



2017 House Bill 1226

Study of Medicaid Fraud
Control Unit (MFCU) in
North Dakota



Background and History –

Department of Human
Services

2017 HB 1226 States:

- During the 2017- 18 interim, the department of human services, with the cooperation of the governor and the attorney general, shall study the feasibility and desirability of establishing a medicaid fraud control unit. Before August 1, 2018, the department of human services shall report to the legislative management the outcome of this study, together with any legislation required to implement the recommendations.

ND MFCU Waiver

- In August 1994 the Office of Inspector General at HHS approved the request from ND for a waiver from the requirement to establish a Medicaid Fraud Control Unit.
- The waiver did not have an end date.

Other Background

- DHS has had multiple findings from the State Auditor's office for not having a MFCU in ND.
- 2007 Legislative Assembly did not adopt a DHS bill requesting establishment of a False Claims Act.
- 2009 Legislative Assembly did not adopt legislation introduced to establish a MFCU.

Other Background

- May 2016 Letter from CMS Acting Administrator to Governor Dalrymple requesting notification of intent to establish a MFCU or the submission of a new waiver request.
- September 2016 Letter from Governor Dalrymple to CMS Acting Administrator requesting a new waiver.

Other Background

- January 2017 – Letter from CMS to Governor requesting North Dakota submit an implementation plan for establishing a MFCU.
- January 2017 Letter from Governor Burgum to CMS outlining the 2017 legislation that was under consideration.

2017 Legislation

- HB 1174 – False Claims Act (Not Adopted)
- HB 1226 Medicaid False Claims Act (Amended and Adopted)
- HB 1227 Medicaid Fraud Statute (Not Adopted)

Activity Since Session

- Workgroup meetings
 - Joint meeting with SD MFCU and Adult Protective Services
- October 2017 DHS Letter to Seema Verma (CMS Administrator)
- December 2017 Letter from CMS to DHS



Medicaid Program Integrity –

Department of Human
Services

Medicaid Program Integrity Unit (PIU)

- If ND implements a MFCU, all of the preliminary provider fraud investigations that the PIU conducts, where a credible allegation of fraud exists, would be referred to the MFCU for further investigation and potential prosecution.
- The PIU would also assist with explaining Medicaid program policies and procedures.
- Collaboration would be expected to discuss fraud trends, areas of concerns, and continued clarification of intersects of activity.

Compare MFCU to PIU

	PIU	MFCU
Medicaid Program Integrity Oversight	X	
Managed Care Organization PI Oversight	X	
Policy Creation/Revision	X	
Third Party Liability Functions	X	
Provider Enrollment Functions	X	
PERM Audits	X	
RAC Audits*	X	
Other Federal Audits (GAO, etc.)	X	
Data mining	X	X
Recipient Audits	X	
Recipient Investigations	X	
Recipient Fraud Referrals	X	
Recipient Lock in Program	X	
Recipient Overpayment Collection	X	
Recipient Abuse and Neglect Investigations		X
Provider Audits	X	X
Provider Preliminary Investigations	X	X
Provider Full Investigation		X
Provider Referrals	X	X
Provider Prosecution		X
Provider Overpayment Collection	X	X
Assessing Civil Monetary Penalties		X
Funding at 50% federal, 50% state	X	
Funding at 75% federal, 25% state		X
<i>*Division currently has a RAC waiver in place</i>		



Scope of MFCU

Office of the Attorney General

Scope of MFCU

- Primary Function and Scope is Medicaid Provider Fraud.
 - Billing for services not performed;
 - Billing for a more expensive process;
 - Billing twice for the same service;
 - Billing for services that should be combined into one billing (unbundling)

Scope of MFCU

- Primary Function and Scope is Medicaid Provider Fraud.
- With permission from HHS/OIG Investigations, they can investigate losses to the Medicare program as part of their Medicaid fraud case if OIG declines to be involved and gives them authorization (verbal) to do so.
- Prescription drug fraud concerning prescriptions paid for by the Medicaid program.

Scope of MFCU

- Nursing home neglect and abuse complaints, and misuse/theft of nursing home resident personal funds;
- Does not include investigating beneficiary fraud unless there is an allegation of a conspiracy between the beneficiary and a Medicaid provider (patient/provider collusion).



Comparison to Similar States

Office of the Attorney General

Comparison to Similar States

- States of Comparison:

- South Dakota
- Montana
- Wyoming

*Data also collected from the National Association of Medicaid Fraud Control Units (NAMFCU)

Comparison to Similar States

- States of Comparison:
- South Dakota, Montana and Wyoming were asked to explain the number of individuals assigned to their respective MFCU's and to share their recommendations for ND regarding personnel needs.

