

Department of Health and Human Services

**OFFICE OF
INSPECTOR GENERAL**

**ALABAMA STATE MEDICAID
FRAUD CONTROL UNIT:
2014 ONSITE REVIEW**



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**April 2015
OEI-06-13-00660**

**EXECUTIVE SUMMARY: ALABAMA STATE MEDICAID FRAUD CONTROL UNIT:
2014 ONSITE REVIEW
OEI-06-13-00600**

WHY WE DID THIS STUDY

The Office of Inspector General (OIG) oversees the activities of all Medicaid Fraud Control Units (MFCUs or Units). As part of this oversight, OIG conducts periodic reviews of all Units and prepares public reports based on these reviews. The reviews assess Unit performance in accordance with the 12 MFCU performance standards and monitor Unit compliance with Federal grant requirements.

HOW WE DID THIS STUDY

We conducted the onsite review in January 2014. We based our review on an analysis of data from seven sources: (1) a review of policies, procedures, and documentation of the Unit's operations, staffing, and caseload; (2) a review of financial documentation; (3) structured interviews with key stakeholders; (4) a survey of Unit staff; (5) structured interviews with the Unit management and selected staff; (6) an onsite review of case files; and (7) an onsite observation of the Unit operations.

WHAT WE FOUND

For fiscal years (FYs) 2011 through 2013, the Unit reported 10 criminal convictions, 63 civil judgments and settlements, and recoveries of over \$63 million. We identified one issue of significant noncompliance with applicable laws, regulations, or policy transmittals – nearly half of the Unit's civil settlements resulted from audits that were outside the MCFU's grant authority. We also found multiple opportunities for improvement in the Unit's performance. Only a small portion of Unit referrals—6 percent—came from the State Medicaid agency. The Unit did not have a cooperative working relationship with certain Federal partners and lacked written policies for referring cases to Federal and State agencies. The Unit also did not refer information about all convictions to OIG and did not send some information within the appropriate timeframe. Unit supervisors did not always conduct periodic case reviews and, when they did conduct such reviews, they did not include notations in case files.

WHAT WE RECOMMEND

We recommend that the Alabama Unit (1) strengthen processes to ensure that investigations involve allegations of fraud or patient abuse or neglect; (2) provide training to the State Medicaid agency regarding elements of a quality referral of fraud; (3) continue existing efforts, and initiate new efforts, to achieve a cooperative working relationship with its Federal partners; (4) implement procedures to ensure that it timely transmits information about all convictions to OIG for purposes of exclusion; and (5) implement processes to ensure that supervisors conduct case reviews periodically, consistent with the Unit's policies and procedures. The Unit concurred with all five of our recommendations.

TABLE OF CONTENTS

Objective.....	1
Background.....	1
Methodology.....	4
Findings.....	5
For FYs 2011 through 2013, the Unit reported 10 criminal convictions, 63 civil judgments and settlements, and recoveries of over \$63 million.....	5
Nearly half of the Unit’s civil settlements resulted from audits that were outside the MCFU’s grant authority.....	6
Only a small portion of Unit referrals—6 percent—came from the State Medicaid agency.....	6
The Unit did not have a cooperative working relationship with certain Federal partners.....	6
The Unit lacked written policies for referring cases to Federal and State agencies.....	7
The Unit did not refer information about all convictions to OIG and did not send some information within the appropriate timeframe.....	8
Unit supervisors did not always conduct periodic case reviews and, when they did conduct such reviews, they did not include notations in case files.....	8
Other observation: OIG case file review suggested a lack of thorough investigations.....	8
Conclusion and Recommendations.....	10
Unit Comments and Office of Inspector General Response.....	12
Appendixes.....	14
A: Methodology.....	14
B: Referrals of Provider Fraud and Patient Abuse and Neglect to the Alabama MFCU by Source, FYs 2011 Through 2013.....	16
C: Investigations Opened and Closed by Provider Category and Case Type, FYs 2011 Through 2013.....	17
D: Unit Comments.....	19
Acknowledgments.....	22

OBJECTIVE

To conduct an onsite review of the Alabama State Medicaid Fraud Control Unit (MFCU or Unit).

