

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**PENNSYLVANIA STATE
MEDICAID FRAUD CONTROL
UNIT: 2015 ONSITE REVIEW**



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**June 2016
OEI-07-15-00360**

**EXECUTIVE SUMMARY: PENNSYLVANIA STATE MEDICAID FRAUD
CONTROL UNIT: 2015 ONSITE REVIEW
OEI-07-15-00360**

WHY WE DID THIS STUDY

The Office of Inspector General (OIG) administers the Medicaid Fraud Control Unit (MFCU or Unit) grant awards, annually recertifies the Units, and oversees the Units' performance in accordance with the requirements of the grant. As part of this oversight, OIG conducts periodic reviews of all Units and prepares public reports based on these reviews. These reviews assess the Unit's adherence to the 12 MFCU performance standards and compliance with applicable Federal statutes and regulations.

HOW WE DID THIS STUDY

We conducted an onsite review of the Pennsylvania Unit in November 2015. We based our review on an analysis of data from seven sources: (1) policies, procedures, and documentation related to the Unit's operations, staffing, and caseload; (2) financial documentation for fiscal years (FYs) 2012 through 2014; (3) structured interviews with key stakeholders; (4) a survey of Unit staff; (5) structured interviews with the Unit's management; (6) a sample of files for cases that were open in FYs 2012 through 2014; and (7) observation of Unit operations.

WHAT WE FOUND

For FYs 2012 through 2014, the Pennsylvania Unit reported 130 criminal convictions, 37 civil judgments and settlements, and combined criminal and civil recoveries of \$80 million. We found that the Pennsylvania Unit was generally in compliance with applicable laws, regulations, and policy transmittals, with one notable exception. Although Federal regulations require the Unit to employ a Chief Investigator to supervise and direct investigative activities, no one held this position prior to February 2016. With respect to adherence to the Performance Standards, we found that the Unit does not document periodic supervisory reviews in its case files. We also found that the Unit maintained proper fiscal control of its resources. Last, we observed that legal barriers limit the Unit's ability to refer cases for civil recovery and pursue patient abuse cases.

WHAT WE RECOMMEND

We recommend that the Pennsylvania Unit implement policies and procedures to ensure it documents periodic supervisory reviews and explains investigative delays in the case files. The Unit concurred with our recommendation.

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OBJECTIVE

To conduct an onsite review of the Pennsylvania State Medicaid Fraud Control Unit (MFCU or Unit).

BACKGROUND

The mission of MFCUs is to investigate and prosecute Medicaid provider fraud and patient abuse or neglect under State law.¹ The SSA requires each State to operate a MFCU, unless the Secretary of Health and Human Services (HHS) determines that (1) operation of a Unit would not be cost-effective because minimal Medicaid fraud exists in a particular State and (2) the State has other adequate safeguards to protect Medicaid beneficiaries from abuse and neglect.² Currently, 49 States and the District of Columbia (States) have MFCUs.³

Each Unit must employ an interdisciplinary staff that consists of at least an investigator, an auditor, and an attorney.⁴ Unit staff review referrals of potential fraud and patient abuse or neglect to determine their potential for criminal prosecution and/or civil action. In fiscal year (FY) 2015, the 50 Units collectively reported 1,553 convictions, 795 civil settlements or judgments, and approximately \$745 million in recoveries.^{5, 6}

Units must meet a number of requirements established by the SSA and Federal regulations. For example, each Unit must:

- be a single, identifiable entity of State government, distinct from the single State Medicaid agency;⁷
- develop a formal agreement, such as a memorandum of understanding (MOU), which describes the Unit's relationship with the State Medicaid agency;⁸ and

¹ Social Security Act (SSA) § 1903(q). Regulations at 42 CFR § 1007.11(b)(1) add that the Unit's responsibilities may include reviewing complaints of misappropriation of patients' private funds in residential health care facilities.

² SSA § 1902(a)(61).

³ North Dakota and the territories of American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands have not established Units.

⁴ SSA § 1903(q)(6); 42 CFR §1007.13.

⁵ Office of Inspector General (OIG), *MFCU Statistical Data for Fiscal Year 2015*. Accessed at http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/expenditures_statistics/fy2015-statistical-chart.htm on February 16, 2016.

⁶ All FY references in this report are based on the Federal FY (October 1 through September 30).

⁷ SSA § 1903(q)(2); 42 CFR § 1007.5 and 1007.9(a).

⁸ 42 CFR § 1007.9(d).

- have either statewide authority to prosecute cases or formal procedures to refer suspected criminal violations to an agency with such authority.⁹

MFCU Funding

Each MFCU is funded jointly by its State and the Federal government. Federal funding for the MFCUs is provided as part of the Federal Medicaid appropriation, but it is administered by OIG.¹⁰ Each Unit receives Federal financial participation equivalent to 75 percent of its total expenditures, with State funds contributing the remaining 25 percent.¹¹ In FY 2015, combined Federal and State expenditures for the Units totaled approximately \$251 million, \$188 million of which represented Federal funds.¹²

Oversight of the MFCU Program

The Secretary of HHS delegated to OIG the authority to administer the MFCU grant program.¹³ To receive Federal reimbursement, each Unit must submit an initial application to OIG for approval and be recertified each year thereafter.

In annually recertifying the Units, OIG evaluates Unit compliance with Federal requirements and adherence to performance standards. The Federal requirements for Units are contained in the SSA, regulations, and policy guidance.¹⁴ In addition, OIG has published 12 performance standards that it uses to assess whether a Unit is effectively performing its responsibilities.¹⁵ The standards address topics such as staffing, maintaining adequate referrals, and cooperation with Federal authorities. Appendix A contains the Performance Standards.

OIG also performs periodic onsite reviews of the Units, such as this review of the Pennsylvania MFCU. During these onsite reviews, OIG evaluates Units' compliance with laws, regulations, and policies, as well as adherence

⁹ SSA § 1903(q)(1).

¹⁰ SSA § 1903(a)(6)(B).

¹¹ Ibid.

¹² OIG, *MFCU Statistical Data for Fiscal Year 2015*. Accessed at http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/expenditures_statistics/fy2015-statistical-chart.htm on February 16, 2016.

¹³ The SSA authorizes the Secretary of HHS to award grants to the Units; the Secretary delegated this authority to the OIG.

¹⁴ On occasion, OIG issues policy transmittals to provide guidance and instructions to MFCUs.

