



Susan Montee, CPA
Missouri State Auditor

OFFICE OF ATTORNEY
GENERAL

Medicaid Fraud
Control Unit

December 2008
Report No. 2008-100



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Office of
Missouri State Auditor
Susan Montee, CPA

December 2008

The following report is our audit of the Office of Attorney General, Medicaid Fraud Control Unit.

The State Auditor is required by state law to conduct an audit of the Medicaid Fraud Control Unit (MFCU) "...to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office." The MFCU needs to ensure all required information required by state law is included and accurately reported in its annual report submitted to the General Assembly and Governor. In 2007, the MFCU collected almost \$6.4 million.

The MFCU reported 110 referrals that resulted in an official complaint and/or case; however, records indicated an official complaint/case was not opened for over 200 additional referrals which were not reported. State law provides the number of referrals received by the office "due to allegations of violations" be reported. All referrals, whether the referral results in a complaint/case or not, should be reported. Since the MFCU must expend time and effort to evaluate each referral, not including all referrals minimizes the MFCU's efforts.

The report does not separately indicate the total amount of overpayments identified as a result of completed investigations. The overpayments reported include applicable damages ordered by the court. Additionally, the report does not specify whether such repayment is to be made by lump sum or in installments and only includes the total installment amount remaining outstanding for the year. The amount of damages and restitution due to other entities is not separately identified.

The report does not include the total amount of monies actually collected for the year and does not separately report whether monies collected by the MFCU are retained by the state or remitted to the federal government based on an allocation process, or for multi-state cases, the amount of the federal portion remitted directly to the federal government.

The report does not include the number of arrests resulting from investigations completed during the year and the number of criminal cases reported as initiated in 2007 was incorrect.

The MFCU needs to improve its internal controls, procedures and records. There is no initial record of the receipt of monies, a summary listing of accrued costs is not maintained, the beginning balance of accrued costs plus new costs less payments is not reconciled to the individual case records on a monthly basis, and written collection procedures have not been established. Not adequately monitoring accrued costs could

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allow these costs to remain uncollected, resulting in lost revenue to the state and federal governments.

The MFCU does not have one comprehensive database to account for all referrals received. Currently, three separate databases are maintained and these databases are not linked with each other. The use of three databases results in additional manual data entry, as well as some duplication of effort. In addition, because certain information needs to be recorded on all databases, the databases are not always updated on a timely basis. Also, the MFCU does not account for the sequential number assigned to referrals recorded in the hotline database.

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OFFICE OF ATTORNEY GENERAL
MEDIAD FRAUD CONTROL UNIT

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STATE AUDITOR'S REPORT



SUSAN MONTEE, CPA
Missouri State Auditor

Honorable Matt Blunt, Governor
and
Members of the General Assembly
and
Honorable Jeremiah W. (Jay) Nixon, Attorney General
Jefferson City, Missouri

We have audited the Office of Attorney General, Medicaid Fraud Control Unit, as required by Section 191.909.1, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2007. The objectives of our audit were to:

1. Determine the amount of money recovered by the unit.
2. Determine the amount of money invested in the unit.
3. Determine if the unit has complied with certain legal provisions.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the office, as well as certain external parties; and testing selected transactions.

We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. However, providing an opinion on the effectiveness of internal controls was not an objective of our audit and accordingly, we do not express such an opinion.

We obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of grant agreement or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion. Abuse, which refers to behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary given the facts and

circumstances, does not necessarily involve noncompliance with legal provisions. Because the determination of abuse is subjective, our audit is not required to provide reasonable assurance of detecting abuse.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying History and Organization is presented for informational purposes. This information was obtained from the office's management and was not subjected to the procedures applied in our audit of the Medicaid Fraud Control Unit.

The accompanying Management Advisory Report presents our findings arising from our audit of the Office of Attorney General, Medicaid Fraud Control Unit.



Susan Montee, CPA
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits: John Luetkemeyer, CPA
Audit Manager: Toni Crabtree, CPA
In-Charge Auditor: Heather Stiles, CPA
Audit Staff: Ashley Lee

MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

OFFICE OF ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT
MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

1.

Annual Report

The Medicaid Fraud Control Unit's (MFCU) annual report did not include some information required by state law. We compared the information included in this report to the statutory requirements. In addition, we reviewed the supporting documentation to ensure the report information was complete and accurate.

