

# Operations and Performance of the Office of the Attorney General

---

# Study mandate

Review legal and other services provided by the Office of the Attorney General (OAG)

- quality of legal services provided
- adequacy of resources and process for pay increases
- expenditure of forfeiture and other funds
- process for retention of private, outside counsel
- performance of Medicaid Fraud Control Unit

JLARC study resolution, authorized October 10, 2017

---

# Research activities

## Structured interviews

- 28 client agencies and institutions
- OAG leadership and managers
- Public attorney offices in Virginia and other states

## Surveys

- 90 client agencies and institutions
- OAG staff

## Data and document analysis

- OAG litigation case review
- Financial and personnel data analysis
- Billing, staffing, and timekeeping analysis
- Outside counsel spending & contract reviews
- Other states OAG comparison

---

## In brief

OAG provides high-quality legal services, and its clients are satisfied.

Several OAG sections are sometimes unable to provide timely legal advice because they lack adequate staffing.

OAG charges less than private legal counsel, and OAG under-billed for nongeneral fund services by ≈\$2.7 million (FY19).

OAG appropriately uses outside counsel and effectively controls costs.

OAG effectively investigates Medicaid fraud at no expense to the state.

---

# In this presentation

## Background

Quality and management of legal services

Funding of legal services

Outside counsel

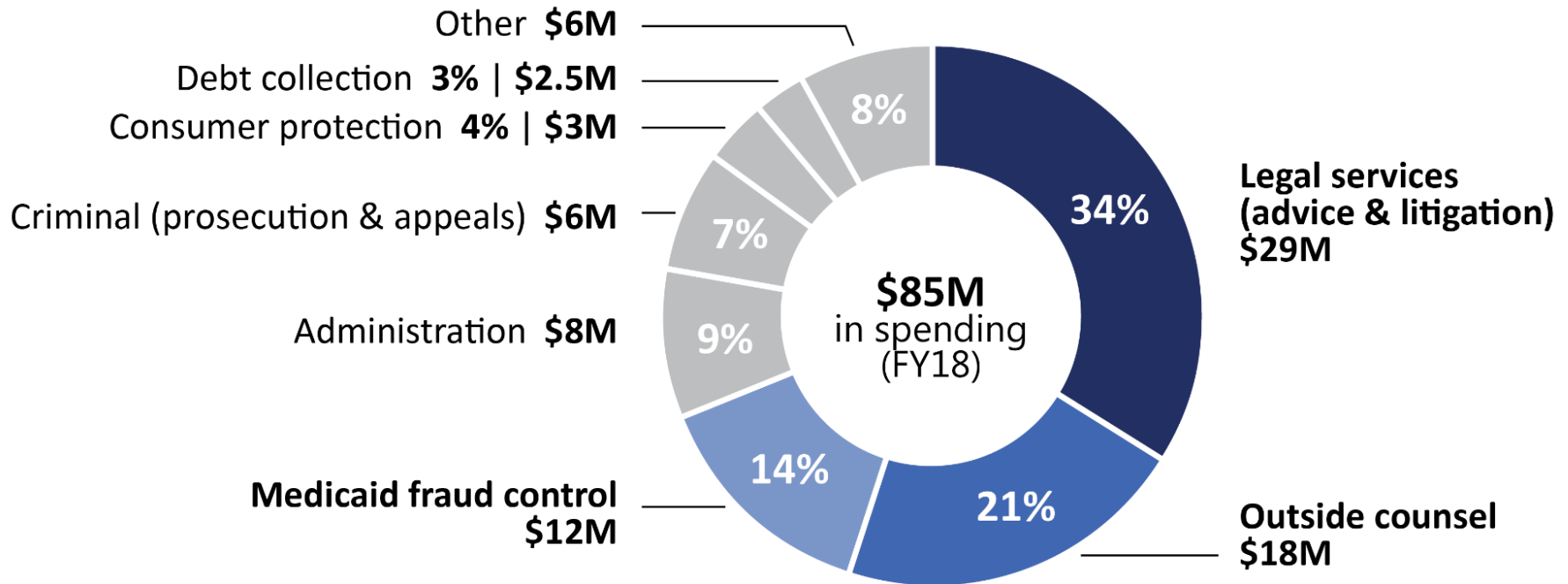
Medicaid fraud control

# Background

- Virginia is one of 43 states with an elected AG
- OAG's main function is to provide legal services to state government clients
- Clients are usually required to use OAG for all legal services
- OAG appoints private, outside counsel when it is not feasible for OAG to provide legal services

Note: Clients include all state agencies, authorities, public universities, boards, councils, and commissions.

# OAG spent or directly oversaw \$85 million in spending in FY18



Note: Written report *Operations and Performance of the Office of the Attorney General* includes more information about Medicaid fraud control, consumer protection, and debt collection.

