

4 Special Investigations of Illegal Acts and Other Misconduct – 2014 *(No changes)*

This section applies to all agencies that receive funding directly from the Department of Health Services or passed through another entity.

All situations involving illegal acts or other misconduct by the department's employees, contractors, sub-contractors, grantees, and sub-grantees are to be promptly reported to appropriate parties, investigated, and corrected. The term "illegal acts and other misconduct" encompasses:

- gross mismanagement of department funds;
- a gross waste of department funds;
- a substantial and specific danger to public health or safety related to the implementation or use of department funds;
- an abuse of authority related to the implementation or use of department funds; or
- a violation of law, rule, or regulation related to the department's agreements with funding agencies

Illegal acts include fraud. Fraud is getting something of value under false pretences. Examples of fraud involving financial assistance include:

- A caseworker enrolling his or her family members in government programs so they receive benefits for which they were not eligible.
- An agency reporting false financial or performance information to improve the likelihood that the funding agency will renew the contract.
- An agency knowingly reporting unallowable expenses for reimbursement from grants.

In each of these examples, someone was injured: an eligible person who didn't receive services because slots were filled with ineligible people, an agency that didn't get a contract it was qualified for because the contract went to an agency that cheated, and the funding agency that paid more for services than it should have.

Illegal acts and other misconduct involving government funding violate the public trust. So, in addition to each individually identifiable victim, another victim is the public as a whole.

Suggested Investigation Procedures:

All of the following steps might not be applicable to any particular situation, and the steps are only roughly in the order in which they are likely to occur. The actual steps taken and the order in which they are taken will vary depending on the circumstances.

1. The agency's board of directors appoints a liaison to coordinate the response to the suspected fraud and gives this person authority to take the steps described in this section. The liaison reports to the board and follows its direction. The liaison documents all contacts made and steps taken in reaction to the suspected fraud and handles all correspondence, etc. related to the suspected fraud. (This assumes the board was not part of the fraud. We recommend contacting the funding agency or the local district attorney or other law enforcement if board members are suspected of being involved in a fraud.)
2. The liaison consults with the agency's legal counsel.
3. The liaison notifies law enforcement and assists law enforcement in its investigation. This notification should be made as early as possible, since law enforcement can provide guidance or assistance on the investigation and can take steps such as freezing bank accounts. (Simply terminating an employee without prosecuting increases the likelihood that the person will commit fraud against the next employer. Therefore, suspected fraud should always be referred for prosecution to the local district attorney or another law enforcement agency such as the Division of Criminal Investigation in the Wisconsin Department of Justice or the local office of the Federal Bureau of Investigation.)
4. Unless specifically directed otherwise by legal counsel or law enforcement in writing at the time of the referral to legal counsel or law enforcement, the liaison notifies the Department of Health Services at DHSAuditors@Wisconsin.gov as soon as it becomes aware of the suspected fraud. The notification shall be in writing and shall include as much of the information about the suspected fraud as possible and offer to involve the funding agency in planning the response to the suspected fraud. (See Section 2.1.4 of the *Main Document*.)

Involving the funding agency from the beginning reduces the potential for duplication of effort and ensures that the investigation is planned to provide the information the funding agency will need to meet its own responsibilities for the funding. In addition, the provider needs prior approval from the funding agency for charging the cost of an audit firm's fraud investigation to the funding agency's program – see #8, below.

If the fraud or other misconduct involved funding provided under the American Recovery and Reinvestment Act, the agency shall send the written notification to the Inspector General of the federal agency that provided the funds. Inspector General contact information is online at <http://www.recovery.gov/?q=content/agency-fraud-hotlines>.