Starting in 2008, pursuant to Section 191.909.1, RSMo, the Attorney General's office is to report annually, by January 1 of each year, the following activities related to the MFCU:

- "(1) The number of provider investigations due to allegations of violations under sections 191.900 to 919.910 conducted by the attorney general's office and completed within the reporting year, including the age and type of cases;
- (2) The number of referrals due to allegations of violations under sections 191.900 to 191.910 received by the attorney general's office;
- (3) The total amount of overpayments identified as the result of completed investigations;
- (4) The amount of fines and restitutions ordered to be reimbursed, with a delineation between amounts the provider has been ordered to repay, including whether or not such repayment will be completed in a lump sum payment or installment payments, and any adjustments or deductions ordered to future provider payments;
- (5) The total amount of monetary recovery as the result of completed investigations;
- (6) The total number of arrests, indictments, and convictions as the result of completed investigations."

Additionally, the state auditor is required to conduct an audit of the MFCU "... to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office."

For the year ended December 31, 2007, the MFCU recovered the following funds:

Federal	\$	409,442	⁽¹⁾
State		5,989,648	⁽²⁾
Federal direct		7,710,035	⁽³⁾
Total	\$	<u>14,109,125</u>	

⁽¹⁾ Federal government's share of the funds recovered by the unit. This amount includes \$6,228 for court ordered reimbursement of the unit's investigation costs.

⁽²⁾ State's share of the funds recovered by the unit and from multi-state cases. This amount includes \$3,802 for court ordered reimbursement of the unit's investigation costs.

⁽³⁾ This amount includes the federal government's share of multi-state settlements, which is remitted directly to the federal government by the multi-state trustee.

For the year ended December 31, 2007, the costs incurred to operate the MFCU were:

Salaries and wages	\$	809,147
Fringe benefits		346,142
Travel, in-state		5,648
Travel, out-of-state		20,488
Supplies		25,417
Professional development		10,685
Communication services and supplies		12,922
Professional services		103,550
Maintenance and repair services		13,066
Computer equipment		3,238
Office equipment		625
Miscellaneous expenses		2,573
Program distributions		144
Building lease payments		<u>55,284</u>
Total	\$	<u>1,408,929</u>

⁽⁴⁾ In 2007, funding of these costs included federal reimbursement of \$1,204,482, federal indirect reimbursement of \$143,526, and National Association of Attorney Generals reimbursement of \$5,670. The remaining balance of \$55,251 was incurred by the state.

The following concerns were noted:

- A. The report did not include some referrals the MFCU received. The MFCU only reported the 110 referrals that resulted in an official complaint and/or case. The MFCU receives referrals related to Medicaid fraud and abuse or neglect from many sources, including the Department of Social Services (DSS), other state agencies, the federal government, and the general public. These referrals are reviewed to determine if they are from a credible source, can be substantiated, and are substantial in nature. If a referral is deemed to meet these criteria, a complaint is opened and an investigator is assigned to gather additional information about the complaint. If the MFCU determines legal action is required for the complaint, a case is opened and an attorney is assigned to the case.

For 2007, the MFCU's records indicated an official complaint/case was not opened for over 200 additional referrals. MFCU personnel indicated including referrals in the report which did not result in a complaint/case might be misleading.

State law provides the number of referrals received by the office "due to allegations of violations" be reported. It appears all referrals, whether the referral results in a complaint/case or not, should be reported. Since the MFCU must expend time and effort to evaluate each referral, not including all referrals minimizes the MFCU's efforts.

The MFCU should report all referrals, and may want to consider reporting additional information, including the number of, and reasons why referrals did not result in a complaint/case.

- B. The report does not separately indicate the total amount of overpayments identified as a result of completed investigations. The overpayments reported include applicable damages ordered by the court.

The MFCU has defined overpayments as the difference between the amount the state paid and the amount the state should have paid. According to state law, any person convicted of Medicaid fraud is, "... required to make restitution to the federal and state governments in an amount at least equal to that unlawfully paid to or by the person." Typically, restitution is the amount identified as the overpayment. Depending on the level of fraud, the damages can be up to three times the amount of overpayment.

The MFCU should report the overpayment/restitution amounts and damages separately.

- C. As noted above, the report does not separate the amount of restitution and damages ordered to be paid the MFCU, and also does not specify whether such repayment is to be made by lump sum or in installments. The report only includes the total installment amount remaining outstanding for the year. In addition, the amount of damages and restitution due to other entities is not separately identified. For example, restitution and damages may be ordered to be paid to a nursing home when theft of patient funds have occurred. There would be greater transparency and accountability if monies ordered paid to other entities is separately identified in the report.