---

# In this presentation

Background

Quality and management of legal services

Funding of legal services

Outside counsel

Medicaid fraud control



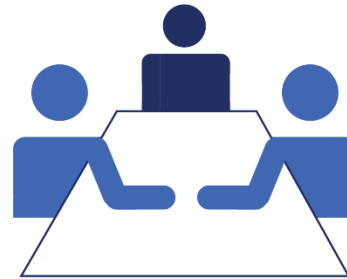
# OAG provides clients with legal advice and representation in civil litigation



Interpretation  
of law and  
regulation



Contract and  
agreement  
advice



Personnel issues



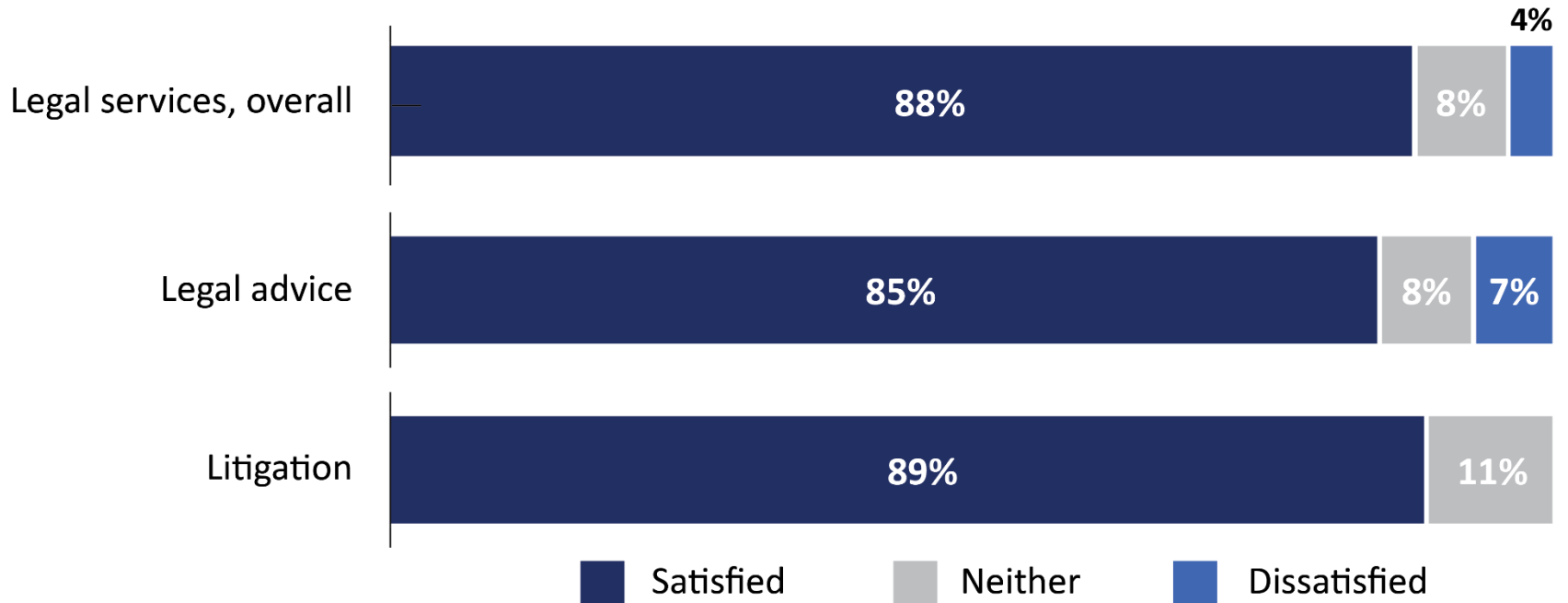
Trial and appeal

---

## Finding

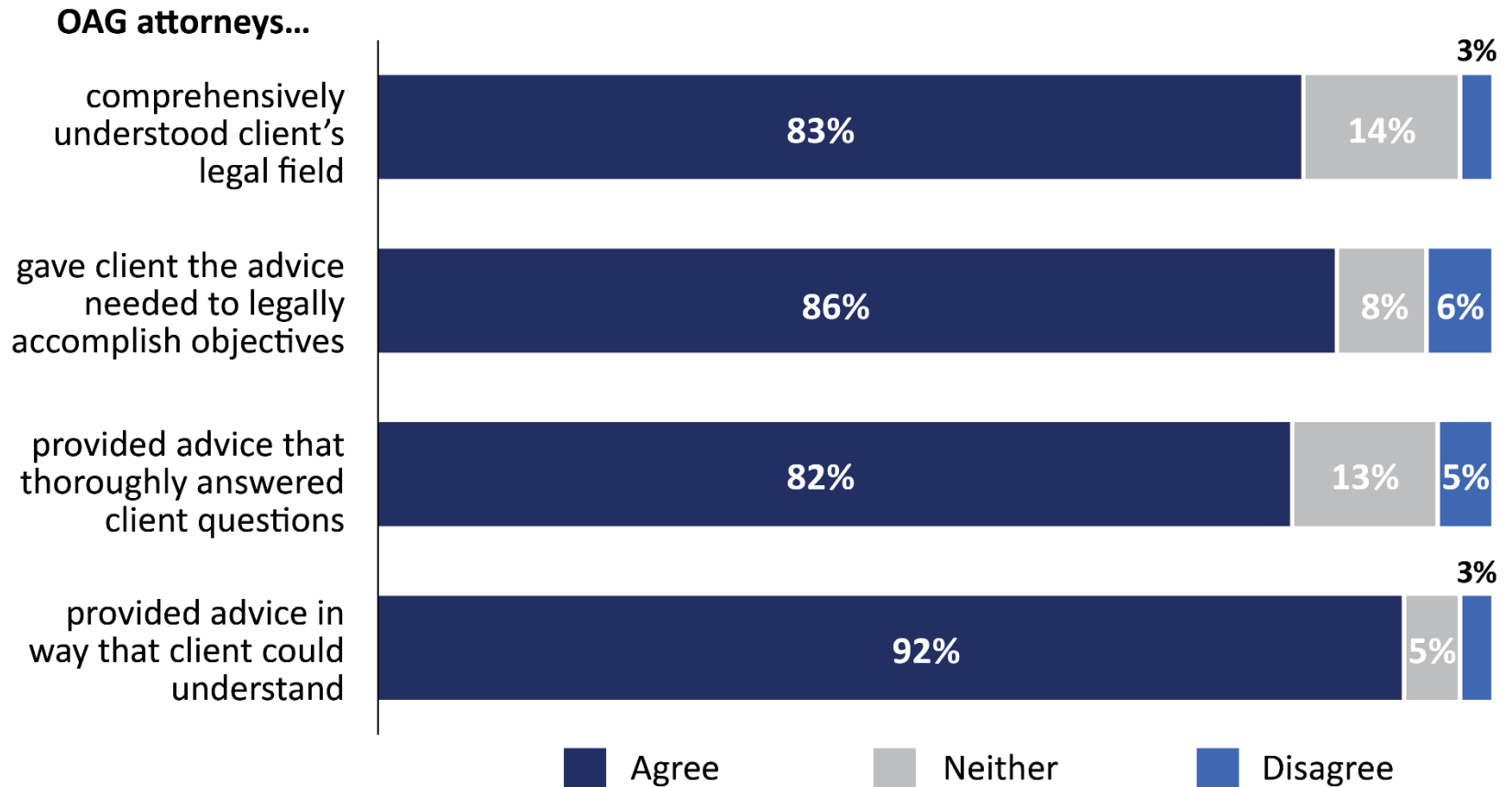
Clients are satisfied with OAG's legal services, and OAG provides clients with competent legal advice and litigation representation.

