


**MAR 22 2010****TO:** All Medicaid Fraud Control Units**FROM:** 
Stuart Wright
Deputy Inspector General
for Evaluation and Inspections**SUBJECT:** State Fraud Policy Transmittal Number 10-01, Program Income

This transmittal provides current guidance on the subject of program income and rescinds State Fraud Policy Transmittal Number 06-01, Program Income, as well as all prior policy transmittals and guidance on the subject.

On October 28, 2008, the Centers for Medicare & Medicaid Services (CMS), in State Health Official (SHO) Letter #08-004, clarified CMS policy regarding legal judgments or settlements received by States pursuant to legal actions under a State False Claims Act (FCA) or other cause of action. The letter stated that the “[Social Security] Act requires that the amounts recovered by a State through a State FCA action be refunded at the Federal Medical Assistance Percentage (FMAP) rate Any State action taken as a result of harm to a State’s Medicaid program must seek to recover damages sustained by the Medicaid program as a whole” Specifically, CMS stated that the Federal Government is entitled to the FMAP proportionate share of the “State FCA-based fines, penalties, or assessments imposed against providers or entities.” CMS also stated that “legal expenses ... or other administrative costs arising from such litigation” may not be deducted from the proceeds of the litigation. Rather, CMS stated that “costs that are in support of ... a State’s Medicaid program are recognized as administrative costs [and to] the extent attributable to Medicaid recoveries ... may be the basis for claims for reimbursement as an administrative cost.”

The Office of Inspector General (OIG) State Fraud Policy Transmittal Number 06-01 set out OIG’s policy regarding the definition, use, and reporting of program income by Medicaid Fraud Control Units (MFCU). The transmittal noted that program income is typically obtained by MFCUs as part of a legal judgment or settlement and reimburses the unit for investigative and legal costs incurred in the case. OIG Transmittal, 06-01 made clear that restitution to the Medicaid program, as well as penalties, fines or other

noncompensatory damages, do not qualify as program income to the MFCU and are not subject to the OIG policy transmittal. The transmittal instructed MFCUs on how to report reimbursements for investigative and legal costs and other receipts identified in the transmittal as program income to the MFCU.

The October 28 SHO letter clarifies CMS policy regarding the treatment of all aspects of the settlement or judgment. The SHO letter specifies that CMS should be paid the FMAP proportionate share of the total recovery, without deducting legal expenses and other administrative costs. As such, State settlement proceeds provided to the MFCU after refunding the Federal share of the entire recovery to CMS would not constitute program income under Federal grant regulations. Accordingly, consistent with the date of the SHO letter, MFCUs should not report as program income funds received from a legal judgment or settlement of a Medicaid fraud case with an effective date on or after October 28, 2008. Any settlement proceeds received by the MFCU from the State should be treated as part of the State's share of MFCU costs for purposes of financial status reports to OIG.

Should a MFCU receive any other funds that meet the definition of program income at 45 CFR § 92.25 (b), which are not derived from a civil or criminal false claims settlement or award, the MFCU must continue to report these amounts in accordance with 45 CFR § 92.25 and include them on the Financial Status Report, Form 269. One example of such income is legal and investigative costs received in a patient abuse case, where there is no corresponding Medicaid overpayment amount. MFCUs should deduct these amounts and any other such income from total allowable costs under the grant in accordance with section 92.25 (g)(1).