¹⁵ 59 Fed. Reg. 49080 (Sept. 26, 1994). Accessed at <http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/files/Performance%20Standards.pdf> on January 5, 2016. On June 1, 2012, OIG published a revision of the performance standards at 77 Fed. Reg. 32645. Because our review covered FYs 2012 through 2014, we applied the standards published on June 1, 2012.

to the 12 performance standards. OIG also makes observations about best practices, provides recommendations to the Units, and monitors the implementation of the recommendations. These evaluations differ from other OIG evaluations as they support OIG's direct administration of the MFCU grant program. These evaluations are subject to the same internal quality controls as other OIG evaluations, including internal peer review.

Additional oversight includes the collection and dissemination of data about MFCU operations and the provision of training and technical assistance.

Pennsylvania Medicaid Program

Pennsylvania's Medicaid program provides services to Medicaid enrollees through managed care and fee-for-service delivery systems.^{16, 17} As of July 2011, over 80 percent of Medicaid beneficiaries in Pennsylvania were enrolled in managed care.¹⁸ As of August 2014, the State Medicaid agency contracted with 15 MCOs and paid them a fixed amount for each Medicaid enrollee.¹⁹ In FY 2015, combined Federal and State expenditures for Pennsylvania's Medicaid program were approximately \$24 billion.²⁰

Pennsylvania MFCU

The Pennsylvania Unit is headquartered within the criminal law division of the Pennsylvania Office of the Attorney General in Harrisburg, Pennsylvania. The Unit also operates three regional offices which are located in Lemoyne, Norristown, and North Huntingdon.

At the time of our review, the Unit employed 45 staff members including the director, the Chief Auditor, 5 supervisory agents, 22 agents, 7 attorneys, 1 auditor, 2 analysts, and 6 support staff members.

Referrals. The Unit receives referrals from a variety of sources, including the State Medicaid agency, health care providers, local law enforcement, and

¹⁶ Medicaid managed care is a type of health care delivery system that provides Medicaid health benefits and services to enrollees through contracted arrangements between State Medicaid agencies and managed care organizations (MCOs). MCOs receive a set payment per member per month from the State Medicaid agency for these services. Fee-for-service is a type of health care delivery system in which health care providers are paid for each service provided to Medicaid enrollees.

¹⁷ Pennsylvania Department of Human Services, *Office of Medical Assistance Programs*, September 2015.

¹⁸ Centers for Medicare & Medicaid Services (CMS), *Managed Care in Pennsylvania*. Accessed at <https://www.medicare.gov/medicaid-chip-program-information/by-topics/delivery-systems/managed-care/downloads/pennsylvania-mcp.pdf> on October 29, 2015.

¹⁹ Ibid.

²⁰ OIG, *MFCU Statistical Data for Fiscal Year 2015*. Accessed at http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/expenditures_statistics/fy2015-statistical-chart.htm on February 16, 2016.

OIG. Appendix B depicts Unit referrals by referral source for FYs 2012 through 2014. All referrals are reviewed in the regional office in which the referral originates. An agent or analyst reviews referrals and is responsible for making a recommendation as to whether to open a case. Generally, a supervisory special agent and attorney review the recommendation before it is submitted to the director for approval. The director ultimately decides whether to open a case.

Investigations and prosecutions. When a case is opened, it is assigned to an agent and attorney for investigation and, as appropriate, prosecution. If warranted, an auditor also may be assigned to the case. The Unit has statewide authority to pursue criminal cases of Medicaid fraud and patient neglect. The Unit does not have authority to pursue civil monetary penalties nor does the State have a False Claims Act. The State Medicaid agency's Bureau of Program Integrity does have authority to pursue civil monetary penalties. Appendix C depicts investigations opened and closed during the review period.

Previous OIG Onsite Review

In 2009, OIG issued a report regarding its onsite review of the Pennsylvania Unit. OIG did not note any instances of noncompliance with the applicable Federal regulations or with the 12 MFCU performance standards.

METHODOLOGY

We conducted an onsite review in November 2015. We based our review on an analysis of data from seven sources: (1) a review of policies, procedures, and documentation related to the Unit's operations, staffing, and caseload; (2) a review of financial documentation for FYs 2012 through 2014; (3) structured interviews with key stakeholders; (4) a survey of Unit staff; (5) structured interviews with the Unit's management; (6) an onsite review of files for cases that were open in FYs 2012 through 2014; and (7) onsite observation of Unit operations. Appendix D provides details of our methodology.

Standards

These reviews are conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

We found that the Pennsylvania Unit was generally in compliance with applicable laws, regulations, and policy transmittals, with one notable exception. Specifically, the Unit did not employ a Chief Investigator to supervise and direct investigative activities prior to February 2016, contrary to Federal regulations. With respect to adherence to the Performance Standards, we found that the Unit did not document periodic supervisory reviews in its case files. We also found that the Unit maintained proper fiscal control of its resources. Last, we observed that legal barriers limit the Unit’s ability to refer cases for civil recovery and pursue patient abuse cases.

For FYs 2012 through 2014, the Pennsylvania Unit reported 130 criminal convictions, 37 civil judgments and settlements, and combined criminal and civil recoveries of \$80 million

For FYs 2012 through 2014, the Unit reported 130 criminal convictions and 37 civil judgments and settlements. See Table 1 for yearly convictions and civil judgments and settlements. Of the Unit’s 130 convictions over the 3-year period, 126 involved provider fraud and 4 involved patient neglect.

Table 1: Pennsylvania MFCU Criminal Convictions and Civil Judgments and Settlements, FYs 2012–2014

Outcomes	FY 2012	FY 2013	FY 2014	3-Year Total
Criminal Convictions	30	54	46	130
Civil Judgments and Settlements	12	13	12	37

Source: OIG analysis of Unit-submitted documentation, 2016.

For the same period, the Unit reported combined criminal and civil recoveries of approximately \$80 million, with average yearly recoveries of approximately \$27 million. See Table 2 for the Unit’s yearly recoveries and expenditures. Because the Unit does not have State authority to pursue civil Medicaid fraud cases, its reported civil recoveries were obtained from “global” cases.²¹ The Unit obtained 93 percent of its recoveries from global cases during the 3-year review period.

²¹ Global cases are civil false claims actions involving the U.S. Department of Justice and other State MFCUs. The National Association of Medicaid Fraud Control Units facilitates the settlement of global cases.

Table 2: Pennsylvania MFCU Recoveries and Expenditures, FYs 2012–2014*

Type of Recovery	FY 2012	FY 2013	FY 2014	3-Year Total
Global Civil	\$41,792,261	\$28,062,504	\$4,352,940	\$74,207,705
Nonglobal Civil	\$0	\$0	\$0	\$0
Criminal	\$1,462,832	\$2,666,616	\$1,354,491	\$5,483,939
Total Recoveries	\$43,255,094	\$30,729,120	\$5,707,431	\$79,691,645
Total Expenditures	\$4,442,013	\$4,724,526	\$5,270,842	\$14,437,382

Source: OIG analysis of Unit-submitted documentation, 2016.