The MFCU should report the court ordered amount of restitution and damages and whether these amounts were lump sum or installment payments. Additionally, the MFCU should separately identify whether the restitution and damages were ordered paid to the state or other entities.

- D. The report does not include the total amount of monies actually collected for the year. The report only includes the amount of overpayments identified and the amount of restitution and damages ordered by the court.

In addition, the MFCU does not separately report whether monies recovered (collected) by the MFCU are retained by the state or remitted to the federal government based on an allocation process, or for multi-state cases, the amount of the federal portion remitted directly to the federal government.

The MFCU should report the total amount of monies collected during the year, including installment payments collected on cases settled in both the current and previous years. In addition, for greater transparency and accountability, the MFCU should consider reporting the amount of money 1) retained by the state, 2) required to be paid to the federal government, and 3) paid directly to the federal government from multi-state cases.

- E. The report does not include the number of arrests resulting from investigations completed during the year. Additionally, the number of criminal cases reported as initiated in 2007 was not correct. The report indicated seven criminal cases were initiated, however, our review of supporting documentation found only three criminal cases had been initiated.

According to the MFCU Director, arrest information was not included in the report because the MFCU does not have the authority to make arrests. The arrest of individuals and prosecution of criminal cases resulting from the MFCU's investigations are handled by local law enforcement and prosecuting attorneys.

The MFCU needs to coordinate with local law enforcement and prosecuting attorneys to accumulate the arrest information needed for the annual report.

The MFCU needs to ensure all required information required by Section 191.909.1, RSMo, is included and accurately reported in its annual report submitted to the General Assembly and Governor.

WE RECOMMEND the MFCU:

- A. Include all referrals received in the annual report. In addition, the MFCU should consider reporting the reasons why referrals did not result in a complaint/case.
- B. Separately account for the amount of overpayments/restitution identified and court ordered damages related to completed investigations in the annual report.
- C. Report whether the court ordered restitution and damages are to be repaid by lump sum payments or in installments. In addition, the MFCU should consider separately identifying whether the restitution and damages were ordered paid to the state or other entities.

- D. Include the total amount of monies collected during the year in the report. The MFCU should also consider separately identifying the amounts paid to the state and federal governments.
- E. Obtain arrest information from local law enforcement and prosecuting attorneys to include in the report and ensure criminal case information included in the report is accurate.

AUDITEE'S RESPONSE

- A. *The Attorney General's Office is required to report the number of referrals due to allegations reviewed each year. The MFCU did not previously count hotlines as referrals. The prior practice was a "hotline" had to be substantive-credible before being counted as a referral. While each hotline is investigated, often times a limited, initial inquiry results in a determination that the allegation does not warrant further investigation, and therefore it was not counted.*

All hotlines are entered into the referral database and are reviewed. After the initial investigation the hotline is then closed, referred or opened into a complaint for further investigation. The MFCU will agree to include the hotlines in the number of referrals reported, if any investigative effort is made on that hotline. The MFCU does not believe it is statutorily obligated or that it is appropriate to report why a hotline was closed without being made into complaint or case.

- B. *The MFCU does keep a record of the amount of overpayments. The MFCU will comply with this recommendation and segregate restitution from damages if possible.*
- C. *The MFCU will identify whether the monies collected are lump sum and/or installment payments. There are very limited instances where monies are ordered to be paid directly to other entities and if these instances arise in the future, it will be specifically identified in the report.*
- D. *The MFCU will report the amount collected by the unit, including the installment payments received from current and previous settlements or Court orders. The MFCU does not report the breakdown of the State share and/or Federal share on any of the reports, as we often do not possess complete information. The Department of Social Services (DSS), Division of Budget and Finance, ultimately makes that determination and the MFCU only reports what it delivers to DSS.*
- E. *The MFCU will report arrest information for cases in which the MFCU continues to have involvement. In some instances, the local prosecuting authority determines to handle the case without MFCU involvement and the MFCU will continue, as it has in the past, to request that the prosecutor keep the MFCU apprised of the status of the case.*

Reporting requirements for prosecuting authorities and police agencies are delineated by statute and regulation. It is beyond the authority of the MFCU to require agencies to

report arrest information. Additionally, in arrests resulting from the issuance of a warrant, it is possible for the arrest to be made by any agency with arrest powers, including those that have no knowledge that the warrant resulted from an MFCU investigation. This would make "coordination" with the arresting agency difficult.

2.

