VERMONT
AGENCY OF HUMAN SERVICES

State of Vermont
Agency of Human Services (AHS)

Policy Title: 1.05 AHS Anti-Fraud Policy

Attachments/Related Documents:	**Revision Number**: 1
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☒ Trauma Informed Review

☒ Equity Review

Name/Title of Authorizing Signature:

Jenney Samuelson, AHS Secretary

1: AHS Secretary Jenney Samuelson Signature

Policy Statement:

The Agency of Human Services does not tolerate any type of fraud, waste, or abuse. There exists in Vermont's government, as in every other state in the nation, the ongoing and continuing risk of fraud, waste, and abuse in the conduct of government business. Our goal is to establish and maintain a business environment of fairness, ethics and honesty for our employees, our citizens, our peers, our customers, our vendors, and anyone else with whom we have a relationship. To maintain such an environment requires the active assistance of every employee, every day. This policy establishes guidelines for reporting and investigating suspected fraud, waste, or abuse within the Agency of Human Services.

Definitions:

Fraud: Fraud is defined as the intentional, false representation or concealment of a material fact for the purpose of inducing another to act upon it to his or her injury. Examples of fraud may include but are not limited to:

- Misappropriation of funds, securities, supplies, or other assets.
- Impropriety in the handling or reporting of money or financial transactions.
- Forgery or unauthorized alteration of a check, bank draft, invoice, timesheet, expense

account or any other official financial record or document.

- Destruction, removal or inappropriate use of State property, equipment, records, data, etc.
- Payment or receipt of bribes, kickbacks, or other inappropriate payments.
- Profiteering as a result of insider knowledge of State operations, including the disclosure or sale of confidential or proprietary information to outside parties, or use of this information in the conduct of an outside business activity;

Waste: Significant loss or misuse of State resources that results from deficient or negligent practices, controls, or decisions.

Abuse: Grossly intentional, wrongful, or improper use of rank, position or authority that causes the loss or misuse of State resources, and/or results in personal financial gain (or financial gain to other family members or associates).

- Waste or Abuse involves behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary given the facts and circumstances but does not necessarily involve fraud or other violations of law.

False Claims Act: Federal (enacted 1863) and State of Vermont (enacted in 2015) laws which set definitions for any conduct where a person knowingly submits false claims to the government or knowingly makes a false record in order for a false claim to be paid by the government. Those who violate the federal and/or state False Claims Act are subject to civil financial penalties for each violation and up to triple the damages incurred by the State of Vermont of Federal Government due to these actions, and any costs of the investigation and prosecution of the violations.

Note: For purposes of this policy only, the use of the terms **fraud** or **fraudulent** include waste, abuse, embezzlement, theft, or other illegal conduct. There are many improper actions and misconduct that, while prohibited and not tolerated, do not rise to the level of fraud as addressed in the scope of this policy.

Applicability:

This policy applies to any suspected fraud involving an employee (including management and appointed officials), a vendor, consultant, contractor, entity, or person doing business, or in any other relationship, with Vermont State Government. This policy also applies to any AHS department or entity that enrolls as a Vermont Medicaid provider and submits claims for reimbursement.

Responsibility To Report:

1. There is an expectation for each employee to report suspected fraud to their supervisor (i.e., director, manager, supervisor) or to the departmental

Commissioner.
2. Employees may make initial reports of suspected fraud in writing, in person, or by email. Anonymous reports will be accepted but may limit the ability to ascertain the facts and circumstances.
3. Supervisors are required to report to the departmental Commissioner **all reports of suspected fraud received by them from employees or other individuals**; managers do not have the authority to determine the merits of a report of suspected fraud – only the Commissioner has been delegated this authority.
4. Employees uncomfortable with reporting suspected fraud to department management, or if they feel management may be complicit, have an opportunity and expectation to report it to the State Auditor's Office using their online reporting form or by telephone at 1-877-290-1400. Employees who encounter possible Medicaid fraud related to healthcare claim submissions by AHS departments, which may or may not violate the state of federal False Claims Act, may also report their concerns anonymously at **reportmedicaidfraud@vermont.gov.**

Guidelines for Reporting Suspected Fraud:

The reporting employee (and all other department employees) should understand and adhere to the following information and instructions:

1. Report suspected fraud immediately; the longer it has been from the incident to the time it is reported, the more difficult it becomes to investigate.
2. Do not contact the suspected individual (or entity) or potential witnesses or others who may have information about the alleged fraudulent conduct in an effort to determine facts or demand restitution.
3. The Commissioner should immediately report any suspected fraud to the AHS Secretary.
4. Do not further investigate the allegations; allow the Commissioner or the Commissioner's designee to conduct the preliminary investigation.
5. Direct any inquiries about the alleged fraudulent conduct from the suspected individual, their attorney/representative, or any other inquirer to the Commissioner.
6. The Agency will not tolerate any form of retaliation or intimidation against employees providing information concerning fraud or suspected fraud or investigating such alleged fraud or misconduct. [Refer to Section I. Whistleblower Protection]
7. Every reasonable effort will be made to protect the rights and reputation of all involved parties, including the individual who in good faith alleges perceived misconduct as well as the alleged violators.
8. The identity of an employee who reports suspected fraud will not be disclosed to the extent possible; however, if criminal, civil or administrative action were to result, there is likelihood that the target of such action may have the right to compel disclosure. [Note: There are exemptions to protect an individual's identity

under Title 1 V.S.A.§ 317 (c)(42).]