BACKGROUND

The mission of State MFCUs, as established by Federal statute, is to investigate and prosecute fraud and patient abuse and neglect by Medicaid providers under State law.¹ Pursuant to Title XIX of the SSA, each State must maintain a certified Unit unless the Secretary of Health and Human Services determines that operation of a Unit would not be cost-effective because (1) minimal Medicaid fraud exists in that State and (2) the State has other, adequate safeguards to protect Medicaid beneficiaries from abuse and neglect.² In fiscal year (FY) 2013, combined Federal and State grant expenditures for the Units totaled \$230 million.³

To carry out its duties in an effective and efficient manner, each Unit must employ an interdisciplinary staff that consists of at least an attorney, an auditor, and an investigator.⁴ Unit staff review referrals provided by the State Medicaid agency and other sources and determine their potential for criminal prosecution and/or civil action. In FY 2013, the 50 Units collectively reported 1,341 convictions, 879 civil settlements or judgments, and recoveries of approximately \$2.5 billion.⁵

Units are required to have either Statewide authority to prosecute cases or formal procedures to refer suspected criminal violations to an office with such authority.⁶ Currently, MFCUs operate in 49 States and in the District of Columbia. Forty-four of the MFCUs operate within offices of State

¹ Social Security Act (SSA) § 1903(q)(3).

² SSA §§ 1902(a)(61) and 1903(q)(3). Regulations at 42 CFR § 1007.11(b)(1) add that the Unit's responsibilities may include reviewing complaints of misappropriation of patients' private funds in residential health care facilities.

³ Office of Inspector General (OIG), *State Medicaid Fraud Control Units Fiscal Year 2013 Grant Expenditures and Statistics*. Accessed at http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/expenditures_statistics/fy2013-statistical-chart.htm on April 10, 2014.

⁴ SSA § 1903(q)(6) and 42 CFR § 1007.13.

⁵ OIG, *State Medicaid Fraud Control Units Fiscal Year 2013 Grant Expenditures and Statistics*. Accessed at http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/expenditures_statistics/fy2013-statistical-chart.htm on September 12, 2014.

Recoveries are defined as the amount of money that defendants are required to pay as a result of a settlement, judgment, or pre-filing settlement in criminal and civil cases and may not reflect actual collections. Recoveries may involve cases that include participation by other Federal and State agencies.

⁶ SSA § 1903(q)(1).

Attorneys General; the remaining six MFCUs operate within other State agencies.⁷ Each Unit must be a single, identifiable entity of State government, distinct from the single State Medicaid agency, and must develop a formal agreement (i.e., memorandum of understanding) that describes its relationship with that agency.⁸

In addition to investigating State-based fraud cases, Units may also be parties in multi-State “global” cases. Global cases are coordinated through the National Association of Medicaid Fraud Control Units. These cases typically involve MFCU attorneys from around the Nation who work with the Department of Justice and OIG on global—i.e., multi-State—civil false-claims cases.

Oversight of the MFCU Program

The Secretary of Health and Human Services delegated to the OIG the authority both to annually certify the Units and to administer grant awards to reimburse States for a percentage of their costs of operating certified Units.⁹ All Units currently are funded by the Federal Government on a 75-percent matching basis, with the States contributing the remaining 25 percent.¹⁰ To receive Federal reimbursement, each Unit must submit an application to OIG.¹¹ OIG reviews the application and notifies the Unit whether it is approved and the Unit is certified. Approval and certification are valid for a 1-year period; the Unit must be recertified each year thereafter.¹² The statute specifies that, when recertifying a Unit, the OIG should give special attention to whether the Unit has used its resources effectively in investigating cases of possible fraud, in preparing cases for prosecution, and in prosecuting cases or cooperating with the prosecuting authorities.¹³

Pursuant to Title XIX of the SSA, States must operate Units that effectively carry out their statutory functions and meet program requirements.¹⁴ OIG developed and issued 12 performance standards to define the criteria it applies in assessing whether a Unit is effectively carrying out statutory

⁷ OIG, *Medicaid Fraud Control Units*. Accessed at <http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/index.asp> on September 12, 2014.