Internal Controls, Procedures, and Records

The MFCU needs to improve its internal controls, procedures and records. There is no initial record of the receipt of monies and accrued costs procedures and records are not adequate. In addition, there is not a comprehensive database to account for referrals and the sequential number assigned to referrals recorded in the hotline database is not accounted for.

- A. There is no initial record of the receipt of monies. The MFCU does not maintain a receipt log and/or issue prenumbered receipt slips. Monies received are recorded in the individual computerized and manual case file. All monies received are remitted to the DSS for deposit in the state treasury. In 2007, the MFCU collected almost \$6.4 million.

To safeguard against possible loss or misuse of funds and to provide reasonable assurance that all transactions are properly accounted for, a receipt log should be maintained or prenumbered receipt slips should be issued for all monies received. Additionally, the MFCU should also establish procedures to reconcile the receipt log and/or receipt slips to the transmittal memos issued to DSS.

- B. The MFCU's procedures and records related to accrued costs (outstanding court ordered restitution and damages) need to be improved. A summary listing of accrued costs is not maintained and the beginning balance of accrued costs plus new costs less payments is not reconciled to the individual case records on a monthly basis. In addition, written collection procedures have not been established.

Upon our request, the MFCU prepared a listing of accrued costs as of December 31, 2007. The listing consisted of 22 cases with accrued costs totaling approximately \$2.4 million. No payment had been received in over two years for six of these cases, with accrued costs totaling over \$509,000. Not adequately monitoring accrued costs could allow these costs to remain uncollected, resulting in lost revenue to the state and federal governments.

According to MFCU personnel, if payments are not made for a period of time, the MFCU will refer the case to the Attorney General's Financial Services Division for assistance in collection. The MFCU also has the option to garnish the individual's wages if employment is known. Additionally, the individual's probation officer may contact the MFCU to ensure restitution has been paid. The

MFCU needs to document its collection procedures to ensure all available collection efforts are pursued on a timely basis.

Month-end summary listings of accrued costs reconciled to the individual case records would allow the MFCU to more readily review the amounts due, take appropriate steps to ensure amounts owed are collected timely, and evaluate if amounts are uncollectible. The MFCU should also establish written collection procedures.

- C. The MFCU does not have one comprehensive database to account for all referrals received. Currently, three separate databases are maintained and these databases are not linked with each other. Although most referrals received are recorded on the hotline database, referrals from certain entities and referrals which are opened directly into a complaint or case are recorded in the case log database. Additionally, information received through the mail, email, or fax is recorded on the correspondence received database. The use of three databases results in additional manual data entry, as well as some duplication of effort. Also, because certain information needs to be recorded on all databases, the databases are not always updated on a timely basis.

Maintaining three separate databases appears to be inefficient, increases the risk of inaccurate records, and decreases the MFCU's ability to ensure appropriate actions have been taken for each referral received.

Utilization of one complete comprehensive database would help ensure all referrals received are accounted for and addressed in a timely fashion, and would reduce the risk of inaccurate and duplicative records.

- D. The MFCU does not account for the sequential number assigned to referrals recorded in the hotline database. During 2007, over 300 numbers were assigned to referrals recorded on the database. However, 63 numbers and related information were missing from the database, with 35 of these missing numbers in one consecutive block.

All referrals recorded in the hotline database are assigned a sequential number by the database. If a hotline entry is cancelled for some reason during the entry process, the database will assign the next sequential number, thus skipping numbers. The MFCU does not document the reasons why the hotline entry was cancelled or otherwise account for the missing referral numbers.

Without a proper accounting for the numerical sequence and ultimate disposition of hotline referral numbers, the MFCU cannot be assured that all referrals received were recorded and handled properly.

WE RECOMMEND the MFCU:

- A. Maintain a receipt log or issue prenumbered receipt slips for all monies received. The MFCU should also establish procedures to reconcile the receipt log and/or receipt slips to the transmittal memos issued to DSS.
- B. Prepare month-end summary listings of accrued costs and reconcile the balance to the individual case records. Also, formal written collection procedures should be established.
- C. Maintain one comprehensive database to account for all referrals received.
- D. Account for the sequential numbers assigned to the referrals recorded on the hotline database and document the reasons for missing numbers.

AUDITEE'S RESPONSE

- A. *There is an initial and complete record for monies received by the MFCU. All monies that are received by the MFCU are entered into the caselog database under the respective case/complaint name. If the monies received pertain to an installment payment, it is entered onto a ledger sheet contained in a ledger book for that respective case/complaint. For all monies received by the MFCU, a receipt is prepared and it and the monies are hand delivered to the Department of Social Services, Division of Budget and Finance. A designated employee of the Department of Social Services, Division of Budget and Finance, signs the receipt and acknowledges receipt of the monies. A copy of the receipt is then placed in the respective case/complaint file and also placed in a file cabinet next to the administrative secretary which contains copies of all convictions/settlements.*

The MFCU will reconcile the receipt slips with the Department of Social Services, Division of Budget and Finance.

