



CHARLIE CRIST
GOVERNOR

Better Health Care for all Floridians

THOMAS W. ARNOLD
SECRETARY

July 7, 2010

Angela Brice-Smith, Director
Medicaid Integrity Group
CMS, Center for Program Integrity
7500 Security Boulevard
Mail Stop: B2-15-24
Baltimore, MD 21244

Victoria Wachino, Director
Family and Children's Health Programs Group
Center for Medicaid, CHIP, and Survey and Certification
Centers for Medicare & Medicaid Services
7500 Security Boulevard, S2-01-16
Baltimore, MD 21244

Dear Ms. Smith and Ms. Wachino:

As Secretary of the Agency for Health Care Administration (Agency), the designated single state agency responsible for administering the Florida Medicaid program; and as state Attorney General in charge of the Medicaid Fraud Control Unit (MFCU), we are pleased to jointly send this letter to request an expedited review approval of an amendment to the Florida 1115 MEDS AD demonstration waiver.

We believe that this waiver will significantly improve the effectiveness of investigation and prevention of Medicaid fraud in Florida. During state fiscal year 2010-2011, the Medicaid program will serve more than 2.7 million enrollees, with total program expenditures of approximately \$18.7 billion. There is an immediate critical need to employ all available resources to ensure the integrity of Medicaid services and payments.

Although the state would require minimal funding for this project, an outdated section of the federal code prohibits Federal Financial Participation (FFP) to reimburse efforts by any state MFCU for the following:




t AHCA online at
ca.myflorida.com

Angela Brice-Smith
Victoria Wachino
July 7, 2010
Page Two

“Efforts to identify situations in which a question of fraud may exist, including the screening of claims, analysis of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received.”

We appreciate the support of Secretary Sibelius and Director Mann in acting on our requests to amend the portion of Section 1007.19 CFR that prevents such data mining by MFCU. The state has data systems and staffing in place to immediately begin data mining activity through a documented process of coordination between MFCU and the Medicaid Program Integrity (MPI) unit. Analysts at MFCU currently use data mining tools and have access to Medicaid data for investigation of leads received through referral and for prosecution of cases – but these skills and resources are constrained from data mining to obtain leads and open investigations. Therefore, the state seeks a waiver of 42 CFR 1007.19(e)(2) as an amendment to the Florida MEDS-AD 1115 Research and Demonstration Waiver (CMS 11-W-00205/4) to demonstrate the effectiveness of a coordinated data mining partnership between the state’s MPI unit and MFCU. We ask that you review this request separately from the state’s pending request to extend CMS 11-W-00205/4, in order that we may receive expedited approval.

Sincerely,



Thomas W. Arnold
Secretary



Bill McCollum
Attorney General

TWA/BMC/md

Enclosures

cc: Robb Miller, CMS
Amber McCarroll, CMS
Mark Pahl, CMS
Roberta Bradford, Deputy Secretary for Medicaid
David Lewis, Director, MFCU

Florida Fraud Identification and Prevention Data Mining Demonstration

Background

The Agency for Health Care Administration (Agency) is the designated single state agency responsible for administering the Florida Medicaid program. During state fiscal year 2010-2011, the Medicaid program will serve more than 2.7 million enrollees, with total program expenditures of approximately \$18.7 billion. To ensure resources are used as effectively as possible, the Agency partners with a number of state agencies for a variety of services, for Medicaid eligibility determination, and for fraud and abuse prevention initiatives. These other agencies include the Department of Children and Families, Department of Elder Affairs, Department of Health, Agency for Persons with Disabilities, Department of Transportation, Florida Department of Law Enforcement (FDLE), and the Medicaid Fraud Control Unit (MFCU) in the office of the Attorney General, Department of Legal Affairs. As the Agency has partnered with MFCU, it is evident that the prohibition on federal financial participation for efforts undertaken by MFCU to identify situations in which a question of fraud may exist is a barrier to a more productive process of data sharing and mining between the Agency's Medicaid Program Integrity (MPI) unit and MFCU.