⁸ SSA § 1903(q)(2); 42 CFR §§ 1007.5 and 1007.9(d).

⁹ The portion of funds reimbursed to States by the Federal government for its share of expenditures for the Federal Medicaid program, including the MFCUs, is called Federal Financial Participation (FFP).

¹⁰ SSA § 1903(a)(6)(B).

¹¹ 42 CFR § 1007.15(a).

¹² 42 CFR § 1007.15(b) and (c).

¹³ 42 CFR § 1007.15(d)(2).

¹⁴ SSA § 1902(a)(61).

functions and meeting program requirements.¹⁵ Examples of standards include maintaining an adequate caseload through referrals from various sources, maintaining an annual training plan for all professional disciplines, and establishing policy and procedure manuals to reflect the Unit's operations.

Alabama Medicaid Program

The Alabama Medicaid program is a component of the Alabama Department of Health. The program provides services to over 940,000 beneficiaries.¹⁶ Total Alabama Medicaid expenditures for FY 2013 were \$5.2 billion.¹⁷

Alabama Unit

The Alabama Unit operates within the Alabama Office of the Attorney General. MFCU grant expenditures totaled \$3.1 million for FYs 2011 through 2013.¹⁸ At the time of our onsite review in January 2014, the Unit employed 8 staff members including 1 director, 1 chief investigator, 1 chief auditor, 1 nurse analyst, 3 investigators, and an administrative assistant. The Unit director also serves as the Unit attorney. The Unit headquarters is located in Alabama's capital, Montgomery. The Unit attorney has Statewide jurisdiction to prosecute MFCU cases, as well as the opportunity to refer or prosecute cases jointly with the United States Attorney's Office (USAO) in the Northern and Southern Districts of Alabama.

Previous Review

In 2008, OIG conducted an onsite review of the Alabama Unit and found that the Alabama MFCU was in full compliance with all applicable Federal rules and regulations that govern the grant and the 12 performance standards.

¹⁵ 77 Fed. Reg. 32645 (June 1, 2012). Accessed at <http://oig.hhs.gov/authorities/docs/2012/PerformanceStandardsFinal060112.pdf> on September 12, 2014. Previous performance standards, established in 1994, are found at 59 Fed. Reg. 49080 (Sept. 26, 1994). Accessed at <http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/files/Performance%20Standards.pdf> on September 12, 2014.

¹⁶ Alabama Medicaid Agency, *Report of the Alabama Medicaid Advisory Commission*. Accessed at http://www.medicaid.alabama.gov/documents/2.0_Newsroom/2.2_Boards_Committees/2.2.1_Med_Adv_Commission/2.2.1_Final_Commission_Report_1-31-13.pdf on September 12, 2014.

¹⁷ OIG, *MFCU Statistical Data for FY 2013*. Accessed at http://oig.hhs.gov/fraud/medicaid_fraud_control_units_mfcu/expenditures_statistics/fy2013-statistical-chart.htm on September 12, 2014.

¹⁸ OIG analysis of Unit Quarterly Statistical Reports, FY 2013.

METHODOLOGY

We conducted the onsite review in January 2014. We based our review on an analysis of data from seven sources: (1) a review of policies, procedures, and documentation related to the Unit's operations, staffing, and caseload including criminal convictions, civil settlements and judgments, recoveries, and referrals; (2) a review of financial documentation; (3) structured interviews with key stakeholders; (4) a survey of Unit staff; (5) structured interviews with the Unit director and supervisors; (6) an onsite review of a sample of case files; and (7) an onsite observation of Unit operations. Appendix A contains the details of our methodology.