* Due to rounding, dollar figures for each category of recoveries do not always sum to the total recovery amount.

Prior to February 2016, the Unit lacked a Chief Investigator to supervise and direct investigative activities

Prior to February 2016, the Unit did not employ a Chief Investigator to supervise and direct investigative activities. Rather, the Unit’s five supervisory agents reported to a Special Agent in Charge (SAC) who was not employed by the Unit.²² The SAC headed the Bureau of Criminal Investigations within the Attorney General’s office, and is responsible for overseeing the investigative activities in six divisions, including the Unit. Federal regulations require a Unit to employ sufficient professional, administrative, and support staff to carry out its duties. The required staff must include “a senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the [U]nit.”²³ In February 2016, the Unit promoted one of its supervisory agents to the Chief Investigator position.

The Unit does not document periodic supervisory reviews in its case files

For FYs 2012 through 2014, the Unit reported that its policy and practice was to conduct supervisory reviews on a monthly basis; however, its policy did not require these reviews to be documented in the case files. Unit staff said that supervisory reviews occurred monthly, but that the reviews were not documented in the case files. As a result, none of the Unit’s case files included documentation of supervisory reviews. Performance Standard 7(a) states that supervisory reviews should be conducted periodically and noted in the case file. Periodic supervisory

²² The SAC’s salary is not paid by the MFCU grant nor is the position included on the Unit’s organizational chart.

²³ 42 CFR § 1007.13(a)(3).

reviews can help to ensure timely completion of cases and may identify potential issues during the investigation.

Three reviewed cases had investigative delays of 6 months or more. None of these cases included documentation in the case file explaining the delays.²⁴ Moreover, none of these three case files included documentation of supervisory reviews. Such documentation might have explained the investigative delays and helped supervisors monitor the progress of the investigation.

The Unit maintained proper fiscal control of its resources

The Unit maintained proper fiscal control of its resources during the review period, in accordance with Performance Standard 11. The Unit's financial documentation indicated that the Unit's requests for reimbursement for FYs 2013 through 2015 represented allowable, allocable, and reasonable costs. In addition, the Unit maintained adequate internal controls related to accounting, budgeting, personnel, procurement, property, and equipment.

Other observation: Legal barriers limit the Unit's ability to refer cases for civil recovery and pursue patient abuse cases

Pennsylvania law limits the Unit's ability to refer and pursue some cases. Specifically, the Unit cannot share criminal investigative information with the State Medicaid agency, which may affect referrals for civil recoveries. Further, the Unit does not have authority to pursue patient abuse cases.

The Unit cannot share investigative information with noncriminal justice agencies, which may affect civil recoveries

The Unit cannot share criminal investigative information with the State Medicaid agency, which may affect the State's civil recoveries.²⁵ The State's civil actions often rely on information originally gathered to support a potential criminal investigation. For example, the State Medicaid agency refers a case to the Unit for criminal investigation. During its investigation, the Unit determines that the case cannot be

²⁴ Performance Standard 5(c) states that investigation and prosecution delays should be limited to situations imposed by resource constraints or other exigencies. In addition, Performance Standard 7(b) states that case files should contain all relevant facts and information.

²⁵ Pursuant to 18 Pa. C.S.A. § 9106(c)(4) (1979), the Unit cannot share criminal investigative information with noncriminal justice agencies (e.g., State Medicaid agency). Criminal investigative information is information collected during an inquiry into an allegation of criminal wrongdoing.

prosecuted criminally; however, the case does have potential for civil recovery. In another State, the Unit would likely refer the case back to the State Medicaid agency to pursue civilly. However, because Pennsylvania law prohibits the Unit from sharing information gathered during its criminal investigation with the State Medicaid agency, the case is not referred and potential civil recoveries are not obtained. Further, unlike many other MFCUs, the Unit does not have authority to pursue civil fraud recoveries.²⁶ Therefore, it cannot pursue these matters civilly within the Unit.

The Unit is seeking legislative changes that would allow it to share information with the State Medicaid agency. Specifically, the Unit director said that the Unit has provided support for the enactment of a false claims statute in Pennsylvania. According to the Unit director, a false claims statute would allow sharing of information discovered during an investigation with the State Medicaid agency or other agency that could pursue false claims actions.

The Unit does not have authority to pursue patient abuse cases

Under Pennsylvania law, the Unit may investigate and prosecute patient neglect cases, but it does not have the authority to investigate or prosecute patient abuse cases. According to Federal regulations, Units are required to review complaints of patient abuse or neglect that occur in health care facilities funded by the State Medicaid program.²⁷ If the initial review of such a complaint indicates substantial potential for criminal prosecution, the Unit may investigate the complaint or refer it to an appropriate criminal investigative or prosecutorial authority.²⁸ Pennsylvania's "Neglect of Care-Dependent Persons Act" gives the Unit authority to investigate cases related to neglect of a "care-dependent person" if physical bodily injury has occurred.²⁹ The Unit director said that this is the sole statute authorizing the Unit to prosecute patient neglect cases, and

²⁶ Pursuant to 62 P.S. § 1407(b)(4), the Unit has authority to pursue criminal Medicaid fraud cases. Pursuant to 62 P.S. § 1407(c)(1), the Pennsylvania State Medicaid agency has the authority to pursue civil fraud recoveries.

²⁷ 42 CFR § 1007.11(b)(1).

²⁸ 42 CFR § 1007.11(b)(2).

²⁹ 18 Pa. C.S.A. § 2713. This statute generally defines neglect as causing bodily injury by failing to provide treatment, care, goods, or services necessary for the well-being of a care-dependent person for whom an individual is responsible to provide care.

it does not authorize the Unit to pursue cases of abuse.³⁰ However, there are other entities in the State that are specifically authorized to investigate and prosecute patient abuse cases—local law enforcement is responsible for investigating these cases and local District Attorneys are responsible for prosecuting them. Therefore, the Unit may refer patient abuse cases to these entities for investigation and prosecution.

³⁰ The Pennsylvania Attorney General has authority to prosecute criminal cases set forth in 71 P.S. § 732-205. According to the Unit, the Pennsylvania courts have concluded that the Attorney General does not possess any inherent additional powers not contained in the above statute with the exception of a certain specialty statute. This specialty statute, 18 Pa.C.S.A. § 2713, gives the Unit the authority to prosecute neglect cases. As such, the Unit has authority to pursue neglect cases but not abuse cases.