Comparison to Similar States

- Population of similar states (approximate):
- As of 2017 (www.worldpopulationreview.com)
 - Wyoming: 589,713
 - **North Dakota: 790,701**
 - South Dakota: 868,799
 - Montana: 1,052,343

Wyoming MFCU Staffing

- Number of MFCU personnel in WY
MFCU:
- (4) Current MFCU members
 - (1) Attorney/Director
 - (1) Investigator
 - (1) Auditor
 - (1) Administrative Assistant
- Certified on 01/01/1995

Wyoming Recommendations for ND

- **SOURCE: Mr. Travis Kirchhefer**
 - **Assistant Attorney General, WY Medicaid Fraud Control Unit, WY Office of Attorney General.**
- Wyoming struggles greatly with only (1) attorney and (1) investigator. When these people are out, cases stop and continued progression is hindered. The Wyoming Attorney was out for (1) month and no prosecution or case development occurred.

Wyoming Recommendations for ND

- At least (2) Wyoming investigators are needed for most MFCU cases (due to the amount of interviews and documents obtained for each investigation). With only one assigned to their MFCU, this puts a demand on other WY DCI employees (not assigned to MFCU).

Wyoming Recommendations for ND

- Wyoming was audited by US Health and Human Services (HHS) Office of Inspector General (OIG)
[conducted every 5 years]
- WY MFCU was issued a finding that Wyoming was in need of an additional investigator to adequately handle the case load assigned to the unit.

Wyoming Recommendations for ND

- Wyoming recommends ND become a qui tam state and a second attorney be part of the ND MFCU. Montana sees States that are not qui tam receive less favorable consideration on Global Settlements.
- Settlement companies and HHS OIG are more favorable to qui tam States.

Wyoming Recommendations for ND

- Wyoming is seeing that their auditor is spending up to (5) full days, per Global Settlement Information request.
- The auditor is spending full time hours gathering paperwork data for the investigator and then helping with Global Settlement Requests for Information from other MFCU's.

South Dakota MFCU Staffing

- Number of MFCU personnel in SD MFCU:
 - (5) Current MFCU members
 - (1) Attorney/Director
 - (2) Investigators
 - (1) Auditor
 - (1) Support Staff/Administrative Analyst
 - Certified on 07/01/1990

South Dakota Recommendations for ND

- **SOURCE: Mr. Paul Cremer**
 - **Assistant Attorney General, SD Medicaid Fraud Control Unit, SD Office of Attorney General.**
- With their current staffing levels, SD stated their efforts would be enhanced if they could add an additional Attorney to their unit.

South Dakota

Recommendations for ND

- SD explained that having two attorneys would allow one attorney to serve as the Director. The Director manages workflow; handles some cases; conducts outreach with providers and the public; and ensures compliance with federal regulations. The second attorney would primarily handle the legal casework.

South Dakota

Recommendations for ND

- SD stated that it is important to note that SD does not have state qui tam provisions, and if they did, SD MFCU staff would need to be larger to be able to investigate and handle the qui tam filings.
- States that have enacted qui tam provisions have needed to substantially supplement their MFCU staffing levels.

Montana MFCU Staffing

- Number of MFCU personnel in MT MFCU:
 - (9) Current MFCU members:
 - (1) Unit Director/Investigator
 - (3) Investigators
 - (2) Auditors
 - (1) Attorney
 - (1) Legal Assistant/Paralegal
 - (1) Administrative Assistant
 - Certified on 11/08/1995

Montana Recommendations for ND

- **SOURCE: Mrs. Debrah Fosket**
 - **Supervising Agent, MT Medicaid Fraud Control Unit, MT Division of Criminal Investigation.**
- At the inception of the MT MFCU, there were (8) members that consisted of:
 - (1) Unit Director
 - (3) Agents/Investigators
 - (2) Auditors
 - (1) Administrative Assistant
 - (1) Attorney

Montana Recommendations for ND

- In the years since the unit's inception, the MT Attorney General's Office provided the services of a paralegal/legal assistant, as needed, to the MFCU Unit's Prosecutor.
- In the last three years, the work load at the MT Attorney General's Office increased to the point that the paralegal/legal assistant could not assist the MFCU any longer.

Montana Recommendations for ND

- The caseload of the MT MFCU similarly increased to the point that the Unit Prosecutor was in dire need of help in preparing cases for prosecution and trial preparation needs.
- In late 2016, the MFCU was able to obtain funds for a legal assistant to work for the MFCU's Attorney.

Montana Recommendations for ND

- MT stated that at the time of creation of the unit, and for several years after, the staffing (8 persons) was adequate for the number of referrals received and investigations conducted by the fraud unit.
- In the last two to three years, MT referrals have increased considerably and they would benefit from having one more attorney; at least one more auditor and one more agent/investigator.