# Most clients satisfied with OAG's legal services



Source: Survey responses from 90 OAG client agencies and higher education institutions (92 percent response rate)

# Clients report OAG provided competent legal advice

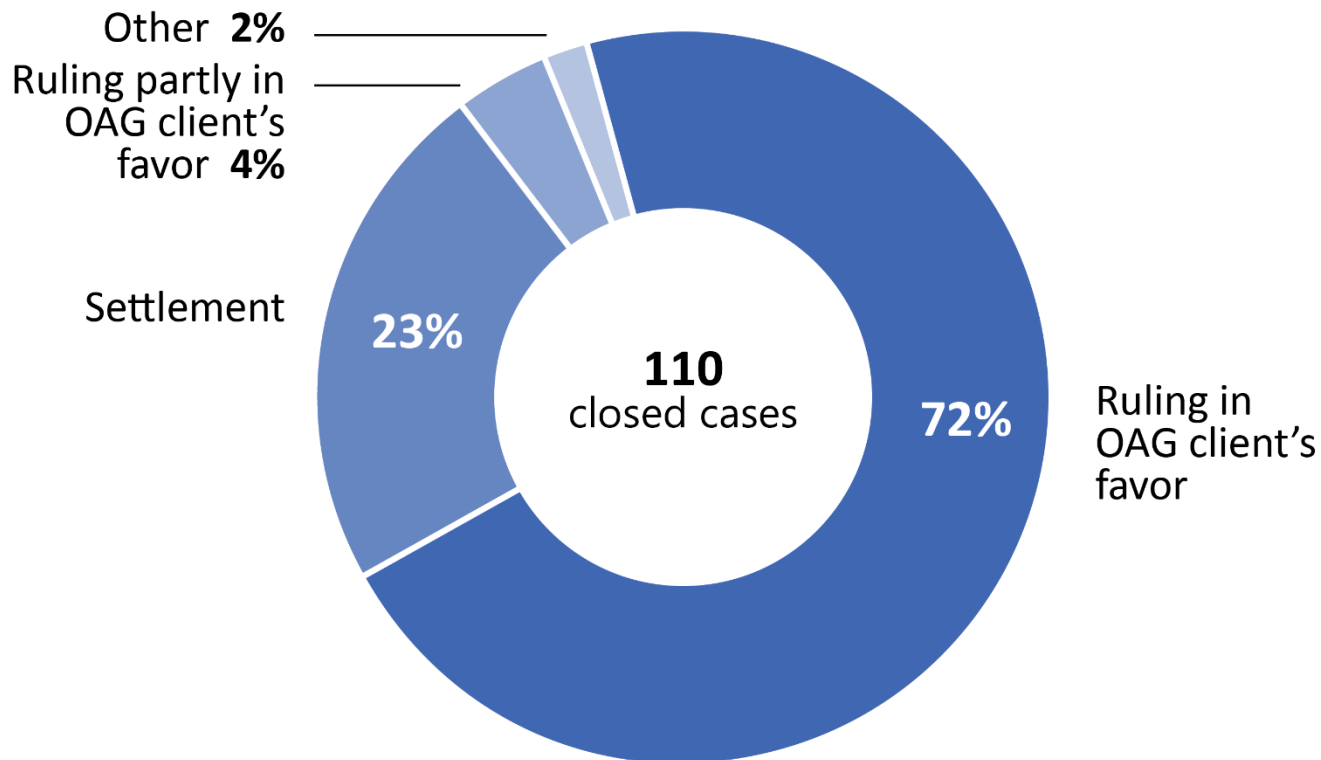


---

## Interviews with 28 clients confirmed survey results

- Interviewed agency heads and senior staff
- Most clients satisfied with legal services
- Almost all clients reported their attorneys were competent and provided good legal advice
- Some clients noted attorneys proactively advised them and helped them improve operations