CONCLUSION AND RECOMMENDATION

For FYs 2012 through 2014, the Pennsylvania Unit reported 130 criminal convictions, 37 civil judgments and settlements, and combined criminal and civil recoveries of \$80 million.

We found that the Pennsylvania Unit was generally in compliance with applicable laws, regulations, and policy transmittals, with one notable exception. Specifically, prior to February 2016 the Unit did not employ a Chief Investigator to supervise and direct investigative activities. With respect to the Performance Standards, we found that the Unit did not adhere to the performance standard stating that periodic supervisory reviews be documented in its case files. We also found that the Unit maintained proper fiscal control of its resources.

We observed that legal barriers limit the Unit's ability to refer cases for civil recovery and pursue patient abuse cases. The Unit is seeking legislative changes that would expand its authorities. OIG encourages and supports the Unit's efforts to expand its authorities to the full extent envisioned under the MFCU grant program.

We recommend that the Pennsylvania Unit:

Implement policies and procedures to ensure it documents periodic supervisory reviews and explains investigative delays in the case files

The Unit should revise its policies and procedures manual to require that periodic supervisory reviews be documented in case files, consistent with Performance Standard 7(a). Further, the Unit should implement policies and procedures to ensure that explanations of investigative delays are included in case files. Documented supervisory reviews could be one mechanism for including explanations of investigative delays.

UNIT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

The Pennsylvania Unit concurred with our recommendation. The Unit stated that it has created and implemented a policy and procedure for documenting the Unit's quarterly supervisory reviews.

In addition to its comments on the recommendation, the Unit provided comments regarding one of our findings and our other observation. Regarding the finding that the Unit lacked a Chief Investigator prior to February 2016, the Unit stated that it had updated its policies and procedures manual to indicate that the Chief Investigator position is required by 42 CFR §1007.13. The Unit stated that it agreed with OIG's observations and reiterated that expanding its authority would require legislative action by the Pennsylvania State legislature. The Unit's comments provided further details regarding its legislative proposal to expand the Unit's authorities to the full extent envisioned under the MFCU grant program.

The full text of the Unit's comments is provided in Appendix E.

APPENDIX A

2012 Performance Standards³¹

1. A UNIT CONFORMS WITH ALL APPLICABLE STATUTES, REGULATIONS, AND POLICY DIRECTIVES, INCLUDING:
A. Section 1903(q) of the Social Security Act, containing the basic requirements for operation of a MFCU;
B. Regulations for operation of a MFCU contained in 42 CFR part 1007;
C. Grant administration requirements at 45 CFR part 92 and Federal cost principles at 2 CFR part 225;
D. OIG policy transmittals as maintained on the OIG Web site; and
E. Terms and conditions of the notice of the grant award.
2. A UNIT MAINTAINS REASONABLE STAFF LEVELS AND OFFICE LOCATIONS IN RELATION TO THE STATE'S MEDICAID PROGRAM EXPENDITURES AND IN ACCORDANCE WITH STAFFING ALLOCATIONS APPROVED IN ITS BUDGET.
A. The Unit employs the number of staff that is included in the Unit's budget estimate as approved by OIG.
B. The Unit employs a total number of professional staff that is commensurate with the State's total Medicaid program expenditures and that enables the Unit to effectively investigate and prosecute (or refer for prosecution) an appropriate volume of case referrals and workload for both Medicaid fraud and patient abuse and neglect.
C. The Unit employs an appropriate mix and number of attorneys, auditors, investigators, and other professional staff that is both commensurate with the State's total Medicaid program expenditures and that allows the Unit to effectively investigate and prosecute (or refer for prosecution) an appropriate volume of case referrals and workload for both Medicaid fraud and patient abuse and neglect.
D. The Unit employs a number of support staff in relation to its overall size that allows the Unit to operate effectively.
E. To the extent that a Unit maintains multiple office locations, such locations are distributed throughout the State, and are adequately staffed, commensurate with the volume of case referrals and workload for each location.
3. A UNIT ESTABLISHES WRITTEN POLICIES AND PROCEDURES FOR ITS OPERATIONS AND ENSURES THAT STAFF ARE FAMILIAR WITH, AND ADHERE TO, POLICIES AND PROCEDURES.
A. The Unit has written guidelines or manuals that contain current policies and procedures, consistent with these performance standards, for the investigation and (for those Units with prosecutorial authority) prosecution of Medicaid fraud and patient abuse and neglect.
B. The Unit adheres to current policies and procedures in its operations.
C. Procedures include a process for referring cases, when appropriate, to Federal and State agencies. Referrals to State agencies, including the State Medicaid agency, should identify whether further investigation or other administrative action is warranted, such as the collection of overpayments or suspension of payments.
D. Written guidelines and manuals are readily available to all Unit staff, either online or in hard copy.
E. Policies and procedures address training standards for Unit employees.
4. A UNIT TAKES STEPS TO MAINTAIN AN ADEQUATE VOLUME AND QUALITY OF REFERRALS FROM THE STATE MEDICAID AGENCY AND OTHER SOURCES.
A. The Unit takes steps, such as the development of operational protocols, to ensure that the State Medicaid agency, managed care organizations, and other agencies refer to the Unit all suspected provider fraud cases. Consistent with 42 CFR 1007.9(g), the Unit provides timely written notice to the State Medicaid agency when referred cases are accepted or declined for investigation.
B. The Unit provides periodic feedback to the State Medicaid agency and other referral sources on the adequacy of both the volume and quality of its referrals.

³¹ 77 Fed. Reg. 32646, June 1, 2012.

