

From: Newman, Zoe <Zoe.Newman@vermont.gov>
Sent: Friday, July 19, 2024 11:42 AM
To: Richard Thompson <[REDACTED]>
Subject: RE: Retaliation Against Mandated Reporters and Investigation Procedures

Good afternoon, Richard:

I was forwarded your e-mail containing your public records request, dated July 10, 2024. I reached out to you via e-mail on July 11, July 15, and July 16 requesting that you provide a phone number and best time to confer due to the broad and vague nature of your initial request.

On July 16, I received an e-mail from you, though it did not address my request to confer nor did it provide a phone number. That same day, I followed up on my request to confer and requested a phone number and times you would be available and I have not heard from you since.

As you have not responded to my request to confer, I have responded to the questions I was able to identify in your July 10 e-mail below. Without the opportunity to clarify your request with you directly, I have provided the best answers I could with the information contained in your request.

Further, as your e-mail was sent to the Medicaid Fraud and Residential Unit (MFRAU) of the Attorney General's Office specifically, the response below pertains to records help by MFRAU as the custodian. For the sake of clarity, I have listed each question in your e-mail below with MFRAU's response directly beneath.

1. *Does your department oversee investigations into retaliation related to Medicaid?*

This is not a request for existing documents and, as such, there are no responsive documents. As an enforcement unit with both criminal and civil jurisdiction, the Attorney General's Medicaid Fraud and Residential Abuse Unit investigates and prosecutes fraud and abuse occurring in the Vermont Medicaid program. This may include the abuse, neglect, and financial exploitation of vulnerable Vermonters in skilled nursing facilities, board and care facilities, and in some instances, "noninstitutional" settings.

2. *If not, could you please provide the contact information for the entity or individual responsible for this oversight?*

This request is too vague and cannot be answered without clarification. To the extent it can be answered, this is not a request for existing documents and, as such, there are no responsive documents.

3. *I am seeking any publicly available forms used for reporting retaliation against a mandated reporter by a state supervisor, employee, or director.*

To the extent responsive, MFRAU has a publicly available form to submit concerns of Medicaid fraud and abuse or neglect of vulnerable individuals in the provision of Medicaid services. The form can be found online, [here](#).

4. *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.

No such documents exist.

5. I am requesting a numerical breakdown of documented retaliation investigations involving state designated agency employees, supervisors, or directors since 2006, in numeration only.

No such documents exist.

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

MFRAU is not the custodian of HHS policies. Requests pertaining to HHS documentation should be made to HHS.

7. 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?

This is not a request for existing documents and, as such, there are no responsive documents.

8. 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?

This is not a request for existing documents and, as such, there are no responsive documents.

9. 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.

MFRAU is not the custodian of HHS policies. Requests pertaining to HHS documentation should be made to HHS. To the extent that such documentation is in MFRAU's custody and control, two documents have been identified as responsive and are attached to this e-mail.

10. 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?

This request is too vague and cannot be answered without clarification. To the extent it can be answered, this is not a request for existing documents and, as such, there are no responsive documents.

Finally, I noted that several of your questions, on their face, appear to seek legal opinions and not documents. MFRAU cannot provide legal opinions to private citizens. However, there are many law firms and several nonprofits that may be able to help in this regard, including [Vermont Legal Aid](#), [the Vermont Bar Pro Bono & Low Bono Programs](#), and [Vermont Law School's Legal Clinic](#).

To the extent you feel any records have been withheld in error, you may appeal to the Deputy Attorney General, Robert McDougall at: AGO.PublicRecordsRequests@vermont.gov.

Sincerely,

Zoe



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

Notice to HHS Contractors, Subcontractors, Grantees, Subgrantees or Personal Services Contractors

Federal law mandates that all Federal contractors, subcontractors, grantees, subgrantees, or personal services contractors, must inform their employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

Whistleblower Information for Employees of HHS Contractors, Subcontractors, Grantees, Subgrantees or Personal Services Contractors

Federal law protects Federal employees against reprisal for whistleblowing. In addition, under Title 41, United States Code, Section 4712, it is illegal for an employee of a Federal contractor, subcontractor, grantee, subgrantee, or personal services contractor to be discharged, demoted, or otherwise discriminated against for making a protected whistleblower disclosure. Under Presidential Policy Directive (PPD-19), an action affecting access to classified information cannot be taken in retaliation for protected whistleblowing.

The U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG), has jurisdiction to investigate whistleblower reprisal allegations brought by employees of HHS contractors, subcontractors, grantees, subgrantees or personal services contractors. Information on how to report suspected reprisal to the OIG is available at: <https://oig.hhs.gov/fraud/report-fraud/>

Whistleblowers perform an important service to the U.S. Department of Health and Human Services and the public when they come forward with what they reasonably believe to be evidence of wrongdoing. They should never be subject to reprisal for doing so.

What is a whistleblower?

