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TO:           The Honorable Crisanta Duran, Chairperson,  
                  Joint Budget Committee  
                  The Honorable Irene Aguilar, Chairperson,  
                  Senate Health and Human Services Committee  
                  The Honorable Beth McCann, Chairperson,  
                  House Health, Insurance and Environment Committee

DATE:         January 2, 2014

**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 2012-13, the Medicaid Fraud Control Unit of the Criminal Justice Division of the Office of the Attorney General of Colorado recovered **\$15,555,348.96** on behalf of the People of Colorado in civil cases, up from **\$8,224,418.11** in the prior fiscal year. In addition to the **\$15,555,348.96** in civil recoveries for the State of Colorado, the Unit also recovered **\$155,300.72** for the state through its criminal investigations and prosecutions, for a total of **\$15,710,649.68** recovered by the Unit for the state. Additionally it is expected that many more dollars will be returned in pending payments, under settlement agreements reached during this fiscal year.

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 to 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, 2014 for the state fiscal year July 1, 2012 to June 30, 2013 (SFY 2013).

Summary

In its third year of operation, the civil litigation group within the Attorney General's Medicaid Fraud Control Unit continued to receive new interstate federal court cases under Colorado's new False Claims Act (FCA). The group also utilized the FCA to open many new cases within Colorado, collecting significant fraud and overpayment money from providers

within the state. The group collected **\$15,555,348.96** in settlement money for the state and, of this amount the group collected **\$470,622.43** in Colorado-only local matters. This amount consisted of settlements from **29** separate Colorado cases.

### 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 Criminal Justice Section of 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.

Until the False Claims Act revised key language in C.R.S. 25.5-4-305, the MFCU had essentially been focused solely on pursuing provider fraud and abuse under 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 Department of Health Care Policy and Financing, the state agency that administers the Colorado Medicaid program. The MFCU criminal group often investigates allegations and makes referrals to the MFCU civil group.

Following the Act's passage in Colorado, the Attorney General received permission from the federal government 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. With matching funds from the federal government, the General Assembly's recurring appropriation of \$69,145 per year has been sufficient to fund three staff members in the new civil litigation group, specifically an attorney and two investigators.

(a) Actions Filed by Attorney General: The Attorney General filed one lawsuit under the Colorado False Claims Act in SFY 2013. The MFCU received 69 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 29 local civil cases. These settlements produced the appropriate result without the need for initiating civil litigation.

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

(c) Amount Recovered in Actions Filed by the Attorney General: No recoveries were received from actions filed by the Attorney General. However, the MFCU recovered \$15,555,348.96 through various civil settlements during the fiscal year. \$7,511,953.06 was collected directly including \$2,573,159.20 in penalties. No litigation costs were requested or recovered.

Additionally, of these amounts, \$470,622.43 was recovered from Colorado-specific cases, the great majority of which were cases initiated by the MFCU itself. Numerous self-initiated cases resulted in penalties up to, and including, treble damages.

(d) Number of Actions Filed by Other Persons: No actions limited to Colorado fraud were filed by other persons under the False Claims Act in state or federal court. However, 69 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 13 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 generally originated with filings by individual whistleblowers (relators) and resulted in settlements returning \$15,123,729.61, plus \$142,674.15 from earlier settlements, to the State of Colorado. Of these settlements, which are a subset of (c) above, the State recovered \$2,396,102.06 in penalties. No litigation costs were requested or recovered. Fees paid to relators, totaled \$682,398.86.

(g) Amount Expended by State for Investigation, Litigation, and Other Costs: The State did not incur extraordinary expenses for investigation or litigation. 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 2013 would be the amount appropriated by Legislature for the Unit's activities, the state share of which was \$69,145.00.

### Conclusion

In SFY 2013, the civil litigation group secured recoveries for the State of Colorado many times over what has been appropriated for its operations. Although interstate qui tam settlements provided a significant part of Colorado's over \$15 million in recoveries this year, the civil group recovered \$470,622.43 in local cases from Colorado providers. Most of these cases were 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.

### Addendum

Pursuant to legislative RFI#7, the Department of Law supplies the following information:

In addition to the **\$15,555,348.96** in civil recoveries for the State of Colorado noted above, the Unit also recovered **\$155,300.72** for the state through its criminal investigations and prosecutions, for a total of **\$15,710,649.68** recovered by the Unit for the state.

Total expenditures for the MFCU for FY2013 were \$1,892,713.00; as the federal government funds approximately 75% of the Unit's budget, total State of Colorado expenditures for the Unit were \$473,178.00.

**In sum, while the Unit's state expenditures totaled \$473,178.00, the Unit recovered \$15,555,348.96 for the state.**

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.

Sincerely,

FOR THE ATTORNEY GENERAL



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