Standards

This study was conducted in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

For FYs 2011 through 2013, the Unit reported 10 criminal convictions, 63 civil judgments and settlements, and recoveries of over \$63 million

For FYs 2011 through 2013, the Unit reported 10 criminal convictions and 63 civil judgments and settlements. FY 2013 had notably fewer outcomes than the prior 2 years, with no criminal convictions and eight civil judgments and settlements. See Table 1.

Table 1: Alabama MFCU Criminal Convictions and Civil Judgments and Settlements, FYs 2011 Through 2013

Outcomes	FY 2011	FY 2012	FY 2013	Total
Criminal Convictions	4	6	0	10
Civil Judgments and Settlements	30	25	8	63

Source: OIG analysis of Unit data,, FYs 2011 through 2013.

For the same time period, the Unit reported combined civil and criminal recoveries of over \$63 million.¹⁹ See Table 2. Recoveries from global cases totaled over \$60 million and accounted for 95 percent of all recoveries during the 3-year review period. Notably, the Unit reported no recoveries from criminal or nonglobal civil cases in FY 2013.

Table 2: Alabama MFCU Recoveries, FYs 2011 Through 2013

Recovery Type	FY 2011	FY 2012	FY 2013	Total Recoveries
Global Civil	\$22,812,037	\$21,044,972	\$16,206,582	\$60,063,591
Nonglobal Civil	\$540,777	\$1,187,719	\$0	\$1,728,496
Criminal	\$1,138,393	\$116,350	\$0	\$1,254,743
Total Recoveries	\$24,491,207	\$22,349,041	\$16,206,582	\$63,046,830

Source: OIG analysis of Unit data, FYs 2011 through 2013.

¹⁹ Unit-reported recoveries include funds recovered from “global” cases, which are civil false claims cases that are brought by the U.S. Department of Justice and involve a group of State MFCUs. The National Association of Medicaid Fraud Control Units facilitates the settlement of global cases on behalf of the States.

Nearly half of the Unit’s civil settlements resulted from audits that were outside the MFCU’s grant authority

Federal MFCU regulations stipulate that FFP is not available for the “investigation of cases of program abuse or other failures to comply with applicable laws and regulations, if these cases do not involve substantial allegations or indications of fraud.”²⁰ However, the Unit conducted 90 audits of nursing homes and therapeutic foster care agencies that did not involve allegations of fraud. These audits resulted in nearly half of the Unit’s civil settlements (29 of 63 civil settlements during the review period) and nearly half of the Unit’s nonglobal civil recoveries (\$800,000 of \$1.7 million in nonglobal civil recoveries during the period).²¹ The Unit consistently reported these audits to OIG in annual reports between 2005 and 2011.²² In April 2012, OIG determined the audits to be outside the MFCU’s grant authority. Unit officials did not contest this determination and agreed to halt the remaining audits and refer them instead to the State Medicaid agency. During the onsite review, OIG confirmed that the Unit had halted this practice.

Only a small portion of Unit referrals—6 percent—came from the State Medicaid agency

According to Performance Standard 4, the Unit should take steps to maintain an adequate volume and quality of referrals from the State Medicaid agency and other sources. However, among the 235 referrals accepted by the Unit during the 3-year review period, only 15 referrals (6 percent) came from the State Medicaid agency. Officials from both entities agreed that 15 was a relatively small number for the 3-year period, given the size of the State Medicaid program. State Medicaid agency staff said that they needed more guidance from the Unit regarding what constitutes a quality referral. Officials from both the State Medicaid agency and the Unit agreed that training regarding what constitutes a quality referral of fraud would be beneficial. See Appendix B for more information on Unit referrals.

²⁰ 42 CFR § 1007.19(e)(1).