## In sample of cases litigated by OAG, most ruled in favor of the client



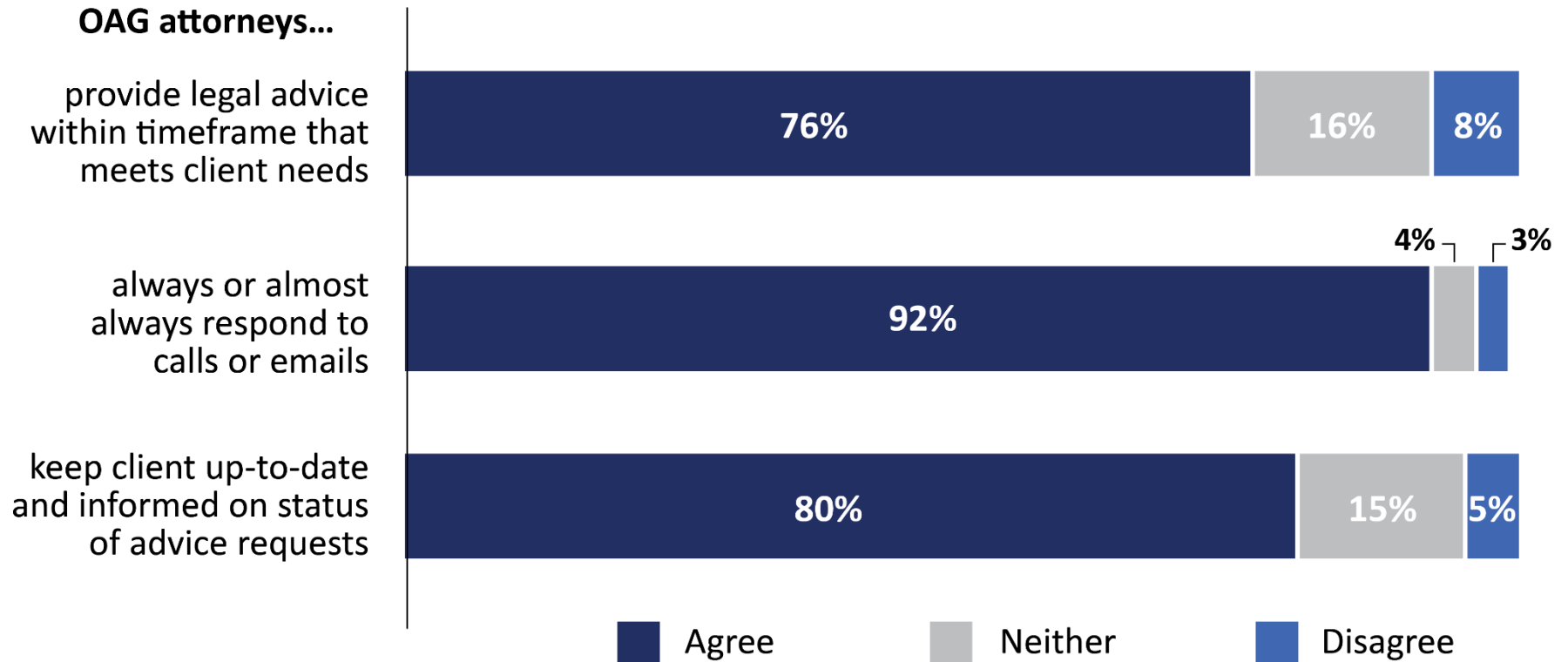
Source: Review of a random sample of OAG-led litigation cases in state circuit courts.

---

## Finding

OAG generally provides timely and responsive legal services, but advice is sometimes delayed because some OAG sections appear to have insufficient staffing.

