days to Set Hearing Date – OAC and parties must work together to set a hearing date within 30 days of the hearing application (also known as date of service) [1 CCR 104-3 Rules 8(A) - (E)]. If the parties do not confirm the hearing date within 35 days, OAC may close their case [1 CCR 104-3 Rule 8(G), and OAC goal ^{3,4}].
	Medicaid Individual	1 Business Day to Set Hearing Date – When clerks process hearing applications, they should schedule the hearing date as part of the process [OAC goal ³].
	Medicaid Provider	No requirement
OAC Completes Hearing	Workers’ Compensation	<ul style="list-style-type: none"> 180+ Days to Complete Hearing – Hearing must commence within 120 days from the date the application for hearing is filed [Section 8-43-209(1), C.R.S.]. Additionally, the ALJ may grant one 60-day extension, and additional extensions upon request of the parties [Section 8-43-209(2), C.R.S., and 1 CCR 104-3 Rule 14(A)]. These timeframes are intended to ensure cases are resolved in an expedited manner. ALJs may also continue, or reschedule, a hearing if agreed upon by the parties [Section 8-43-209(3), C.R.S.].
	Medicaid Individual	<ul style="list-style-type: none"> 25-35 Days to Complete Hearings – Hearings should be completed within 25-35 days of the application date, but clerks may reschedule hearings within 10-20 days of the first scheduled hearing, upon request [OAC goal ³]. 20-45 Days to Complete Hearings – For appeals related to eligibility, level of care, or disability determinations for special populations, OAC should complete a hearing within 20 days of the application date, but ALJs may grant an extension of the hearing date up to 45 days from the date of application [10 CCR 2505-10, Section 8.057].
	Medicaid Provider	No requirement
ALJ Issues Case Decision/ Order	Workers’ Compensation	15 Working Days for ALJ to Issue Final Order – The ALJ must issue an order denying or allowing the claim within 15 working days of the hearing, or after parties submit post-hearing statements [Section 8-43-215(1), C.R.S., and 1 CCR 104-3 Rules 25 and 26].
	Medicaid Individual	20 Days to Issue ALJ Decision – ALJs should issue the decision within 20 days of the hearing for Medicaid special populations [10 CCR 2505-10, Section 8.057]. OAC applies this special population timeframe to all Medicaid cases [OAC goal ³].
	Medicaid Provider	30 Days to Issue ALJ Decision – ALJs should issue the decision within 30 days of the hearing [OAC goal ³].
OAC’s Timeline for Life of Case	Workers’ Compensation	No requirement
	Medicaid Individual	60 Days + Extensions – OAC and HCPF set a 60-day goal [OAC goal ³] for OAC to complete its process of entering the application, holding the hearing, and issuing the decision, so that HCPF has 30 days to complete its review of the ALJ decision and send parties the final decision in order to meet a federal 90-day requirement. Specifically, HCPF’s final decision must be issued within 90 days of the date that the hearing was requested, although extensions are allowed for good cause [42 CFR 431 Subpart E].
	Medicaid Provider	No requirement

Source: Office of the State Auditor summary of applicable statutes, regulations, rules, and Office Administrative Courts’ goals.

¹ All timeliness requirements are in calendar days, unless otherwise specified.

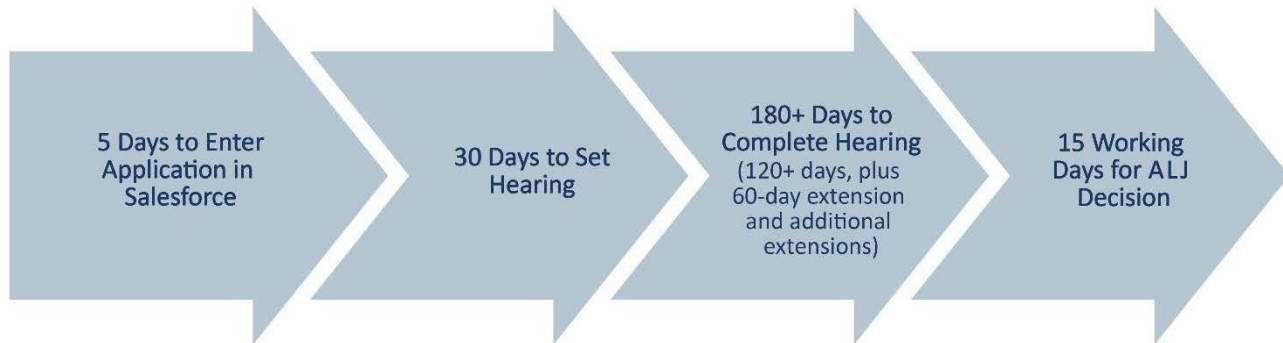
² According to 1 CCR 104-3, OAC last updated requirements for workers’ compensation cases in September 2023.

³ According to OAC, it implemented timeliness goals for individual Medicaid appeals in July and August 2023.

⁴ OAC allows parties up to 35 days from the application date to confirm the hearing date, rather than the 30-days in rule, in order to minimize the number of applications closed due to parties needing slightly more time to set and confirm hearing dates.

Exhibit 2.2 summarizes OAC’s timeliness requirements and internal goals for workers’ compensation cases.

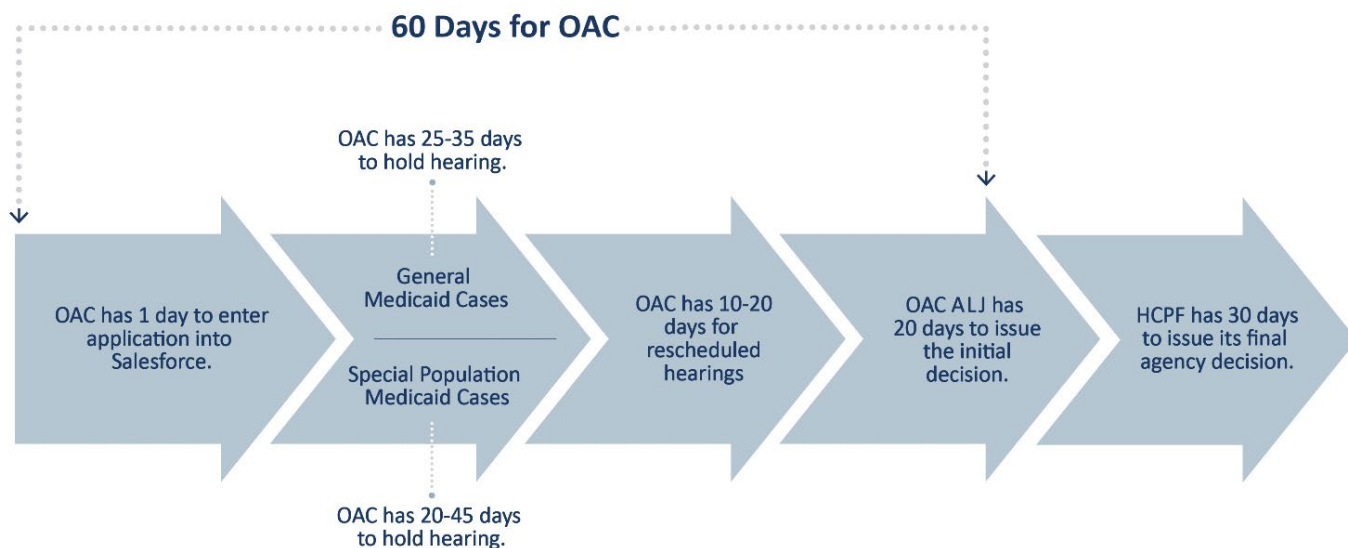
Exhibit 2.2
OAC Timeliness Requirements and Goals for Workers’ Compensation Cases



Source: Office of the State Auditor summary of applicable statutes, regulations, rules, and Office Administrative Courts’ goals.

Exhibit 2.3 summarizes OAC’s timeliness requirements and internal goals for individuals’ Medicaid appeals, for both the general Medicaid population and special populations.

Exhibit 2.3
OAC Timeliness Requirements and Goals for Individual Medicaid Cases



Source: Office of the State Auditor summary of applicable statutes, regulations, rules, and Office Administrative Courts’ goals.

What problems did the audit work identify?

Overall, we found that OAC generally met timeliness requirements and goals for the 2 case timelines that this audit must review, which relate to completing hearings and issuing decisions for workers' compensation cases. However, we identified opportunities for OAC to make improvements that would increase the timeliness of workers' compensation and Medicaid cases. Because workers' compensation cases and Medicaid cases are unique and have different timeliness requirements, we describe the results of our timeliness analyses for these case types, and opportunities for improvement, separately in the following sections.

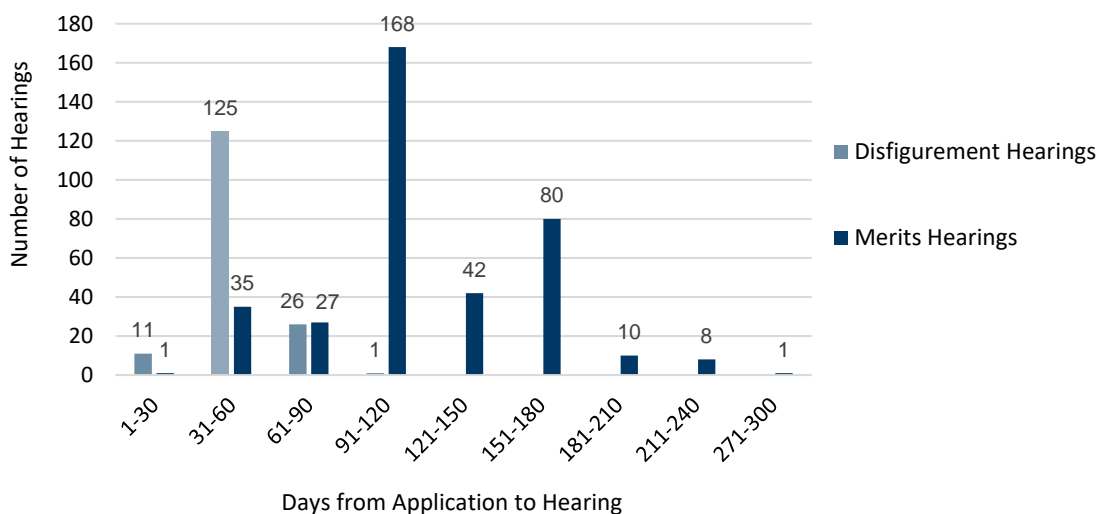
Workers' Compensation Case Timeliness Results

The majority of the 5,200 workers' compensation cases opened in Calendar Year 2023 met the timeliness requirements in statute and rule, as well as OAC's timeliness goals. Specifically, we found:

- **96 percent of the 535 workers' compensation cases with hearings were completed within the 180 days specified in statute for typical cases (i.e., 120 days to complete the hearing plus a 60-day extension).** On average, OAC hearings commenced within 85 days of the application dates, with merits hearings generally taking longer. Exhibit 2.4 shows the range of days that hearings took from the application date to the completed hearing date. These cases had an average lifespan of 107 days from the date OAC processed the application until the date a final order was issued in the case—a 166-day average for merits hearings and 48-day average for disfigurement hearings. As discussed later in this finding, a number of factors, such as appellant requested extensions, can cause cases to go beyond 180 days or have delays.

Exhibit 2.4

Workers' Compensation Hearing Timeliness from Date of Application to Date Hearing Completed, Calendar Year 2023

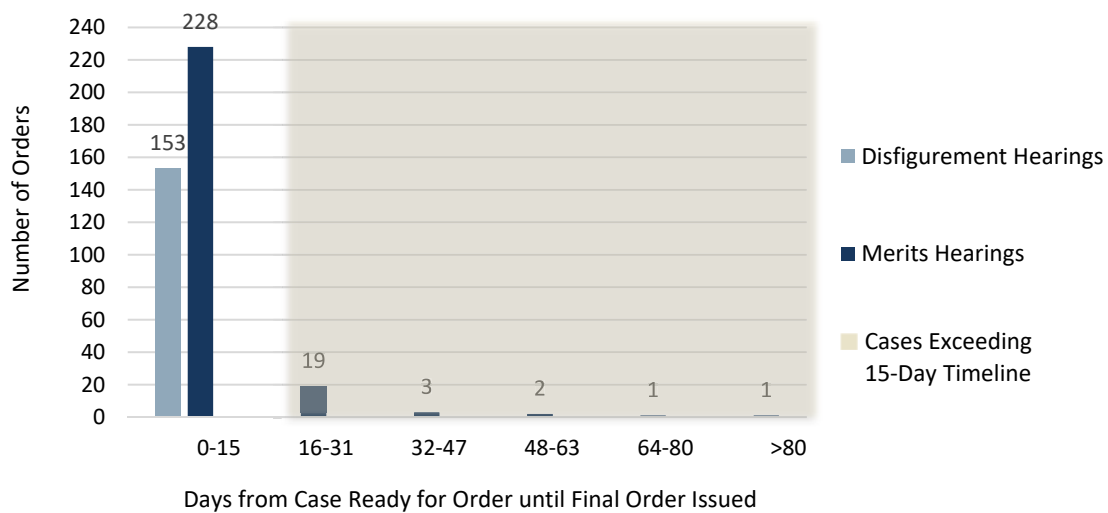


Source: Office of the State Auditor analysis of Office Administrative Courts' Salesforce data.