C. The Unit provides timely information to the State Medicaid or other agency when the Medicaid or other agency requests information on the status of MFCU investigations, including when the Medicaid agency requests quarterly certification pursuant to 42 CFR 455.23(d)(3)(ii).
D. For those States in which the Unit has original jurisdiction to investigate or prosecute patient abuse and neglect cases, the Unit takes steps, such as the development of operational protocols, to ensure that pertinent agencies refer such cases to the Unit, consistent with patient confidentiality and consent. Pertinent agencies vary by State but may include licensing and certification agencies, the State Long Term Care Ombudsman, and adult protective services offices.
E. The Unit provides timely information, when requested, to those agencies identified in (D) above regarding the status of referrals.
F. The Unit takes steps, through public outreach or other means, to encourage the public to refer cases to the Unit.
5. A UNIT TAKES STEPS TO MAINTAIN A CONTINUOUS CASE FLOW AND TO COMPLETE CASES IN AN APPROPRIATE TIMEFRAME BASED ON THE COMPLEXITY OF THE CASES.
A. Each stage of an investigation and prosecution is completed in an appropriate timeframe.
B. Supervisors approve the opening and closing of all investigations and review the progress of cases and take action as necessary to ensure that each stage of an investigation and prosecution is completed in an appropriate timeframe.
C. Delays to investigations and prosecutions are limited to situations imposed by resource constraints or other exigencies.
6. A UNIT'S CASE MIX, AS PRACTICABLE, COVERS ALL SIGNIFICANT PROVIDER TYPES AND INCLUDES A BALANCE OF FRAUD AND, WHERE APPROPRIATE, PATIENT ABUSE AND NEGLECT CASES.
A. The Unit seeks to have a mix of cases from all significant provider types in the State.
B. For those States that rely substantially on managed care entities for the provision of Medicaid services, the Unit includes a commensurate number of managed care cases in its mix of cases.
D. As part of its case mix, the Unit maintains a balance of fraud and patient abuse and neglect cases for those States in which the Unit has original jurisdiction to investigate or prosecute patient abuse and neglect cases.
C. The Unit seeks to allocate resources among provider types based on levels of Medicaid expenditures or other risk factors. Special Unit initiatives may focus on specific provider types.
E. As part of its case mix, the Unit seeks to maintain, consistent with its legal authorities, a balance of criminal and civil fraud cases.
7. A UNIT MAINTAINS CASE FILES IN AN EFFECTIVE MANNER AND DEVELOPS A CASE MANAGEMENT SYSTEM THAT ALLOWS EFFICIENT ACCESS TO CASE INFORMATION AND OTHER PERFORMANCE DATA.
A. Reviews by supervisors are conducted periodically, consistent with MFCU policies and procedures, and are noted in the case file.
B. Case files include all relevant facts and information and justify the opening and closing of the cases.
C. Significant documents, such as charging documents and settlement agreements, are included in the file.
D. Interview summaries are written promptly, as defined by the Unit's policies and procedures.
E. The Unit has an information management system that manages and tracks case information from initiation to resolution.
F. The Unit has an information management system that allows for the monitoring and reporting of case information, including the following:
1. The number of cases opened and closed and the reason that cases are closed.
2. The length of time taken to determine whether to open a case referred by the State Medicaid agency or other referring source.
3. The number, age, and types of cases in the Unit's inventory/docket

4. The number of referrals received by the Unit and the number of referrals by the Unit to other agencies.
5. The number of cases criminally prosecuted by the Unit or referred to others for prosecution, the number of individuals or entities charged, and the number of pending prosecutions.
6. The number of criminal convictions and the number of civil judgments.
7. The dollar amount of overpayments identified.
8. The dollar amount of fines, penalties, and restitution ordered in a criminal case and the dollar amount of recoveries and the types of relief obtained through civil judgments or pre-filing settlements.
8. A UNIT COOPERATES WITH OIG AND OTHER FEDERAL AGENCIES IN THE INVESTIGATION AND PROSECUTION OF MEDICAID AND OTHER HEALTH CARE FRAUD.
A. The Unit communicates on a regular basis with OIG and other Federal agencies investigating or prosecuting health care fraud in the State.
B. The Unit cooperates and, as appropriate, coordinates with OIG's Office of Investigations and other Federal agencies on cases being pursued jointly, cases involving the same suspects or allegations, and cases that have been referred to the Unit by OIG or another Federal agency.
C. The Unit makes available, to the extent authorized by law and upon request by Federal investigators and prosecutors, all information in its possession concerning provider fraud or fraud in the administration of the Medicaid program.
D. For cases that require the granting of "extended jurisdiction" to investigate Medicare or other Federal health care fraud, the Unit seeks permission from OIG or other relevant agencies under procedures as set by those agencies.
E. For cases that have civil fraud potential, the Unit investigates and prosecutes such cases under State authority or refers such cases to OIG or the U.S. Department of Justice.
F. The Unit transmits to OIG, for purposes of program exclusions under section 1128 of the Social Security Act, all pertinent information on MFCU convictions within 30 days of sentencing, including charging documents, plea agreements, and sentencing orders.
G. The Unit reports qualifying cases to the Healthcare Integrity & Protection Databank, the National Practitioner Data Bank, or successor data bases.
9. A UNIT MAKES STATUTORY OR PROGRAMMATIC RECOMMENDATIONS, WHEN WARRANTED, TO THE STATE GOVERNMENT.
A. The Unit, when warranted and appropriate, makes statutory recommendations to the State legislature to improve the operation of the Unit, including amendments to the enforcement provisions of the State code.
B. The Unit, when warranted and appropriate, makes other regulatory or administrative recommendations regarding program integrity issues to the State Medicaid agency and to other agencies responsible for Medicaid operations or funding. The Unit monitors actions taken by the State legislature and the State Medicaid or other agencies in response to recommendations.
10. A UNIT PERIODICALLY REVIEWS ITS MEMORANDUM OF UNDERSTANDING (MOU) WITH THE STATE MEDICAID AGENCY TO ENSURE THAT IT REFLECTS CURRENT PRACTICE, POLICY, AND LEGAL REQUIREMENTS.
A. The MFCU documents that it has reviewed the MOU at least every 5 years, and has renegotiated the MOU as necessary, to ensure that it reflects current practice, policy, and legal requirements.
B. The MOU meets current Federal legal requirements as contained in law or regulation, including 42 CFR § 455.21, "Cooperation with State Medicaid fraud control units," and 42 CFR § 455.23, "Suspension of payments in cases of fraud."
C. The MOU is consistent with current Federal and State policy, including any policies issued by OIG or the Centers for Medicare & Medicaid Services (CMS).
D. Consistent with Performance Standard 4, the MOU establishes a process to ensure the receipt of an adequate volume and quality of referrals to the Unit from the State Medicaid agency.
E. The MOU incorporates by reference the <i>CMS Performance Standard for Referrals of Suspected Fraud from a State Agency to a Medicaid Fraud Control Unit</i> .
11. A UNIT EXERCISES PROPER FISCAL CONTROL OVER UNIT RESOURCES.

A. The Unit promptly submits to OIG its preliminary budget estimates, proposed budget, and Federal financial expenditure reports.
B. The Unit maintains an equipment inventory that is updated regularly to reflect all property under the Unit's control.
C. The Unit maintains an effective time and attendance system and personnel activity records.
D. The Unit applies generally accepted accounting principles in its control of Unit funding.
E. The Unit employs a financial system in compliance with the standards for financial management systems contained in 45 CFR 92.20.
12. A UNIT CONDUCTS TRAINING THAT AIDS IN THE MISSION OF THE UNIT.
A. The Unit maintains a training plan for each professional discipline that includes an annual minimum number of training hours and that is at least as stringent as required for professional certification.
B. The Unit ensures that professional staff comply with their training plans and maintain records of their staff's compliance.
C. Professional certifications are maintained for all staff, including those that fulfill continuing education requirements.
D. The Unit participates in MFCU-related training, including training offered by OIG and other MFCUs, as such training is available and as funding permits.
E. The Unit participates in cross-training with the fraud detection staff of the State Medicaid agency. As part of such training, Unit staff provide training on the elements of successful fraud referrals and receive training on the role and responsibilities of the State Medicaid agency.