5. Under the advice of legal counsel and/or law enforcement, the liaison stops any further loss by taking action such as placing the person suspected of committing fraud on administrative leave, changing locks, suspending access to computer systems, changing passwords, changing access authorization, re-assigning all case files, and taking away access to areas where records are kept.
6. The liaison investigates or arranges for an investigation of the suspected fraud to provide answers to the following questions:
 - How did the agency learn of the fraud?
 - Who was involved?
 - What happened?
 - When did it happen?
 - Did the fraud involve government funds? If yes, which programs, what is the dollar amount involved by program, how were these programs billed, and how does the agency propose to make the programs or clients whole again?
Depending on the amount involved and the complexity of the situation, a “what was” and “what should be” presentation may be needed for financial statements, audit schedules, and claims for reimbursement.
 - What was the impact on clients served by the agency?
 - What has the agency done in reaction to the fraud?
7. If the fraud directly affected clients (for example, a case manager is suspected of arranging for inappropriate services for clients or mishandling client funds), the liaison ensures that all of the case files that were handled by the suspect are assigned to other staff for review.
8. Depending on the nature of the suspected fraud, the liaison may decide to investigate the fraud internally or to obtain the services of an audit firm to perform a fraud investigation. In all cases, whoever is chosen to perform the fraud investigation must be independent of the organizational unit where the fraud occurred and must report to the board of directors or to agency management at a level above the organizational level where the fraud occurred. The agency should consult with law enforcement, legal counsel, and the funding agencies before deciding how investigate the fraud.
 - a. Having someone from within the agency investigate the fraud may be appropriate in situations where the fraud is limited and involves a relatively small amount of money (less than \$50,000) and the agency has a strong internal audit function. However, the agency needs to be aware that there could be an appearance of a conflict of interest.
 - b. Hiring an independent audit firm to perform a fraud investigation is strongly recommended in situations where the fraud is pervasive or it involves a relatively

large amount of money (more than \$50,000). We also recommend that the audit firm hired to do the fraud investigation not be the same firm that performed the most recent annual audit. While an auditor who also does the annual audit has an advantage in being familiar with the agency, there is a problem with independence or, at the very least, an appearance of a conflict of interest when a fraud investigation involves reviewing records from the period the firm just audited.

The agency should provide the department and, when ARRA funds are involved, the federal funding agency's OIG with an opportunity to review the engagement letter for the fraud investigation. The agency should incorporate additional items that the department or OIG may request. This will reduce the potential that the department and OIG will have specific information needs that were not addressed in the investigation, requiring the agency to have to bring the auditor back to do more work.

The engagement letter should specify that:

- The auditor is to perform an agreed-upon procedures engagement in accordance with the attestation standards established by the American Institute of Certified Public Accountants, the United States General Accounting Office's Government Auditing Standards (the Yellow Book), and the Department of Health Services' *Guide for Audits and Special Investigations*, an appendix to the *State Single Audit Guidelines*.
- The auditor is to provide a written report answering all of the questions and information listed in #4, above.
- The auditor will provide recommendations on improving internal controls in the report.
- The auditor must document steps performed in the investigation.
- The agency, the department, and, when ARRA funds are involved, the federal funding agency's OIG have the right to review the auditor's documentation of the steps followed in the investigation.
- Other items as specified by the department or the federal funding agency's OIG.

The agency pays for the fraud investigation. The cost of the fraud investigation is an allowable cost to the department's program if the following conditions are met:

- The cost meets all the relevant criteria for an allowable cost (see *Allowable Cost Policy Manual* at www.dhfs.state.wi.us/grants).
- The agency obtained prior approval from the department for charging the cost of the fraud investigation to the department's programs.
- The cost is charged to the department's programs in proportion to their

share of total expenditures of the agency, unless the department authorizes charging a higher share to its programs.

9. The liaison provides the report on the fraud investigation to the agency's Board of Directors for review and approval. The Board then authorizes official transmittal of the investigative report to the department and to law enforcement.
10. The agency's Board of Directors directs the agency's liaison and/or other agency managers and staff to develop a corrective action plan to improve the agency's internal controls and address all known weaknesses that contributed to the fraud. The Board reviews and approves the corrective action plan, and then: (a) directs appropriate agency staff to implement the plan; and (b) directs the liaison to report to the department on its corrective action.
11. Upon the direction from the agency's Board, the liaison makes arrangements with the department for repayment of amounts stolen from the department's programs.
12. The agency's handling of the suspected fraud or other misconduct is subject to review in the agency's annual audit – See Section 2.11 of the [DHS Audit Guide](#) and Section 3.6 of the [Main Document of the State Single Audit Guidelines](#).

Questions

Please send questions by email to DHSAuditors@Wisconsin.gov and include the name of the auditee in the message.