- **94 percent of the 407 ALJ final orders were issued within the 15 working day statutory timeframe.** In the cases for which a final order was needed, ALJs issued their order within an average of 6 working days after the hearing, with the decisions in merits hearings generally taking longer. We found that most of the ALJs (10 of 12) who adjudicated workers’ compensation hearings in 2023, issued timely orders for most of their cases. Exhibit 2.5 shows the range of days that OAC ALJs took to issue their final orders after each case was complete and ready for an order during Calendar Year 2023.

Exhibit 2.5

ALJ Decision Timeliness for Workers’ Compensation Case Decisions, from Date Case is Ready for Order until Final Order Issued, Calendar Year 2023



Source: Office of the State Auditor analysis of Office Administrative Courts’ Salesforce data.

These audit results show significant improvement since both our 2008 and 2012 performance audits of OAC, when we determined that OAC did not meet statutory timeframes for workers’ compensation cases due to inefficient case management practices, weaknesses with case information system and data management, and gaps in outreach and education to the public and parties likely unfamiliar with the hearing process. For example, the 2012 audit reviewed 682 workers’ compensation cases from that year and found that OAC completed only 70 percent of hearings and 83 percent of orders within the statutory timeframes. In addition, stakeholders who we interviewed told us that OAC has made improvements in managing cases since 2022 when its current Director/Chief Judge assumed their role, including issuing more timely decisions on cases and improvements in administrative support throughout the case management process.

Opportunity to Improve Workers’ Compensation Case Timeliness

Although OAC met the timeliness requirements and goals when handling most workers’ compensation cases in Calendar Year 2023, we identified some delays in OAC’s receipt of the post-

hearing documentation that the ALJ needs to complete the case and issue the final order, which can extend the life of merits cases, and how long parties must wait for a decision. For merits cases, we found that, on average, 35 days elapsed from the hearing until the ALJ had the needed information from all parties to begin working on the final order, with some cases exceeding 100 days before the ALJ could begin working on their final order.

Medicaid Case Timeliness Results

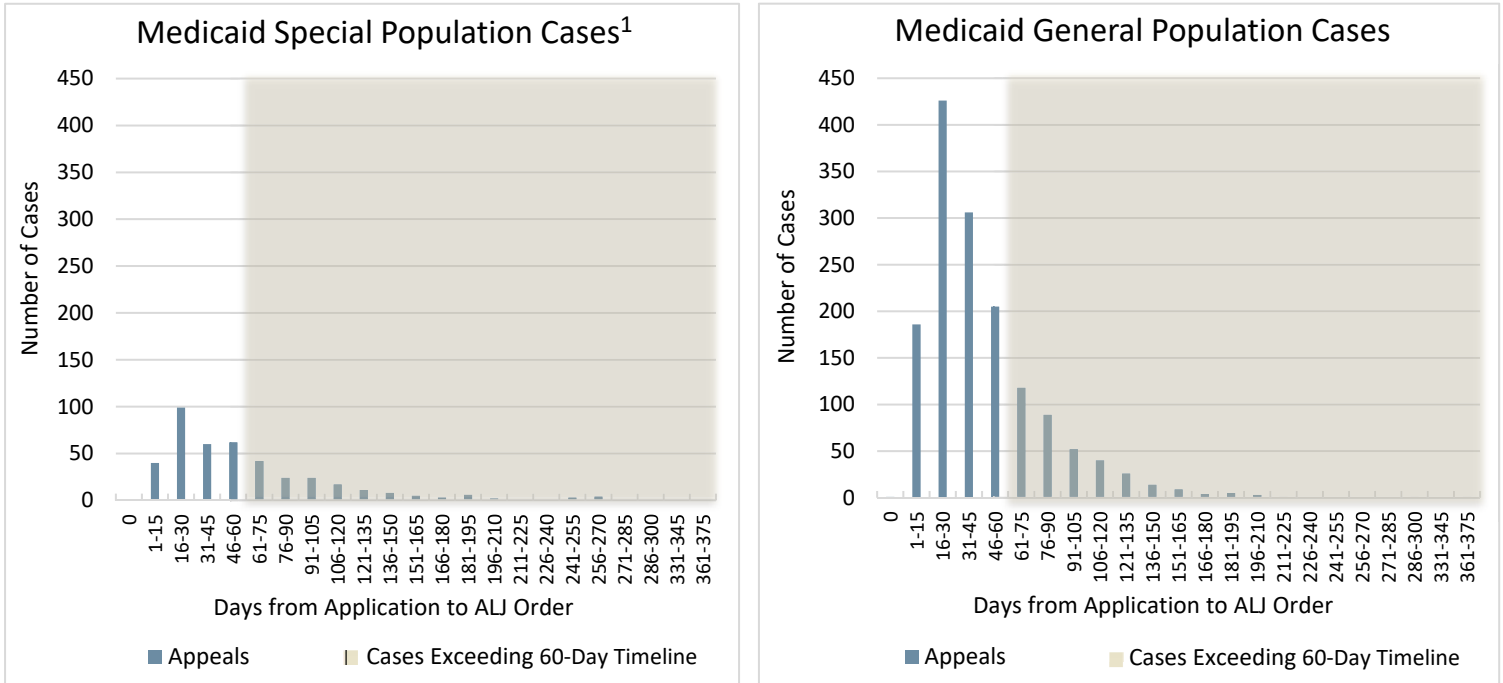
Of the 2,505 Medicaid cases opened in Calendar Year 2023, there were 2,114 cases that were closed with an order and included all necessary information for us to assess their timeliness. These cases involved 1,899 individual appeals and 215 provider appeals. The majority of the individual cases met OAC's goal of issuing a decision within 60 days of the hearing application during Calendar Year 2023, although OAC implemented this goal in August 2023. Specifically, we found:

- 63 percent of the 412 appeal cases involving individuals who appeared to be in special populations that typically need more intensive services and support, were closed within 60 days of the application date. On average, ALJs issued a closing order for this group within 61 days of the application date.
- 76 percent of the remaining 1,487 appeal cases involving individuals in the general Medicaid population were closed within 60 days of the application date. On average, ALJs issued a closing order for this group within 46 days of the application date.

Exhibit 2.6 shows the range of days that ALJs took to issue their order for individual appeals, from the application date to the date of the last order on record.

Exhibit 2.6

Timeliness of Medicaid Individual Appeals, from Date of Application to OAC’s ALJ Order Calendar Year 2023



Source: Office of the State Auditor analysis of Office Administrative Courts’ Salesforce data.

¹ State Medicaid regulations related to timing requirements distinguish between general populations and special populations. Special populations include individuals who may need the more intensive health care services, such as long term care, home support services, and/or services for people with developmental disabilities. We used available case data to group cases into the general and special population categories.

While OAC does not have a timeliness requirement or goal for the overall life of a Medicaid provider appeal case, we determined that—for the 215 provider cases that were opened in Calendar Year 2023 and had an order—ALJs issued their order within 86 days, on average, and most issued orders in fewer days.

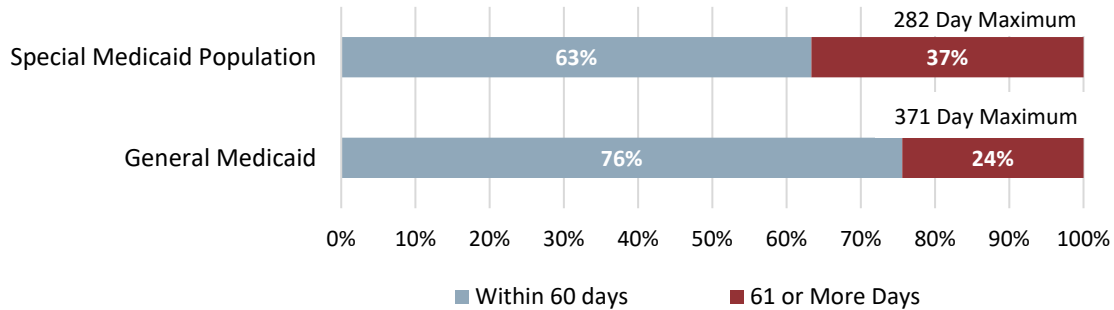
Opportunities to Improve Medicaid Case Timeliness

Although OAC generally met the timeliness requirements and goals when handling most Medicaid cases in Calendar Year 2023—and OAC has some flexibility in these timelines—the results of the timeliness analyses indicate that more could be done to improve the timeliness of Medicaid decisions. We identified the following areas for improvement:

- **Some Medicaid cases took significantly longer to complete.** A substantial number of individual Medicaid appeals did not meet performance expectations for the overall life of the case and some key case milestones, with some cases having long timeframes. Specifically, 37 percent of appeals that appeared to involve special populations took longer than 60 days to complete, with the longest taking 282 days; and 24 percent of the remaining individual appeals

took longer than 60 days to complete, with the longest case taking 371 days. Exhibit 2.7 shows the percentage of individual appeals that were completed within 60 days and the percentage that took longer than 60 days. Similar to workers' compensation cases, a number of factors, such as extensions, can cause cases to have delays.

Exhibit 2.7
Percentage of Medicaid Individual Cases Completed Within and Outside of 60 Days
Calendar Year 2023



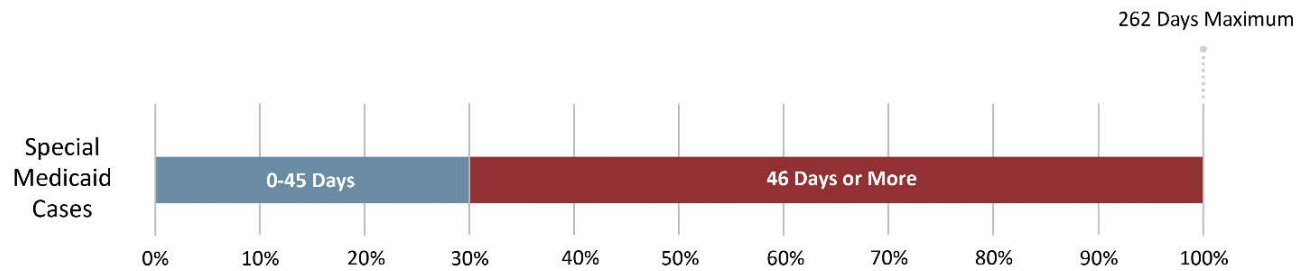
Source: Office of the State Auditor analysis of Office Administrative Courts' Salesforce data.

Additionally, Medicaid cases often did not meet other key timeliness goals. Specifically:

- 218 of the general Medicaid individual cases that had a hearing (60 percent of 365 cases), did not meet the goal to complete the hearing within 25 to 35 days of the application. These cases took an average of 54 days from the application date to hearing, and the maximum number of days for a case was 187 days.
- 30 cases that appeared to involve special populations (31 percent), and 76 general population cases (22 percent), did not meet the goal for the ALJ to issue an order within 20 days of the hearing. The maximum number of days that a special population case had from the hearing to the order date was 50 days, and the maximum for general population cases was 94 days.
- **Hearings for cases involving special populations fell well short of timeliness requirements.** We found that 71 of the 101 (70 percent) special population appeals that had a hearing were not completed within the maximum 45-day timeframe allowed. On average, OAC completed these hearings within 73 days, and the maximum number of days from the application to hearing date was 262 days. Exhibit 2.8 shows the percentage of these cases that had completed hearings within 45 days, and the percentage that were outside of this required timeframe.

Exhibit 2.8

Percentage of Medicaid Special Population Cases that Met and Exceeded 45 Days from Application to Hearing, Calendar Year 2023



Source: Office of the State Auditor analysis of Office Administrative Courts' Salesforce data.

Why did these problems occur?

