

**VERMONT MEDICAID FRAUD AND
RESIDENTIAL ABUSE UNIT**

2018 ANNUAL REPORT



July 1, 2017 - June 30, 2018

**Office of the Vermont Attorney General
Honorable Thomas J. Donovan**

2018 ANNUAL REPORT NARRATIVE

In compliance with 42 C.F.R. § 1007.17(h), the Vermont Medicaid Fraud and Residential Abuse Unit (Unit) submits this narrative as part of its annual report to HHS-OIG for State Fiscal Year 2018.

I. EVALUATION OF THE UNIT'S PERFORMANCE

A. *Overview*

This reporting period was unique as the director of the Unit left in early November of 2017 and the position wasn't filled until June of 2018, leaving the unit without a director for seven months. The Unit is only staffed with one other attorney besides the director and is staffed with only three analysts, three investigators and a legal technician. Everyone stepped up to fill roles and plug gaps to ensure that the Unit continued to operate at a high level despite the long gap without a director.

During the reporting period the Unit continued to diversify its mix of cases, both in terms of provider types and increasing its civil enforcement under the Vermont False Claims Act (which became retroactive on March 15, 2016). The Unit was able to successfully prosecute seven criminal cases, while moving several larger criminal cases toward prosecution. The Unit concluded and recovered a civil settlement with a urinalysis laboratory during this reporting period which resulted in a large monetary recovery of over \$800,000 in Federal and State funds. The Unit also worked with the United States' Attorney's Office to recover \$1.5 million dollars from a Vermont hospital. Considerable progress has been made in the investigation of several other important civil and criminal enforcement cases during this reporting period.

In the past year, Unit investigative and prosecutorial resources were well spent on a patient abuse case involving a young man with cerebral palsy, whose death was caused by severe neglect from a paid caregiver. The caregiver was sentenced to fifty months to fifteen years in jail after pleading guilty to criminal charges of serious felony neglect and Medicaid fraud felonies. Another case that was criminally charged this reporting period involved the death of a young disabled man by his paid caregivers. The trial of this case is expected in October of 2018. A criminal Medicaid fraud case involving a substance abuse treatment provider is scheduled for a November jury draw and trial. The provider is charged with upcoding treatment sessions and billing for services not provided which resulted in fraudulent billing of over \$800,000 dollars.

The Unit also continued to make significant progress in increasing its efficiency and effectiveness in order to more quickly resolve and close cases. The Unit also continued to focus more attention on complex investigations and prosecutions that are more likely to protect the fiscal integrity of the Vermont Medicaid program and the welfare of vulnerable adults.

B. *Statistical Summary*

Across both civil and criminal cases, the Unit obtained settlements and restitution judgment orders totaling \$2,336,001 for Medicaid overpayments and additional recoveries. This total includes \$599,282 from Vermont-only fraud cases. The Unit collected \$2,945,684 this year from these settlements, restitution judgment orders, and payments related to settlements and orders from previous years. This includes \$716,869 from last year's record \$6.75 million settlement from a

Medicaid fraud case involving a urinalysis laboratory. Over the past five years, the Unit's total recoupments exceed \$22 million.

Capitalizing on the skill and experience of our investigators and analysts in investigating urinalysis testing labs, and taking advantage of the civil investigatory authority of the Vermont FCA, the Unit built a compelling case against an out-of-state testing provider, resulting in the recovery of more than \$800,000 in Medicaid and Medicare funds. Similarly, the Unit's analysts played a critical role in the recovery of more than \$1.5 million from a Vermont hospital that failed to properly document out-patient services. The Vermont FCA, which went into effect in mid-2015, made the successful outcomes in both of these cases possible. Operating under that statute and working in partnership with the United States Attorney's Office for the District of Vermont, the Unit has made recoveries approaching \$9 million over the last two years.

