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CRIMINAL JUSTICE SECTION
MEDICAID FRAUD

STATE OF COLORADO
DEPARTMENT OF LAW

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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)

The Attorney General is required by C.R.S. § 25.5-4-310 to submit an annual report to the Joint Budget Committee and to the Health and Human Services Committees of the House and Senate concerning claims under Colorado Medicaid False Claims Act. In accordance with that requirement, the Attorney General tenders this report for the State Fiscal year that began on the 1st of July 2017 and ended on the 30th of June 2018 (SFY 2018).

First established in 1978, the Colorado Medicaid Fraud Control Unit (COMFCU) has been housed within the Colorado Attorney General's Office since 1979. COMFCU is vested with statewide jurisdiction to investigate and prosecute waste, fraud, and financial abuse committed by Colorado Medicaid providers; and investigate and prosecute the abuse, neglect, and exploitation of Medicaid recipients, as well as, individuals that reside in federally funded long-term care facilities and board and care facilities.

While there are exceptions, fraud in the Medicaid program generally falls into one of three categories: billing for services that are not provided, overbilling for services that are provided, and billing for providing services for which there is no medical necessity. The types of practitioners that commit such fraud and the

schemes that they devise differ significantly. Some examples of matters investigated by the COMFCU during SFY 2018: a speech therapist that billed for services over and above those actually provided to patients, a nurse practitioner that billed Medicaid for office visits used to dispense opioids when there was no medical necessity for such drugs, and a home health corporation that billed for providing in home services to patients when this was not occurring.

Until the Colorado False Claims Act revised key language in C.R.S. § 25.5-4-305, the COMFCU had 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.

Using the Colorado False Claims Act, the COMFCU continued its active work in interstate federal court cases. During SFY 2018, the COMFCU opened 84 new civil cases and settled 31 civil cases, of which 17 involved Colorado Medicaid providers. The Colorado Attorney General's Office did not file suit under or complete an action under the False Claims Act during SFY 2018. That being said, the COMFCU did intervene in *United States of America et al v. INSYS Therapeutics, Inc., et al*, a matter filed in the U.S. District Court for the Central District of California and is seeking recovery from opioid manufacturer INSYS Therapeutics under the Colorado False Claims Act. Colorado is seeking recovery under 45 new federal court cases that were served on the state during SFY 2018 by *qui tam* relators, in which Colorado was named as a plaintiff. In addition, Colorado participated in the settlement of 14 *qui tam* cases in federal courts in other states. These cases likely would not have been pursued in the absence of the False Claims

Act. These settlements produced the appropriate result without the need for initiating civil litigation.

While no recoveries were obtained from actions filed by the Attorney General in SFY 2018, the COMFCU recovered $7,161,879.11 in civil matters and collected $6,642,818.73 directly. No litigation costs were recovered, but it should be noted that $2,184,497.99 of the $7,161,879.11 in recoveries consisted entirely of penalties that were assessed against providers. The fees paid to relators during SFY 2018 totaled $758,944.19. 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.

Investigations SFY 2018

Type of Investigation	# of Closed Investigations	# of New Investigations
Fraud	82	112
Drug Diversion	0	9
Abuse, Neglect, Financial Exploitation	8	23
TOTAL	**90**	**144**

Criminal Actions

Complaints Filed	Criminal Convictions	Restitution Ordered	Restitution Collected
13	12	$123,341.07 [1]	$20,982.11[2]

[1] A total of $59,979.04 was ordered to be paid by four defendants in two criminal court cases, but the defendants are jointly and severally liable for the restitution and the total recovery to the Medicaid Program for the cases will be a total of $29,989.52.

[2] It should be noted that in criminal matters, the Court generally establishes repayment guidelines for the defendant after their conviction. As a result, all collection activities of the COMFCU are held in abeyance until such time as the defendant violates those guidelines.

Civil Actions

Local Settlements	*Qui Tam* Settlements	Total Civil Settlements	Civil Recoveries	Recoveries Collected
17	14	31	$7,161,879.11	$6,642,818.73

Summary

During SFY 2018, the COMFCU opened 60 new criminal investigations, 84 new civil investigations, filed 13 criminal cases, settled 31 civil cases, and obtained 12 criminal convictions of providers related to Medicaid fraud and patient abuse. The State budgetary footprint for the COMFCU during SFY 2018 was $536,807.72 and during that time, the Unit recovered over $7.2 million for the State of Colorado.

It is reasonable to believe that if Medicaid 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. The Legislature's appropriation has been used effectively as measured by the 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.

FOR THE ATTORNEY GENERAL,

Robert James Booth II
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Director, Medicaid Fraud Control Unit