



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL
WASHINGTON, DC 20201



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TO: All Medicaid Fraud Control Unit Directors

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SUBJECT: State Fraud Policy Transmittal 2021-1
Expanded Authority for Cases of Patient Abuse or Neglect in Noninstitutional
Settings: Frequently Asked Questions

The purpose of this transmittal is to answer frequently asked questions regarding expanded authority of Medicaid Fraud Control Units (MFCUs or Units) to receive Federal funding for cases of patient abuse or neglect arising in noninstitutional settings. This transmittal was prepared in collaboration with a working group of the National Association of Medicaid Fraud Control Units.

Background

The Consolidated Appropriations Act of 2021, Section 207, Division CC, December 27, 2020, amended provisions of the Social Security Act to allow MFCUs to receive Federal financial participation (FFP) to investigate and prosecute abuse or neglect of “patients (who are receiving [Medicaid]) in a noninstitutional or other setting.”

Before enactment of this legislation, MFCU funding authority for abuse or neglect cases was limited to (1) abuse or neglect of patients in health care facilities—typically nursing facilities and hospitals—that receive payments from the Medicaid program,¹ and (2) abuse or neglect of patients residing in “board and care facilities.”² The expanded authority is **at the option** of the MFCU, similar to the authority to investigate and prosecute complaints of abuse or neglect of

¹ The authority to receive FFP for patient abuse or neglect cases involving health care facilities does not require that the victim be a Medicaid beneficiary, but only that the facility where the suspected conduct occurred received some amount of Medicaid funding.

² Board and care facilities are defined to mean residential settings where two or more unrelated adults receive nursing care services or a substantial amount of personal care services. The authority to receive FFP for investigation of cases in board and care facilities, commonly including assisted living facilities, does not require that the facility receive Medicaid funding, and such facilities in many of the States often do not receive Medicaid funding.

those residing in board and care facilities. The expanded authority applies to cases involving beneficiaries in both managed care and fee-for-service environments.

The new authority for receiving FFP for cases of abuse or neglect in noninstitutional settings provides an important protection for Medicaid beneficiaries. With the dramatic increase in the provision of home and community-based services rather than in residential health care facilities, millions of Medicaid beneficiaries remained outside the protective umbrella provided by the MFCUs until Congress enacted this legislation. The expanded authority provides MFCUs the ability to receive FFP to investigate and prosecute these matters.

MFCUs are encouraged to contact the OIG Medicaid Fraud Policy and Oversight Division for additional questions that may arise in implementing the new authority.

Questions and Answers

1. Is this authority optional?

Yes, the authority is optional as there is no requirement that a MFCU investigate cases in noninstitutional or other settings. The new authority allows a Unit to receive FFP for investigating and prosecuting these cases but does not require a Unit to investigate such cases.

2. What are the settings where most of these cases will occur?

These cases will likely occur in the home (including Medicaid-funded personal care services in the home); community-based programs; clinical settings, such as physician and dental offices; and medical transportation settings, such as ambulances and ambulettes.

3. What type of patient abuse or neglect is covered by the new authority?

The law itself does not define what types of “patient abuse or neglect” are covered. However, Federal regulations governing the MFCUs generally define “abuse” and “neglect” as any act that constitutes abuse or neglect under applicable State law (see 42 CFR §1007.1). Those definitions will similarly apply to cases arising under the new authority. Furthermore, in accordance with the statutory phrase “of patients . . . who are receiving [Medicaid],” **the alleged abuse or neglect must have occurred in connection with the provision of Medicaid services.** For example, a MFCU would not have the authority to receive FFP for investigating personal crimes, unrelated to the provision of Medicaid services, that might occur in a home or other noninstitutional setting, on the mere basis that the victim happened to be a Medicaid beneficiary.

4. Will HHS-OIG provide funding for additional positions and other costs associated with the expanded authority?

No additional Federal funding was specifically authorized for costs associated with the expanded authority. However, if a Unit wishes to seek additional resources, Federal funds are available at the 75 percent matching rate (or 90 percent for new Units), if the State provides the remaining 25 percent match (or 10 percent for new Units). OIG generally encourages budget requests that would provide additional resources to address a MFCU's expanded authority.

