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**STATE OF COLORADO
DEPARTMENT OF LAW**

Criminal Justice Section

TO: The Honorable Millie Hamner, Chairperson,
Joint Budget Committee
The Honorable Jim Smallwood, Chairperson,
Senate Health and Human Services Committee
The Honorable Joann Ginal, Chairperson,
House Health, Insurance and Environment Committee
The Honorable Pete Lee, Chairperson,
House Judiciary Committee
The Honorable Bob Gardner, Chairperson,
Senate Judiciary Committee

DATE: January 6, 2017

**ATTORNEY GENERAL'S REPORT TO THE LEGISLATURE
REGARDING PROVIDER FRAUD AND THE COLORADO MEDICAID FALSE
CLAIMS ACT (C.R.S. 25.5-4-303.3 and C.R.S. 25.5-4-310)**

This report is submitted pursuant to the provisions of C.R.S. § 25.5-4-303.3 and C.R.S. §25.5-4-310.

During Fiscal Year 2016, the Medicaid Fraud Control Unit of the Criminal Justice Section of the Office of the Attorney General of Colorado recovered **\$12,324,863.42** on behalf of the People of Colorado in civil cases. In addition to the **\$12,324,863.42** in civil recoveries for the State of Colorado, the Unit also recovered **\$881,201.53** for the state through its criminal investigations and prosecutions, for a total of **\$13,206,067.94** 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. § 25.5-4-303.3 provides that the Attorney General shall provide a report relating to provider fraud to the Judiciary Committees of both the House and Senate, and to the Health and Human Services Committees of both the House and Senate.

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, 2017 for the state fiscal year July 1, 2015 to June 30, 2016 (SFY 2016).

Summary

The Medicaid Fraud Control Unit had 54 open criminal investigations during the reporting year, and obtained 12 criminal convictions of providers related to fraud committed against the Colorado Medicaid program. An additional 11 providers were charged by the MFCU with crimes in state courts. In addition, investigators from the MFCU assisted in one criminal prosecution of providers in Federal District Court in Colorado. No cases were dismissed and no acquittals occurred in cases prosecuted by the MFCU. A total of **\$881,201.53** was recovered in criminal court orders on behalf of the State of Colorado.

In its sixth 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 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 recovered **\$12,324,863.42** in settlement money for the state and of this amount the group recovered **\$2,828,456.25** in Colorado-only local matters. This amount consisted of settlements from **67** 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 by providers 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.

Criminal Cases

As noted above, the MFCU had a successful year in its prosecution of providers accused of committing fraud against the Colorado Medicaid program.

- (a) Investigations of provider fraud: 54.
- (b) Criminal cases filed: 11.
- (c) Cases dismissed, cases acquitted, confessions of judgment: 0.
- (d) Criminal convictions: 12.
- (e) Monetary recoveries in criminal cases: \$ 881,201.53.

Based on a review of this past year's criminal investigations, it is evident that fraudulent activity in the provision of durable medical equipment to Colorado Medicaid recipients is an area mandating continued vigilance.

Civil Cases

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.

(a) Civil Actions Filed by Attorney General: The Attorney General filed no suits under the Colorado False Claims Act in SFY 2016. The MFCU received 50 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 67 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 in FY 2016. Numerous cases were pursued to settlement.

(c) Amount Recovered in Actions Filed by the Attorney General: No recoveries were obtained from actions filed by the Attorney General in FY 2016. The MFCU recovered **\$12,324,863.42** through various civil settlements during the fiscal year, including \$4,083,894.66 in penalties and interest. Further, \$2,091,412.59 was collected directly. No litigation costs were requested or recovered.

Additionally, of these amounts, \$2,828,456.25 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, 50 cases were served on Colorado by qui tam relators in which Colorado was named as a plaintiff 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 19 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 recovering \$9,496,407.17 for the State of Colorado. Of these settlements, which are a subset of (c) above, the State recovered \$4,083,894.66 in penalties and interest. No litigation costs were requested or recovered. Fees paid to relators totaled \$369,193.87.

(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.

Conclusion

In SFY 2016, the criminal litigation group continued its history of vigilance in defending the Colorado Medicaid program against provider fraud, conducting numerous investigations as the facts warranted. Upon review of the completed investigations, the MFCU sought and successfully completed several criminal prosecutions which resulted in significant recoveries for the State of Colorado, totaling **\$881,201.53**.

In SFY 2016, 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 \$12.3 million in recoveries this year, the civil group recovered \$2,828,456.25 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#2, the Department of Law supplies the following information:

In addition to the **\$12,324,863.42** in civil recoveries for the State of Colorado noted above, the Unit also recovered **\$881,201.53** for the state through its criminal investigations and prosecutions, for a total of **\$13,206,067.94** recovered by the Unit for the state.

Total budget for the MFCU for FY2016 was \$2,563,156.00; as the federal government funds approximately 75% of the Unit's budget, total State of Colorado budget for the Unit was \$640,788.00.

In sum, while the Unit's state budget totaled \$640,788.00, the Unit recovered \$13,206,067.94 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.

FOR THE ATTORNEY GENERAL,



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