APPENDIX B

Pennsylvania State Medicaid Fraud Control Unit Referrals by Referral Source for FYs 2012 Through 2014

Referral Source	FY 2012			FY 2013			FY 2014		
	Fraud	Abuse & Neglect	Patient Funds	Fraud	Abuse & Neglect	Patient Funds	Fraud	Abuse & Neglect	Patient Funds
Medicaid agency – PI/SURS ³²	93	1	1	131	0	0	133	1	0
Medicaid agency – other	3	3	0	3	2	0	0	4	0
Managed care organizations	17	0	0	22	0	0	21	0	0
State survey and certification agency	1	0	0	0	0	0	0	0	0
Other State agencies	2	1	0	5	7	0	1	5	0
Licensing board	0	0	0	0	0	0	0	0	0
Law enforcement	3	0	0	14	3	0	7	1	0
Office of Inspector General	1	1	0	3	1	0	1	1	0
Prosecutors	0	0	0	0	0	0	0	0	0
Providers	23	0	0	26	0	0	10	0	0
Provider associations	0	0	0	0	0	0	0	0	0
Private health insurer	0	0	0	0	0	0	0	0	0
Long-term-care ombudsman	0	0	0	0	0	0	0	0	0
Adult protective services	0	0	0	0	0	0	0	0	0
Private citizens	8	2	1	7	2	0	9	3	1
MFCU hotline	0	0	0	0	0	0	0	0	0
Self-generated	0	0	0	0	0	0	0	0	0
Other	19	0	0	28	0	0	27	1	0
Total	170	8	2	239	15	0	209	16	1
Annual Total	180			254			226		

Source: OIG analysis of Unit-submitted documentation, 2015.

³² The abbreviation “PI” stands for program integrity; the abbreviation “SURS” stands for Surveillance and Utilization Review Subsystem.

APPENDIX C

Investigations Opened and Closed By Provider Category for FYs 2012 Through 2014

Table C-1: Fraud Investigations

Provider Category	FY 2012		FY 2013		FY 2014	
Facilities	Opened	Closed	Opened	Closed	Opened	Closed
Hospitals	1	0	0	0	0	0
Nursing facilities	4	8	6	7	5	5
Other long-term-care Facilities	0	0	0	0	2	1
Substance abuse treatment centers	0	1	1	0	0	0
Other	2	2	1	1	6	2
Subtotal	7	11	8	8	13	8
Practitioners	Opened	Closed	Opened	Closed	Opened	Closed
Doctors of medicine or osteopathy	6	5	11	6	14	11
Dentists	2	5	4	5	3	6
Podiatrists	0	0	1	1	0	0
Optometrists/opticians	1	0	0	1	2	1
Counselors/psychologists	30	19	37	40	34	34
Chiropractors	0	0	0	0	0	0
Other	1	1	3	1	2	3
Subtotal	40	30	56	54	55	55
Medical Support	Opened	Closed	Opened	Closed	Opened	Closed
Pharmacies	2	1	3	2	2	3
Pharmaceutical Manufacturers	16	15	21	11	22	19
Suppliers of durable medical equipment and/or supplies	1	0	1	1	0	0
Laboratories	0	0	0	0	1	0
Transportation services	2	3	0	2	0	0
Home health care agencies	4	2	5	2	8	4
Home health care aides	95	60	140	128	108	138
Nurses, physician assistants, nurse practitioners, certified nurse aides	0	0	0	0	0	0
Radiologists	0	0	0	0	0	0
Medical support—other	3	3	4	1	0	4
Subtotal	123	84	174	147	141	168

Table C-1 (Continued): Fraud Investigations

Provider Category	FY 2012		FY 2013		FY 2014	
	Opened	Closed	Opened	Closed	Opened	Closed
Managed care organizations	0	0	0	0	0	0
Medicaid program administration	0	0	0	0	0	0
Billing company	0	0		0	0	0
Other	0	0	0	0	0	0
Subtotal	0	0	0	0	0	0
Total Provider Categories	170	125	238	209	209	231

Source: OIG analysis of Unit-submitted documentation, 2015.

Table C-2: Patient Abuse and Neglect Investigations

Provider Category	FY 2012		FY 2013		FY 2014	
	Opened	Closed	Opened	Closed	Opened	Closed
Nursing facilities	3	1	6	6	6	6
Other long-term-care facilities	5	4	9	8	10	11
Nurses, physician assistants, nurse practitioners, certified nurse aides	0	0	0	0	0	0
Home health aides	0	0	0	0	0	0
Other	0	0	0	0	0	0
Total	8	5	15	14	16	17

Source: OIG analysis of Unit-submitted documentation, 2015.

Table C-3: Patient Funds Investigations

Provider Category	FY 2012		FY 2013		FY 2014	
	Opened	Closed	Opened	Closed	Opened	Closed
Nondirect care	2	1	1	0	1	2
Nurses, physician assistants, nurse practitioners, certified nurse aides	0	0	0	0	0	0
Home health aides	0	0	0	0	0	0
Other	0	0	0	0	0	0
Total	2	1	1	0	1	2

Source: OIG analysis of Unit-submitted documentation, 2015.

APPENDIX D

Detailed Methodology

Data collected from the seven sources below was used to describe the caseload and assess the performance of the Pennsylvania MFCU.

Data Collection

Review of Unit Documentation. We collected information for FYs 2012 through 2014 regarding the Unit's investigation of Medicaid cases, including information about the number of referrals the Unit received, the number of investigations the Unit opened and closed, the outcomes of those investigations, and the Unit's case mix. We also collected and analyzed information about the number of cases that the Unit referred for prosecution and the outcomes of those prosecutions.

We gathered information from several sources, including the Unit's quarterly statistical reports; its annual reports; its recertification questionnaire; its policies and procedures manual; and its MOU with the State Medicaid agency. We requested any additional data or clarification from the Unit as necessary.