A whistleblower is an employee of a Federal contractor, subcontractor, grantee, subgrantee or personal services contractor who discloses information that the individual reasonably believes is evidence of:

- Gross mismanagement of a Federal contract or grant;
- A gross waste of Federal funds;
- An abuse of authority relating to a Federal contract or grant;
- A substantial and specific danger to public health or safety; or
- A violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract) or grant.

To whom must the disclosure be made to be protected?

To be protected under Section 4712, a disclosure must be made to one of the following:

- A Member of Congress, or a representative of a committee of Congress;
- The OIG;
- The Government Accountability Office (GAO);
- A Federal employee responsible for contract or grant oversight or management at the relevant agency;
- An authorized official of HHS or other law enforcement agency;

- A court or grand jury; or
- A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Disclosures involving classified information should be made in accordance with otherwise applicable laws, and individuals should consult with the OIG Hotline to ensure that such disclosures to it are made appropriately.

What can I do if I believe retaliation has occurred?

Employees of Federal contractors, subcontractors, grantees, or subgrantees or personal services contractors may file a complaint under Section 4712 with the OIG Office of Investigations (through the OIG Hotline) which will investigate the matter unless it determines that the complaint is frivolous, fails to allege a violation of the prohibition against whistleblower reprisal, or has been addressed in another proceeding. Upon completion of its investigation, the OIG will submit a report of its findings to the employee, the contractor or grantee concerned, and the HHS Secretary (or his/her designee).

If you are an employee of HHS, or of a HHS contractor, subcontractor, grantee, subgrantee or personal services contractor, and you suspect that a personnel action or an action affecting access to classified information has been taken against you in reprisal for making a disclosure of wrongdoing, you may report it to the OIG Hotline.

Nothing in an employer's non-disclosure agreement should be interpreted as limiting your ability to provide information to the OIG Hotline.

For further information about whistleblower rights and protections, please see the Whistleblower Protection Coordinator page on the OIG's website at: <https://oig.hhs.gov/fraud/whistleblower/>

Note: OIG does not have authority to investigate EEO complaints. For such matters, please refer to the HHS Equal Employment Opportunity Compliance and Operations (EEOCO) Division website at <https://www.hhs.gov/about/agencies/asa/eoo/index.html> or the U.S. Equal Employment Opportunity Commission (EEOC) website at www.eeoc.gov. If you are a civilian Federal employee and wish to make a whistleblower disclosure or report reprisal for doing so outside HHS, you may contact the U.S. Office of Special Counsel website at <https://osc.gov>.

How can I report wrongdoing to OIG?

If you know about waste, fraud, abuse, misconduct, or whistleblower reprisal relating to a HHS employee, program, contract, or grant you may report it to the OIG Hotline through the following:

Website:

<https://oig.hhs.gov/fraud/report-fraud/>

Hotline:

1-800-447-8477 (1-800-HHS-TIPS)

TTY #: 1-800-377-4950

Fax #: 1-800-223-8164

Mailing Address:

Office of Inspector General
U.S. Department of Health and Human Services
ATTN: HOTLINE
P.O. Box 23489
Washington, DC 20026

From: [Anderson, Elizabeth](#)
To: [AGO - MFRAU](#)
Cc: [Padula, Domenica](#); [Delabruere, Rebecca](#)
Subject: Federal whistle blower protections for MFCU employees
Date: Tuesday, May 28, 2024 10:50:00 AM
Attachments: [NDAA-Notice-HHS-Contractors.pdf](#)

Good Morning –

Please find attached and linked OIG’s prepared [Notice to HHS Contractors, Subcontractors, Grantees, Subgrantees, or Personal Services Contractors](#), which must be distributed to all MFCU employees pursuant OIG’s [MFCU General Terms and Conditions](#). Please let me know if you have any questions or concerns. I have also placed a copy in the OIG-HHS file.

OIG has also provided additional information about whistleblower protections at <https://oig.hhs.gov/fraud/whistleblower/> and specific questions may be directed to Whistleblower.Coordinator@oig.hhs.gov.

Thank you.

Betsy

Elizabeth L. Anderson
Assistant Attorney General
Director, Medicaid Fraud and Residential Abuse Unit
Office of the Vermont Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-5511 (Phone)
(802) 828-2154 (Fax)

PRIVILEGED & CONFIDENTIAL COMMUNICATION: This communication may contain information that is privileged, confidential, and exempt from disclosure under applicable law. DO NOT read, copy or disseminate this communication unless you are the intended addressee. If you are not the intended recipient (or have received this E-mail in error) please notify the sender immediately and destroy this E-mail. Any unauthorized copying, disclosure or distribution of the material or taking of any action in reliance on the contents of the electronically transmitted materials is prohibited. Vermont’s lobbyist registration and disclosure law applies to certain communications with and activities directed at the Attorney General. Prior to any interactions with the Office of the Vermont Attorney General, you are advised to review Title 2, sections 261-268 of the Vermont Statutes Annotated, as well as the Vermont Secretary of State’s most recent compliance guide available at <https://www.sec.state.vt.us/elections/lobbying.aspx>.