²¹ These monies involved in these audits were “estate recoveries.” Section 1917 of the SSA mandates that States implement estate recovery programs to recoup medical assistance payments from the estates of deceased Medicaid beneficiaries. Estate recovery is normally performed by the State Medicaid agencies and is not an activity within the MFCU scope of duties as defined in SSA § 1903(q) and 42 CFR § 1007.11.

²² Although the Unit consistently reported to OIG that it was conducting these audits, it was not until 2012 that OIG determined that the audits fell outside the MFCU grant authority. Because OIG did not object to these audits until 2012, OIG is not requesting that the Unit repay grant funds spent on these audits.

The Unit did not have a cooperative working relationship with certain Federal partners

According to Performance Standard 8, the Unit should cooperate with OIG and other Federal agencies in the investigation and prosecution of Medicaid and other health care fraud. According to our interviews with representatives of these entities, the Unit had a cooperative working relationship with the Internal Revenue Service (IRS), the Food and Drug Administration (FDA), the Federal Bureau of Investigation (FBI), and the USAO for the Middle District of Alabama.²³ However, the Unit did not have a cooperative working relationship with OIG investigators or the USAO for the Southern District of Alabama.

According to stakeholder interviews, the relationship between the Unit and OIG investigators has not been cooperative in recent years and the two entities did not regularly work together on investigations. Documentation showed that the Unit and OIG investigators worked only 2 joint cases during FYs 2011 through 2013. Despite OIG investigators and the Unit director both reporting they intended to improve their relationship, neither reported positive progress by the time of publication.

According to stakeholder interviews, the relationship between the Unit and the USAO for the Southern District of Alabama has also not been cooperative in recent years. Although the Unit prosecutes cases with the USAO for the Northern District of Alabama, there were few Unit cases prosecuted with the Southern District. Neither the Unit nor the USAO for the Southern District of Alabama reported efforts to improve their relationship.

The Unit lacked written policies for referring cases to Federal and State agencies

According to Performance Standard 3(c), the Unit should establish written policies and procedures for referring cases to Federal and State agencies, including the State Medicaid agency. Written procedures are important to ensure the referral of cases that may warrant administrative action, such as the collection of overpayments or suspension of Medicaid payments. Unit officials reported that they had a process for making such referrals and documentation indicated the Unit referred 14 cases to Federal and State agencies during FYs 2011 through 2013. However, the Unit's referral process was not incorporated into the Unit's written policy and procedures manual, as specified by the performance standard. Subsequent to our

²³ The USAO for the Northern District of Alabama could not be reached for comment.

onsite review, the Unit incorporated into its procedures manual the policies for referring cases to outside agencies.

The Unit did not refer information about all convictions to OIG and did not send some information within the appropriate timeframe

According to Performance Standard 8(f), the Unit should transmit all pertinent information on MFCU convictions to OIG for the purposes of program exclusion. The Unit did not refer 3 of its 10 convictions obtained during FYs 2011 through 2013 to OIG for exclusion. For three of the other seven convictions, the Unit took more than 140 days to send conviction information.²⁴ Unit officials reported that during FYs 2011 through 2013, the Unit did not have a formal process for sending and tracking submission of conviction information to OIG.

Unit supervisors did not always conduct periodic case reviews and, when they did conduct such reviews, they did not include notations in cases files

According to Performance Standard 7(a), reviews by supervisors should be conducted periodically, consistent with the Unit's policies and procedures, and noted in the case files. According to the Unit's procedures during FYs 2011 through 2013, supervisors were expected to meet with investigators every 3–6 months to review their cases. However, we found that Unit supervisors did not conduct any such reviews during FY 2011, and conducted many reviews less frequently than every 6 months during FYs 2012 and 2013. When reviews did occur, they were not noted in the case files, but instead records of the reviews were kept in the Chief Investigator's office.