We identified a number of reasons why the case delays occurred, including some reasons that are outside of OAC's control, as follows:

Factors Within OAC's Control

We identified some issues with OAC's case management that caused some case delays for both workers' compensation and Medicaid cases, including data entry errors, inconsistent case documentation practices, and gaps in OAC's oversight of case timeliness. Specifically, we identified:

- **Data Entry Errors.** Two of the 20 sampled workers' compensation cases appeared late due to errors in data entry and clerical mistakes. For example, 1 order appeared to be untimely because Salesforce did not accurately reflect that an extension of time was granted for the parties to submit position statements. In another case, the parties submitted post-hearing documentation and position statements by the due date set by the ALJ, but the case was not marked in Salesforce as ready for the order until 3 weeks *after* the parties submitted the documentation, without an explanation for the delay. According to OAC staff, the date entered into Salesforce as when a case is complete and ready for order should be the date that the ALJ is in possession of all post-hearing documentation from the parties.

OAC's written guidance for staff's data entry in Salesforce lacks specific direction for workers' compensation cases and does not indicate when or how staff should document changes to the case that may impact case milestones, such as documenting due dates for position statements and final orders. Salesforce guidance is limited to general instructions for high level tasks, such as creating cases, scheduling hearings, issuing notices, and logging documents received and orders issued.

- **Inconsistent Case Management and Documentation Practices.** For 2 of the 20 sampled workers' compensation cases, and 11 of the 22 sampled Medicaid cases, there was no evidence in Salesforce to indicate the cause of the delays. Documenting case events that may explain delays could assist OAC in developing processes and identifying needed resources to mitigate their underlying causes. For the cases with documentation indicating the reasons for delays:
 - 4 of the 20 sampled workers' compensation cases had delays due to documentation issues—for example, in 1 case, a clerk did not upload a party's position statement to Salesforce timely, so the ALJ had less time to review the information and write the decision; and for another case, the ALJ requested that a party submit evidence after the hearing, but did not document what evidence was requested or the due date, or follow up with party, so it was unclear what items were outstanding.
 - 1 of the 22 sampled Medicaid cases had delays due to documentation issues—the case was delayed because OAC did not send a hearing notice to the parties timely. A notice was prepared in August, but was not sent; in October, staff noted the omission in Salesforce, but did not send the missing notice until December, almost 6 weeks after it was noted.

These issues indicate a need for improved Salesforce and case management guidance, along with training for OAC staff and ALJs. In our survey of ALJs, the majority (10 of 16) indicated that aspects of managing cases in Salesforce were unclear, such as what should be documented and where. Eight ALJs commented that they needed more Salesforce training, and 5 commented that ALJs have no manual or formal training for using Salesforce, or there was a lack of clarity on how ALJs are expected to use Salesforce. Additionally, most ALJs (12 of 16) indicated that they track or find case information outside of Salesforce.

- **Gaps in Monitoring of Case Timeliness.** According to OAC management, although Salesforce timeliness reports and monitoring dashboards are available, OAC has not provided training to supervisors and ALJs on how to use these tools, and some of the reports may not be useful. While most supervising ALJs told us that they review case timeliness reports and follow up with ALJs about late cases, OAC lacked evidence of the monitoring, and we identified practices that reduce the effectiveness of monitoring efforts. For example:
 - Supervisory review, monitoring of, and follow-up on case timeliness was not documented in Salesforce for 19 of the 22 sampled Medicaid cases (86 percent) that were untimely, so we generally could not confirm that supervisors monitored ALJs' late decisions. According to OAC management, some individual ALJs may struggle to meet timeliness goals, which makes supervisory monitoring of ALJ timeliness an important safeguard to help ensure timely decisions and case management.
 - For the 4 workers' compensation cases with delayed final orders, there was no evidence in Salesforce that supervisors monitored or followed up with ALJs on late orders. In 1 case, a

party reached out to OAC to inquire about the case status 44 working days after the case was complete and ready for the final order, which prompted a clerk to follow up with the ALJ. Separately, we reviewed complaints related to delays in the issuance of final orders on 3 workers' compensation cases, which OAC received from parties' attorneys. The ALJs' orders in these 3 cases were ultimately issued in 57, 77, and 243 business days, respectively, after the cases were complete and ready for the final order.

The previously described data entry errors and inconsistent case documentation practices also limit the effectiveness of OAC's monitoring efforts. For example, the data entry errors related to when a case is ready for an order directly affect the quality of OAC's case timeliness reports that rely on accurate data. Additionally, in the example of the ALJ not documenting the information that they requested from a party, there was no way for a supervisor to track the dates for when the ALJ should have issued an order.

OAC has not established procedures or expectations, such as for documenting and monitoring outstanding items from parties and for supervisors' monitoring of case timeliness after the hearing conclusion and the ALJ has enough information from all parties.

Factors Outside of OAC's Control

We identified the following reasons for case delays that are outside of OAC's control:

- **Party actions frequently cause delays for both workers' compensation and Medicaid cases.** For example, parties may request hearing date extensions, fail to appear at hearings, or appear at a hearing without sufficiently preparing or submitting necessary evidence, and may need to provide written position statements after the hearing. For example, in 9 of 16 sampled workers' compensation cases for which the ALJs asked the parties to submit written position statements after the hearings, the parties requested extensions of time to submit the statements. Also for workers' compensation cases, parties in 12 of the 20 sampled cases requested and received one or more extensions of the hearing date because the parties or their witnesses had scheduling conflicts with the original hearing date.
- **Complex policy issues that take longer to research and issue decisions cause delays for both workers' compensation and Medicaid cases.** For example, for 1 Medicaid case, an ALJ exceeded the timeframe to issue a decision after the hearing because they ordered the county to seek clarification on changing Medicaid policies related to the COVID-19 Public Health Emergency. For 1 workers' compensation case hearing that we observed, the injured worker had complex medical treatment needs and their employer appeared uninsured, which required the ALJ to determine whether the employer was uninsured and determine the extent to which the appellant should be compensated for their treatment.

Specific to Medicaid, causes of case delays that are outside of OAC's control included:

- **HCPF has delays in making final decisions.** As described in Chapter 1, HCPF reviews all OAC initial decisions for Medicaid individual appeal cases, and then issues a final decision to appellants. This HCPF review process increases the overall length of a case after OAC has completed its role of issuing an initial decision. Audit analysis of the timeliness of Medicaid cases prior to this audit is not available because the prior audits focused on the timeliness of workers' compensation cases. Also, HCPF and OAC did not have data on the time that it takes for HCPF to review OAC's decisions and then issue final decisions, so we were unable to determine the extent to which HCPF's reviews created delays. However, HCPF Office of Appeals staff told us that they estimated that they have generally had resource challenges meeting timeliness requirements or goals for Medicaid appeal cases since approximately 2019, and there is currently a backlog of cases that have an initial OAC decision, but need HCPF's review. In interviews that we conducted during the audit, HCPF Office of Appeals staff, OAC and DPA management, and organizations that advocate on behalf of Medicaid applicants and recipients, told us that the backlogs in completing cases are due to the time needed for HCPF to review each OAC decision before HCPF issues final decisions.

HCPF does not report on the number of cases awaiting its final review, but, as of June 2024, data from the Office of Appeals showed that there were 1,144 cases that had been open for more than the 90-day federal requirement for issuing a final decision for Medicaid appeals—an increase from June 2023 when 304 cases had been open beyond 90 days. The Centers for Medicare & Medicaid Services (CMS), the federal Medicaid oversight agency, has given HCPF a temporary waiver from meeting the 90-day federal timeliness requirement due to the volume of cases that HCPF must review.

Through our audit, we determined that HCPF's review of all OAC decisions may not be necessary for two reasons. First, HCPF data show that from January 1, 2023 through March 25, 2024, HCPF's review of all OAC initial decisions resulted in HCPF overturning or remanding just 17 of the 2,005 (less than 1 percent) OAC decisions. Second, federal regulations and CMS guidance allow states some flexibility in the design of the State's Medicaid program, and in how they make final decisions on appeal cases as long as appellants are given due process [42 CFR 431.205] and the state agency that oversees Medicaid exercises appropriate oversight over the entities that handle appeals [42 CFR 431.10]. Recent CMS guidance allows a state's Medicaid agency to consider the ALJ's decision as final, without further Medicaid agency review, at least for certain appeals. For example, according to HCPF staff, in New Jersey, the Medicaid agency has received temporary approval from CMS to manage pandemic-related appeal case backlogs by allowing the state's OAC-equivalent administrative court to issue final decisions related to appeal dismissals. An ALJ may dismiss a case for reasons such as the party that requested the hearing withdraws their appeal, the Medicaid program reverses the action that had affected the appellant (e.g., reversed the ineligible determination), or the ALJ determines that there is no appealable issue in the case. In Colorado, OAC's ALJs issued initial orders dismissing 80 percent

of special population Medicaid appeal cases and 85 percent of general population appeals cases during the period we reviewed. Also, HCPF staff told us that ALJ dismissals account for the majority of its backlog of cases that need a HCPF review and final decision. If OAC were provided the authority to issue the final decisions for dismissals, the timeliness of individual appeals should improve because a significant number of individual's appeals would involve only the administrative court's process and timeline to decide their case, and HCPF would have significantly fewer ALJ decisions to review and final decisions to issue.

HCPF staff told us that they were unsure the amount of flexibility that CMS would approve, so it is something that HCPF and OAC would need to explore. HCPF staff indicated that it may be possible to change appeal processes to allow OAC to issue final decisions on dismissal cases without a final HCPF review, as long as appellants can request a HCPF review of OAC's decisions, as currently required by state regulations [10 CCR 2505-10 8.057.9(B)]; CMS approves the changes; and the state revises statute [Section 25.5-1-107, C.R.S.] and regulations [10 CCR 2505-10 8.057.10] that require HCPF to issue final decisions. Considering the flexibility allowed under Medicaid regulations, HCPF's backlog, and the low rate of OAC initial decisions that HCPF overturns or remands, changes to OAC's role to make final decisions on dismissal cases (unless the appellant requests a HCPF review of the decision), would provide more efficient and timely resolution of individual Medicaid appeals. However, OAC would need to consider how a change in its authority could affect its operations and resources. According to HCPF staff, allowing ALJs to issue final dismissal decisions would require OAC to invest administrative resources into sending parties notices of final decisions and instructions on how to request that HCPF review the decision, and ALJs would need to ensure they stay informed of CMS's frequent updates in Medicaid guidance and rules.

- **OAC has increased workload due to Medicaid disenrollment after the Public Health Emergency.** During the COVID-19 Public Health Emergency, the federal government did not allow states to disenroll Medicaid recipients based on changes to their income or healthcare needs. As the Public Health Emergency ended in May 2023, Colorado resumed its standard eligibility redetermination process, which resulted in disenrolling recipients from Medicaid, many of whom then submitted applications for appeal hearings with OAC in 2023 and 2024. OAC hired 2 additional ALJs to hear these cases, but the temporary high volume of cases and workload has led to some longer timelines for OAC to issue the initial decisions.
- **Medicaid program communication to parties has created some unnecessary OAC workload.** For example, 2 of the 22 Medicaid cases that we reviewed had longer timeframes because the Medicaid program sent recipients inaccurate or unclear notices denying their eligibility or services, which resulted in OAC opening multiple cases for 1 appeal because the case type was unclear, and holding an extra hearing for another case. In 3 other sampled cases, ALJs dismissed the case because they found no adverse action by the Medicaid program that needed to be adjudicated, meaning these appeals were unnecessary. In each case, we identified inaccurate, incomplete, or unclear letters that the Medicaid program sent recipients, which led

them to mistakenly believe that their benefits or services were being affected negatively and that they needed to appeal. According to HCPF's data, for 312 other Medicaid cases that HCPF reviewed from the beginning of January 2023 through March 2024 (16 percent of individual Medicaid cases), OAC ALJs ultimately dismissed these cases because there were no adverse actions. While there may have been other factors in some of these cases that resulted in their dismissal for no adverse action, our September 2023 *Medicaid Correspondence* performance audit identified persistent issues with the Medicaid program sending inaccurate, incomplete, and unclear notices of adverse action. That audit made recommendations to HCPF to improve the accuracy, clarity, and completeness of correspondence to Medicaid recipients, which HCPF agreed to implement by July 2026.

- **Medicaid case timeline goals for OAC may not be realistic.** Federal and state Medicaid regulations may not realistically reflect the time needed to process Medicaid appeals, and appellants are allowed to seek hearing extensions that may result in cases surpassing the 60-day and 90-day timeframes. Furthermore, even if OAC meets its 60-day goal to issue its decision, HCPF's final case decision may still exceed the 90-day requirement because, as HCPF Office of Appeals staff reported to us, resource challenges to complete HCPF's review and decision can cause delays.

