



**STATE OF COLORADO
DEPARTMENT OF LAW**

January 15, 2020

**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 2018 and ended on the 30th of June 2019 (SFY 2019).

First established in 1978, the Colorado Medicaid Fraud Control Unit (COMFCU) has been housed within the 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 to investigate and prosecute the abuse, neglect, and exploitation of patients.

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 and prosecuted by the COMFCU include 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 the drugs, and a home health corporation that billed for providing in-home services to patients when this was not occurring.

In some instances, fraudulent actions taken by Medicaid providers do not fit within the Colorado criminal statutes and absent another remedy, Colorado would not be able to recover dollars unlawfully taken from the Medicaid program. The Colorado False Claims Act, C.R.S. § 25.5-4-305, is a powerful tool that allows 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 2019, the COMFCU opened 106 new civil cases and settled 22 civil cases, of which 10 involved Colorado Medicaid providers. The Colorado Attorney General's Office filed 3 civil actions under the False Claims Act during SFY 2019.

Colorado is currently seeking recovery under 73 new federal court cases that were served on the state during SFY 2019 by qui tam relators, in which Colorado was named as a plaintiff. In addition, Colorado participated in the settlement of 12 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.

In SFY 2019, the COMFCU recovered \$14,181,349.43 in actions filed under the Colorado False Claims Act. The COMFCU also recovered an additional \$7,151,069.33 in multi-state civil matters, \$232,557.08 in local civil matters, and \$1,370,665.15 in criminal matters. During SFY 2019, the COMFCU has been able to collect \$3,554,584.49 of that sum. No litigation costs were recovered, but it should be noted that \$13,553,558.13 of the \$22,935,640.99 in recoveries consisted entirely of penalties

that were assessed against providers. The fees paid to relators during SFY 2019 totaled \$686,997.04. The State of Colorado did not incur extraordinary expenses for investigation or litigation. The time spent by salaried investigators and attorneys 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 2019

Type of Investigation	# of Closed Investigations	# of New Investigations
Fraud	63	158
Drug Diversion	0	4
Abuse, Neglect, Financial Exploitation	4	16
TOTAL	67	178

Criminal Actions

Complaints Filed	Criminal Convictions	Restitution Ordered	Restitution Collected
7	8	\$1,370,665.15	\$117,533.57 ¹

Civil Actions

Complaints Filed	Judgments & Settlements	Multi-State Settlements	Civil Recoveries	Recoveries Collected
3	10	12	\$21,564,975.84	\$3,437,050.92

¹ It should be noted that in criminal matters, the Court generally establishes repayment guidelines for the defendant after their conviction. As a result, all COMFCU collection activities over and above those guidelines held in abeyance until such time as the defendant has completed repayment or there has been a violation of the guidelines.

Summary

During SFY 2019, the COMFCU opened 72 new criminal investigations, 106 new civil investigations, filed 7 criminal cases and 3 civil actions, settled 22 civil cases, and obtained 8 criminal convictions of providers related to Medicaid fraud and patient abuse. The State budgetary footprint for the COMFCU during the fiscal year was \$507,125.27 and in the course of that time, the Unit recovered over \$22.9 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 within 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
Assistant Deputy Attorney General
Director, Medicaid Fraud Control Unit