The Medicare-Medicaid Antifraud and Abuse Amendments of 1977 (Public Law 95-1420), and the 2005 Deficit Reduction Act (Public Law 109-171) were enacted to strengthen the capability of the Government to detect and prosecute fraudulent activities under the Medicare and Medicaid programs. There has been much recent testimony and many reports from various sources presenting estimates of the total cost of health care fraud in the U.S. An estimate of \$98 billion in improper payments, including \$54 billion from Medicare and Medicaid, was presented by the Office of Management and Budget in November of 2009.¹ Although a precise accounting of fraud and abuse is unknown², recent estimates widely assume the national total cost to taxpayers for fraudulent payments range from three percent to ten percent of spending.³ Furthermore, the estimates vary by services as some services such as durable medical equipment and home health are frequent targets of fraudulent activities, whereas there is virtually no fraud in some Medicaid expenditures such as payment to the federal Centers for Medicare and Medicaid Services (CMS) for Part D premiums and other premium assistance programs. Although there is wide variation among these estimates of the cost to taxpayers for Medicaid fraud, there is consensus on one point: the Government can do more to prevent and recover costs for fraudulent activities, and collaboration with CMS, state auditors, MFCUs, Department of Justice, and other government enforcement agencies is needed, to identify, prevent, and deter fraud and abuse.^{4,5}

¹ Peter Orszag, Director of the White House Office of Management and Budget, in a media briefing on November 17, 2009.

² "It is not possible to measure precisely the extent of fraud in Medicare and Medicaid", Statement of Daniel R. Levinson, Inspector General, U.S. Department of Health & Human Services, before the Senate Special Committee on Aging, May 6, 2009.

³ Thomson Reuters. Where Can \$700 Billion in Waste Be Cut Annually from the U.S. Healthcare System?, white paper, October 2009.

⁴ GAO-05-855T MEDICAID FRAUD AND ABUSE/CMS's Commitment to Helping States Safeguard Program Dollars is Limited. Statement of Leslie G. Arnovitz, Director, Health Care in testimony before the Committee on Finance, U.S. Senate

Currently in Florida, initial fraud and abuse prevention occurs through alerts provided by Medicaid enrollees, providers, and other members of the public, and the efforts of the Bureau of Medicaid Program Integrity (MPI) in the Agency's Office of the Inspector General. MPI analysts develop leads for referral to MFCU for investigation and prosecution. As noted above, MFCU cannot receive federal financial participation to conduct analysis to independently identify Medicaid fraud. Enrollee fraud and abuse is investigated by FDLE. During fiscal year 2008-2009, 39 fraud cases were referred by MFCU for prosecution, and 58 arrests were made or warrants issued for fraud.

In Florida, in accordance with 42 CFR §1007.9(d), the state's MPI unit coordinates with MFCU through the terms of a Memorandum of Understanding (MOU) that defines the scope and purpose of their efforts, definitions, principles, and respective roles and responsibilities. This MOU documents the process of referrals of suspected fraud, cooperation in case management, and recoveries, in accordance with 42 CFR § 455.15 and § 455.21.⁶ The collaboration between MPI and MFCU is constrained by 42 CFR § 1007.19(e)(2), which prohibits federal financial participation by state MFCUs for "data mining" efforts to identify situations in which a question of fraud may exist, including the screening of claims, analyses of patterns of practice, or routine verification with recipients of whether services billed by providers were actually received. Such data mining appears to be inherent in the responsibilities of the MFCU, and this prohibition compromises the ability of MFCU to identify and prosecute fraud to prevent and recover Medicaid overpayments. It is unclear what the original intent of the Federal Government was in imposing this prohibition in 1992, however, it might have been a measure to prevent a duplication of effort between the single state agency MPI unit and the MFCU. Given the advancement in technology and analytical capability that now exists, this prohibition no longer advances a legitimate governmental interest. Analysts in both MPI and MFCU have available, at their desktops, efficient analytical tools and a formalized process of biweekly communication to preclude duplication of data mining efforts. Furthermore, duplication will be easily avoided as MPI and MFCU work collaboratively on joint efforts, and have the ability to coordinate activities to ensure that duplication does not occur.