Given the range of complexity for Medicaid cases and appellants' rights to request extensions, it does not appear realistic to expect OAC to consistently meet the various goals set for Medicaid cases—the 20 to 45-day goal to complete hearings for special population and the 60-day goal for all cases. For example, some cases involve complex medical issues that require more hearings, evidence, and time to close. Medicaid cases with a hearing take an average of 71 days from application to ALJ order compared to cases without a hearing, which have an average of 49 days. State regulations also set what OAC believes to be an unrealistic goal for completing special population hearings—within 20 days of the application—because it does not allow appellants sufficient time to prepare, and is likely to result in parties requesting extensions.

During the audit, we met with staff from HCPF's Office of Appeals to discuss the causes of Medicaid appeal cases that exceed statutory and regulatory timeframes, and potential steps that could be taken to address the causes. HCPF staff indicated that they would be open to meeting with OAC to consider options to improve timeliness and reduce inefficiencies. These options could include assessing: (1) ways to reduce the backlog of cases needing HCPF review, such as by OAC issuing some final decisions as long as there is a process for HCPF review if requested by the parties; (2) ways to improve communication to parties to reduce unnecessary appeals; and (3) statutes and/or regulations to identify ways to adopt more realistic timeline goals for completing Medicaid appeal hearings.

Why do these problems matter?

When OAC does not resolve cases in a timely manner, quality of life for appellants is negatively affected. For example, in workers' compensation hearings, claimants may delay medical care and surgical procedures while they wait to find out if any benefits will be awarded. We observed hearings for 2 cases in which the claimant had postponed recommended medical procedures or were unable to proceed with ongoing treatments while they waited for OAC to resolve their claim. In another case, a claimant who needed physical therapy treatments multiple times a week opted to pause treatments as they had no way to pay for the therapy unless medical benefits were awarded in their case. In addition, the claimants in some of the hearings we attended stated that they are unable to work as a result of their injuries. Cases that take longer to resolve may contribute to claimants' financial hardship by delaying workers' compensation cash benefits that they are eligible to receive.

Medicaid appellants can be similarly affected by cases that take longer to resolve, such as by delaying their access to Medicaid-covered services they may be eligible to receive, and creating financial hardship if they choose to pay for these services out-of-pocket while waiting for their Medicaid appeal to be resolved. According to the Medicaid advocacy representatives we interviewed, appellants can sometimes be distressed by a lengthy appeal process. Medicaid appellants can be vulnerable individuals whose health is at risk while they are awaiting approval for Medicaid services. For example, in our case file review, we observed an appellant in a community waiver program who was not able to access medical devices that assisted them with daily activities, like remembering to take anti-seizure medication and to attend medical appointments. Barriers to accessing health care carry the likelihood of emotional and mental stress as individuals deal with a threatened well-being and an uncertain future.

Recommendation 1

The Office of Administrative Courts (OAC) should take steps to improve the timely resolution of workers' compensation and Medicaid cases by:

- A. Revising its procedures, guidance, and monitoring reports for OAC staff and Administrative Law Judges (ALJs) to help ensure timely and complete case management, accurate and consistent data entry, timely documentation of key case steps, and supervisory monitoring of timeliness. This should also include training relevant staff and ALJs on the revised procedures, guidance, and monitoring reports.
- B. Working with the Department of Health Care Policy and Financing (HCPF) to identify feasible corrective actions to address the causes of Medicaid appeals cases that exceed statutory and regulatory timeframes due to HCPF-controlled factors. This could include working with HCPF to identify efficiencies by assessing:

- i. HCPF's practice of reviewing all OAC decisions and options for a risk-based HCPF review in order to reduce the backlog of cases needing such review. This could include assessing HCPF's role as the agency that issues final decisions on appeals, in order to determine if OAC could have authority to issue some types of final decisions as long as there is a process for HCPF review if requested by the parties;
 - ii. Communication practices to Medicaid recipients, and between OAC and HCPF, to improve accuracy and clarity, in order to help reduce unnecessary appeals that OAC must hear and HCPF must review; and
 - iii. Applicable state statutes and/or regulations to identify ways to adopt more realistic timeline goals for completing Medicaid appeal hearings.
- C. Based on the results of OAC's coordination with HCPF in subpart B, OAC should work with the General Assembly and HCPF, as appropriate, to implement any necessary changes to state statute and regulations, and subsequently update internal procedures and goals, and appeal guidance and notifications for parties.

Response

Office of Administrative Courts

A. Agree

Implementation Date: December 2025

The OAC has implemented some updated data entry procedures since the inception of the audit. The OAC commits to creating or updating policy and procedure manuals to reflect process changes made in response to this recommendation. The OAC agrees to review its current monitoring reports, and revise if appropriate and possible within the current case management system. The OAC will also conduct additional training with relevant staff on the revised procedures and use of reports.

B. Agree

Implementation Date: June 2025

The OAC has already initiated discussions with HCPF related to the above recommendations.

C. Agree

Implementation Date: June 2026

The OAC commits to coordinating with HCPF and the General Assembly in an effort to implement changes to state statutes and regulations. However, despite the expected June 2026 implementation, legislative and regulatory changes may take longer.

Finding 2—Customer Service and Public Perception

A fundamental purpose of administrative law courts is to provide an accessible and cost effective alternative to litigation in district court. To help ensure a fair and expeditious hearing process for all parties, OAC should provide an appropriate level of information and assistance to parties before, during, and after the hearing. For example, before a hearing, OAC notifies parties of the hearing date, location, and the general hearing process. During hearings, ALJs may set expectations for how the hearing will proceed and next steps, and/or may answer a party's questions about the hearing process. After the hearing, OAC staff may instruct a party on how to mail or e-file documents that the ALJ requested, and will notify parties of the case outcome or an ALJ's order.

Some parties in cases adjudicated by OAC may be unfamiliar with legal proceedings. Statute allows an individual involved in an administrative law case to represent themselves without an attorney or other representative, which is known as self-representation or pro se [Section 24-4-105(9)(a), C.R.S.]. OAC management estimated that, in Calendar Year 2023, about 70 percent of Medicaid cases and 10 percent or fewer workers' compensation cases involved pro se appellants. Regardless of whether or not parties have representation, all parties are bound by the same procedural rules, and are expected to present evidence to support their case, which may include information on relevant statutes or rules.

To provide information on the hearing process to those who may not be familiar with legal proceedings, OAC makes resources available in a variety of formats, including providing customer support over the phone, by email, or in person at its offices; publishing informational resources on its website; and printing website resources, when requested. OAC's website includes:

- Rules of procedure for OAC hearings, including some technical guidance for virtual hearings;
- Some frequently asked questions and responses;
- Relevant sections of statutes and rules (e.g., Administrative Procedures Act, Colorado Workers' Compensation Act);
- Links to and contact information for relevant state agencies and local governments;
- Guidance for pro se parties;
- A 16-minute video, produced by OAC, on the hearing process for public benefit cases;
- Information on how appellants can find low or no cost legal help or representation; and
- Language resources and disability accommodation information.

However, OAC staff and ALJs are prohibited from providing legal advice to parties [Colorado Code of Judicial Conduct, Canon 3, Rule 3.10; and Colorado Rules of Civil Procedure, Rule 232.2]. Legal advice is an opinion or guidance that can affect the rights of the appellant, or advice on a specific course of action based on the law. For example, OAC cannot help parties with substantive questions, such as advising them on what evidence or motion to submit, or guide them in how to present their case at hearing. Therefore, OAC must balance providing guidance and resources to

those navigating the hearing process without providing legal advice. OAC policies state that clerks may answer administrative questions from parties, such as those related to hearing dates, receipt of filings, what forms to fill out, and whether an order or decision has been issued, and an OAC legal assistant is available to answer general questions regarding hearing procedures.

Statute [Section 8-47-101(3)(d)(II), C.R.S.] requires our audits of OAC to assess public perception related to the quality of OAC's work.

What was the purpose of the audit work and what work was performed?

The purpose of our audit work was to assess the sufficiency of OAC's customer service, including its communication and guidance to parties, and its impact on the public perception of OAC. We reviewed OAC's public-facing guidance, including its website, publications, notices, and forms sent to parties, and observed 23 workers' compensation and Medicaid hearings. We interviewed OAC management and staff; staff from HCPF and DOWC; and nonprofit advocacy groups and attorneys who assisted or represented workers' compensation claimants, Medicaid appellants, and other hearing parties, to understand their experiences working with OAC. To understand how ALJs communicate with parties, we surveyed the 17 ALJs who were actively adjudicating cases during our review, and received responses from 16 of them. We reviewed OAC survey results from parties who participated in virtual hearings, which were conducted in November 2022 and February 2023. We also reviewed the results of customer service surveys conducted by DOWC from 2020 through 2024, in order to understand feedback that it had received related to the appeal process. To understand other resources available to the public, we also reviewed HCPF's and DOWC's websites. To identify the types of guidance provided to parties navigating the legal system, we reviewed guidance published by advocacy groups, administrative court systems in 10 other states, and professional court management organizations.

How were the results of the audit work measured?

DPA's Performance Management Plans emphasize that OAC's purpose is to provide "an easily accessible, independent and cost-effective administrative law adjudication system in Colorado," and that DPA's value is to be "helpful, useful, timely, and efficient in our actions, results, and communications [Performance Management Plans, Fiscal Years 2023 through 2025]. Administrative appeals are intended to allow for parties to navigate the process without needing legal representation, so OAC should ensure a fair, easy-to-navigate, and effective hearing process, and provide resources for parties to generally understand how the process works and what to expect. This includes providing quality information to the public and parties with cases before the court, and communicating accurate and timely information to parties throughout the adjudication of their case. Further, generally accepted best practices for customer service in government judicial settings include creating a user-friendly environment, integrating information resources for pro se parties,

and maintaining neutrality in services and hearing administration [National Association of Court Management, *Creating a User-Friendly Court Structure and Environment*]. One measure of OAC's success is whether the parties believe they have been treated fairly and professionally, and the services provided by the State met their needs. Thus, public perception provides an indicator of success to OAC's overall customer service.

Additionally, the *Standards for Internal Control in the Federal Government* (Green Book), published by the U.S. Government Accountability Office—which all state departments must follow—states that an agency's effective communication is a core principle of internal controls to help ensure that programs operate as intended. The Green Book instructs management to consider the audience in external communication and the purpose of the communication, and design and implement appropriate communications based on those factors [Green Book, Principle 15.07 and 15.09]. For example, information provided to the public on a website, and in forms and notices, should be clear, accurate, complete, and consistent across formats. According to the National Association of Court Management, the court's website is typically the first stop for court users, so the website should also provide easy-to-find information and resources [*Creating a User-Friendly Court Structure and Environment*].

The Green Book requires management to communicate quality information with external stakeholders in order to achieve its objectives, and obtain feedback from external parties [Green Book, Principle 15]. OAC's key external stakeholders include individuals whose cases may be heard by OAC; parties involved in cases, including state agencies; and advocacy groups working with individuals who are navigating the hearing process.

What problems did the audit work identify and why did these problems occur?

Overall, we found that parties, state agencies, and stakeholders that have had interaction with OAC have been mostly satisfied with OAC's customer service, and public perception of OAC has improved since 2012, as it relates to the timeliness of cases and communication. Our audits of OAC in 2008 and 2012 identified deficiencies in its website, informational resources for parties, and engagement with pro se parties. Since 2012, OAC has included more resources on its website, such as the informational video, frequently asked questions, and technical guidance on virtual hearings; and OAC hired a legal assistant to help answer questions regarding hearing procedures or procedural rules; and the OAC Director/Chief Judge began holding regular meetings with several representatives from state agencies and other external stakeholders to gather feedback and answer questions. Those we interviewed noted that OAC clerks were responsive and helpful with their inquiries, the quality of OAC's communication and resource materials have improved, and agencies and stakeholders particularly appreciated OAC's efforts to ensure ongoing communication with them and told us that they felt comfortable reaching out to the Director/Chief Judge to communicate an issue that should be brought to management's attention.

