



JOHN W. SUTHERS
Attorney General

CYNTHIA H. COFFMAN
Chief Deputy Attorney General

DANIEL D. DOMENICO
Solicitor General

STATE OF COLORADO
DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

STATE SERVICES BUILDING
1525 Sherman Street - 7th Floor
Denver, Colorado 80203
Phone (303) 866-4500

TO: The Honorable Mary Hodge, Chairperson,
Joint Budget Committee
The Honorable Betty Boyd, Chairperson,
Senate Health and Human Services Committee
The Honorable Ken Summers, Chairperson,
House Health and Environment Committee

DATE: January 6, 2012

ATTORNEY GENERAL'S REPORT TO THE LEGISLATURE
REGARDING THE COLORADO MEDICAID FALSE CLAIMS ACT
C.R.S. 25.5-4-310

Pursuant to the provisions of C.R. S. 25.5-4-304, et seq, during Fiscal Year 2011, the Medicaid Fraud Control Unit of the Criminal Justice Division of the Office of the Attorney General of Colorado recovered **\$5,151,270.29** on behalf of the People of Colorado. Thus far in Fiscal Year 2012, the Unit has recovered **\$2,355, 809.41** on behalf of the People.

Introduction

C.R.S. 25.5-4-310 provides that the Attorney General shall provide a report to the Joint Budget Committee, as well as the Health and Human Services Committees of both the House and Senate concerning claims under the Colorado Medicaid False Claims Act. This report is filed in January, 2012 for the state fiscal year July 1, 2010 to June 30, 2011 (SFY 2011).

Summary

In SFY 2011, the Attorney General formed a civil litigation group within the Medicaid Fraud Control Unit (MFCU), Criminal Justice Section, with appropriations allocated for that purpose in section 19 of S.B. 10-167. In its first year of operation, numerous civil cases were received by the MFCU, all of which were interstate "global" qui tam cases from federal courts in other states, adding Colorado under its new False Claims Act. The civil litigation group recovered \$5,151,270.29 in fraud and abuse repayments through settlements with providers outside of the court system.

Discussion

The MFCU was formed in 1978 under 42 U.S.C. 1396b(q) and 42 C.F.R. §1007.1 and by Governor's Order D001787. The MFCU has been located in the Attorney General's Office since 1981. Its primary mission is to investigate and prosecute fraud against the Medicaid program as well as the physical and financial abuse of residents of federally-funded long term care facilities. The MFCU receives 75% of its funding from the federal government with the remaining 25% coming from the state General Fund. Because of the matching federal funds, the General Assembly's appropriation of \$69,145 was sufficient to fund three persons in the civil litigation group, specifically an attorney and two investigators.

Until the False Claims Act changed key language in C.R.S. 25.5-4-305, the MFCU had essentially been limited to pursuing provider fraud and abuse under the higher standard of proof found in criminal law. Criminal law is effective in many cases, but not every fraudulent act rises to the level of a criminal charge. In addition, a criminal charge does not necessarily permit the State to recover its lost Medicaid expenditures from the business entities and others who are truly responsible for fraud, or who are holding the proceeds. The Act provided a powerful new tool to allow the MFCU to pursue fraud and overpayments in the civil arena alongside attorneys for the state agency.

Following the Act's passage, the Attorney General received federal permission to increase its matching funds, and then began the process of hiring to fill the civil group positions. This was completed in mid-October, 2010. Since then, the group has been steadily improving its skills and knowledge. It has been active and effective in pursuing unscrupulous providers under its new civil authority. As the following statistics demonstrate, the MFCU has leveraged its appropriation to recover new fraud money from providers and its recoveries are steadily increasing over time.

(a) Actions Filed by Attorney General: The Attorney General did not file any lawsuits under the Colorado False Claims Act in SFY 2011. The MFCU received 90 qui tam cases filed in courts in other states that named Colorado as a party plaintiff during this year. The MFCU also investigated and settled 4 civil cases without the need to file them in court.

(b) Actions Filed by Attorney General that were Completed: No actions were filed or completed by the Attorney General, although numerous cases were pursued to settlement.