While a change in the federal regulation would allow all state MFCUs to perform data mining, the need to quickly address fraud using all available means is immediate. To that end, the HHS Inspector General's Office of Evaluation and Inspections white paper OEI-07-04-00180⁷, referenced in the DRA Report to Congress for fiscal year 2006, encouraged specific demonstration projects. Specifically, conclusions noted in the report include:

"Demonstrations—Finally, State Agencies and MFCUs may want to work through OIG and CMS to undertake demonstration projects intended to improve the detection, development, and referral of suspected fraud cases. For example, several MFCUs expressed interest in data mining to identify suspected Medicaid fraud. Federal regulation presently prohibits Federal reimbursement for such activity. A demonstration

⁵ Daniel R. Levinson, Inspector General, U.S. Department of Health & Human Services, before the Senate on Homeland Security and Governmental Affairs, Subcommittee on Federal Financial Management, Government Information, and International Security Hearing, March 28, 2006.

⁶ 42 CFR § 455.15; 42 CFR § 455.21

⁷ OEI-07-04-00180 Factors Impacting Referral of Suspected Medicaid Fraud Cases: State Medicaid Agency and Medicaid Fraud Control Unit Experiences

project could help determine whether it would be more effective and efficient for MFCUs to conduct this function directly or to continue to rely on the specialized staffs in the State Agencies.”

Given the pervasive and nefarious nature of fraud and the unique characteristics of the state, the provision of additional resources would significantly enhance the state’s efforts to more effectively identify fraud cases. Florida believes that it is uniquely situated to implement a demonstration that will provide meaningful results, as MPI and MFCU work in partnership to combat fraud and abuse.

Data Mining Demonstration Waiver Proposal

The state is seeking a waiver of 42 CFR § 1007.19(e)(2), which would allow the MFCU, in close coordination with the MPI unit, to perform data mining activities to support investigation of fraud and recovery of overpayments. This program will demonstrate the effectiveness of collaboration of the state Medicaid agency MPI Unit analysts with their MFCU counterparts in specific efforts to prevent and identify fraud in the Medicaid program. MFCU and MPI agree to formalize and document methods and criteria for identifying fraud as currently required of MPI in accordance with 42 CFR § 455.13. Further, the MOU between MPI and MFCU will be revised to reflect the addition of the parties’ respective roles and responsibilities and the ongoing process of communication pursuant to this demonstration project. This regular communication will serve to prioritize and coordinate efforts and prevent duplication of data mining efforts.

In collaboration for this demonstration, MPI and MFCU agree to the following:

I. Methods and criteria development

MFCU and MPI agree to incorporate an Amendment to their MOU that documents:

- a) Methods and criteria for identifying suspected fraud cases;
- b) Methods for investigating these cases that--
 - 1. Do not infringe on the legal rights of persons involved; and
 - 2. Afford the due process of law; and
- (c) Procedures, developed in cooperation with State legal authorities, for referring suspected fraud cases to law enforcement officials.

II. Memorandum of Understanding Principles Specific to this Demonstration

MFCU and MPI agree to amend their MOU to include:

“The Agency and MFCU shall follow the specific procedures related to the federally approved demonstration waiver to coordinate identification of suspected fraud in the Medicaid program. The roles and responsibilities of the Agency and MFCU, and the communication plan specific to coordination of the waiver activities are incorporated by Amendment to this memorandum.”

III. Communication Process for Coordination of Demonstration Activities

Although there are ongoing informal communications and assistance between MFCU and MPI staff, there are also scheduled biweekly meetings attended by an MFCU Law Enforcement Captain, Investigator, and Analyst, and MPI staff at the Tallahassee office. The agenda currently includes case management matters and details of investigations that MPI proposes to refer to the MFCU. Though a regularly scheduled event, the meeting is informal in nature to encourage dialog between the participants and to help refine and develop potential referrals to maximize resources. Objectives are to raise the quality of the referrals, help each agency better understand the considerations and constraints of the other, provide two-way feedback regarding what referrals have been made and received, and review the status of investigations.