Although we heard that parties, agencies, and other stakeholders were largely satisfied with OAC's customer service and communication, we identified the following three areas where OAC could make further improvements:

Methods for Communicating with Parties. Some stakeholders that we interviewed and ALJs that we surveyed told us that OAC could further improve the information provided to parties because pro se individuals, in particular, have been ill-prepared for the courtroom experience or are unsure as to the next steps in the process or the hearing outcome. OAC clerks who we spoke with said that they felt limited in the assistance they could provide when contacted by parties because OAC must avoid providing legal advice, and clerks must spend time managing cases and assisting ALJs. According to OAC management, new clerks receive limited, verbal training on how to field questions from the public and clerks are not provided written guidance or other reference materials to navigate interactions with the public, which is a reason clerks may be cautious when providing assistance to parties. The National Center for State Courts recommends developing robust self-help resources, as well as trainings for court staff on interacting with parties to improve the user experience. Other courts have found additional solutions to guide parties through the hearing process. For example, within Colorado's Judicial Branch, each judicial district has a Self-Help Center staffed by one or more litigant coordinators who are dedicated to helping users navigate the court system and direct them to appropriate forms, but cannot provide advocacy or legal advice. According to management, at the time of the audit, OAC was participating in a pilot program in which a part-time litigant coordinator had been provided to OAC to assist parties with their questions and guide them through the hearing process; however, because the litigant coordinator also assisted other agencies, OAC management stated that it did not have the opportunity to utilize the coordinator effectively.

Additionally, while adjudication of Medicaid appeals is currently a shared responsibility between OAC and HCPF, HCPF's Office of Appeals is responsible for providing parties with the initial OAC decision as well as the final HCPF decision on the outcome of the appeal. As such, for Medicaid cases, OAC does not communicate the ALJ's decision to the parties after the hearing or notify them that the decision has been transmitted to HCPF so that it can issue its final agency decision for the case. Stakeholders we interviewed told us that when parties are waiting on a decision, they are sometimes confused about the case status and outcome, and do not know which agency to follow up with—OAC or HCPF—when the case does not meet timeliness requirements (as discussed in Finding 1). Although OAC staff are permitted to answer questions regarding whether or not an order has been issued, stakeholders told us that more proactive communication from OAC regarding the status and the next steps in the case timeline would be helpful.

Public-Facing Website Guidance. Advocacy groups and attorneys told us that they believed improved informational resources on OAC's website would better help parties understand the role of OAC and the hearing process and, thus, be better prepared for hearings. While stakeholders consistently told us that clerks at OAC are helpful when contacted with inquiries, stakeholders expressed that they or the parties who they represent often had to reach out to OAC staff about

simple or straightforward questions that are the result of poor or confusing information on the website. When we reviewed OAC's website, we identified the following issues:

- **The website and published guidance do not provide a clear and complete description of the hearing process for users.** Stakeholders confirmed that OAC's website lacked a straightforward description of how the hearing process works, what parties could expect, and how to find information about their case. One advocacy group that works with Medicaid appellants said that they no longer refer appellants to the OAC website for information because they have heard that the website is confusing for appellants and the site lacks information on Medicaid appeals; the group, instead, provides the appellants that they assist written guidance that they produced. In our review of administrative court websites in 10 other states, we found that 7 of the states provided guidance that describes the hearing process in more detail than OAC. For example, other states provided schematic diagrams, step-by-step breakdowns of the process, and specific frequently asked questions on the hearing process.
- **The website has some contradictory or outdated information.** For example, one page on OAC's website explaining how to file documents and forms conflicted with OAC's procedural rules, and one guidance document for pro se parties had outdated information on interpretation services that conflicted with information elsewhere on the website. Further, several website sections and documents contained broken links or placeholders with incomplete information. For example, sections of guidance documents intended to provide contact information for OAC's offices, contained incomplete phone numbers or email contacts.
- **Some of OAC's guidance may not be accessible to the lay person.** For example, some guidance contains many legal and technical terms, and guidance for pro se parties instructs them to review statutes, rules, and regulations, but this guidance and statutes, rules, and regulations are not written in plain language for a lay audience.

OAC lacks a regular process to review its website information to ensure that it is updated with clear, complete, accurate, and accessible information.

Methods for Gathering Feedback from Parties. At the time of our 2008 and 2012 audits, OAC used a customer service survey questionnaire to gather feedback from all parties on OAC operations. According to management, OAC has not conducted one of these surveys in more than 5 years, and no longer asks all parties to provide feedback. In 2022 and 2023, OAC surveyed parties to specifically gather feedback on virtual hearings, but did not for other areas of operations. The 2022 and 2023 survey respondents generally said that they were comfortable using the virtual hearing platform, and felt that offering virtual hearings made the hearing process more accessible. However, the survey results showed that parties who had language or accessibility needs, such as a foreign or sign language interpreter, did not know what to expect, which led to complications in the hearing. Further, some respondents expressed confusion about filing and presenting exhibits in the virtual and hybrid format, which could be resolved by more comprehensive guidance from OAC. Medicaid

advocacy groups we spoke with had similar concerns with appellants' access to language and accessibility resources as well as electronic processes to submit and serve documents to other parties. Some representatives from these advocacy groups were not aware of how to communicate their concerns to OAC.

The National Center for State Courts recommends that courts collect information on the experience of at least pro se parties navigating the courts in order to improve operations. Developing a process to gather feedback from key customers—parties in cases, attorney and other representatives, and advocacy groups—would help OAC identify gaps in its informational resources and communications with parties. For example, DOWC posts a survey questionnaire on its website to gather feedback from workers' compensation claimants, insurance carriers, employers, and attorneys. DOWC asks parties to rate its informational resources and customer service, and comment on whether they are helpful and how to improve services.

Why do these problems matter?

We recognize that, while OAC is intended to provide a streamlined, lower-cost process than parties would experience in district court, adjudication can be adversarial by nature and not all parties who interact with OAC will conclude that they had a positive experience. However, when parties lack access to quality information about the appeals process, or they are not aware of how they can communicate feedback, it can unnecessarily impact public opinion about the quality of OAC's work. According to the National Association for Court Management, the court's actions, including communications, play an integral role in a party's perception of whether a court operates in a fair and impartial manner and that they exist for everyone [*Creating a User-Friendly Court Structure and Environment*]. This can create the impression of unequal treatment for certain parties, possibly undermining OAC's goal to be perceived as impartial and independent. The National Association for Court Management also reported that users who can find what they need quickly and easily are less likely to feel frustrated, and when information is presented in a clear, understandable way, users may feel the court is transparent and accessible. Conversely, outdated, confusing, or conflicting guidance can make parties lose trust in the system, and some pro se parties may have difficulty moving forward with their case without representation. However, obtaining representation may be a financial burden for parties, which undermines OAC's mission to provide cost effective services.

When guidance on the appeals process is lacking, appellants may also feel stress about how to navigate the process. According to OAC management and staff, and stakeholders, a party's appeal is often their first time interacting with an administrative law system, and when they do not have representation, they lack knowledge on how to proceed with their case. For some workers' compensation and Medicaid appellants, they may have added concern because they can be injured, sick, or disabled, and need accurate and clear guidance to understand the hearing process, since their case may be about accessing benefits tied to their quality of life.

Lastly, when OAC's public information is incomplete or unclear, and OAC lacks a method to gather regular feedback from parties, it can lead to inefficiencies in its operations. Some clerks told us that they spend a significant amount of time answering common questions from parties, which could be addressed by improving the informational resources available. ALJs also told us that they spend a significant amount of time in pro se hearings explaining hearing procedures to unrepresented parties, and said that if OAC had better resource materials available, or a dedicated staff liaison to guide parties through the hearing process, ALJs may be able to use hearing time more efficiently. For example, in some of the pro se hearings we observed, ALJs spent substantial time explaining how to file evidence documents, which could be alleviated by improved guidance. Gathering regular feedback from parties could help OAC better ensure that its public information is useful and its customers have the information they need, and could reduce unnecessary staff and ALJ workload.

Recommendation 2

The Office of Administrative Courts (OAC) should improve its customer service and communications to parties by:

- A. Developing and implementing expectations, guidance, and training materials for clerks, and other OAC staff as needed, on how to respond to inquiries from the public and parties, without providing legal advice.
- B. Considering establishing a staff position that is responsible for assisting parties with their questions, such as a litigant coordinator position.
- C. Considering implementing a process to communicate the status of a case, next steps in the process, and/or the responsible agencies, to Medicaid appellants after the hearing. OAC may also want to consider this type of communication to parties involved in other General Services cases.
- D. Implementing a process to review and update website information to ensure that it includes clear, complete, accurate, and accessible information. This should include providing information on OAC's role in the different types of cases that it adjudicates, and how to generally navigate the appeal hearing process, in plain language for a lay audience.
- E. Reinstating a process to gather feedback from parties, such as through a survey sent to parties after their hearings are completed.

Response

Office of Administrative Courts

A. Agree

Implementation Date: June 2025

The OAC currently provides limited training for clerks on how to respond to inquiries from the public. The OAC will seek additional training opportunities through other court systems within the state. The OAC will also update all training materials to clarify guidance and expectations.

B. Agree

Implementation Date: December 2025

The OAC hired a part-time social worker/litigant coordinator for a period of 6 months as a pilot program. While the OAC did not find that having a full time litigant coordinator was necessary, the OAC will consider establishing a new staff position or modifying the duties of a current position to include more broadly assisting parties with questions. The OAC also believes that additional training for OAC staff will be effective at improving customer service and communications.

C. Agree

Implementation Date: March 2025

The OAC will consider processes to more effectively communicate the post-hearing case status, next steps, and responsible agencies to Medicaid appellants; and the OAC will implement such processes to both advise appellants during hearings, and elsewhere, such as on the OAC's website. The OAC has also initiated discussions with HCPF about additional solutions related to this recommendation.

D. Agree

Implementation Date: December 2025

The OAC formed an employee workgroup responsible for making website updates. This workgroup has met several times beginning on July 25, 2024 and is creating a comprehensive list of updates to the OAC website. Once the initial website updates are complete, the workgroup will meet at least on a biannual basis to review content and determine if additional updates or modifications are necessary.

E. Agree

Implementation Date: April 2025

The OAC is eager to gather feedback from parties through surveys, and has found a low cost solution that will meet privacy best practices.

Finding 3—Administration of Cases and Hearings

OAC fulfills its purpose—to provide an easily accessible, independent, and cost-effective administrative court adjudication system—by processing applications for hearings related to dispute and appeal cases, completing hearings, and issuing decisions on the cases. In order to manage cases through these steps, OAC has the following key administrative processes:

- **Case Management.** OAC uses Salesforce software to track data on hearing applications and their related cases, and to create data reports to monitor each case. OAC has limited ability to modify the design and features of Salesforce, but can add and edit users, fields, drop-down data-entry options for select fields, and can create custom data reports, such as case timeliness reports. When managing a case or after a case is concluded, if OAC receives a complaint, such as from a party to a case, OAC’s Director/Chief Judge investigates the merits of the complaint, takes steps to resolve it, and communicates the outcome to the complainant. If the investigation finds an ALJ violated judicial standards of conduct, formal disciplinary procedures may apply. In Calendar Year 2023, OAC opened a total of 9,274 cases that its staff and ALJs were actively managing.
- **Hearing Administration.** OAC adjudicates hearings that are in-person, fully remote/virtual, and hybrid. OAC’s three regional offices conduct a different mix of these hearings, with the Denver office conducting more remote meetings using Google Meet, and Grand Junction and Colorado Springs conducting more in-person and hybrid meetings using telephone conferencing and Google Meet. OAC provides interpreters at workers’ compensation hearings for participants with limited English proficiency. For Calendar Year 2023 cases, we used OAC data to estimate that OAC’s three regional offices held in total about 64 percent of hearings remotely, and 36 percent in-person or hybrid.
- **Mitigation of ALJ Conflicts of Interest.** As part of case and hearing administration, ALJs should self-identify potential and actual conflicts of interest that they may have related to an assigned case—such as if they have professional or social relationships with parties or their legal representatives—and should recuse themselves if they believe the conflict may impair their judgment. According to management and staff, OAC attempts to hire individuals with administrative law knowledge and experience to serve as ALJs. For example, OAC’s ALJs who handle workers’ compensation cases are typically former attorneys who represented parties on appeal cases, such as by working for firms that litigated workers’ compensation cases. ALJs are required to disclose conflicts related to their financial interests, concurrent outside employment, and gifts on OAC’s Judicial Disclosure Form, which is reviewed by OAC’s Director/Chief Judge to determine if a case should be reassigned based on a conflict. ALJs may disclose other conflicts in discussion with their supervisor or during a hearing with parties, on the record. ALJs participate in OAC’s ethics training every other year, as well as other non-OAC trainings, which may cover conflicts of interest mitigation in order to maintain their law licenses and meet professional education requirements.

What was the purpose of the audit work and what work was performed?