During the reporting period, the Unit received 98 complaints and opened 60 new investigations, with a total of 78 investigations open at the end of the year. The majority of the Unit's current investigations (69%) involve Vermont provider fraud; a smaller percentage of the remaining investigations involve patient abuse and neglect (26%) or multi-state fraud cases (5%). In comparison with past years, the distribution of the Unit's investigations has made a significant shift to include a greater percentage of Vermont abuse, neglect, and exploitation of vulnerable adults in Vermont. This is a result of an initiative of our new Attorney General's Elder Protection Initiative (EPI) and the Department of Disabilities, Aging and Independent Living (DAIL) which has brought together different sections of the Office with state and local partners that provide protection and services to the elderly. However, the Unit has and will continue to place an emphasis on both Vermont provider fraud, and the abuse, neglect and exploitation of vulnerable adults in Vermont.

Following the completion of investigations, Unit attorneys filed eleven criminal informations leading to arraignments during the reporting period. Six of the cases charged by the Unit involved allegations of Medicaid billing fraud by home health care providers. Two cases involved fraudulent billing by mental health counselors, and one case involved fraudulent billing by a physician operating a drug treatment practice. The other two cases involved the death of a 20-year-old vulnerable adult. His paid caregivers were charged with multiple felonies including Medicaid fraud, abuse and neglect of a vulnerable adult and involuntary manslaughter for the death of a twenty-year-old disabled man.

Additionally, Unit attorneys obtained seven criminal convictions during the reporting period. The Unit also concluded three civil settlements. Two of these civil settlements were worked collaboratively with the USAO to reach substantial settlements.

Significant case resolutions and developments included:

- The successful argument of a contested sentencing. At the end of the prior reporting period, the Unit obtained felony convictions for the untimely death of a young disabled individual with cerebral palsy. The care-giver received a sentence of 50 months to 15-years after pleading guilty to one felony count of Neglect of a Vulnerable Adult with Serious Bodily Injury/Death resulting, one felony count of Medicaid Fraud, one misdemeanor count of False Pretenses, one misdemeanor count of Neglect of a Vulnerable Adult and one count of False Information to Law Enforcement.
- Felony convictions (two counts) and a restitution judgement order in excess of \$134,000 in a case in which a husband and wife mental health counseling team submitted

fraudulent billings for a significant number of counseling services that were not rendered.

- Civil settlement of \$815,000 to the federal government and the State of Vermont against a laboratory which provided urine drug testing. The laboratory performed and billed for validity testing of specimen samples without obtaining a physician's order. The laboratory also adopted a new Usual & Customary Rate and then billed that rate retroactively. The case was jointly investigated with the United States' Attorney's Office and the Office of Inspector General. For her work on this case, the USAO presented one of the Unit's auditors with a commendation for making an Exceptional Contribution to a Federal Prosecution.
- One felony and two misdemeanor convictions for a fraud ring involving a parent/employer who colluded with various Personal Care Attendants (PCA) to file false claims for services not actually rendered to a teenager receiving community-based wrap services. The Unit secured restitution judgement orders in excess of \$60,000.
- Civil settlement of \$1,655,000 to the federal government and State of Vermont against a not-for-profit community hospital that violated both the Federal and Vermont False Claims Acts for submitting outpatient laboratory claims that lacked documentation necessary to support reimbursement by Medicare and Medicaid.

The Unit also committed resources during the reporting period to the investigation of several time sheet fraud cases that were included as part of the 2018 Office of Inspector General Healthcare Takedown. Four separate individuals were criminally charged and the total potential recoveries from these cases is expected to exceed \$50,000.

The Unit reported all convictions that it obtained to HHS-OIG for purposes of exclusion. The Unit continues to actively prosecute the remaining charged cases.

II. DESCRIPTION OF PROBLEMS THE UNIT HAS HAD IN CONNECTION WITH REQUIRED PROCEDURES AND AGREEMENTS

The Unit has not had any problems fulfilling its required procedures or agreements during the Reporting Period.

III. DISCUSSION OF OTHER MATTERS IMPAIRING THE UNIT'S EFFECTIVENESS

There are no other matters currently impairing the Unit's effectiveness.

