# **APPENDIX C: LIHEAP FRAUD INVESTIGATION AND PROSECUTION (I&P)**

**AN OVERVIEW OF STATE PRACTICES**

This overview outlines common practices among the states in the areas of fraud investigation and prosecution. The LIHEAP Clearinghouse solicited information on such practices from members of the LIHEAP Program Integrity Working group as well as from state policy manuals.

## FRAUD DEFINITION

VA

Fraud is defined as a material representation relating to a past or an existing fact

which is: false; made with knowledge of its falsity; or in reckless disregard of the

truth.

Section **63.2-523** of the ***Code of Virginia*** states "Whoever knowingly and with

intent to defraud transfers, acquires or uses benefits from the **Energy** Assistance

Program, or possesses benefits from such **Energy** Assistance Program in any

manner not authorized by law shall be deemed guilty of larceny and, upon

conviction thereof, be punished accordingly."

With respect to receipt of EnergyAssistance benefits fraud may consist of

withholding information which would affect eligibility for energy assistance or the amount thereof. Fraud may also include giving false information in order to obtain or use benefits from the Energy Assistance Program. In either case, the criterion is the intent of the action or failure to act.

To determine that fraud exists, it must be established that the giving of false information was done with knowledge of its falsity or that the withholding of information which would affect eligibility for assistance or the amount thereof was deliberate, with knowledge of its implications.

OR

Fraud occurs when a household or business takes any of the following actions knowingly, willfully, and with deceitful intent by:

* Making false statements, or knowingly assisting applicants to make a false statement(s) to the agency or its agent(s), either orally or in writing, to receive benefits, services, or payments, for which the household/business are not eligible
* Concealing information that would change or disallow benefits for the household
* Violating provisions set forth in the program regulations, vendor contracts, or other documents pertaining to LIHEAP or OEAP

## CLIENT RIGHTS

VT

“Any investigation of a case of suspected fraud shall be pursued with the same regard for confidentiality and protection of the legal and other rights of the individual as investigation and reinvestigation of eligibility to receive assistance.”

ND

Local agencies must give the person suspected of fraudulent activity notice of the unresolved questions, offer the person the opportunity to reply, and advise of the right to a fair hearing.

Some states require clients to read and sign information about fraud and penalties – rights and responsibilities of clients.

Some states advise clients of rights to a fair hearing.

1. **INVESTIGATION**

MN

When to Investigate:

Investigate credible complaints and findings of suspected fraud. A complaint is credible when the complainant identifies him/herself, states that a household appears to violate some aspect of an energy program’s policy and provides evidence in support of that claim.

Types of complaints to investigate may include:

* A credible complaint that contradicts application information that affects eligibility or benefits
* If it becomes known that a household has applied in more than one location, the

service provider where the household applied last is in charge of the investigation

* Public information from law enforcement activity or the news media
* A vendor or contractor complaint that a household misuses assistance or materials

VA

A determination as to whether fraud occurred must be based on a careful consideration of the particular circumstances. Among the factors to be considered in deciding whether there isdeliberate misrepresentation on the part of the client are:

* the incorrect or unreported information affected eligibility
* the correct information was, in fact, known to the client; and
* the client fully understood the eligibility requirements and his responsibility for reporting information, or
* whether his failure to report facts was unintentional

In general, when service providers conduct the investigation they proceed as follows:

* Verify facts
* Follow-up interview
* Complete ‘Incident Report’
* Consult attorney for future steps
* Refer to local agency personnel policies when agency staff may have misappropriated energy assistance program funds. Local agencies are responsible for misappropriated funds that are not returned according to the contractual agreement with the state.

NY

Employee fraud: If any improprieties are found the case will be referred to the Resource/Fraud/ Investigation Department. The results of the investigation are given to the commissioner, who will determine the course of action. Depending on the results of the investigation there are several things that may happen. The benefit will have to be repaid and/or the worker may be dismissed or transferred. The worker's employment may be terminated or the worker may be suspended, with or without pay and/or criminal charges filed. If benefits were received to which the worker (as a recipient) was not eligible, restitution would be required.

Client fraud: An Intentional Program Violation (IPV) or fraud suspected on the client's part is always referred for investigation If it is determined to be an IPV, then the worker that has the case is notified and the appropriate action to sanction the individual for a specific time and benefits received to which the client was not entitled are recouped out of the grant if the case remains opened or when the case reopens. If the client is no longer eligible for assistance then a repayment agreement is done. If it is determined to be criminal fraud then the report is given to the commissioner and a determination is made whether or not to send it to the District Attorney. The IPV may be for any dollar amount; fraud is determined on a case by case basis and there is no set penalty.

NJ

Refers all cases, no matter how small, to the attorney general because sometimes what appears to be a small case turns out to be much larger. Other states may refer to county attorney or local police.

AK

Cases involving lots of money, blatant fraud and those with prior fraud history will be referred to the Department of Law, Welfare Fraud Section for criminal prosecution.

WA

Does not prosecute but makes client provide additional documentation and start the process over if they falsify information.

## PENALTIES / RESTITUTION / RECOVERY

Some states try to recoup overpayments from clients by subtracting the amount of overpayment from future benefits and/or have restrictions that the client cannot receive benefits for a specified length of time. Some states have a tiered system of disqualification for 1st and following offenses.

AK

1st violation — 6-month disqualification from program

2nd violation — 12-month disqualification

3rd violation — Permanent disqualification

Alaska can garnish wages, tax returns. Also, the state may recover from the individual the cost of investigation and prosecution of the civil action, including attorney fees as determined by court rules.

MN

Except in the case of Service Provider error or fraud, Service Provider recovery costs (legal action, fees, investigations, etc.) are allowable administrative expenses.

OH

The Local delegate agency (LDA) is responsible for initiating and organizing recovery in all cases of duplicate payments as follows:

* Misrepresentation by the client resulting in the client receiving a benefit from two different LDAs. The agency that paid the second (or duplicate) benefit is responsible for

recovering the full amount of the second benefit

* Misrepresentation by the client resulting in two payments received by the client from the same agency
* Payments in excess of $175 or $250 for gas or electric, or in excess of $350 for wood or coal, or in excess of $600 for propane or bottled gas, fuel oils or kerosene
* In cases where the LDA is aware of fraudulent vendor activity

OH LDAs must notify clients of duplicate payment, must develop a recovery plan in which the client pays at least 25% of the amount due and may not apply until the recovery is resolved.

Some states have a minimum overpayment before the collection process is started:

NM: $35

UT: $75

VA: Administrative cost of collecting the overpayment can’t exceed the amount of overpayment.

Many states request refunds from vendors if there is an overpayment or may terminate their contract until reinstated while ensuring that clients continue to receive benefits.

If employee fraud suspected, several states refer to employee handbooks.

Generally a service provider or vendor must repay with non-federal funds.

1. **BARRIERS TO FRAUD INVESTIGATION AND RECOVERY**

Members of the LIHEAP Program Integrity Working Group have cited the following barriers to effective fraud investigation and prosecution.

* Cost of overpayment recovery is prohibitive or more than the amount of fraudulent payment
* In some states, attorney general or law enforcement will not handle cases below a certain dollar threshold
* Lack of statute, policy, procedures, or guidelines to clearly and completely document fraud and investigation
* Time and staff to conduct ongoing monitoring of agencies and utility vendors
* Time and staff to conduct investigation and prosecution
* Recouping fraudulent benefit from clients is a problem; if not recouped it’s an accounting problem
* Some states are unaware of procedures and penalties because fraud I & P is handled by local agencies, or once a matter is turned over to law enforcement it is out of state’s hands