# Clients report OAG provided timely and responsive advice



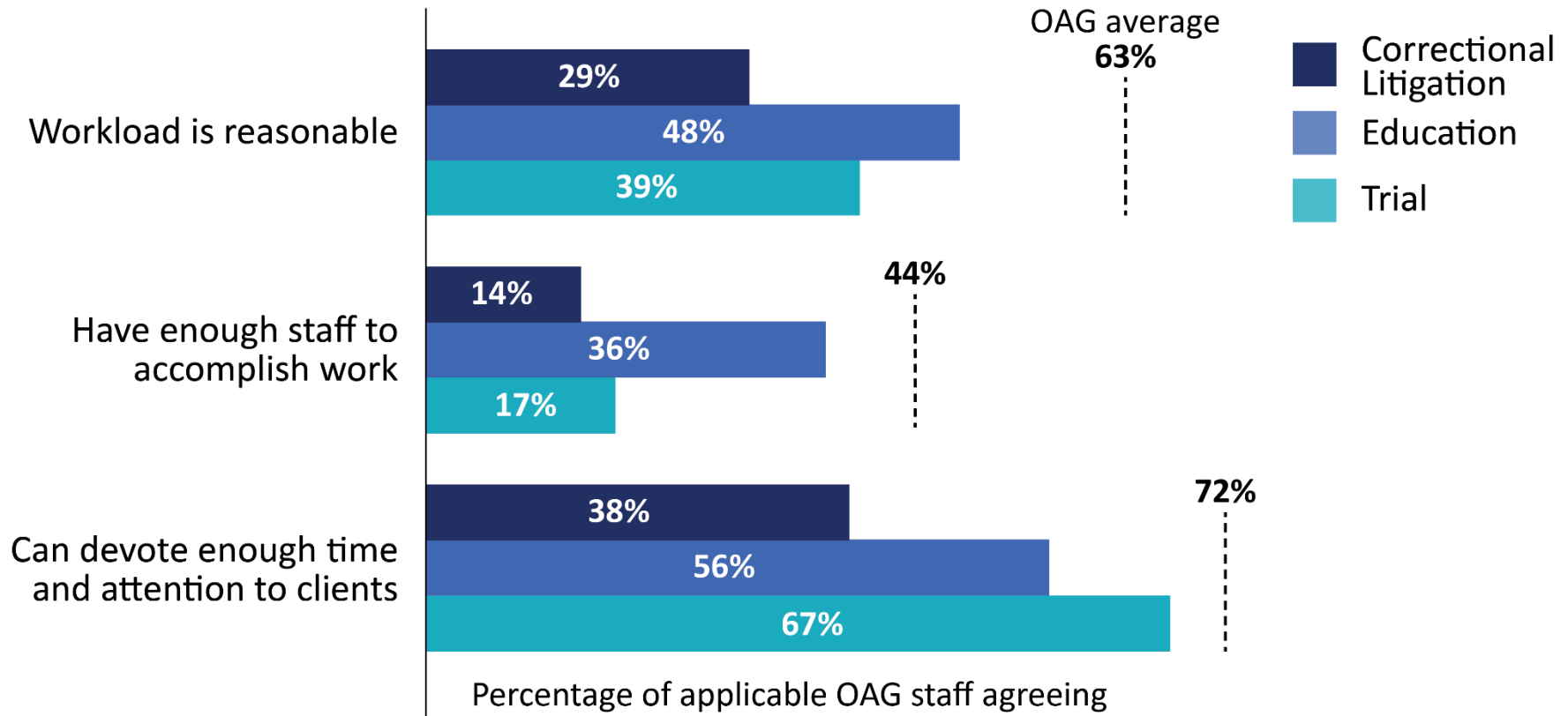


## OAG attorneys do not consistently provide some clients with timely advice

- Lowest scoring aspect of legal services in client survey
- Some clients reported waiting weeks or months for advice, with few or no status updates
- In OAG staff survey, 34 percent of attorneys indicated they could not always provide timely advice

*“My clients’ chief criticism of me would be the timeliness of my advice.”*

# Attorneys in three OAG sections reported workload imbalances that affected services



Source: survey responses from 393 OAG staff (80% response rate)

## Additional data confirmed workload imbalances

- Correctional Litigation section's caseload increased 20 percent in recent years
- Education section has fewer attorneys assigned to DOE and public universities than other states
  - <1 attorney for DOE compared to five in GA and NC
  - 2.5 per university compared to 3.5 in GA and five in NC
- Trial section attorneys worked substantial additional hours (422 hours/year)

DOE = Department of Education

---

## Recommendations

OAG should conduct detailed workload and staffing needs analysis for the Correctional Litigation, Education, and Trial sections using more complete FY20 data.