With respect to demonstration project activities, MFCU and MPI propose a standing agenda item for these biweekly meetings regarding the data mining demonstration project. There will be a process for the MFCU to give notice to MPI about the program areas and methodology being considered for analyses. MPI will review the projects within their data unit to either (a) ensure that the proposed examination would not be duplicative, or (b) determine whether a coordinated data mining effort would be useful. Although productive relationships and informal communication between the MPI and MFCU is ongoing, the pre-review and biweekly meeting process will provide a formal record of the consultation specific to the demonstration activities.

Anticipated Results of Demonstration Efforts

The MFCU investigative strategy related to fraud focuses on the types of fraud, subjects or targets, or provider types that represent widespread impact and expense to the Medicaid program or involve public safety. Emphasis on case investigations and prosecutions that have a deterrent effect are a priority, as recovery after overpayment offers a far lesser return on resources expended. Areas of particular concern that the demonstration would address include hospital services; nursing homes; pharmacy; physician services; home and community based waivers; payments to assisted living facilities, and home health services. In addition, given that Florida has over 3.03 million seniors (age 65+), which is the second in the country to California, we believe that any fraud and abuse detection efforts could focus on population specific activities, including dual eligible beneficiaries, and this could directly benefit Medicare. As CMS and OIG are aware, Medicare fraud is rampant in Miami-Dade County. The state seeks to demonstrate that the experience developed by MFCU analysts who currently review data in investigative and prosecutorial roles can be applied through primary data mining designed to identify patterns that indicate intent to defraud. This enhanced utilization of MFCU analysts will:

- a) Increase the number of leads developed;
- b) increase the number and quality of cases opened;
- c) result in a investigation of a broader mix of provider types;
- d) increase the number of arrest warrants issued;
- e) increase the number of fraud and fraud-related convictions;

- f) increase the number of overpayment and abuse referrals by MFCU to MPI, and
- g) increase the recovery of funds.

The state has been extremely proactive in implementing activities to deter fraud and abuse. The ability to data mine will yield direct and measurable results. Also, as noted above, the demonstration may serve as a model for the rest of the nation. Finally, given the number of seniors and dual eligibles, authorizing the demonstration in Florida has the added benefit of providing another opportunity to partner on Medi-Medi projects which provides another dimension. Specifically, increased prosecutions of providers that are defrauding Medicaid and Medicare will provide a clear signal that providers who commit fraud will be swiftly prosecuted.

Impact to Beneficiaries

This amendment to the MEDS AD demonstration will not impact beneficiary services or eligibility. Data mining activities by MFCU could help improve beneficiary safety through increased scrutiny and coordination with MPI.

Statewide Initiative

Data mining activities performed under this amendment to the demonstration will not be limited to the MEDS AD population, but will encompass statewide Medicaid activities.

Budget Neutrality

The MFCU staff would need minimal resources to implement this demonstration to affect a significant impact on fraud prevention and recovery of overpayments. The MFCU currently accesses Medicaid data through the same data warehouse as the state Medicaid agency, but the 42 CFR § 1007.19(e)(2) prohibition prevents federal financial participation for data mining activities by MFCU staff. The state anticipates that fraud recoveries will be far in excess of the minimal cost requested to implement this demonstration, and would agree to return the federal funds expended for the demonstration in the event such recoveries are not realized. Further, the ability of MFCU to perform data mining will be a deterrent to fraudulent activity. To implement this demonstration, total costs for year one are projected to be \$205,268 (\$153,951 FFP).

The state agrees to track administrative costs of the waiver separately from the cost of other waiver expenditures, and will also separately track recoveries related to the data mining demonstration activities. The costs related to this data mining activity will not exceed the ceiling established for total waiver costs over the demonstration period. Please see the estimate of waiver costs and the budget neutrality documentation for this demonstration, including costs of this amendment, in Attachment 1 of this document.

Evaluation Design

The evaluation design for the MEDS AD will be revised to include tracking of costs of data mining activities and the related recoveries or measurable cost avoidance directly attributable to analysis performed by MFCU analysts in this demonstration.