Appendices

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2018 ANNUAL REPORT - APPENDIX

A. MATTERS RECEIVED

Matter Type	Matters Received	Investigated by Unit	Referred Out	Declined
Abuse and Neglect & Exploitation	47	21	3	23
Vermont Fraud	46	32	3	11
Multi-State Fraud	5	5	0	0
TOTAL	98	58	6	34

B. MFRAU CASES

Complaint Type {1}	Open at Start of Period	Opened Within the Period	Prosecuted {2}	Resolved {3}	Open at End of Period
Criminal Cases					
Patient Abuse & Neglect	8	21	0	10	19
Vermont Fraud	42	30	7	16	49
Multi-State Fraud	0	0	0	0	0
Patient Funds	0	0	0	0	0
Subtotal	50	51	7	26	68
Civil Cases					
Patient Abuse & Neglect	2	0	0	1	1
Vermont Fraud	11	4	0	10	5
Multi-State Fraud	3	5	0	4	4
Patient Funds	0	0	0	0	0
Subtotal	16	9	0	15	10
TOTAL	66	60	7	41	78

{1} Complaints of mixed type--involving both fraud and abuse/neglect elements--are categorized as either fraud or abuse/neglect at the Unit Director's direction.

{2} "Prosecuted" complaints include all and only those cases that have been closed by the Unit following criminal prosecution. It does not include criminal cases still in active prosecution and/or successfully resolved and merely awaiting a closing memo, or civil enforcement actions.

{3} "Resolved" complaints include all and only those cases that the Unit has closed following a full (as opposed to a preliminary) investigation, but excluding criminal cases closed following prosecution.

C. OPEN MATTERS - BY PROVIDER CATEGORY AND TYPE

Provider Type {4}	Open at Start of Period {4}	Opened Within the Period {4}	Prosecuted {4}	Resolved {4}	Open at End of Period
FRAUD: Facility Based Medicaid Providers and Programs - Inpatient and/or Residential					
Assisted Living Facility	1	0	0	1	0
Developmental Disability Facility (Residential)	0	0	0	0	0
Hospice	0	0	0	0	0
Hospitals	2	1	0	2	1
Inpatient Psychiatric Services (Under Age 21)	0	0	0	0	0
Nursing Facilities	2	1	0	0	3
Other Inpatient Mental Health Facility	2	1	0	2	1
Other Long Term Care Facility	0	0	0	0	0
TOTAL	7	3	0	5	5
FRAUD: Facility Based Medicaid Providers and Programs - Outpatient and/or Day Services					
Adult Day Center	0	0	0	0	0
Ambulatory Surgical Center	0	0	0	0	0
Developmental Disability Facility (Non-Resid.)	0	0	0	0	0
Dialysis Center	0	0	0	0	0
Mental Health Facility (Non-Residential)	1	0	0	0	1
Substance Abuse Treatment Center	1	0	0	0	1
Other Facility (Non-Residential)	1	1	0	2	0
Total	3	1	0	2	2
FRAUD: Physicians (MD/DO) by Medical Specialty					
Allergist/Immunologist	0	0	0	0	0
Cardiologist	0	0	0	0	0
Emergency Medicine	0	0	0	0	0
Family Practice	3	0	0	1	2
Geriatrician	1	0	0	1	0
Internal Medicine	0	0	0	0	0
Neurologist	0	0	0	0	0
Obstetrician/Gynecologist	0	0	0	0	0
Ophthalmologist	0	0	0	0	0
Pediatrician	0	0	0	0	0
Physical Medicine and Rehabilitation	0	0	0	0	0

C. OPEN MATTERS - BY PROVIDER CATEGORY AND TYPE (Continued)

Provider Type {4}	Open at Start of Period {4}	Opened Within the Period {4}	Prosecuted {4}	Resolved {4}	Open at End of Period
Psychiatrist	0	0	0	0	0
Radiologist	0	0	0	0	0
Surgeon	0	0	0	0	0
Urologist	0	0	0	0	0
Other MD/DO	0	0	0	0	0
Total	4	0	0	2	2
FRAUD: Licensed Practitioners					
Audiologist	0	0	0	0	0
Chiropractor	0	0	0	0	0
Clinical Social Worker	1	0	1	0	0
Dental Hygienist	0	0	0	0	0
Dentist	2	0	0	1	1
Nurse - LPN, RN, or other licensed	0	0	0	0	0
Nurse Practitioner	0	0	0	0	0
Optometrist	0	0	0	0	0
Pharmacist	0	0	0	0	0
Physician Assistant	0	0	0	0	0
Podiatrist	0	0	0	0	0
Psychologist	0	0	0	0	0
Therapist (Non-Mental Health; PT, ST, OT, RT)	0	0	0	0	0
Other Practitioner	1	1	1	0	1
Total	4	1	2	1	2
FRAUD: Other Individual Providers					
EMTs or Paramedics	0	0	0	0	0
Nurse's Aide - CNA or other	0	0	0	0	0
Optician	0	0	0	0	0
Personal Care Services Attendant	25	25	5	10	35
Pharmacy Technician	0	0	0	0	0
Unlicensed Counselor (Mental Health)	0	0	0	0	0
Unlicensed Therapist (Non-Mental Health)	0	0	0	0	0
Other	1	1	0	0	2
Total	26	26	5	10	37