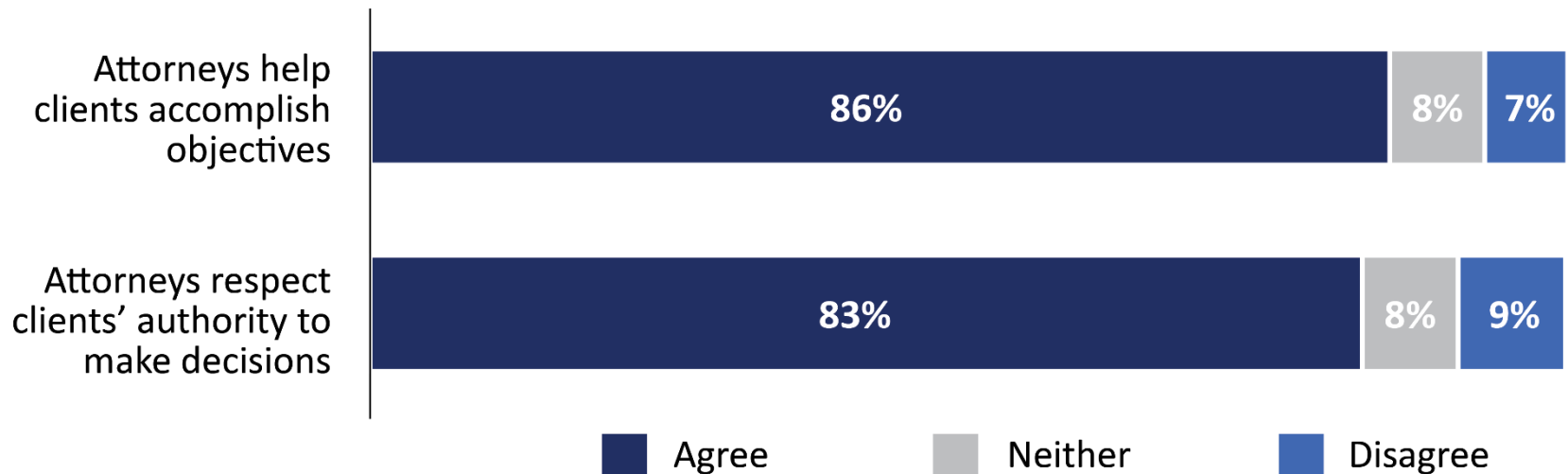
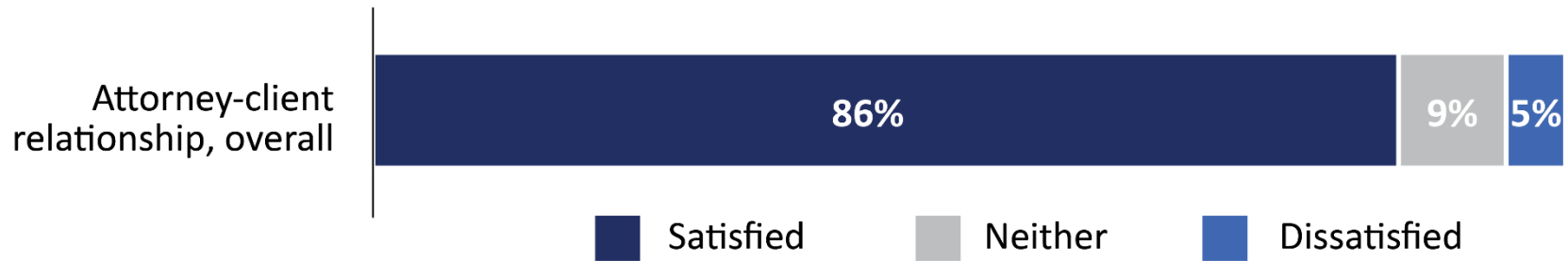
OAG should annually review workload indicators to identify workload imbalances and staffing needs across all sections.

---

## Finding

Most clients report good relationships with OAG but do not have a structured process to follow when they need to address occasional service or relationship problems.

# Most clients satisfied with their relationships with OAG attorneys



## OAG does not have a structured process for clients to address problems

- Occasionally clients encounter service or relationship problems that need to be addressed
- Clients can only address problems by raising issue directly with assigned attorney or his or her supervisor
- Clients were worried that raising concerns could damage ongoing relationships with OAG
- Clients who raised major concerns with attorneys, or OAG supervisors, reported the approach was ineffective

---

## Private-sector approaches allow clients to more effectively address service problems

- Some firms employ a designated client services manager to help handle and address issues
- Contracts between attorneys and clients set roles and expectations
- Some firms routinely solicit feedback from clients on service quality and attorney performance
- OAG-client relationship is unique and requires way to escalate and resolve rare but difficult issues



---

## Recommendations

General Assembly may wish to consider funding a director of client services position at OAG.

OAG should develop and adopt a client services policy that defines client-attorney roles, service expectations, and a problem resolution process that explains under what circumstances clients are allowed to directly employ outside counsel.