Reporting

The state's quarterly reporting schedule will continue, and will include the status and progress of data mining activities related to this amendment. Tracking of costs and recoveries will be submitted by the state annually within 60 days of the end of each waiver year.

Implementation of Data Mining Demonstration by MFCU

The state requests expedited review of this amendment request, and upon timely approval, the MFCU is prepared to implement data mining activities to develop potential fraud referrals by January 1, 2011. The MFCU and MPI are prepared to begin coordination of development of leads upon approval from CMS.

**Attachment 1
Assurance of Budget Neutrality for Amendment to Florida MEDS-AD 1115 Research and
Demonstration Waiver (CMS 11-W-00205/4)**

DEMONSTRATION RENEWAL: WITH WAIVER BUDGET PROJECTION

	TREND RATE	MONTHS OF AGING	RENEWAL DEMONSTRATION YEARS (DY)			TOTAL RENEWAL
			DY 06 (1/1/11-12/31/11)	DY 07 (1/1/012-12/31/12)	DY 08 (1/1/13-12/31/13)	
Eligible Member Months	9.97%	24	402,870	443,036	487,207	
Total Cost Per Eligible	5.48%	24	\$ 1,443	1,522	1,605	
MFCU Data Mining			\$ 205,268	225,795	248,374	
Contracted Case Review Costs			\$ 45,000	45,000	45,000	
Total Projected Renewal Expenditure			\$ 581,561,059	\$ 674,570,130	\$ 782,456,031	\$ 2,038,587,220

Florida MEDS AD Demonstration (Renewal for DY6-DY8)
Budget Neutrality - Template (June 24, 2010)

DEMO YEAR	Quarter Ended	WW Expenditures	WW Expenditures Cumulative	WOW (Target) Expenditures	WOW Expend Total	Budget Neutrality	
						Quarterly Difference	Cummulative Difference
DY1	Q1	51,696,950		507,710,894		456,013,944	
	Q2	132,235,096		507,710,894		375,475,798	
	Q3	105,271,113		507,710,894		402,439,781	
	Q4	146,356,839	435,559,998	507,710,894	2,030,843,575	361,354,055	1,595,283,577
	Q5	69,927,763		460,700,626		390,772,863	
	Q6	79,047,475		460,700,626		381,653,151	
	Q7	87,567,517		460,700,626		373,133,109	
DY2	Q8	90,210,963	762,313,716	460,700,626	3,873,646,079	370,489,663	3,111,332,363
	Q9	93,882,619		455,999,599		362,116,980	
	Q10	103,108,178		455,999,599		352,891,421	
	Q11	95,761,142		455,999,599		360,238,457	
DY3	Q12	96,128,169	1,151,193,824	455,999,599	5,697,644,476	359,871,430	4,546,450,652
	Q13	107,727,900		465,401,653		357,673,753	
	Q14	106,365,677		465,401,653		359,035,976	
	Q15	120,849,499		465,401,653		344,552,154	
DY4	Q16	133,665,863	1,619,802,762	465,401,653	7,559,251,086	331,735,790	5,939,448,324
	Q17	138,153,080		460,700,626		322,547,546	
	Q18	127,257,681		460,700,626		333,442,945	
	Q19	129,362,523		460,700,626		331,338,103	
DY5	Q20	129,362,523	2,143,938,568	460,700,626	9,402,053,590	331,338,103	7,258,115,022
DY6	Q21	145,390,265					
	Q22	145,390,265					
	Q23	145,390,265					
	Q24	145,390,265	581,561,059				6,676,553,963
	Q25	168,642,533					
	Q26	168,642,533					
	Q27	168,642,533					
DY7	Q28	168,642,533	1,256,131,189				6,001,983,833
	Q29	195,614,008					
	Q30	195,614,008					
	Q31	195,614,008					
DY8	Q32	195,614,008	2,038,587,220				5,219,527,802

SHADED AREAS ARE PROJECTIONS

NOTE: The commulative budget neutrality surplus will be fixed with the completion of DY5.

Waiver expenditures for DY6-DY8 will be deducted from this fixed surplus amount.