Other observation: OIG case file review suggested a lack of thorough investigation

OIG's criminal investigator conducted an indepth review of 26 of the Unit's case files.²⁵ This review found that 9 cases (35 percent) were closed

²⁴ The 1994 Performance Standards indicated that information about convictions should be transmitted within 30 days after sentencing "or other reasonable time period;" the 2012 Performance Standards stipulate that conviction information should be sent within 30 days after sentencing.

²⁵ Although not directly applicable to the MFCUs, the Quality Standards for Investigations issued by the Council of the Inspectors General on Integrity and Efficiency describe standards and principles for the conduct of investigations by Federal Offices of Inspector General, including that investigations be conducted in a timely, efficient, thorough, and objective manner. Quality Standards for Investigations (November 15, 2011), p. 11. Accessed at <https://www.ignet.gov/sites/default/files/files/committees/investigation/invprg1211appi.pdf> on March 31, 2015.

without the Unit first completing a thorough investigation. While onsite, the OIG staff made recommendations on the handling of future cases. In offering their recommendations, OIG staff recognize that each investigation is unique and cannot be molded to a single, standard test of sufficiency. In a separate letter, we will send the Unit a list of the cases in which we questioned the thoroughness of investigations.

CONCLUSION AND RECOMMENDATIONS

The Unit's low criminal and civil case outcomes for the period of our review, in conjunction with our findings regarding Unit operations, suggest that additional attention to Unit efficiency and effectiveness is warranted. For FYs 2011 through 2013, the Alabama Unit reported 10 criminal convictions, with none during FY 2013, and total nonglobal recoveries of \$2.9 million. Further, nearly half of the Unit's civil settlements resulted from audits that were outside the MFCU's grant authority. Additionally, many of our case file reviews revealed problems with the thoroughness of Unit investigations. We encourage the Unit to examine its internal processes and work with the OIG to develop and implement improvement strategies.

Additionally, our review found one issue of significant noncompliance with applicable laws, regulations, or policy transmittals. We found multiple areas in which the Unit could improve its operations to more fully align with the MFCU Performance Standards.

Therefore, we specifically recommend that the Alabama Unit:

Strengthen processes to ensure that investigations involve allegations of fraud or patient abuse or neglect

Contrary to 42 CFR § 1007.19(e)(1), nearly half of the Unit's civil settlements during the period of our review resulted from audits that focused on compliance with programmatic laws and regulations, rather than on allegations of fraud or patient abuse or neglect. The Unit had agreed to halt such audits in April 2012. To prevent similar situations in the future, the Unit should strengthen its processes to screen potential cases to ensure that they involve allegations of fraud or patient abuse and neglect. The processes should include mechanisms for consulting with OIG, as needed, regarding unusual circumstances where it may be unclear whether a case would be within or outside the scope of the MFCU grant.

Provide training to the State Medicaid agency regarding elements of a quality referral of fraud

Only a small portion of Unit referrals—6 percent—came from the State Medicaid agency. The Unit should work with the State Medicaid agency to ensure that it receives an adequate number of referrals. To this end, the Unit should provide training to the State Medicaid agency regarding what constitutes a quality referral of fraud.

Continue existing efforts, and initiate new efforts, to achieve a cooperative working relationship with its Federal partners

The Unit director reported convening a meeting in March 2013 to discuss how the Unit and OIG investigators could improve their working relationship. The Unit should continue to find ways to improve its working relationship with OIG investigators. Additionally, the Unit should initiate efforts to improve the working relationship with the USAO for the Southern District of Alabama.

Implement procedures to ensure that the Unit timely transmits information about all convictions to OIG for purposes of exclusion

The Unit did not refer information about all convictions to OIG and did not send some information timely. The Unit should implement a tracking system or other means to ensure that it promptly transmits all conviction information to OIG in accordance with MFCU Performance Standard 8(f).