---

# In this presentation

Background

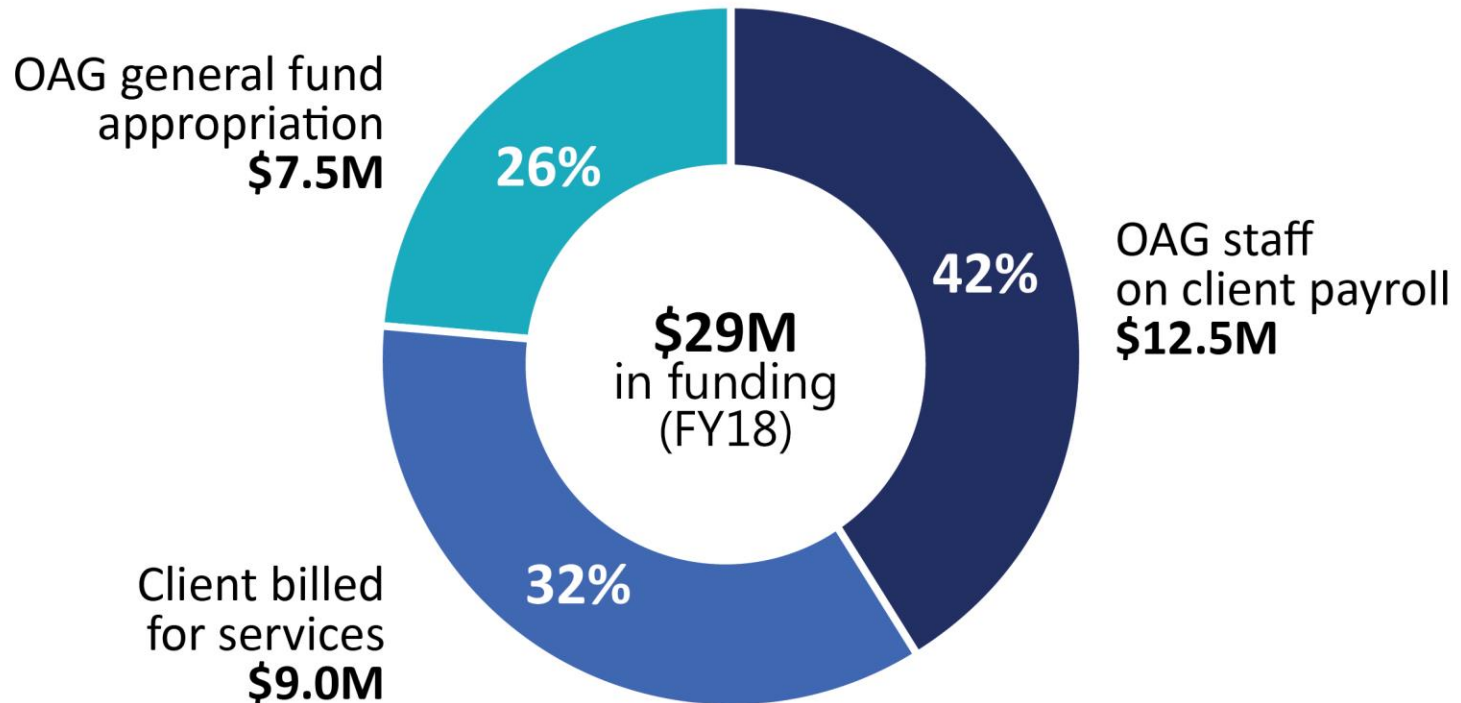
Quality and management of legal services

Funding of legal services

Outside counsel

Medicaid fraud control

## OAG legal services funded through three arrangements



## OAG can bill for nongeneral fund services but should not bill for general fund services

- Appropriation Act authorizes billing of nongeneral fund clients and programs to cover cost of legal services
- Under-billing of nongeneral fund clients results in
  - some clients subsidizing services for others
  - general funds being used to cover nongeneral fund services
  - less revenue to pay for legal services

