



HEALTH AND HUMAN SERVICES SYSTEM FRAUD, WASTE AND ABUSE REPORTING, RESPONSIBILITIES, AND COORDINATION Circular C-027

Purpose

The purpose of this circular is to establish Health and Human Services System (HHS) policy concerning program integrity responsibilities and coordination, as well as reporting suspected fraud, waste, and abuse. These terms are, for purposes of this circular, defined as follows:

Fraud: Any intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to that person or some other person. The term does not include unintentional technical, clerical, or administrative errors.

Examples of fraud include:

- falsifying financial records to conceal theft of money or property;
- procurement/contracting fraud, including favoritism;
- falsely or fraudulently obtaining benefits for the employee, family or friends;
- intentionally misrepresenting the costs of goods or services provided; and
- accepting a bribe or kickback.

Waste: Practices that a reasonably prudent person would deem careless or that would allow inefficient use of resources, items, or services.

Waste includes incurring unnecessary costs because of inefficient or ineffective practices, systems, or controls. Examples of waste include:

- purchase of unneeded supplies or equipment; and
- improper purchase of goods at inflated prices.

Abuse: A practice by a provider that is inconsistent with sound fiscal, business, or medical practices and that results in an unnecessary cost to the Medicaid program; the reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care; or a practice by a recipient that results in an unnecessary cost to the Medicaid program.



Background

Government has a responsibility to safeguard taxpayer dollars and maintain the highest standard of integrity, impartiality, and conduct. To help meet this responsibility, each HHS employee has an obligation to participate in a combined effort to protect the resources and interests of HHS and the State of Texas. This circular outlines specific program integrity expectations and the responsibilities of HHS employees and contractors. It includes the processes for reporting suspected fraud, waste, and abuse to the Office of Inspector General and the State Auditor's Office (SAO), as well as the requirement for full agency cooperation in any investigation, audit, or review.

Directive

Pursuant to Texas Government Code §321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the state auditor., HHS policy requires that all HHS employees and contractors also report suspected fraud, waste, and abuse to the OIG. HHS agencies and divisions must establish program-specific processes to assist in the prevention, deterrence, and detection of fraud, waste, and abuse. The respective roles and obligations in detecting and reporting fraud, waste, and abuse in the HHS System are outlined as follows:

Responsibilities

The Office of Inspector General:

- conducts independent, fact-based, and objective investigations, audits, and reviews.
- reports incidents determined to have merit to executive management, the Office of the Attorney General, and other authorities as appropriate.
- refers information to internal and external authorities that have jurisdiction, as appropriate (so that they may pursue independent investigations, audits, and reviews consistent with their authority).



- establishes and maintains information collection methods that do not infringe upon the rights of individuals and are consistent with due process of law.
- offers training and consultation to each HHS agency to assist them in understanding their responsibilities, time limits, and to promote establishment of appropriate procedures.

HHSC Executive Commissioner, in consultation with the Office of Inspector General:

- sets clear objectives, priorities, and performance standards for the OIG that emphasize:
 - ▶ coordination of investigative efforts to aggressively recover money;
 - ▶ allocation of resources to cases that have the strongest supportive evidence and the greatest potential for recovery of money; and
 - ▶ maximization of opportunities for referral of cases to the Office of the Attorney General.

HHS Agencies and Divisions:

- Any fraud, waste and abuse prevention, initiative or communications shall be coordinated with the OIG.
- Assure all employees and contractors are informed of their responsibilities for reporting and preventing fraud, waste, and abuse.
- Authorize and provide to the OIG and the SAO, as applicable, full access to any information maintained internally or externally.

HHS Agency Commissioners and HHSC Division Directors:

- Designate an executive as that agency's internal coordinator of its fraud, waste, and abuse prevention programs, including coordinating those programs with the OIG.
- Establish and maintain management controls designed to ensure program integrity. Management controls must provide for the security and accountability of resources, and safeguard state assets against loss from unauthorized use or disposition.
- Establish and maintain procedures that provide for:
 - ▶ control of physical assets;
 - ▶ required reporting of suspected fraud, waste, and abuse;
 - ▶ and
 - ▶ freedom from retaliation during or after any investigation for individuals reporting or suspected of involvement in fraud, waste, or abuse.



- Incorporate fraud, waste, and abuse prevention and detection procedures into business processes, practices, and systems.
- Evaluate periodically the effectiveness of management controls, including those designed to prevent and detect fraud, waste, and abuse.
- Ensure compliance with laws, regulations, rules, policies, and procedures.
- Take appropriate disciplinary action against employees who are aware of fraud, waste, and abuse in the HHS System but do not appropriately report it as outlined in this Circular.

Each HHS employee must:

- act with propriety in the use of state resources; and
- report appropriately suspected fraud, waste, and abuse as outlined in this Circular.

The HHS Internal Audit Director will:

- Evaluate the potential for the occurrence of fraud and how the organization manages fraud risk as part of the agency risk assessment performed by Internal Audit.
- Consider fraud risks in the development of a proposed annual audit plan, as required by the Texas Internal Auditing Act (Government Code, Chapter 2102) and applicable auditing standards.
- Assess the risk of fraud during the planning phase of each audit engagement. When factors or risks indicate the likelihood that fraud may have occurred and may materially affect the area under audit, the Internal Audit Director will ensure procedures are designed to provide reasonable assurance of detecting such fraud (as required by the Texas Internal Auditing Act and applicable auditing standards).
- Coordinate with the OIG when concern for fraud, waste, or abuse is identified during an audit project.
- Communicate fraud findings identified during internal and external audits, special projects, and other activities to executive management and appropriate managers.

