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DEPARTMENT OF LAW

Criminal Justice Section

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

This report is submitted pursuant to the provisions of **C.R.S. §25.5-4-310** for the State Fiscal Year July 1, 2016 to June 30, 2017 (SFY 2017). **C.R.S. § 25.5-4-310** provides that the Attorney General shall submit a report to the Joint Budget Committee and the Health and Human Services Committees of both the House and Senate concerning claims under Colorado Medicaid False Claims Act.

The Colorado Medicaid Fraud Control Unit (COMFCU) has been housed within the Criminal Justice Section of the Colorado Office of the Attorney General since 1987. The COMFCU has statewide jurisdiction to investigate waste, fraud, and financial abuse within the Colorado Medicaid program.

Furthermore, the COMFCU has jurisdiction to investigate patient abuse, neglect, and exploitation cases that occur in long term care facilities and board and care facilities.

Provider Fraud Summary

During the SFY 2017, the COMFCU opened **54** new criminal investigations, filed **9** criminal cases, and obtained **3** criminal convictions of providers related to fraud committed against the Colorado Medicaid program. No cases were dismissed and no acquittals occurred in cases prosecuted by the COMFCU. During the reporting period, the Unit closed **23** criminal cases and collected **\$42,283.70** in criminal restitution.

Investigations of Provider Fraud (7/1/2016 to 6/30/2017)

Type of Investigation	# of Closed Investigations	# of New Investigations
Fraud	143	164
Drug Diversion	0	4
Abuse, Neglect, Financial Exploitation	5	19
TOTAL	148	187

Criminal Complaints Requested, Cases Dismissed, Cases Acquitted, Convictions, and Confessions of Judgment

Criminal Complaints	Cases Dismissed	Cases Acquitted	Criminal Convictions	Confessions of Judgment
9	0	0	3	0

Recoveries, Restitution Ordered, and Restitution Collected

Civil Recoveries	Recoveries Collected	Restitution Ordered	Restitution Collected
\$1,347,955.24	\$973,299.40	\$2,290.53	\$42,283.70

There continues to be fraud within the Medicaid program, though the specific schemes may vary, the fraud generally involves billing for services that are not provided or overbilling Medicaid for services that have been provided. The types of practitioners that commit such fraud differs significantly and can include, but aren't limited to pharmacists, speech therapists, dentists, and durable medical equipment providers.

Civil Summary and False Claims Act

Until the Colorado False Claims Act revised key language in **C.R.S. § 25.5-4-305**, the COMFCU 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 some instances, fraudulent actions by a provider do not fit within the Colorado criminal statutes or permit the State to recover its lost Medicaid expenditures from the business entities and others who are truly responsible for fraud. The False Claims Act provided a powerful tool to allow the COMFCU to pursue fraud and overpayments in the civil arena. The COMFCU criminal litigation group investigates allegations and makes referrals to the civil litigation group.

The civil litigation group within the COMFCU continued to receive new interstate federal court cases under the Colorado False Claims Act. During the SFY 2017, the COMFCU opened **133** new civil cases and closed **125** civil cases. Within Colorado, while no recoveries were obtained from actions filed by the Attorney General in SFY 2017, the COMFCU recovered **\$1,347,955.24** in civil matters and collected **\$973,299.40** directly. No litigation costs were recovered, but it should be noted that **\$384,064.15** of the **\$1,347,955.24** in recoveries consisted entirely of penalties that were assessed against the providers. The fees paid to relators totaled **\$78,694.89**.

During SFY 2017, the Attorney General filed no suits or completed actions under the Colorado False Claims Act. However, **60** cases were served on Colorado by *qui tam* relators, in which Colorado was named as a plaintiff in United States federal courts. In addition, Colorado participated in the settlement of **11** *qui tam* cases in federal courts in other states. These are cases that likely would not have been pursued in the absence of the False Claims Act. The COMFCU also investigated and settled **42** local civil cases. These settlements produced the appropriate result without the need for initiating civil litigation.

Conclusion

In SFY 2017, the COMFCU continued its history of vigilance in defending the Colorado Medicaid program against provider fraud, conducting numerous investigations as the facts warranted.

The State of Colorado 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.

The total budget for the COMFCU in SFY 2017 was **\$2,006,787.94**. As the federal government funds approximately 75% of the Unit's budget, the total State budget for the Unit was **\$501,696.99**.

In summary, while the COMFCU State budget totaled \$501,696.99, the Unit recovered for the State of Colorado over \$1.3 million dollars.

It is reasonable to believe that if these providers responsible for improper billings had not been identified, then the fraudulent activity would have continued and the losses to the Medicaid program would have been far higher than the amounts that were recovered.¹ The Legislature's appropriation has been used effectively with the results in monetary value returned to the State and a reduction in fraud to the Medicaid Program. The COMFCU and the Attorney General's Office continue to diligently pursue providers who commit fraud and financial abuse against the State's Medicaid program. 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,



Robert James Booth II
First Assistant Attorney General
Director, Medicaid Fraud Control Unit

¹ The time period captured by this report does not truly reflect the efforts of the COMFCU during the prior year. During the SFY 2017, Colorado Medicaid program transitioned to a new MMIS system. During this transition, the COMFCU did not have access to provider billing data for several months. It should be noted that the inability to access data was not due in any part to the actions of the Department of Health Care Policy and Financing, who tirelessly sought to remedy this situation. However, as a result of the lack of access to data, both new investigations and existing investigations slowed. The restoration of data access led to an uptick in activity and in the first quarter of SFY 2018 (1st of July 2017 to the 30th of September 2017), the COMFCU recovered \$702,811.77 and collected \$3,644,376.12 in civil cases.