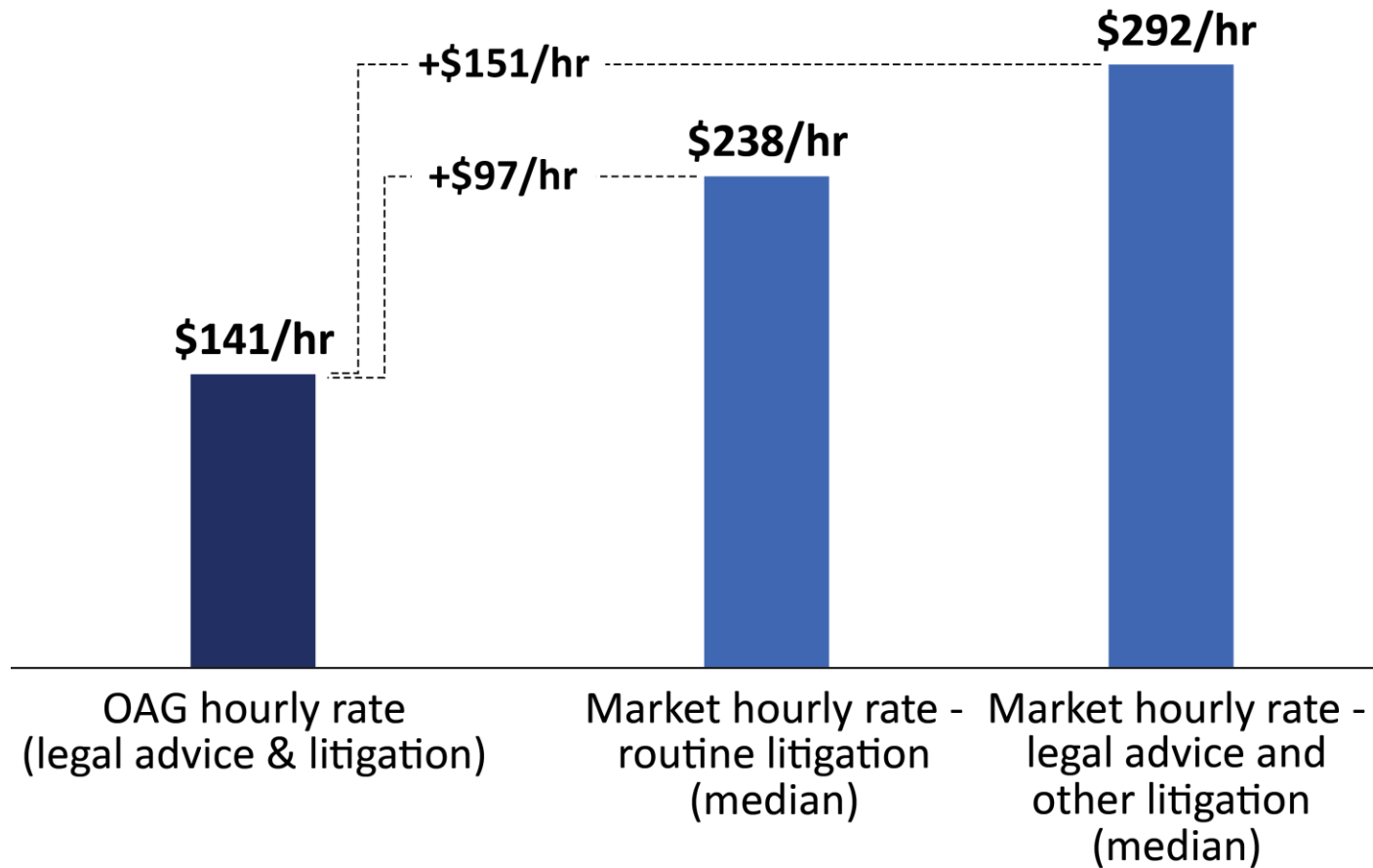
---

## Finding

OAG legal services cost substantially less than private services.

Overall, OAG under-billed clients by about \$2.7 million in FY19.

# OAG hourly rate is substantially lower than rates charged by most private firms and attorneys



## OAG collected about \$3.3 million less in nongeneral funds than it could have (FY19)

- Attorneys *recorded but did not bill* about \$1 million (6,850 hours) in services to nongeneral fund programs
  - No clear and consistent reason why some clients were billed and others were not
- Attorneys *did not record and did not bill* an estimated \$2.3 million (16,600 hours) in nongeneral fund services
  - Attorneys in several sections not required to record hours, even though hours should have been used to bill clients

JLARC staff estimated under-billing through analysis of OAG timekeeping and billing data and interviews with OAG staff.

## OAG billed clients for about \$600,000 in general fund-related legal services (FY19)

- OAG not supposed to bill for general fund services
- Ten clients billed an estimated \$350,000 for general fund-related legal services under hourly rates
  - Even though clients received mix of general and nongeneral funds, OAG billed for all services
- Department of Corrections billed \$250,000 even though it is almost entirely (95 percent) general funded
  - Billing started in FY18 and, while justifiable in the short term, should not continue indefinitely



---

## Recommendations

OAG should update its billing policy to require consistent recording and billing of legal services.

OAG should enter into written agreements with its largest clients to ensure these clients are billed appropriately.

---

# In this presentation

Background

Quality and management of legal services

Funding of legal services

Outside counsel

Medicaid fraud control

## OAG oversees the use of private, outside counsel for legal services

- Code of Virginia limits use of outside counsel to when it is “impracticable or uneconomical” for OAG to provide services
- OAG determines if outside counsel should be used, selects outside counsel, and procures contracts
- Clients pay for the services
- Clients spent \$21 million on outside counsel services, mostly for litigation (FY19)

---

## Finding

OAG appropriately authorizes use of outside counsel and effectively controls costs.

---

## Use of outside counsel is appropriate and consistent with statute

- All decisions to use outside counsel must be internally documented, reviewed, and approved
- Reasons OAG uses outside counsel are consistent with statute
  - Local knowledge or presence is critical
  - Complex or niche subject-matter expertise needed
  - OAG lacks immediate staff capacity to handle
- Client involvement in outside counsel selection could be improved

## OAG effectively controls the cost of outside counsel

- Rates negotiated by OAG were at the low end of the regional market, according to a JLARC sample analysis
- OAG reviews outside counsel invoices before clients pay them and removed \$1.1 million in erroneous charges (FY18–19)
- Virginia spent less (\$21M) than North Carolina (\$32M) and Georgia (\$51M)

Note: Virginia outside counsel spending is FY19, whereas Georgia and North Carolina spending is FY17.

---

# In this presentation

Background

Quality and management of legal services

Funding of legal services

Outside counsel

Medicaid fraud control

---

## Finding

OAG effectively investigates Medicaid provider fraud at no expense to the state.



## OAG effectively investigates Medicaid provider fraud at no expense to the state

- Investigations are thorough
- Virginia achieves similar or better outcomes than other states (indictments, convictions, financial recoveries)
- Investigations returned \$29 million to Virginia's Medicaid program over past five years
- Investigations performed at no cost to the state since FY09 (paid for from financial recoveries from past case)

# Asset forfeiture funds from Medicaid and other cases used in accord with federal requirements

- OAG receives average of \$75,000 per year in federal asset forfeiture funds (FY16–19)
  - Spent on non-personnel and one-time expenses
- OAG received \$115 million forfeiture windfall in 2012
  - Most passed to state and local law enforcement
  - Complied with federal requirements
  - Appropriation Act language added by 2015 General Assembly increases legislative role in future windfalls

## Key findings

- OAG provides quality legal services and clients are satisfied.
- Several OAG sections are sometimes unable to provide timely legal advice because they lack adequate staffing.
- OAG charges less than private legal counsel, but OAG under-billed nongeneral fund clients by ≈\$2.7 million.
- OAG appropriately uses outside counsel and effectively controls costs.
- OAG effectively investigates Medicaid fraud at no expense to the state.

---

## JLARC staff for this report

Justin Brown, Associate Director

Mark Gribbin, Project Leader

Maria Garnett, Senior Legislative Analyst

Ellie Rigsby, Associate Legislative Analyst

Kapria Lee, Assistant Legislative Analyst