(c) Amount Recovered in Actions Filed by the Attorney General: No actions were filed by the Attorney General. However, the MFCU recovered \$5,151,270.29 through various civil settlements during the fiscal year, broken down as follows:

Damages:	\$ 2,552,618.25
Penalties:	\$ 2,496,472.60
Litigation Costs:	\$ 0
Post-Settlement Interest:	\$ 102,179.57

Additionally, of these amounts, \$114,160.60 was recovered from Colorado-specific cases, and \$49,138.61 was recovered from cases initiated by the MFCU itself.

(d) Number of Actions Filed by Other Persons: No actions were filed under the False Claims Act in state or federal court that were limited to Colorado fraud. 90 cases were served on Colorado by qui tam relators in which Colorado was named in federal courts in other states.

(e) Number of Completed Actions Filed by Other Persons No actions were filed or completed under the Colorado Act that were limited to Colorado fraud. Colorado participated in the settlement of 12 interstate cases in federal courts in other states.

(f) Amount Recovered in Actions Filed by Other Persons: No actions were completed under the Colorado Act that were limited to Colorado fraud. The interstate cases that were settled by Colorado mostly originated with filings by individual whistleblowers (relators) and resulted in settlements returning \$5,037,109.69 to the State of Colorado. Only one of these interstate settlements involved a case in which Colorado was named. Of these settlements, which are a subset of (c) above, the following was recovered:

Damages:	\$ 2,438,457.65
Penalties:	\$ 2,496,472.60
Litigation Costs:	\$ 0
Post-Settlement Interest:	\$ 102,179.57

No fees were paid to relators for any of the cases resolved in SFY 2011.

(g) Amount Expended by State for Investigation, Litigation, Other Costs: The State did not incur extraordinary expenses for investigation or litigation because no cases were filed in Colorado. As stated above, no relator fees were paid in SFY 2011. The time spent by salaried investigators and attorneys during the fiscal year to investigate civil cases would be difficult to determine because cases often begin as criminal investigations before being reclassified as a civil inquiry, while others may be shared between criminal and civil groups. A fair approximation of salary and employee time related to the civil group's activities in SFY 2011 would be the amount appropriated by Legislature for the Unit's activities, the state share of which was \$69,145.00.

Conclusion

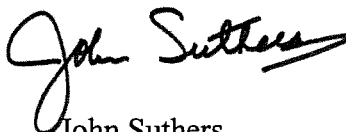
In the first several months, the civil litigation group secured recoveries in excess of the appropriation provided for it. Much of the funding collected by the group came from interstate qui tam settlements. However, \$114,160.60 of this amount was recovered from Colorado providers for fraud and overpayment within Colorado. Further, almost \$50,000.00 of the amount is attributable to cases generated affirmatively by the MFCU and the civil group; these are cases that likely would not have been pursued in the absence of the new False Claims Act. Under any view of the results, the Legislature's appropriation has been used effectively and has resulted in value returned to the State, as well as a reduction in fraud.

Moreover, in the first half of the new fiscal year, SFY 2012, the MFCU and the civil group have already recovered considerably more money than in the entire first year of the group's operation. As of today's date, the MFCU has already recovered **\$1,566,029.85** of

Colorado-only money, and of this amount **\$239,924.66** was generated from MFCU investigations and would likely not have been recovered absent the False Claims Act. These recoveries are from several different cases, and many more are on the horizon for the MFCU.

The MFCU and the Attorney General's Office continue to diligently pursue providers who commit fraud and financial abuse against the state's Medicaid system. The False Claims Act provides another means for the State to respond to fraud and abuse, and has permitted this Office to bring fraud recoveries to a new level. The first half of the new Fiscal Year has shown that the recovery picture will continue to improve as the MFCU builds its experience and sophistication in civil litigation and recovery against unscrupulous providers.

Sincerely,

A handwritten signature in black ink that reads "John Suthers". The signature is written in a cursive style with a long, sweeping underline.

John Suthers
Attorney General