The purpose of our audit work was to assess OAC’s performance when carrying out its administrative processes of managing cases and hearings. To understand OAC processes, we interviewed OAC’s Director/Chief Judge, the four supervising ALJs, OAC’s Salesforce system administrator, ALJs, and clerks. We also surveyed OAC’s 17 ALJs about their practices and understanding of expectations related to their responsibilities, and received responses from 16 ALJs. To assess OAC’s case management data for reliability, completeness, and consistency, we reviewed Salesforce data for all of the 26,675 cases opened in Calendar Years 2021 through 2023, and entries that OAC made for those cases through February 2024, which included data on hearings, orders, and hours ALJs spent working on different case activities. We reviewed OAC’s documentation on the 12 complaints that management told us that it received from September 2022 through March 2024. We also attended 23 virtual and in-person hearings for workers’ compensation and Medicaid cases. To identify evidence of discussion or disclosure of conflicts, we reviewed Judicial Disclosure Forms submitted to the Director/Chief Judge in Calendar Year 2023, documentation for a sample of 42 workers’ compensation and Medicaid cases (discussed in Finding 1), and hearing practices. We also interviewed stakeholders representing parties of cases, and staff from DOWC and HCPF, to understand their experiences working with OAC, perceptions of potential ALJ conflicts of interest, and experiences with OAC’s complaint resolution process.

How were the results of the audit work measured?

We measured OAC’s key administrative processes based on the following requirements and expectations for OAC operations:

- **OAC should maintain quality case data and information.** In 2017 and 2018, OAC issued Salesforce guides to its staff and ALJs, which outlined some how-to guidance and expectations for managing cases, such as opening cases, tracking the parties’ information, logging evidence and motions received, scheduling hearings, issuing orders, and sending notices. OAC should have processes for ensuring case data and information are relevant and reliable for managing cases and monitoring operations. Both the State Measurement for Accountable, Responsive, and Transparent Government (SMART) Act and the *Standards for Internal Control in the Federal Government* (Green Book), published by the U.S. Government Accountability Office—which state agencies are required to follow—emphasize that agencies should collect and use quality information in order to make management decisions and keep apprised of operations. For example, the SMART Act requires agencies to have data that tie to their mission, goals, and performance measures [Section 2-7-204(3)(c), C.R.S.], and the Green Book states that management should use quality information to achieve its objectives, and defines quality information as “...appropriate, current, complete, accurate, accessible, and provided on a timely basis” [Principle 13].

In addition, as part of its statutory responsibility to maintain a process to receive, investigate, and resolve complaints about ALJs, OAC should ensure that it maintains quality information on each complaint received, its investigation, and the resolution of the complaint, because OAC may need to take disciplinary action against the ALJ if the investigation finds that they violated standards in the Judicial Code of Conduct, or OAC may need to support its position if the complainant is dissatisfied with OAC's resolution [Section 24-30-1003(4)(b-d), C.R.S.].

- **OAC should administer hearings consistently to help ensure all parties are provided due process.** The U.S. Constitution's Fourteenth Amendment requires that state governments abide by certain procedures to protect the essential interests of citizens, including providing procedural due process to help ensure fundamental fairness. Essential to due process in an administrative court is consistent administration of hearings. As such, OAC's procedural rules outline standard expectations for hearings [1 C.C.R. 104-1] and state that there should be just, speedy, and inexpensive determination of matters presented in cases [1 C.C.R. 104-1 Rule 2]. OAC is responsible for developing procedures or guidance for its ALJs and staff to consistently carry out the rules in practice.
- **OAC should ensure ALJs mitigate conflicts of interest that could affect their judgment on cases.** Conflicts of interest, both in appearance and fact, present a risk to an ALJ's independence. Maintaining judicial independence, objectivity, and impartiality are critical to OAC's ability to fulfill the aspect of its mission to provide an independent administrative law adjudication system in Colorado. Thus, statute and OAC's procedural rules require ALJs to be independent and perform their duties with integrity in order to maintain public confidence in the judiciary [Section 24-30-1003 C.R.S., and 1 C.C.R. 104-2]. Statute [Section 24-30-1003, C.R.S.] also requires ALJs to follow Colorado's Judicial Code of Conduct promulgated by the Judicial Branch, which includes independence requirements. OAC rules include key aspects of the Judicial Code of Conduct, collectively establish that the appearance of impropriety poses a risk to OAC's credibility, and acknowledge that respect for and adherence to administrative rulings depend on public confidence in the integrity and independence of ALJs.

OAC rules advise ALJs to take steps, beyond what might be expected of the average citizen, to protect public confidence in their independence, and avoid impropriety and the appearance of impropriety, including conduct that would create in reasonable minds a perception that an ALJ is not honest and impartial [1 C.C.R. 104-2, Canon 2]. ALJs are to recuse themselves from any judicial proceeding in which their impartiality might reasonably be questioned, such as for cases in which the judge previously served as an attorney for the firm representing a party, or has a personal relationship with one of the parties, unless the parties agree in writing that the conflict is immaterial [1 C.C.R. 104-2, Canon 3]. The rules also provide general guidance for ALJs to disclose conflicts, and advise that they document the disclosure and any factors that may mitigate a perceived conflict. The Judicial Code of Conduct also requires judges to report extra-judicial financial compensation, gifts, and reimbursements received (i.e., in OAC's Judicial Disclosure Form) [Colorado Code of Judicial Conduct, Rule 3.15: Reporting Requirements].

Additionally, the Green Book requires management to respond to risks, such as ALJ conflicts, that could impede the organization from achieving its mission [Green Book, Principle 7]; and demonstrate a commitment to ethical values by adopting standards for professional conduct, implementing safeguards to detect and resolve issues, and incorporating accountability mechanisms throughout the organization [Green Book, Principle 1]. These safeguards and mechanisms should be documented with clearly assigned responsibilities in policies and procedures [Green Book, Principle 12]. The Green Book also specifies that management should ensure that these priorities are understood by employees and the general public.

What problems did the audit work identify, and why do they matter?

Overall, we found that OAC has taken steps to improve its administrative processes, such as by implementing a new case management system, since our prior performance audit in 2012. Additionally, stakeholders who we interviewed told us that OAC has generally improved its administrative support of cases. However, we identified opportunities for OAC to further improve its processes for managing cases and conducting hearings, as follows:

OAC could improve the quality of data and information needed to support case

management. When we reviewed Salesforce data from January 2021 through February 2024, which OAC used to monitor the management of cases, we identified incorrect, incomplete, or invalid information tracked in Salesforce in each year of the review period. We performed a range of data reliability tests on OAC's data for cases, hearings, and orders. Not all tests were applicable for each type of data so the results cannot be aggregated. However, we identified reliability errors for each test, which were as high as 11 percent of the applicable records within each data type. Collectively, the results show that there are data inaccuracies that reduce OAC's ability to measure case timeframes and understand case delays and outcomes. For example, we identified:

- **Invalid and missing dates**, such as hearing dates and times that were incorrect because they were outside of business hours, missing dates for when orders were ready to issue or were issued, missing case closure dates, and hearing application and order dates that were incorrect because the recorded application date was after the order date. For example, when we reviewed the key date fields that OAC uses to monitor the timeliness of ALJ's orders, we identified 1,023 order records (about 2 percent of orders) for which OAC did not record the date that the order was ready to be issued or recorded it incorrectly, and 1,720 records (about 4 percent of orders) that were missing or had invalid dates that the orders were issued to parties.
- **Some orders were categorized incorrectly.** For example, we identified 22 Medicaid case orders for which the ALJ dismissed the appeal but the orders were incorrectly categorized as bench orders, which the ALJ issues from the bench during the hearing to address procedural processes, such as granting or denying a request for a hearing extension, or requiring parties to

clarify information submitted as evidence. According to OAC, dispositive orders close a case with OAC so dismissals should always be categorized as dispositive orders. Correctly categorizing orders is important because OAC's Salesforce reports rely on dispositive orders to identify delayed cases. As a result of this incorrect categorization, OAC lacks data needed to accurately measure timeframes for these cases.

- **Missing case information**, such as closed cases with missing close reasons, completed hearings tracked without an assigned ALJ or hearing location, and order records missing the ALJ responsible for the order. For example, 2,359 order records (5 percent of orders) were missing the name of the assigned ALJ who issued the order, so OAC would not be able to use its data to accurately measure ALJ performance for issuing orders timely in these cases. In addition, in our review of sampled cases, we identified instances of hearing records that were marked with an incorrect completion status so OAC may not have an accurate count of completed hearings.
- **Duplicative and inconsistent terms used to track case information**, such as case status, close reason, order category, and ALJ work activity. For example, OAC staff inconsistently used the terms "Case Settled," "Issue(s) Resolved," "Settled," to mean the same status for cases closed when the parties settled the case, and inconsistently recorded these terms in either the Case Status field or the Closed Reason field in Salesforce. Because OAC does not consistently capture information on settled cases in one field, it cannot easily report on all cases that are settled, which would inform both OAC management and the agencies that it serves about trends in case outcomes. As another example, when ALJs tracked their work activities in Salesforce, they used eight different terms to note time that they spent working on similar activities of reviewing evidence and legal criteria for a case—"Deposition Review," "Document Review," "Evidence Review," "File Review," "Research," "Review filings and issue response," "Transcript Review," and "Video Review (outside of hearing)." In our survey, ALJs expressed confusion about how to record their time for activities and how to use the terms in Salesforce consistently. When ALJs do not consistently track their time on case activities, it can be difficult for management to accurately measure how ALJs are spending their time, and understand what tasks take more time and may require additional resources or assistance for ALJs.
- **Lack of data on ALJ decisions that parties appealed** to ICAO or HCPF's Office of Appeals, and lack of data on the ALJ decisions that were overturned and why. Due to OAC's lack of tracking of this information, we obtained these data from ICAO and HCPF.
- **Inconsistent tracking of complaint information**, although OAC was responsive to the complaints received. For 2 of the 12 complaints that OAC reported receiving from September 2022 through March 2024, OAC was unable to provide us documentation of some relevant details, such as the complainants' allegations or OAC's response. Additionally, for 2 other complaints, OAC did not maintain a record of their resolutions along with the complaints in a consolidated location, although we were able to find the resolutions in OAC's detailed case records in Salesforce.

Inconsistent data management practices can affect OAC's ability to provide timely and effective case management services, and present unnecessary challenges to staff. Inconsistent data entry compromises the quality of the data and its value to management for monitoring and performance management to identify areas for improvement. Further, inconsistent record-keeping for complaints could limit OAC's ability to demonstrate that it has appropriately resolved complaints and communicated the steps taken to involved parties in a transparent way, which are important to OAC's credibility with the people and organizations it serves. Additionally, gaps in record-keeping can create challenges for staff to understand cases, and pass on institutional knowledge if there is staff turnover.

OAC could improve the consistency of its virtual hearing administration. When we observed virtual hearings, we found that ALJs had the following inconsistent practices:

- **Virtual trailing dockets managed inconsistently.** Our observations included several virtual hearings that were scheduled as trailing dockets, which are when OAC schedules multiple cases for virtual hearings on the same day and at the same time; the parties wait for their hearing while the ALJ begins and holds one case hearing at a time, and then moves on to the next. Some ALJs did not provide the parties information on when their particular hearing would occur or instructions on when to re-join the online meeting for their hearing. When we attempted to join some of these virtual hearings using the online links provided by OAC, our connection did not work or timed out with no indication as to when the hearing would start, or whether the hearing was cancelled or there had been technical difficulties with the virtual system. We observed only one ALJ who had all of the hearing parties for the docket join their virtual hearing room, and then gave them instructions for the docket. For example, this ALJ told the parties that they each had different hearings, the judge would first complete the hearings that they anticipated finishing quickly, and the remaining parties should wait until the judge rejoined them in their virtual hearing room; the ALJ then started each hearing after the previous was completed.
- **Some hearing technology used inconsistently.** For example, in a hearing that we observed, the parties were unsure how to share their computer screens to discuss evidence, and the ALJ seemed unsure on how to provide guidance. Additionally, some parties did not understand the need for or how to mute themselves when not speaking during hearings, so audio feedback made it difficult to understand hearing participants and capture a clear record of the hearing. We observed only one ALJ who, at the beginning of the hearing, told the parties to mute themselves when not speaking while other ALJs did not; and some ALJs allowed testimony that was difficult to hear at times due to parties not muting, before the judge interrupted testimony to ask the parties to mute themselves.
- **Interpretation services may be managed inconsistently for workers' compensation cases.** One party, who required interpretation services during a virtual hearing, was unsure how to communicate with OAC's interpreter, and the interpreter appeared to be unsure how to provide their service. Prior to the hearing, the party had not been instructed that they would need a

second phone or computer to communicate with the interpreter and judge at the same time, so the hearing was delayed during their search for another device. Additionally, the ALJ initially instructed the interpreter to provide simultaneous interpretation, in which the interpreter translates while the person speaks, but that method was not appropriate for the testimony portion of the hearing requiring a question and answer format. This resulted in additional delays as the interpreter changed to consecutive interpretation, in which the interpreter waits for the speaker to stop before interpreting, and parties repeated testimony so that the online meeting audio could capture a complete recording of the hearing.