5. How do these cases affect a MFCU's case mix for purposes of Performance Standard 6?

Performance Standard 6 states that a "Unit's case mix, as practicable, covers all significant provider types and includes a balance of fraud and, where appropriate, patient abuse and neglect cases." 77 Fed Reg. 32647 (June 1, 2012). Since the new authority is optional, OIG does not expect a MFCU to investigate or prosecute a certain number of cases under the new authority to satisfy the performance standard. However, OIG encourages the investigation and prosecution of noninstitutional patient abuse or neglect cases, and a MFCU may determine that such cases are an effective way to improve its case mix.

6. Must the victim of abuse or neglect be a Medicaid beneficiary?

Yes, the victim must be a Medicaid beneficiary, unlike the victim in a health care facility or board and care facility, where no such requirement applies regarding the victim.

7. Does expanded authority cover allegations of abuse or neglect that took place before the victim was receiving Medicaid?

Generally, no, although a MFCU may investigate allegations that arise from the time when a victim is first covered by a State's Medicaid program. Each MFCU should determine when its State Medicaid program considers an individual to be covered by Medicaid, and thus, when he or she qualifies as a Medicaid beneficiary. The Centers for Medicare & Medicaid Services (CMS) provides the following general guidance regarding eligibility and coverage:

Once an individual is determined eligible for Medicaid, coverage is effective either on the date of application or the first day of the month of application. Benefits also may be covered retroactively for up to three months prior to the month of application, if the individual would have been eligible during that period had he or she applied. Coverage generally stops at the end of the month in which a person no longer meets the requirements for eligibility.

<https://www.medicaid.gov/medicaid/eligibility/index.html>.

8. What is the responsibility of a MFCU in misappropriation and other cases of financial harm under the expanded authority and in general?

Federal regulations that define the duties and responsibilities of MFCUs include, as a type of optional authority for cases of abuse or neglect, the ability to review “complaints of the misappropriation of funds or property of patients or residents.” 42 CFR §1007.11(b)(1) and (2). Regulations also more generally define “abuse of patients or residents,” depending on applicable State laws, to include “financial harm.” 42 CFR §1007.1. Under the expanded authority for noninstitutional settings, MFCUs may receive FFP for the investigations and prosecutions of financial misappropriation and financial harm, as long as the victim is a Medicaid beneficiary and the conduct in question was related to the provision of Medicaid services. As one example of a financial harm case, the new authority would permit FFP for an investigation of a personal care services attendant who, in the course of providing Medicaid-funded services, misused a beneficiary’s credit card.

Regulations governing the MFCUs generally define “[m]isappropriation of patient or resident funds” as “the wrongful taking or use, as defined under applicable State law, of funds or property of a patient or resident of a health care facility or board and care facility.” 42 CFR §1007.1. Such cases may include the direct theft or embezzlement of a resident’s property in a residential facility but may also include more complex financial transactions where facility residents or Medicaid beneficiaries are defrauded of their financial assets. One example of financial abuse involves criminal allegations involving the misuse of a resident’s or beneficiary’s power of attorney (POA).

A Unit may only receive FFP for financial harm or financial misappropriation cases where the alleged victim (1) is a current Medicaid beneficiary or (2) resides in a Medicaid-funded health care facility or a board and care facility. For example, FFP is not available for efforts by family members, such as through a POA, to “spend down” current assets as a way to ensure future eligibility for Medicaid benefits.

Similar to our answer to question 3 above, under the expanded authority for cases arising in a home or other noninstitutional setting, **the misuse of a POA must have occurred in connection with the provision of Medicaid services.** If the perpetrator in a noninstitutional POA case is a relative or acquaintance of the victim who had no connection to the provision of Medicaid services, the case would not be eligible for FFP. This may be different than the typical POA case involving a nursing facility or hospital, where the alleged misconduct would not need to involve the provision of Medicaid services for the case to be eligible for FFP.

9. Does expanded jurisdiction include child abuse cases?

Yes, FFP for cases of abuse involving a child would be authorized if the victim of the allegations is a child who is a Medicaid beneficiary and the abuse or neglect occurred in connection with the provision of Medicaid services. Abuse or neglect referrals involving children may become more frequent with the new authority, since children are generally more likely to receive services in a home or clinical setting and less likely to reside in health care facilities or board and care facilities. While MFCUs can prosecute child abuse cases, we recognize that there may be a more appropriate prosecuting agency for child abuse matters, and we leave determinations as to the most appropriate prosecutor to each MFCU's discretion.