C. OPEN MATTERS - BY PROVIDER CATEGORY AND TYPE (Continued)

Provider Type {4}	Open at Start of Period {4}	Opened Within the Period {4}	Prosecuted {4}	Resolved {4}	Open at End of Period
FRAUD: Medical Services					
Ambulance	0	0	0	0	0
Billing services	0	0	0	0	0
DME, Prosthetics, Orthotics and Supplies	2	0	0	1	1
Home Health Agency	1	0	0	0	1
Lab (Clinical)	1	0	0	0	1
Lab (Radiology and Physiology)	0	0	0	0	0
Lab (Other)	1	1	0	1	1
Medical Device Manufacturer	0	1	0	0	1
Pain Management Clinic	0	0	0	0	0
Personal Care Services Agency	0	0	0	0	0
Pharmaceutical Manufacturer	1	3	0	3	1
Pharmacy (Hospital)	1	0	0	1	0
Pharmacy (Institutional Wholesale)	0	0	0	0	0
Pharmacy (Retail)	2	2	0	2	2
Transportation (Non-Emergency)	0	0	0	0	0
Other	0	0	0	0	0
Total	9	7	0	8	8
FRAUD: Program Related					
Managed Care Organization (MCO)	0	0	0	0	0
Medicaid Program Administration	3	0	0	2	1
Other	0	1	0	0	1
Total	3	1	0	2	2
ABUSE AND NEGLECT:					
Assisted Living Facility	1	4	0	2	3
Developmental Disability Facility (Residential)	0	0	0	0	0
Hospice	0	0	0	0	0
Non-Direct Care	0	0	0	0	0
Nurse's Aide (CNA or Other)	1	1	0	1	1
Nursing Facilities	3	10	0	4	9
PCA or Other Home Care Aide	1	3	0	1	3
Registered/Licensed Nurse/PA/NP	0	0	0	0	0
Other	4	3	0	3	4
Total	10	21	0	11	20
TOTAL	66	60	7	41	78

D. AGE OF OPEN CASES

Age	# of Cases
0 – 6 Months	25
7 – 12 Months	18
13 – 24 Months	24
24 – 36 Months	9
36+ Months	2
TOTAL	78

E. MFRAU CASE OUTCOMES

Case Outcomes	SFY '14	SFY '15	SFY '16	SFY '17	SFY '18
Criminal Investigations/Prosecutions					
Plea agreement	9	11	12	9	9
Dismissed	0	0	0	0	0
Conviction at trial (some charges)	1	0	0	0	0
Acquitted at trial (all charges)	0	0	0	0	0
Close Prior to Prosecution	33	60	45	25	26
Other	0	8	0	0	0
Subtotal	43	79	57	34	35
Civil Investigations/Litigation					
Settled prior to trial	13	36	12	17	6
Dismissed	0	0	0	0	0
Summary Judgment	0	0	0	0	0
Judgment for State at trial	0	0	0	0	0
Judgment for Defendant at trial	0	0	0	0	0
Closed Prior to Litigation	0	0	8	4	9
Other	0	0	0	0	0
Subtotal	13	36	20	21	15
TOTAL	56	115	77	55	50

F. RECOUPMENTS BY AGENCY

Agency	Recovery Actions Initiated	Referred to Another Agency	Overpayments Identified {4}	Overpayments Collected {4}	Overpayments to be Collected {5}
MFRAU	NA	NA	\$2,336,001	\$2,945,684	\$5,246,968
DVHA/PIU under agreement with Unit {5}	NA	NA	NA	NA	NA
TOTAL			\$2,336,001	\$2,945,684	\$5,246,968

{4} Overpayments include the total state *and* federal share.