9. Disciplinary action may be taken against an employee who makes a report of suspected fraud in bad faith. Bad faith is the reporting of information known to be false but representing it as factual and accurate; bad faith does not include allegations of suspected fraud that are reported in good faith but which cannot be substantiated.

Responsibility of Commissioner:

The departmental Commissioner or designee has the primary responsibility for conducting the preliminary investigation of all reports of suspected fraud within the Agency of Human Services.

Investigation Guidelines:

1. If the Commissioner receives a report of suspected fraud within the Agency of Human Services, then the Commissioner must document receipt of the report and conduct a preliminary investigation to determine the credibility of the report. Reports of suspected fraud involving the employees and activities of other State agencies and departments will be referred by the Commissioner to the appropriate authorities.
2. During the course of the investigation, the Commissioner may consult, in confidence, with legal counsel, the Department of Human Resources, the State Auditor's Office and others who may be able to substantiate the allegations, provide relevant information, or confirm whether an action constitutes fraudulent activity.
3. All investigations will be conducted without regard to the suspected wrongdoer's title, position, length of service, relationship to the State, or any other perceived mitigating circumstance.
4. On determining that a report of suspected fraud is not credible or does not constitute fraudulent activity or otherwise cannot be substantiated, the Commissioner shall document this determination.
5. Investigation results will only be disclosed or discussed with those that have a legitimate business need to know.
6. If the preliminary investigation substantiates the likelihood of fraudulent activities, the Commissioner will prepare an incident report to the appropriate authorities. The incident report shall document the scope of the preliminary investigation and the preliminary findings. Misconduct or improper actions which do not rise to the level of fraudulent activity will be addressed internally and in accordance with State policies and procedures and collective bargaining agreements, if applicable.
7. Decisions to prosecute or refer investigation results to the appropriate law enforcement and/or regulatory agencies for independent investigation will be made in conjunction with legal counsel and the AHS Secretary.

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AHS Departments as Medicaid Providers

Any department or entity within the Agency of Human Services that is enrolled as a VT Medicaid provider must submit claims that are true, use accurate medical coding, and are properly documented. The Department / entity must ensure that adequate safeguards are in place to review claim submissions to DVHA periodically, and that the staff responsible for submission of these claims have the proper understanding of the services being provided, and any applicable training related to submission of claims to Medicaid. The department / entity must have internal controls in place where there is more than 1 employee involved with submitting claims for services paid by Medicaid; that a supervisor or fellow staff member has some level of oversight or peer review of the dollar amounts, codes, and content of the claim forms. Any discovery of inaccurate claim submissions must be immediately reported to DVHA and DVHA's MMIS provider to correct the claims in question and correct any procedural or human errors that lead to the improperly paid claims(s).

As Medicaid providers, any AHS staff who directly submit claims for payment or oversee Medicaid claims for payment are subject to the federal and State of Vermont False Claims Act (FCA). The full text of Section 3729 of the Federal FCA and Title 32 V.S.A. § 631 of the State FCA are linked below in this policy document. The FCA, at both levels, state that any person who knowingly submits a false claim to the government or false record or statement to get a false claim paid by the government is in violation of the FCA. Specific examples of conduct that violates the FCA are explained in § 3729(a) of the Federal FCA and § 631(a) of the State FCA. At both levels, those who are found to have violated the FCA are subject to any or all of three penalty types:

1. Civil penalties between $5,000 and $10,000[2] per offense
2. Person shall be liable for the costs of the investigation and prosecution of FCA violations.
3. Three times the amount of damages that the State or Federal government sustains because of the actions of that person.

AHS Staff functioning in the provision of Medicaid covered services and claim submissions shall refrain from any conduct which may violate State and Federal law, including the Federal and State of Vermont FCA. AHS staff acting in this capacity shall not:

Accept employment benefits or direct / indirect payments in exchange for inflated or otherwise knowingly False claims on behalf of the AHS Department or entity. Or;

Submit false, fraudulent, or misleading claims to DVHA which characterize the service differently than the service that was actually rendered or claims which do not otherwise

[2] The amount is between $5,500 and $11,000 in the State of Vermont FCA

comply with applicable programs or Medicaid covered service requirements.

Disciplinary Action:

Employees may be subject to appropriate disciplinary action by the department (in accordance with State policies and procedures and the collective bargaining agreement, if applicable), up to and including possible termination, if they:

1. have engaged in any form of substantiated fraud, waste, or abuse;
2. intentionally report false or misleading information;
3. fail to inform their supervisor or departmental Commissioner of all reports of suspected fraud made to them by an employee or other individual;
4. are a supervisor and fail to inform the departmental Commissioner of all reports of suspected fraud made to them by an employee or other individual.
5. engage in any form of retaliation against employees or outside third parties providing information concerning fraud or suspected fraud or investigating alleged incidents of fraud.

Related Policies and Laws:

Including but not limited to

Department of Human Resources (DHR) Policies:

- Policy 5.6: Employee Conduct
- Policy 8.0: Disciplinary Action and Corrective Action
- Policy 17.0: Employment Related Investigations

Vermont Statutes Annotated:

- Title 3 V.S.A. §971 - 978: Whistleblower Protection
- Title 1 V.S.A. §317: Definitions; public agency; public records and documents
- Title 32 V.S.A. § 631: Prohibition; penalties

Deficit Reduction Act of 2005 (S.1932 - 120 Stat. 4 - Public Law No. 109-171)

- §6032- Employee Education about False Claims Recovery

Federal False Claims Act

- 31 U.S.C. § 3729: False claims

Executive Orders:

- EO 19-17: Executive Code of Ethics