Montana Recommendations for ND

- MT would prefer not to have temporary positions, but they may be the most obvious way to increase personnel for the work that needs to be accomplished.
- The increased caseload may be a temporary issue, but is believed to be directly related to MT being a Medicaid Expansion State for the past two years.



Qui Tam

Office of the Attorney General

Qui Tam

- Our law needs to have the provisions from the False Claims Act. It is a whistleblower law that allows private citizens to sue any individuals, companies or other entities that are defrauding the state and recover damages and penalties on the state's behalf. The statute provides whistleblowers financial rewards as well as job protection against retaliation.

Qui Tam continued

- A partnership between public institutions and private citizens in keeping with President Reagan's promise of greater privatization of government functions and the use of market forces to enhance government services.
- Since 1986, the federal and state governments have recovered more than \$55 billion in civil settlements and related criminal fines as a result of qui tam lawsuits brought by whistleblowers.

Qui Tam continued

- The relator must do the following to initiate a qui tam suit:
- file the civil complaint under seal with the court (defendant is not served at this time); and
- serve a copy of the complaint and a "written disclosure of substantially all material evidence and information" possessed by the relator on the Attorney General pursuant to Rule 4 of the North Dakota Rules of Civil Procedure.
- The state must then decide whether to take over the case as its own. If it does not notify the court that it is taking over the case, it becomes the relator's to litigate.

Qui Tam continued

- Can't bring action based on allegations or transactions in which the state is already a party.
- Court's shall dismiss claims based on substantially the same actions or claims that are publicly disclosed, unless the person bringing the action is the original source of the information.

Qui Tam \$

- Civil penalties must be based on Federal Civil Penalties Inflation Adjustment Act, currently not less than \$10,957 and not more than \$21,956 for each act.
- Relator is entitled to share of proceeds depending on facts of case and who proceeded with the action.

MFCU Duties

- Investigate and prosecute under applicable criminal or civil laws fraud and patient abuse or neglect by providers or any other person, including cases referred by the department;
- Review complaints of patient abuse, patient neglect, and misappropriation of patient property and, if appropriate, investigate and initiate criminal or civil proceedings or refer the complaint to another federal, state, or local agency for action;
- Refer to the department for collection and, if appropriate, imposition of appropriate provider administrative actions involving provider overpayments and abuse;
- Communicate and cooperate with and, subject to applicable confidentiality laws, provide information to other federal, state, and local agencies involved in the investigation and prosecution of health care fraud, patient abuse, and other improper activities related to the medicaid program;
- Transmit to other state and federal agencies, in accordance with law, reports of convictions, copies of judgments and sentences imposed and other information and documents for purposes of program exclusions or other sanctions or penalties under medicaid, medicare, or other state or federal benefit or assistance programs; and
- Recommend to state agencies appropriate or necessary adoption or revision of laws, rules, policies, and procedures to prevent fraud, abuse, and other improper activities under the medicaid program and to aid in the investigation and prosecution of fraud, abuse, and other improper activities under the medicaid program.
- Enter into an agreement with the medicaid agency regarding referrals, information sharing and improper payment recoveries as provided in title 42, Code of Federal Regulations, part 455, section 23.

MFCU DUTIES CONTINUED

- Initiate criminal prosecutions and civil actions pursuant to subsection 1 in any court of competent jurisdiction in the state;
- Upon request, obtain information and records from applicants, recipients, and providers;
- Subject to applicable federal confidentiality laws and rules and for purposes related to any investigation or prosecution under subsection 1, obtain from the department, local offices of public assistance, and other local, county, or state government departments or agencies records and other information, including applications, provider enrollment forms, claims and reports, individual or entity tax returns, or other information provided to or in the possession of the tax commissioner or the state auditor;
- Refer appropriate cases to federal, other state, or local agencies for investigation, prosecution, or imposition of penalties, restrictions, or sanctions;
- Work cooperatively with federal agencies; and
- Enter into agreements with the department and other federal, state, and local agencies in furtherance of the unit's mission.

Recommended number of MFCU members for ND

- (7) recommended members for ND MFCU (non qui tam):
 - (1) Attorney/Director (criminal focus)
 - (1) Attorney (civil focus)
 - (2) Investigators
 - (2) Auditors (leverage cases/non-sworn investigative work)
 - (1) Support Staff/Administrative Analyst

Recommended number of MFCU members for ND

- (9) recommended members for ND MFCU (qui tam):
 - (1) Attorney/Director (assist w/criminal focus)
 - (1) Attorney (criminal focus)
 - (1) Attorney (civil focus)
 - (2) Investigators
 - (2) Auditors (leverage cases/non-sworn investigative work)
 - (1) Criminal Analyst (conduct case work on civil and criminal cases)
 - (1) Support Staff/Administrative Analyst

Budgetary Requirements

- Handout regarding financial information.



Status of Draft Legislation

Office of the Attorney General