{5} DVHA/PIU figures are limited to cases referred by MFRAU to PIU (per Section IV.F.4 of the MOU), and exclude any amounts reported as collected by MFRAU.

G. MFRAU RECOUPMENTS BY CASE TYPE

Case Type	Overpayments Collected SFY'14	Overpayments Collected SFY'15	Overpayments Collected SFY'16	Overpayments Collected SFY'17	Overpayments Collected SFY '18
Multi-State	\$4,111,630	\$567,539	\$6,805,293	\$83,911	\$1,801,874
Vermont Civil	\$286,881	\$168,127	\$809,053	\$1,932,245	\$1,112,714
Vermont Criminal	\$3,126	\$2,587	\$71,377	\$35,916	\$31,097
TOTAL	\$4,401,637	\$738,253	\$7,685,723	\$2,052,072	\$2,945,685

H. MFRAU RECOUPMENTS BY CASE SHARE

Case Share	Overpayments Collected SFY'14	Overpayments Collected SFY'15	Overpayments Collected SFY'16	Overpayments Collected SFY'17	Overpayments Collected SFY '18
Federal Share	\$2,543,287	\$391,581	\$4,030,875	\$1,938,244	\$1,672,093
State-Only Share	\$1,858,350	\$346,672	\$3,654,848	\$113,828	\$1,273,592
TOTAL	\$4,401,637	\$738,253	\$7,685,723	\$2,052,072	\$2,945,685

I. STATE-ONLY SHARE BREAKDOWN

Case Share	Overpayments Collected SFY'14	Overpayments Collected SFY'15	Overpayments Collected SFY'16	Overpayments Collected SFY'17	Overpayments Collected SFY '18
Restitution to DVHA	\$1,473,357	\$299,895	\$3,136,987	\$95,263	\$1,108,205
MFRAU's Share of "additional recoveries"	\$384,994	\$46,777	\$517,861	\$18,565	\$165,387
TOTAL	\$1,858,350	\$346,672	\$3,654,848	\$113,828	\$1,273,592

J. MFRAU COSTS

Expense Category	SFY '15	SFY '16	SFY '17	SFY '18	Projected FFY'19
Personnel	\$662,826	\$624,218	\$739,572	\$784,620	\$1,003,175
Non-Personnel	\$91,983	\$85,830	\$98,315	\$105,866	\$159,076
Indirect Costs	\$90,577	\$85,206	\$105,574	\$112,202	\$139,238
TOTAL	\$845,386	\$795,254	\$943,461	\$1,002,688	\$1,301,489

K. MFRAU TOTAL BUDGET EXPENDITURES VS. STATE FUNDING

State Fiscal Year	MFRAU Deposits to State Special Fund	Distribution to MFRAU by State Legislature
2018	\$165,387	\$305,354
2017	\$18,565	\$291,553
2016	\$517,068	\$291,533
2015	\$46,777	\$254,434
2014	\$384,482	\$247,751
2013	\$379,940	\$318,455

L. MFRAU PROJECTIONS - BY CASE TYPE

Case Type	Current Open at Start of Period	Projected New Complaints	Projected Prosecuted Cases	Projected Resolved Cases	Projected Cases Closed with No Investigation	Projected Open at End of Period
Patient Abuse & Neglect	20	18	3	5	10	20
Vermont Fraud	54	67	9	40	33	39
Multistate Fraud	4	10	0	10	0	4
TOTAL	78	95	12	55	43	63

M. MFRAU PROJECTIONS - BY PROVIDER TYPE

Case Type	Current Open at Start of Period	Projected New Complaints	Projected Prosecuted Cases	Projected Resolved Cases	Projected Cases Closed w/ No Invest.	Projected Open at End of Period
Facility Based Providers & Programs	19	15	2	7	8	17
Physicians & Lic/Other Providers	49	65	9	33	31	41
Medical Support	8	13	1	12	4	4
Program Related	2	2	0	3	0	1
TOTAL	78	95	12	55	43	63