- B. *The MFCU maintains ledgers on all individuals that are making installment payments and those ledger sheets are reconciled after each payment is received. The MFCU has collection procedures in place and will put them in writing.*
- C. *The MFCU does have a complete comprehensive database for all referrals. Each referral is investigated and closed, referred or opened into a case or complaint. Each database has a specific purpose and controls specific information.*
- D. *The referral database uses a sequential number as the hotline identification (ID); the hotline ID number identifies a hotline referral. The referral database automatically, without any user intervention, assigns a new hotline ID number to each hotline entered. If an entry problem occurs the attempted entry may need to be deleted and reentered. Once a reentry occurs, a new hotline ID number is automatically assigned and a gap will occur in the hotline ID sequential numbering process. While the sequential numbering*

has no importance to the MFCU other than it creates a unique identifier for every hotline referral, the referral database will maintain a record of all referrals deleted from the database, the date of deletion and an explanation.

HISTORY AND ORGANIZATION

OFFICE OF ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT
HISTORY AND ORGANIZATION

The Attorney General's office is located in Jefferson City. There are branch offices in Kansas City, St. Louis, Springfield, and Cape Girardeau. The office is organized into eight divisions: Agriculture and Environment, Consumer Protection, Criminal, Financial Services, Governmental Affairs, Labor, Litigation, and Public Safety. Each division is headed by a chief counsel who is responsible for the operations of the division.

The Medicaid Fraud Control Unit (MFCU) is organizationally located within the Public Safety Division, and was created in 1994.

The MFCU conducts a statewide program for the investigation and prosecution of health care providers that defraud the Medicaid program. Additionally, the MFCU reviews complaints of abuse or neglect of nursing home residents and may review complaints of the misappropriation of patients' private funds in these facilities. The MFCU is also charged with investigating fraud in the administration of the Medicaid program and providing for the collection or referral for collection to the state Medicaid agency, the Department of Social Services (DSS). Referrals are received from the DSS's Program Integrity Unit and Investigations Unit, other state agencies, and federal agencies. Additionally, the MFCU initiates its own investigation.

The MFCU operates under the administrative oversight of the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS), and must be recertified annually by the OIG. To receive certification, the MFCU must be separate and distinct from the state Medicaid agency (DSS). Federal regulations also prohibit 1) any official from DSS from having authority to review or overrule activities of the MFCU, 2) the MFCU from receiving funds from the DSS, 3) the MFCU from pursuing recipient fraud, unless there is a conspiracy with a provider, and 4) the MFCU from engaging in the routine computer screening activities that are the usual monitoring function of DSS. In addition, the MFCU is required to enter into a Memorandum of Understanding (MOU) with the DSS which outlines each agency's responsibilities and duties to each other. An annual federal grant from HHS reimburses 75 percent of the MFCU's expenses, with the state paying the remaining 25 percent of expenses.

Section 191.905.11, RSMo, provides restitution monies recovered by the MFCU be deposited to the MO HealthNet Fraud Reimbursement Fund and appropriated to the federal government and affected state agency(s) to refund monies falsely obtained from the federal and state agency(s). For federal fiscal year 2007, monies collected were distributed between the federal and state at a rate of 61.6 percent and 38.4 percent, respectively. These rates changed in federal fiscal year 2008 to 62.42 percent and 37.58 percent, respectively. Any monies remaining in this fund after appropriation to the federal government and state agency(s) are to be used to increase the MO HealthNet provider reimbursement until it is at least one hundred percent of the Medicare provider reimbursement rate for comparable services. Any cost reimbursements for the investigation and/or prosecution of the Medicaid fraud are to be deposited to the MO HealthNet Fraud Prosecution Revolving Fund. These monies may be appropriated to the Attorney General,

or to any prosecuting or circuit attorney who has successfully prosecuted and been awarded such costs of prosecution.

At December 31, 2007, the Office of Attorney General, Medicaid Fraud Control Unit employed 22 full-time employees.

An organization chart follows:

OFFICE OF ATTORNEY GENERAL
 MEDICAID FRAUD CONTROL UNIT
 ORGANIZATION CHART
 DECEMBER 31, 2007