Reporting Fraud, Waste, and Abuse

Pursuant to Texas Government Code §321.022, if the administrative head of a department or entity that is subject to audit by the state auditor has reasonable cause to believe that money received from the state by the department or entity or



by a client or contractor of the department or entity may have been lost, misappropriated, or misused, or that other fraudulent or unlawful conduct has occurred in relation to the operation of the department or entity, the administrative head shall report the reason and basis for the belief to the state auditor.

A report to the SAO must be made through one of the following avenues:

- SAO Toll Free Hotline: 1-800-TX-AUDIT
- SAO website: <http://sao.fraud.state.tx.us/>

Any HHS employee or contractor who has reasonable cause to believe that fraud, waste, or abuse has occurred will report the questioned activity to the OIG. All reports made to the OIG must be made through one of the following avenues:

- OIG Toll Free Hotline 1-800-436-6184
- OIG Website: ReportTexasFraud.com
- Internal Affairs Email: InternalAffairsReferral@hhsc.state.tx.us
- OIG Hotline Email: OIGFraudHotline@hhsc.state.tx.us.
- OIG Mailing Address: Office of Inspector General
 Attn: Fraud Hotline
 MC 1300
 P.O. Box 85200
 Austin, Texas 78708-5200

In making a report, it is helpful to provide as much of the following information as possible:

- The name, address, telephone number, and e-mail address of the person making the report (anonymity is acceptable).
- The date(s) the incident(s) occurred.
- The date the incident was discovered.
- A detailed description of the incident, including any known program area, case numbers, or identifying characteristics that will assist the investigation.
- The name, address, telephone number(s), and email address of each person involved in the incident.
- The name, address, contact number, and e-mail address of each known witness.
- Whether the incident was reported to any other government agencies and, if so, which government agencies.



Reporting Employee Misconduct

Most employee misconduct situations are appropriately handled internally by the relevant management chain. However, HHS supervisors must report allegations of employee fraud, waste, or abuse to OIG's Internal Affairs Section for investigation.

Some activities that warrant action by managers do not meet the OIG's definitions of fraud, waste, or abuse. Such acts may occur independently or in conjunction with fraud, waste, or abuse.

The Internal Affairs Director reserves the right to decline to investigate matters of employee misconduct and/or refer all or part of a case in order to devote limited resources to the OIG's core responsibilities.

Employee misconduct appropriate for referral to Internal Affairs includes the following:

- Intentional falsification of documents (e.g., falsification of records related to procurement/contract fraud)
- Theft of state equipment that threatens program integrity by affecting the delivery of services (e.g., theft of electronic benefit transfer cards)
- Privacy/data breaches, in coordination with the HHS Privacy Office (e.g., HIPAA violations, breaches of confidential information, personally identifiable information, Social Security Administration data, etc.)
- Possession/use of pornography
- Retaliation in possible Whistleblower situations
- Travel Fraud
- Workplace violence
- Providing false testimony in or to any tribunal
- Intentional destruction of state property
- Criminal misconduct (e.g., abuse of official capacity, official oppression, tampering with a governmental record, etc.)

Employee misconduct appropriate for investigation internally by program management includes the following:

- Computer misuse (exception: pornography)
- Retaliation (exception: whistleblower cases)
- Abuse of leave
- Travel documentation errors



- Unlawful possession of a weapon at the workplace
- Ethics violations
- Other general HR policy work rule violations in the Human Resources Manual

At management's request, Internal Affairs may also investigate alleged employee misconduct that appears serious (e.g., conduct considered a major offense in HR policy). Nothing in this circular should be construed as preventing management from taking appropriate disciplinary action, when necessary and determined in consultation with the Office of Chief Counsel and Human Resources, or contacting local law enforcement to preserve the peace and/or safeguard lives and property.

Most investigation referrals to IA are clear cut, and either fit plainly within Internal Affairs' scope, or they should be handled by management. For the less frequent cases where the allegations do not fall neatly into an appropriate category, then management will consult with Internal Affairs, Human Resources and/or the Office of Chief Counsel.

Each agency or division is responsible for processing the results of an Internal Affairs investigation. For investigative findings of misconduct, the agency or division must notify Internal Affairs, Legal Services, and Human Resources of the actions taken in response to the investigative findings.

Protection for Reporting Violations of Law, and Confidentiality

HHS employees who in good faith report suspected fraud, waste, or abuse may fall within the protection of the Whistleblower Act in Texas Government Code, Chapter 554.

Reports made to the OIG involving an audit, inspection, or investigation regarding fraud, waste, and abuse in the provision and delivery of all health and human services in the state are generally confidential by law, and not subject to release in response to an open records request, subpoena, or other means of legal compulsion. Throughout the investigative processes, every effort will be made to maintain the anonymity and to protect the rights of the individuals directly connected with a report of fraud, waste, or abuse. The OIG will disclose the results of an audit, review, or investigation in a final report that is produced after all findings are complete (including legal proceedings), and such final reports are open to the public. The OIG, in the interim, may disclose information obtained from an investigation, audit, or review to appropriate HHS legal staff and/or client representatives based upon applicable confidentiality law, and in accordance with



established program integrity related procedures. The OIG has an obligation to provide management with timely and sufficient information to support management's obligations to protect program integrity and to manage the workforce effectively.

Inquiries

Inquiries regarding this circular or requests for assistance with fraud, waste, and abuse training should be directed to the Office of Inspector General via its website at:

<https://oig.hhsc.texas.gov/contact>

The HHS Office of Chief Counsel is also available to assist with any inquiries.