Review of Unit Financial Documentation. To evaluate internal control of fiscal resources, we reviewed policies and procedures related to the Unit's budgeting, accounting systems, cash management, procurement, property, and staffing. We reviewed records in the Payment Management System (PMS)³³ and revenue accounts to determine the accuracy of the Federal Financial Reports (FFRs) for FYs 2012 through 2014. We also obtained the Unit's claimed grant expenditures from its FFRs and the supporting schedules. From the supporting schedules, we requested and reviewed supporting documentation for the selected items. We noted any instances of noncompliance with applicable regulations.

We reviewed three purposive samples to assess the Unit's internal control of fiscal resources. All three samples were limited to the review period of FYs 2012 through FY 2014. The three samples included the following:

1. To assess the Unit's expenditures, we selected a purposive sample of 124 non-payroll transactions and manual accounting adjustments. We selected routine and nonroutine transactions representing a variety of budget categories and payment amounts.

³³ The PMS is a grant payment system operated and maintained by the Department of Health and Human Services, Program Support Center, Division of Payment Management. The PMS provides disbursement, grant monitoring, reporting, and case management services to awarding agencies and grant recipients, such as MFCUs.

2. To assess the Unit's inventory, we selected and verified a purposive sample of 17 items from the current inventory list of 254 items. To ensure a variety in our inventory sample, we included items that were portable, high value, or unusual in nature (e.g., a pole camera).
3. To assess employees' "time and effort"—i.e., their work hours spent on various MFCU tasks—we selected three purposive samples of Unit employees who were paid during the review period: for FY 2012, we sampled 23 of 34 Unit employees; for FY 2013, we sampled 23 of 35 Unit employees; and for FY 2014, we sampled 19 of 35 Unit employees. We then requested and reviewed documentation (e.g., time card records) to support the time and effort of each employee in the selected pay period.

Interviews with Key Stakeholders. In September and October 2015, we interviewed key stakeholders, including officials in the United States Attorneys' Offices, the State Attorney General's Office, and other State agencies that interacted with the Unit (e.g., the Medicaid Program Integrity Unit, Bureau of Facility Licensure and Certification, and State Department of Aging). Additionally, we interviewed two managed care health plans that interact with the Unit. We also interviewed supervisors from OIG's Region III Office of Investigations who work regularly with the Unit. We focused these interviews on the Unit's relationship and interaction with OIG and other Federal and State authorities and opportunities for improvement. We used the information collected from these interviews to develop subsequent interview questions for Unit management.

Survey of Unit Staff. In September 2015, we conducted an online survey of all 38 nonmanagerial Unit staff within each professional discipline (e.g., investigators, auditors, and attorneys) as well as support staff. The response rate was 100 percent. Our questions focused on operations of the Unit, opportunities for improvement, and practices that contributed to the effectiveness and efficiency of Unit operations and/or performance. The survey also sought information about the Unit's compliance with applicable laws and regulations.

Onsite Interviews with Unit Management. We conducted structured interviews with the Unit's management in October and November 2015. We interviewed the Unit director, Chief Auditor, Special Agent in Charge, the supervisory agents, and two Senior Deputy Attorneys General. We asked these individuals to provide information related to (1) the Unit's operations, (2) Unit practices that contributed to the effectiveness and efficiency of Unit operations and/or performance, (3) opportunities for the Unit to improve its operations and/or performance, and (4) clarification regarding information obtained from other data sources.

Onsite Review of Case Files. We requested that the Unit provide us with a list of cases that were open at any point during FYs 2012 through 2014. The Unit provided a list of 786 cases that were open during this period. For each of these 786 cases, the Unit provided data including the current status of the case; whether the case was criminal or civil; and the date on which the case was opened. From this list of cases, we excluded 114 cases that were categorized as “grand jury” and 27 cases that had been closed prior to the period of our review and thus should not have been included. The remaining number of cases was 645.

From these 645 cases, we selected a simple random sample of 110 cases for review. From the initial sample of 110 case files, we selected a simple random sample of 55 files for a more indepth review of selected issues, such as the timeliness of investigations and case development.

Three cases in our sample of 110 were not reviewed. These cases were grand jury cases, and therefore ineligible to be in the sample. After excluding the three ineligible cases, we reviewed the remaining 107 case files, of which 105 were for cases that had been open for longer than 30 days.

Because there were 3 ineligible cases in the 110 sampled cases, it is possible that there could be other ineligible cases in the population. Therefore, we estimate that there were 627 total eligible cases in the population based on the eligible sample.³⁴

Onsite Review of Unit Operations. During our November 2015 onsite visit, we reviewed the Unit’s workspace and operations. Specifically, we visited the Unit headquarters in the State capital. While onsite, we observed the Unit’s offices and meeting spaces; security of data and case files; location of select equipment; and the general functioning of the Unit.

Data Analysis

We analyzed data to identify any opportunities for improvement and any instances in which the Unit did not fully meet the performance standards or was not operating in accordance with laws, regulations, or policy transmittals.³⁵

³⁴ The eligible sample size in which we make this estimate is 107. The 95-percent confidence interval for this estimate is 597–641.

³⁵ All relevant regulations, statutes, and policy transmittals are available online at <http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu>.

APPENDIX E

Unit Comments



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF ATTORNEY GENERAL

KATHLEEN G. KANE
ATTORNEY GENERAL

May 26, 2016

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U.S. Department of Health & Human Services
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Washington, DC 20201

**RE: Pennsylvania Medicaid Fraud Control Unit 2015 Onsite Review,
OEI-02-14-00580**

Dear Ms. Murrin:

Thank you for the opportunity to respond to the HHS-OIG Onsite Review of the Pennsylvania Medicaid Fraud Control Unit (MFCU). We appreciate the diligence and professionalism demonstrated by the HHS-OIE Review Team throughout all phases of this endeavor. This process was a well-timed and beneficial opportunity to strengthen the Pennsylvania MFCU in its continuing mission to investigate and prosecute those who steal from the Medicaid system. We especially appreciate your recognition that the Unit has recovered 80 million dollars while expending 18.5 million dollars. In other words, for every dollar spent on the Unit's operations, approximately \$4.32 was returned to the Medicaid Program. HHS-OIG requested that the Pennsylvania MFCU respond, by way of comments, to the report of the Onsite Review Team.

In response to the HHS-OIE recommendations, we have listed the Onsite Review Team's recommendation, finding and observations and our position and analysis of each point as follows:

Recommendation - Implement policies and procedures to document periodic supervisory reviews that explain investigative delays in the files.

We concur with this recommendation. As noted, the MFCU's Director and supervisory staff conduct quarterly case reviews on all of the Unit's open investigations. Additionally, all investigative reports in the Pennsylvania MFCU's computer system require supervisory approval prior to the entry of the report. We acknowledge that the MFCU's files lack a paper

form documenting the case reviews. Based on the guidance the Unit received from the Onsite Review Team, the MFCU immediately created and implemented a policy and procedure for documenting the Unit's quarterly supervisory case reviews.

