

From: Richard Thompson <[REDACTED]>
Sent: Wednesday, July 10, 2024 4:38 PM
To: AGO - MFRAU Report <AGO.MFRAUReport@vermont.gov>
Subject: Retaliation Against Mandated Reporters and Investigation Procedures

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I hope this message finds you well. I am writing to formally request access to public records under the Vermont Public Records Act, V.S.A. § 315 et seq. Specifically, I am seeking information related to retaliation against mandated reporters, including clinical licensed individuals working with, in, or contracted by the state's designated agencies, as well as the procedures for investigating such allegations. My request is detailed below:

Background: My inquiry stems from a multi-year effort to understand the rights of employees in Vermont, especially in light of the unusual structure of DAIL and its implications on employment and whistleblower protections. There seems to be a systemic issue where designated agencies, backed by state legal resources, may not be held accountable for retaliation, affecting the ability of employees to seek justice.

As mandated reporters face potential jail time for non-compliance, please describe in detail what recourse a mandated reporter has when experiencing retaliation from a state-designated agency.

- **Whistleblower Protections:**
 - HCAR 8.100.8(f) ensures that no punitive action is taken against providers who file or support a beneficiary's grievance. Attachment C to the Provider Agreements with the designated and specialized service agencies includes whistleblower protections.
- 1. **Oversight of Medicaid Retaliation:**
 - Does your department oversee investigations into retaliation related to Medicaid? If not, could you please provide the contact information for the entity or individual responsible for this oversight?
- 2. **Publicly Available Forms:**
 - I am seeking any publicly available forms used for reporting retaliation against a mandated reporter by a state supervisor, employee, or director. Please indicate if no document exists.
- 3. **Investigation Procedures:**
 - Please provide documentation on the procedures for investigating allegations of retaliation against state employees, supervisors, and directors. Specifically, I am interested in understanding the steps involved,

the timeline, and any oversight mechanisms in place. Please indicate if no document exists.

4. Documented Retaliation Investigations:

- I am requesting a numerical breakdown of documented retaliation investigations involving state designated agency employees, supervisors, or directors since 2006, in numeration only. Please indicate if no document exists.

Second: HHS has reported the ability to act at discretion in regard to relation laws at the federal and state level.

- Performance of the designated and specialized service agencies is monitored and investigated by staff within DAIL's Developmental Disabilities Services Division to ensure compliance with laws and regulations. Remedies for contractual violations are set forth in the Provider Agreements and are exercised at the discretion of the Agency of Human Services and its departments.

1. Please provide documentation that HHS is allowed to treat federal and state laws as discretionary as they pertain to retaliation against mandated reporters.

Additionally, I would like to bring to your attention information received from other departments regarding related issues:

- **Department of Labor Response:** The Health Care Employees whistleblower protection allows the employee whistleblower to:
 - "(1) utilize any available internal process, grievance procedure, or similar process available to the employee to maintain or restore any loss of employment rights with the employer; or
 - (2) bring an action in the Superior Court of the county in which the violation is alleged to have occurred." (21 VSA 508)

The Department of Labor suggested directing questions to the Attorney General's office, which investigates and prosecutes Medicaid fraud.

1. Given the provisions outlined, does this indicate that a private citizen (mandated reporter) who has lost employment from retaliation would have to sue a designated agency?

- a. If so, does this mean that the employee, supervisor, director of the designated agency would be provided automatic representation by the state of Vermont's unlimited resources via the designated agency lawyers?

If true, we have concerned this system is designed to create chilling effect among mandated reporters and a vastly underreported fraud abuse within the HHS system.

2. Please provide documents indicating the representation structure when a retaliation violation of federal and state laws is committed by an HHS employee, supervisor or director of a designated agency.

Additionally: In Vermont, services for individuals with disabilities are administered by designated agencies under DAIL, which claims a “non-medical” status, allegedly exempting it from certain state employee retaliation laws. This has raised concerns about the protection of mandated reporters who are often employed as independent contractors, potentially diminishing their rights. There is a lack of clarity on who enforces prohibitions against retaliation and the legal backing provided to employees facing such situations.

Oversight of Grievances as reported by HHS:

- Each designated agency or specialized service agency identifies its staff responsible for responding to grievances received by the agency, as well as the staff responsible for conducting reviews of those decisions. HCAR 8.100.8(g)(1) and HCAR 8.100.8(j) outline the regulatory requirements for grievance decision-making and review processes.
- The Department of Disabilities, Aging, and Independent Living (DAIL) does not maintain a record identifying the names of staff at each agency who respond to grievances or conduct reviews of those grievance decisions. During the Department’s Designation Review of an agency, which occurs every four years, the Department’s Quality Review Team reviews minutes of Local Program Standing Committee meetings to ensure compliance with HCAR 8.100.8.

1. Given that the agencies use an internal grievance procedure that could shield them from external oversight, is there a quality reviewer within (**Medicaid Fraud & Residential Abuse Unit**) to ensure these grievances do not constitute fraud or have elements of retaliation?

I am willing to adjust my request as needed to facilitate the retrieval of the information.

Thank you for your time and assistance. I look forward to your response.

Sincerely,