Implement processes to ensure that supervisors conduct case reviews periodically, consistent with the Unit's policies and procedures

These processes may include automated reminders or other mechanisms to alert Unit staff when cases are due for periodic reviews. The processes should ensure that reviews are documented in case files, consistent with Performance Standard 7(a).

UNIT COMMENTS AND OFFICE OF INSPECTOR GENERAL RESPONSE

The Unit concurred with all the recommendations but objected to the observation that many reviews of case files revealed problems with the thoroughness of Unit investigations. The Unit stated its belief that this observation was subjective and outside the scope of the 12 MFCU performance standards. Although the level of thoroughness of investigations is a matter of professional judgment, the team performing the review found it to be an issue with respect to many of the reviewed case files and believe the observation to be appropriate. OIG uses standardized protocols for its reviews of random samples of MFCU case files, and these reviews are conducted by a program evaluation team that includes an experienced OIG criminal investigator. Regarding the scope of the performance standards, OIG has a general responsibility for the effective operation of the MFCUs. We believe that in addition to making specific findings and recommendations regarding a Unit's adherence to standards or program requirements, it is appropriate for us to include observations about salient issues that may improve a Unit's ability to investigate or prosecute fraud and patient abuse or neglect. In response to the Unit's comments about our observation, we made changes to the report to give greater context regarding the extent of the problems. Additionally, we removed specific case examples and will instead send a list of cases to the Unit in a separate letter.

Regarding the first recommendation (to strengthen processes to ensure that investigations involve allegations of fraud or patient abuse or neglect), the Unit reiterated that it suspended the audit activity that led to the recommendation.

Regarding the second recommendation, the Unit reported that it will continue to participate in monthly meetings with the Alabama Medicaid agency to discuss pending cases and engage in joint training in areas of mutual interest, including the development of quality referrals. However, the Unit contends that referrals are not low because the Medicaid agency does not understand what constitutes a quality referral of fraud, but rather because the agency lacks the technology to conduct modern fraud detection. The Unit stated that it will continue to work with the Alabama Medicaid agency to improve fraud detection through acquisition of modern data-mining technology.

Regarding the third recommendation, the Unit reported that it will continue to work with all State and Federal agencies, and that Unit employees have initiated contact with USAO representatives in an effort to establish a more cooperative working relationship.

Regarding the fourth recommendation, the Unit reported that it has implemented procedures to ensure that information about all convictions is transmitted to OIG for purposes of exclusion.

Regarding the fifth recommendation, the Unit reported that it has revised its policies and procedures to require that Unit supervisors review cases on at least a quarterly basis and document these reviews in case files.

The full text of the Unit's comments is provided in Appendix D.

APPENDIX A

Methodology

We used data collected from the seven sources below to describe the caseload and assess the performance of the Unit.

Data Collection and Analysis

Review of Unit Documentation. Prior to the onsite visit, we collected the Unit's Quarterly Statistical Reports, annual reports, recertification questionnaire, policy and procedures manuals, MOU with the State Medicaid Agency, and the 2008 OIG onsite review. We analyzed information about the number of referrals the Unit received, the number of investigations the Unit opened and closed, the outcomes of those investigations including the number of criminal convictions, civil judgments and settlements, recoveries, and the Unit's case mix. We also analyzed information about the number of cases that the Unit referred for prosecution and the outcomes of those prosecutions. We qualitatively analyzed the Unit's written policy manual to ensure it contained all components specified by the performance standards. Additionally, we confirmed with the Unit director that the information we had was current as of January 2014, and we requested any additional data or clarification as necessary.

Review of Fiscal Controls. We reviewed the Unit's controls over its fiscal resources to identify potential internal control weaknesses or other issues involving use of resources. Prior to the onsite review, we reviewed the Unit's financial policies and procedures; its response to an internal control questionnaire; and documents (such as financial status reports) related to MFCU grants. During the onsite review, we reviewed a sample of the Unit's purchase and travel transactions. In addition, we reviewed vehicle records, the equipment inventory, and a sample of time and effort records.