Finding - The Unit lacked a Chief Investigator to supervise and direct investigative activities prior to February 2016.

This is not a recommendation but rather a finding. We feel a response is necessary to place this finding within the context of the MFCU's timeline. It should be noted that the Pennsylvania Unit has not had a Chief Investigator for 16 years. The previous audit did not mention this failure. This point is not intended to excuse the absence of a Chief Investigator, but instead is meant to attest that we do not endorse the decision making of prior administrations as it relates to this position. The MFCU clearly benefits from the presence and guidance of a Chief Investigator and so that this position is never again removed by executive fiat, we have updated the MFCU Policies and Procedurals Manual to memorialize this vital position in accordance with federal requirements of 42 CFR §1007.13 (relating to staffing requirements of a MFCU).

We also note that prior to the Onsite Review, the Unit was building its staff compliment and had requested state funding for its investigative operations; this request included reestablishment of the Chief Investigator position. The record breaking Pennsylvania budget stalemate delayed, by several months, the Unit's ability to achieve this goal on a timelier basis.

Observations - Finally, we wish to validate the two observations made by the Audit Team concerning the legal barriers that limit the civil recovery and patient abuse functions of the MFCU. We are in complete agreement that change is necessary. The mechanism for change relating to these observations lies with the legislative powers of the Commonwealth.

The Pennsylvania Fraud and Abuse Act, which provides the legal framework for the MFCU, has not been amended since 1980 despite 36 years of massive transformations within the public healthcare system. In point of fact, pharmaceutical manufacturers are exempt from the definition of "provider" under the Medicaid Fraud Statute. See *Commonwealth v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.*, 52 A.3rd 498 (Pa. Cmwlth. 2012).

The Commonwealth is the fourth largest Medicaid Program in the country. It cannot afford to fight sophisticated fraud schemes that are perpetrated by well-funded entities where the MFCU is armed only with statutory provisions crafted decades before the digital revolution. David can defeat the Giant, but he still needs a slingshot to accomplish the task.

As to a civil provision, forty-two (42) states have granted their respective MFCUs a civil remedy to enforce their fraud statutes. Of the eight (8) states that do not possess a civil remedy for their MFCU, Pennsylvania is the largest. In this time of difficult budgets, augmenting the civil arm of the Medicaid Fraud Control Unit makes sound fiscal and policy

sense. Civil money penalties (CMPs) are one type of sanction established by the government to encourage providers to comply with state and federal requirements and to prevent poor quality of care. CMPs offer a two-fold opportunity to make Medicaid better: (1) CMPs are an important deterrent to poor care; and (2) collected CMPs/fines offer an additional pool of money to return to the Medicaid program. CMPs are both a sanction and a deterrent against providers who deliberately or negligently disregard the law. The MFCU is required by law to return the funds it recovers back to the Medicaid program. A CMP remedy will guarantee that offenders are required to pay tax money fraudulently taken from the Department of Human Services back to the Department.

Third, as noted, Pennsylvania's Criminal History Records Information Act ("CHRIA") imposes (18 Pa. C.S.A. § 9101 *et. seq.*) requirements that prevents the free exchange of information with the Department of Human Services because the Department is not a criminal justice agency under CHRIA. Information that the Section assembles as a result of the performance of any inquiry, formal or informal, into an allegation of Medicaid fraud cannot be disseminated to any department unless that department is a criminal justice agency. This law prevents the Medicaid Fraud Control Section from sharing with DHS the findings of investigations that originate as criminal inquiries, but after review, are civil in nature. A civil remedy available to the Medicaid Fraud Control Section will guarantee that offenders pay back the tax money fraudulently taken from the Department without the offender gaining the unintended protection of CHRIA.

Fourth, the Office of Attorney General's historically based authority in both civil cases involving the Commonwealth and in Medicaid Fraud investigations makes this a logical and measured extension of the Attorney General's authority. The Pennsylvania Medicaid Fraud Control Unit has a 36 year history of prosecuting fraud cases so it makes common sense for the Commonwealth to take full advantage of the Unit's existing expertise.

The final observation the Audit Team made concerns the Unit's work in the field of abuse and neglect cases. Pennsylvania's "Neglect of Care-Dependent Persons Act" provides the MFCU with the authority to prosecute neglect cases only if actual bodily injury occurs as a result of the failure to provide care. This statute creates an unnecessary obstacle to the Unit's work in this area. If evidence in a case reveals a pattern of endangering the welfare of a care-dependent person, the Pennsylvania Crimes Code has no answer for these actions. Just as it is criminal to endanger the welfare of a child under Pennsylvania law, so should it be for those who endanger aged or disabled adults who cannot oversee their own welfare. The Unit resides in a state with a higher than average aging population and it should have the ability to ensure that vulnerable adults are not being abused, neglected or exploited.

Presently there is a bill before the State Senate (House Bill 215). This Bill will allow the MFCU to charge cases relating to the physical abuse of a care-dependent adult. This proposed statute also mirrors the language of the endangering the welfare of a child crime in the Pennsylvania Crimes Code. It has passed the State House unanimously on three occasions and is the fruit of a legislator who saw the damage caused by the predations of people intent

Suzanne Murrin, Deputy Inspector General
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on abusing and neglecting care-dependent adults. The PA OAG is strongly in support of this Bill.

Thank you again for the professionalism shown by the Onsite Audit Team, as they demonstrated the patience and attentiveness to detail that is necessary for not only their task, but for the benefit of the MFCU.

Should you have any questions or comments, please feel free to contact me.

Sincerely,



Andrew E. Demarest
Chief Deputy Attorney General
Director, Medicaid Fraud Control Unit

AED/tls

ACKNOWLEDGMENTS

This report was prepared under the direction of Brian T. Whitley, Regional Inspector General for Evaluation and Inspections in the Kansas City regional office, and Jennifer King, Deputy Regional Inspector General; and in consultation with Richard Stern, Director of the Medicaid Fraud Policy and Oversight Division.

Rae Hutchison, of the Kansas City regional office, served as the project leader for the study. Other Office of Evaluation and Inspections staff who conducted the review include Michael P. Barrett. Other Medicaid Fraud Policy and Oversight Division staff who participated in the review include Susan Burbach. Office of Investigations staff also participated in the review. Office of Audit Services staff who conducted a financial review include Marilyn Carrion, Valerie Johnson, and Michael Jones. Other central office staff who contributed to this review include Kevin Farber, Lonie Kim, and Joanne Legomsky.

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