SB 2347 Department of Human Services

Medicaid Fraud Control Unit (MFCU)

Overview, Background and History

Code of Federal Regulations

42 CFR §1007.5   Basic requirement

A State Medicaid fraud control unit must be a single identifiable entity of the State government certified by the Secretary as meeting the requirements of §§1007.7 through 1007.13 of this part.

Code of Federal Regulations

42 CFR §1007.7 Organization and location requirements

Any of the following three alternatives is acceptable:

- **(a)** The unit is located in the office of the State Attorney General or another department of State government which has Statewide authority to prosecute individuals for violations of criminal laws with respect to fraud in the provision or administration of medical assistance under a State plan implementing title XIX of the Act;
- **(b)** If there is no State agency with Statewide authority and capability for criminal fraud prosecutions, the unit has established formal procedures that assure that the unit refers suspected cases of criminal fraud in the State Medicaid program to the appropriate State prosecuting authority or authorities, and provides assistance and coordination to such authority or authorities in the prosecution of such cases; or
- **(c)** The unit has a formal working relationship with the office of the State Attorney General and has formal procedures for referring to the Attorney General suspected criminal violations occurring in the State Medicaid program and for effective coordination of the activities of both entities relating to the detection, investigation and prosecution of those violations. Under this requirement, the office of the State Attorney General must agree to assume responsibility for prosecuting alleged criminal violations referred to it by the unit. However, if the Attorney General finds that another prosecuting authority has the demonstrated capacity, experience and willingness to prosecute an alleged violation, he or she may refer a case to that prosecuting authority, as long as the Attorney General's Office maintains oversight responsibility for the prosecution and for coordination between the unit and the prosecuting authority.

Code of Federal Regulations

42 CFR §1007.9 Relationship to, and agreement with, the Medicaid agency

- **(a)** The unit must be separate and distinct from the Medicaid agency.
- **(b)** No official of the Medicaid agency will have authority to review the activities of the unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.
- **(c)** The unit will not receive funds paid under this part either from or through the Medicaid agency.
- **(d)** The unit will enter into an agreement with the Medicaid agency under which the Medicaid agency will agree to comply with all requirements of §455.21(a)(2) of this title.
- **(e)**
  - (1) The unit may refer any provider with respect to which there is pending an investigation of a credible allegation of fraud under the Medicaid program to the State Medicaid agency for payment suspension in whole or part under §455.23 of this title.
  - (2) Referrals may be brief, but must be in writing and include sufficient information to allow the State Medicaid agency to identify the provider and to explain the credible allegations forming the grounds for the payment suspension.
- **(f)** Any request by the unit to the State Medicaid agency to delay notification to the provider of a payment suspension under §455.23 of this title must be in writing.
- **(g)** When the unit accepts or declines a case referred by the State Medicaid agency, the unit notifies the State Medicaid agency in writing of the acceptance or declination of the case.

Code of Federal Regulations

42 CFR §1007.11 Duties and responsibilities of the unit.

- **(a)** The unit will conduct a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.
- **(b)**
  - (1) The unit will also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities.
  - (2) If the initial review indicates substantial potential for criminal prosecution, the unit will investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.
  - (3) If the initial review does not indicate a substantial potential for criminal prosecution, the unit will refer the complaint to an appropriate State agency.
- **(c)** If the unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider of medical assistance under the State Medicaid plan, the unit will either attempt to collect such overpayment or refer the matter to an appropriate State agency for collection.
- **(d)** Where a prosecuting authority other than the unit is to assume responsibility for the prosecution of a case investigated by the unit, the unit will insure that those responsible for the prosecutive decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.
- **(e)** The unit will make available to Federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the State plan and will cooperate with such officials in coordinating any Federal and State investigations or prosecutions involving the same suspects or allegations.
- **(f)** The unit will safeguard the privacy rights of all individuals and will provide safeguards to prevent the misuse of information under the unit's control.

Scope of MFCU

- Primary Function and Scope is Medicaid Provider Fraud.
- Neglect and abuse complaints, including misuse/theft of resident personal funds, of individuals in health care facilities and board and care facilities; and
- Does not include investigating beneficiary fraud unless there is an allegation of a conspiracy between the beneficiary and a Medicaid provider (patient/provider collusion).

DHS - 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.

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.
- DHS has had multiple findings from the State Auditor’s office for not having a MFCU in ND.

Other Background

- 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)

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.

Activity Since 2017 Session

- Multiple 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
- April 2018 Workgroup (DHS and AG) presentation to interim committee
  - Review of draft bill prepared by Office of Attorney General
- August 2018 Letter from Governor Burgum to CMS with MFCU Implementation Plan
- December 2018 – funding for MFCU included in Governor's Executive Budget Request

2019 Legislative Session

- SB 2347 has been introduced to implement a Medicaid Fraud Control Unit.
- Funding for the Unit is included in SB 2003 (Appropriation for the Office of the Attorney General)