The differences in how virtual hearings are administered can result in time wasted on preventable delays, like those resulting from screen-sharing and audio difficulties, which may cause hearings later in the day to have to be rescheduled and delay case decisions. Additionally, hearing inconsistencies may cause confusion and frustration for the parties, or diminish their trust in the adjudication process. For example, two of the Medicaid advocacy groups that we interviewed had some frustration because they did not understand how virtual hearings are scheduled. They thought that cases involving appellants who do not have attorney representation—known as pro se appellants—may be scheduled later than hearings involving appellants with attorney representation; yet, OAC management told us there is no scheduling on this basis, but the process may be unclear to the parties.

OAC could improve practices for mitigating ALJ conflicts of interest. While we did not identify evidence that any ALJs had conflicts of interest, we identified inherent risks that ALJs could adjudicate a case while they have a conflict or perceived conflict, based on the following:

- Supervising ALJs told us that conflicts stemming from an ALJ’s prior employment are common due to OAC hiring from private firms that handle workers’ compensation cases, which creates the risk that ALJs may have a conflict on a case, or the parties may perceive ALJ bias. Supervising ALJs also described inconsistent practices for determining if ALJs have potential conflicts with their assigned cases.
- Some stakeholders told us they perceived some bias due to ALJs’ former and current relationships with the attorneys representing some of the parties.
- ALJs had an inconsistent understanding of what might constitute a conflict that needs recusal—only 11 of the 16 ALJs responding to our survey said that having a financial interest in a party on a case would be a potential conflict that they would consider disclosing or that may lead them to recuse themselves from a case. Additionally, not all ALJs said they would discuss a potential conflict with their supervisor.
- Beyond what management and staff told us in interviews, and our review of the only Judicial Disclosure Forms that ALJs submitted to OAC during 2023—which were three forms

submitted by one ALJ—we did not observe evidence in hearings or identify documented evidence that ALJs considered conflicts.

Inconsistencies in processes to manage conflicts of interest limit OAC’s ability to ensure that all cases are handled impartially, and limit transparency for stakeholders. Because OAC generally relies on ALJs to self-manage and mitigate their conflicts, our ability to independently evaluate how consistently and effectively OAC addresses conflicts is limited. Limited transparency, in turn, may lead parties to send OAC complaints or question ALJ decisions. For example, one stakeholder told us that they raised concerns with OAC management about an ALJ potentially having bias on cases, which they believe affected the ALJ’s treatment of certain parties. Without evidence of how conflicts are consistently considered and addressed, OAC may be limited in its ability to defend itself against such complaints and questions, and we could not substantiate the merit of the concern.

Why did these problems occur?

OAC needs to develop written procedures, and improve its processes and corresponding training, to help ensure consistent administrative practices. We identified a lack of written procedures, some existing guidance for ALJs and staff that was outdated or incomplete, inconsistencies in how ALJs and staff understood and fulfilled their responsibilities, and limited training, as follows:

- **Lack of data and information management strategy, complete guidance, and updated training.** OAC management told us that the data issues we identified were generally caused by data entry errors due to staff’s and ALJs’ inconsistent understanding of how to and who should enter data into Salesforce. OAC management has not fully determined what data are important to collect to monitor the organization’s performance, or updated data entry guidance for ALJs and staff to help ensure they collect needed data consistently. Some OAC staff told us that they questioned the value of some information that OAC currently collects, such as the close reasons indicating case outcomes. Additionally, OAC’s data entry guidance for ALJs and staff is outdated and incomplete—OAC last updated its data process guide for clerks in 2017, and its guide for ALJs in 2018. The guides do not clearly state staff and ALJ roles and responsibilities for entering data; key data definitions; or how to use Salesforce preset drop-down menus to track accurate case information and track ALJ time for case activities. Some OAC management said that clerks should review ALJ orders and correct discrepancies, such as missing and invalid dates or incorrect order categories, but this expectation is not in the guides; management said that supervisors communicate general expectations in one-on-one training to new staff, but there are no standard training materials given to staff. Further, 10 of 16 ALJs who responded to our survey told us that case management tasks and features in Salesforce were unclear, confusing, or difficult, and 8 ALJs indicated that they needed more Salesforce training on what terms mean, how to complete tasks, and assigned roles and responsibilities for data entry and other tasks. OAC management told us that it had been some time since they reviewed how staff use Salesforce to collect data. Lastly, OAC has not developed a process to track data on ALJ

decisions remanded and overturned. These data are named specifically in statute for OSA to review in our assessment of OAC performance, in order to monitor if ALJs regularly have their decisions overturned, which could indicate a concern with individual ALJs.

- **Lack of a process for maintaining complete complaint documentation.** OAC has not developed a written procedure to ensure all relevant complaint records, including the related investigation and resolution information, are maintained together and accessible to appropriate management or staff. While some complaints may be documented as part of an ALJ's performance evaluation or disciplinary proceedings, that occurs only if there were violations of professional conduct standards.
- **Lack of written procedures and limited training on virtual hearing administration.** OAC began using virtual hearings for most cases in response to the COVID-19 pandemic, and has not formalized expectations and procedures for administering these types of hearings. For example, while OAC management told us that there are informal expectations related to how ALJs should manage virtual dockets, OAC has not provided ALJs written guidance on how ALJs should conduct virtual hearings or should give parties instructions on various aspects of these hearings, such as screen-sharing and muting. Additionally, OAC has not developed organization-wide procedures or guidance for interpretation. OAC recently took responsibility for providing interpretation services for workers' compensation cases, and each regional office coordinates their own interpretation vendors. Further, OAC has not provided updated training to all ALJs on best practices and expectations for conducting virtual hearings, including how to incorporate interpretation services throughout hearing procedures. According to OAC management, the previous OAC Director/Chief Judge provided ALJs limited training on holding virtual hearings when they were implemented in 2020, and currently, supervisors train new ALJs on an as-needed basis during onboarding, but that training may vary by supervisor.
- **Incomplete procedures for ensuring that ALJs apply conflict of interest standards.** Although we did not identify ALJs who adjudicated cases while having conflicts of interest related to the cases, OAC's procedures do not appear sufficient to mitigate risks to its independence and credibility. OAC has not developed a standard written process for ALJs or supervisors to follow in order to identify and mitigate conflicts.

According to OAC management, a standard process has not been developed because ALJs are professionals who are capable of using their discretion to manage conflicts. Nonetheless, developing a documented process for how ALJs should apply judicial conduct standards, and communicating the process to all OAC employees would reduce the risk of inconsistent understanding and approaches, and help safeguard OAC against the risk of an ALJ adjudicating a case when they have a conflict. In addition, one tool that would help provide assurance that ALJs have considered and mitigated conflicts, would be for OAC to periodically require ALJs to use a standard form to attest to their independence, or disclose any potential conflicts and their planned approach to address the conflicts.

Recommendation 3

The Office of Administrative Courts (OAC) should improve its administrative processes for case management, virtual hearing administration, and conflict mitigation, by developing and implementing processes, and updating procedural rules as needed, in the following areas:

- A. Data management, including developing a strategy that identifies key case data and information needed to inform OAC’s performance and management decisions, and updating written guidance and training for Administrative Law Judges (ALJ) and staff on data entry practices as well as roles and responsibilities for data entry. This could also include making improvements to Salesforce to strengthen data management and functionality.
- B. Maintaining complete information on relevant complaints received, the investigations, and resolutions.
- C. Virtual hearing administration, including clarifying expectations and establishing guidance for ALJs, parties, and interpretation services, and providing related training to relevant ALJs and staff.
- D. Conflict of interest mitigation, to provide greater assurance that ALJs consistently consider their independence and recuse themselves from cases when appropriate. This should include OAC documenting a standard process for identifying and addressing conflicts; providing ALJs updated training on what constitutes a conflict; and considering the use of a standard form for ALJs to attest to their independence or disclose potential conflicts.

Response

Office of Administrative Courts

- A. Agree

Implementation Date: December 2025

The OAC has updated some data entry policies since the inception of this audit. The OAC will analyze key case data and develop written procedures for ensuring key data is captured and entered by the correct employees. The OAC will also provide updated training to all relevant employees. The OAC will investigate whether data management and functionality improvements to its current case management system are feasible and cost effective.

B. Agree

Implementation Date: Implemented September 2024

The OAC is presently maintaining complete information on relevant complaints received, investigations, and resolutions.

C. Agree

Implementation Date: June 2025

The OAC will create a written process for virtual hearings, including interpretation services directed at relevant employees. The OAC will also provide training for current and new relevant employees. The OAC previously issued technical guidance and a code of conduct directed at parties of virtual hearings; however, the OAC will add guidance on expectations for trailing hearings, and use of interpreters during virtual hearings.

D. Agree

Implementation Date: December 2025

Pursuant to §24-30-1001(4)(a), C.R.S., the OAC ALJs must adhere to the Colorado Code of Judicial Conduct regarding conflicts of interest and when disqualification is appropriate. See Rule 2.11, Colorado Code of Judicial Conduct, incorporated herein by reference, which sets forth the criteria, including identification of conflicts of interest, that would support disqualification of an ALJ. The OAC will create and implement a standard process for how and when ALJs should consider the application of Rule 2.11 to their circumstances. The OAC also agrees to provide updated training on what constitutes a conflict of interest during its biennial ethics continuing legal education seminar.

Appendix A

Review of OAC Decisions

Appendix A summarizes Calendar Year 2023 data on the number of Office of Administrative Courts (OAC) workers' compensation case decisions that were reversed upon appeal to the Industrial Claims Appeals Office (ICAO) and to the Colorado Court of Appeals, as required by Section 8-47-101(3)(d)(II), C.R.S., as well as the number of OAC Medicaid case decisions that the Department of Health Care Policy and Financing's Office of Appeals (HCPF Appeals Office) reversed from January 1, 2023 to March 25, 2024.

The rates at which OAC orders are reversed for different types of cases, and by each appellate body, should not be compared because workers' compensation cases and Medicaid cases vary significantly and undergo disparate levels of appellate review, by different appellate bodies. A reversal or modification of an OAC decision could be due to legitimate differences in OAC's and the appellate body's legal interpretation or judgment, and is not necessarily an indication that OAC erred.

Appellate Action on OAC's Workers' Compensation Case Decisions

In workers' compensation cases heard by OAC, once the Administrative Law Judge (ALJ) issues a decision known as the "Findings of Fact and Conclusions of Law," the parties have the right to appeal the decision, first to the ICAO, and later to the Colorado Court of Appeals and the Colorado Supreme Court.

ICAO is an appellate panel made up of at least two ALJs, which is administratively housed within the Department of Labor and Employment, but operates independently from the Department and its Division of Workers' Compensation. When an OAC decision is appealed to ICAO, the ICAO reviews the original case record and issues a written decision that either affirms, remands, or reverses or partially reverses OAC's decision. Affirm means ICAO agrees with OAC's decision, remand means that that ICAO returns the case back to OAC to reconsider its original decision, and reverse means that ICAO overturns or changes OAC's decision. In the event of a remand, an OAC ALJ must issue a new order that is consistent with the findings of the ICAO's decision.

If a party disagrees with ICAO's decision, they may appeal the case to the Colorado Court of Appeals, which is a panel of three judges within the Judicial Branch. The Court of Appeals reviews the original case record and issues a written decision that affirms, reverses, or partially reverses decisions made by the ICAO, which may or may not confirm the original decision rendered by OAC. A party that disagrees with a decision by the Court of Appeals may appeal to the Colorado Supreme Court, but this is rare and the Supreme Court is not required to review the case.

Exhibits A.1 and A.2 summarize the outcomes of ICAO and Court of Appeals reviews of OAC decisions for workers' compensation cases in Calendar Year 2023. It takes time for an appellate body to review a case, so the decisions that the ICAO and Court of Appeals issued in 2023 may relate to cases that OAC adjudicated in 2022 or earlier.

Exhibit A.1
Outcomes of ICAO Review of OAC Workers’ Compensation Cases
Calendar Year 2023

Total OAC Workers’ Compensation Cases Reviewed by ICAO	OAC Decisions Affirmed ¹ by ICAO	OAC Decisions Remanded ² by ICAO	OAC Decisions Partially Reversed by ICAO	OAC Decisions Reversed by ICAO
73	63 (86%)	7 (10%)	2 (3%)	1 (1%)

Source: Data provided by Industrial Claims Appeal Office based on the date it received each appeal.

¹ The 63 affirmed cases include 4 cases that were either dismissed due to the issues of the appeal not being relevant for ICAO review or were ICAO’s corrections of their own previous actions.

² Total includes 5 partial remands, meaning the ICAO returned the case to OAC to re-review a portion of its original decision.

Exhibit A.2
Outcomes of Court of Appeals Review of OAC Workers’ Compensation Cases
Calendar Year 2023

Total OAC Workers’ Compensation Cases Reviewed by Court of Appeals	ICAO Decisions Affirmed ¹ by Court of Appeals	ICAO Decisions Partially Reversed ² by Court of Appeals	ICAO Decisions Reversed ³ by Court of Appeals
14	13 (93%)	1 (7%)	0 (0%)

Source: Data provided by Colorado Court of Appeals based on date that it issued its decision.

¹ Cases affirmed by the Court of Appeals are those in which the ICAO decision is upheld.

² Cases partially reversed by the Court of Appeals are those in which the ICAO decision is partially upheld and partially reversed.

³ Cases reversed by the Court of Appeals are those in which the ICAO decision is reversed.

HCPF Final Action on OAC’s Medicaid Case Decisions

After individual Medicaid appeal cases are heard by OAC, the ALJ issues an “initial decision,” and the HCPF Appeals Office reviews the decision and issues the “final decision.” In provider Medicaid appeal cases, OAC’s decision is binding and not subject to review by HCPF’s Appeal’s Office. For each of the individual appeal cases, the HCPF Appeals Office notifies the parties of OAC’s initial decision, and then the parties may send the Appeals Office exceptions, which are any formal objections that they would like HCPF to consider. HCPF Appeals Office staff review OAC’s initial decision and any exceptions, and issue a final decision on the case. According to HCPF Appeals Office staff, when reviewing OAC’s initial decisions, they check whether or not the information and evidence in the case file supports the ALJ’s decision, and then staff uphold, modify, remand, or reverse the initial decision. Uphold means the HCPF Appeals Office agrees with OAC’s decision, modify means that it disagrees with part of OAC’s decision and changes it, remand means that it returns the case back to OAC to reconsider part of its initial decision,

and reverse means that it overturns OAC’s decision. For each case that OAC dismisses because the appellant withdrew their case, HCPF Appeals Office staff told us that they review the case to determine if the information in the file supports an appellant withdrawing.

HCPF Appeals Office staff are not professional judges, nor are they bound by judicial rules of procedure or conduct, although these staff are knowledgeable about Medicaid rules and regulations, and have experience reviewing OAC’s initial decisions for Medicaid appeal cases.

Exhibit A.3 summarizes the HCPF Appeals Office’s final decisions issued from January 1, 2023 through March 25, 2024, on individual Medicaid appeal cases adjudicated by OAC.

Exhibit A.3
HCPF Appeals Office Final Decisions on Medicaid Appeals Heard by OAC
January 1, 2023 to March 25, 2024

Total OAC Initial Decisions Reviewed by Appeals Office	OAC Decisions Upheld by Appeals Office	OAC Decisions Modified by Appeals Office	OAC Decisions Remanded by Appeals Office	OAC Decisions Reversed by Appeals Office
2,005	1,988 (99%)	7 (< 1%)	2 (< 1%)	8 (< 1%)

Source: Data provided by the Office of Appeals at the Department of Health Care Policy and Financing.

Appendix B

Workload Summary

This audit used the Office of the Administrative Court’s (OAC) case, hearing, order, and billing data from the Salesforce case management system to analyze various workload measures for Administrative Law Judges (ALJs) and paralegals. ALJs and paralegals record time spent on cases in order to bill case costs to the agencies that OAC serves, whereas clerks and administrative staff do not record and bill their time.

Exhibit B.1 summarizes the total hours that ALJs and paralegals recorded in Salesforce, by each type of case activity.

Exhibit B.1

ALJ and Paralegal Hours, by Case Activity, Calendar Year 2023 Cases¹

Activity Category ²	Description of OAC’s Billed Activities	Hours ³
Drafting Orders	Drafting decisions, including dispositive, bench, and procedural orders	15,475
Reviewing Evidence, Files, and Legal Research	Reviewing case-specific, relevant program, and legal information needed to manage a case and issue decisions	8,554
Hearings	Hearing preparation and holding different types of hearings	3,968
Preparing Documents	Preparing documents such as responses, notices, and hearing transcripts	1,878
Miscellaneous	Travel, administrative duties, communication, mediation, and quality assurance activities, as well as some timekeeping records with no associated activity description	734
Conferences	Meetings between parties, ALJs, and OAC staff, as well as meetings between ALJs to discuss their cases	537
Total Hours Billed⁴		31,146

Source: Office of the State Auditor analysis of Office of Administrative Courts’ Salesforce data.

¹ Includes time recorded through February 2024 for cases opened in Calendar Year 2023 in order to provide the most complete analysis of ALJ workload for cases that began in 2023.

² Categories developed by auditor to summarize the time entries.

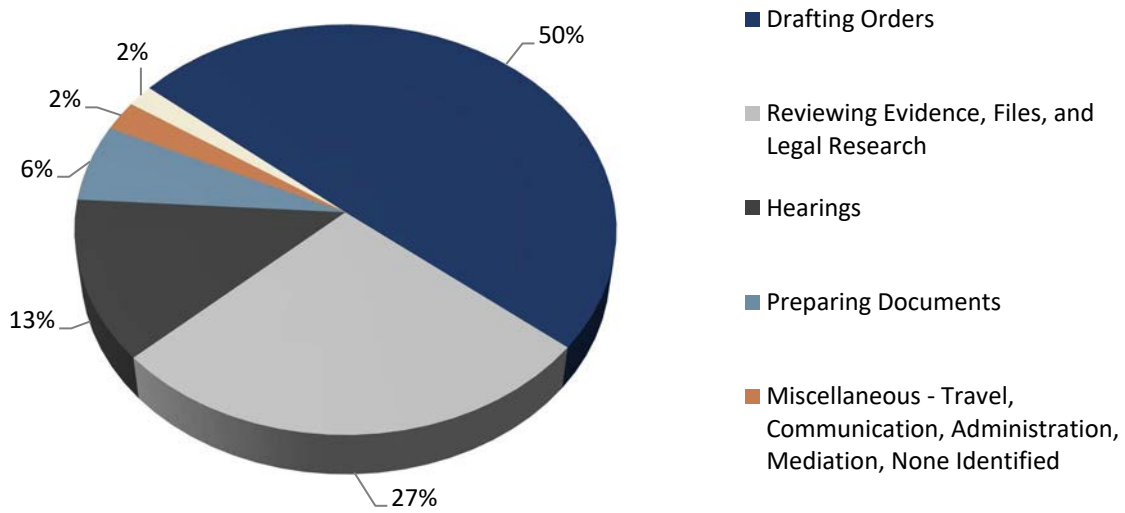
³ Hours billed have been rounded to the nearest whole number.

⁴ This summary excludes 37 hours for which the information recorded in Salesforce lacked sufficient details for us to determine the validity of the record.

Exhibit B.2 shows the percentage of hours that ALJs and paralegals billed, by case activity. OAC’s most time-consuming activity is drafting orders, followed by reviewing evidence, reviewing case files and documents, and legal research for cases.

Exhibit B.2

Percentage of OAC Total Billed Hours by Case Activity, January 2023 through February 2024

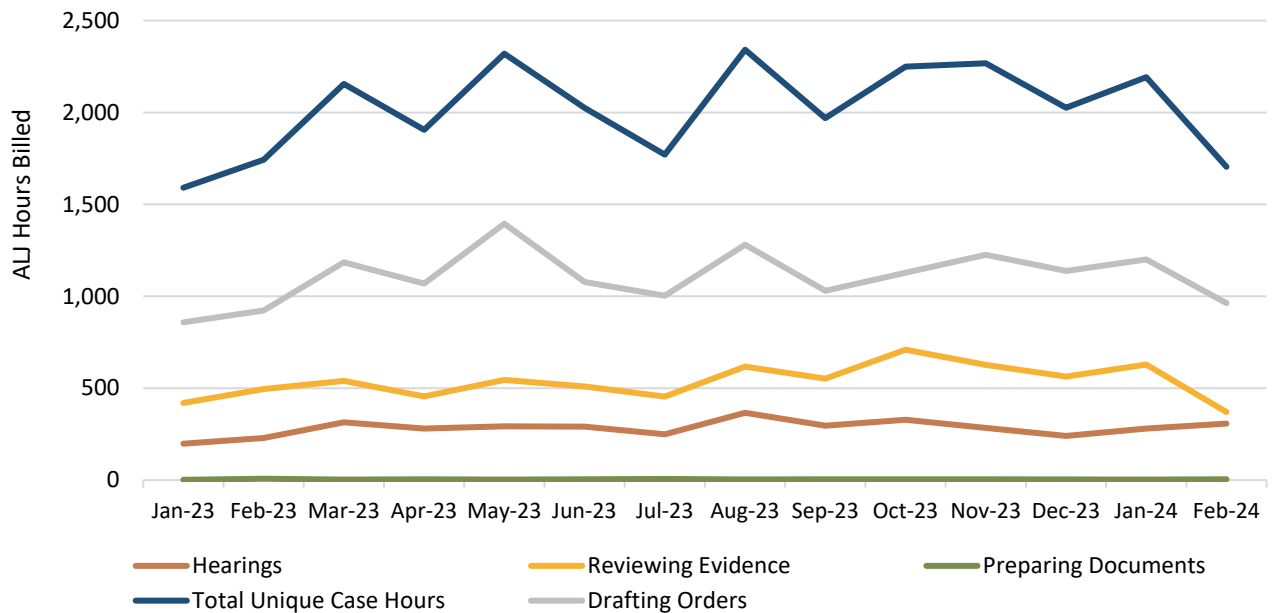


Source: Office of the State Auditor analysis of Office of Administrative Courts' Salesforce data.

Exhibit B.3 summarizes the monthly trend for hours that ALJs billed per case and for select activities from January 2023 through February 2024.

Exhibit B.3

ALJ Billed Hours per Month, by Case Activity, January 2023 through February 2024



Source: Office of the State Auditor analysis of Office of Administrative Courts' Salesforce data.

Exhibit B.4 summarizes workload measures including cases billed, hearings completed, orders issued, and hours billed for each ALJ active from January 2023 through February 2024.

Exhibit B.4

ALJ Cases, Hearings, Orders, and Hours Billed, by ALJ, January 2023 through February 2024

Auditor Assigned ALJ #	Workers' Compensation Cases	Medicaid Cases	Other General Services Cases	Total Cases ¹	Total Hearings	Total Orders	Hours Billed ²
1	-	556	367	923	185	1,418	1,663
2	-	523	339	862	219	1,071	1,587
3	-	362	485	847	196	1,316	1,352
4	-	385	435	820	189	1,342	1,063
5	-	394	406	800	175	1,174	1,547
6	-	395	287	682	170	1,200	1,044
7	557	-	2	559	69	727	704
8	15	217	237	469	99	512	1,306
9	114	320	5	439	66	506	1,291
10	425	-	3	428	74	529	1,950
11	408	-	2	410	102	436	1,581
12	349	1	2	352	90	370	1,961
13	-	319	-	319	79	399	438
14	281	-	2	283	82	264	1,607
15	263	-	2	265	52	304	1,041
16	263	-	-	263	62	285	1,435
17	-	233	-	233	52	440	219
18	132	-	4	136	61	100	1,420
19	132	-	-	132	35	133	1,244
20	58	62	6	126	35	130	2,368
21	121	-	-	121	95	381	1,352
22	-	16	-	16	3	60	15
23	-	6	6	12	2	17	36
24	-	-	-	-	-	1	-
Missing ALJ Name ³	15	31	20	66	18	372	37
Total	2,580	3,252	2,171	8,003	2,210	13,487	28,261

Source: Office of the State Auditor analysis of Office of Administrative Courts' Salesforce data.

¹ A case may be counted more than once in the ALJ rows of this table, if more than one ALJ charged time to the case; however, the Total row counts each case only once.

² Hours have been rounded to the nearest whole number.

³ We could not attribute these records to a specific ALJ because staff did not record the name of the responsible ALJ in Salesforce.



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