Interviews With Key Stakeholders. We interviewed key stakeholders, such as officials in the Alabama Department of Health, Program Integrity Division; the Department of Public Health, Division of Health Care Facilities; USAOs from the Northern and Southern Districts of Alabama; four OIG investigators; an FDA agent; two Special Agents with the FBI; and two Special Agents with the IRS who worked closely with the Unit during the review period. We focused these interviews on the Unit's relationship and interaction with OIG and other Federal and State authorities, and we identified opportunities for improvement. We used the information collected from these interviews to develop subsequent interview questions for Unit management. We also qualitatively analyzed interviews with key stakeholders to assess the Unit's relationships with partners.

Survey of Unit Staff. We conducted an online survey of all nonmanagerial Unit staff. The response rate was 100 percent. Our questions focused on operations of the Unit, opportunities for improvement, and practices that contributed to the effectiveness and efficiency of Unit operations and/or performance. The survey also sought information about the Unit's compliance with applicable laws and regulations.

Onsite Interviews with Unit Management. We conducted structured interviews with the Unit's management in January 2014. We interviewed the Unit director (who also served as the Unit's lead attorney), the chief auditor, the chief investigator, the nurse analyst, and an investigator. We asked these individuals to provide additional information to better understand the Unit's operations and clarify information obtained from other data sources.

Onsite Review of Case Files and Other Documentation. We selected a statistically valid, simple random sample of 100 case files from the 310 nonglobal cases that were open at any point during FYs 2011 through 2013 for review. From these 100 case files, we selected another simple random sample of 50 files for a more indepth review (24 of these 50 cases were determined to be outside of the Unit's grant authority). After reviewing the 100 case files, we found that 4 case files were outside of the scope of our review and 1 case was appended to another case. We reviewed the 95 sampled case files for selected issues, such as the appropriateness and timeliness of investigations.

Onsite Review of Unit Operations. During our January 2014 onsite visit, we reviewed the Unit's workspace and operations. Specifically, we visited the Unit headquarters in the State capital. While onsite, we observed the Unit's offices and meeting spaces, security of data and case files, location of select equipment, and the general functioning of the Unit.

Finally, we analyzed data to identify any opportunities for improvement and any instances in which the Unit did not fully meet the performance standards or was not operating in accordance with laws, regulations, and policy transmittals.²⁶ In addition, we noted practices that appeared to be missed opportunities in the investigative and prosecutorial practices of the Unit. We based these observations on statements from Unit staff, data analysis, and our own judgment. We did not independently verify the effect of these practices, but included the information because it may be useful to other Units in their operations.

²⁶ All relevant regulations, statutes, and policy transmittals are available online at <http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu>.

APPENDIX B

Referrals of Provider Fraud and Patient Abuse and Neglect to the Alabama MFCU by Source, FYs 2011 Through 2013

Table B-1: Referrals of Fraud and Abuse to MFCU

Case Type	FY 2011	FY 2012	FY 2013	Total
Provider Fraud	23	48	19	90
Patient Abuse and Neglect	61	55	29	145
Total	84	103	48	235

Source: Alabama MFCU response to OIG data request.

Table B-2: Referrals to MFCU, by Referral Source

Referral Source	FY 2011		FY 2012		FY 2013	
	Provider Fraud	Patient Abuse and Neglect	Provider Fraud	Patient Abuse and Neglect	Provider Fraud	Patient Abuse and Neglect
Medicaid Agency	6	0	6	0	3	0
State Survey / Certification	0	28	0	22	0	19
Law Enforcement	1	0	5	0	2	0
HHS OIG	0	0	5	0	2	2
Provider	1	4	2	3	2	2
Adult Protective Services	0	3	0	6	0	2
Private Citizen	3	2	10	3	3	3
Self-Generated Referrals	8	0	15	0	0	0
Other	4	24	5	21	7	1
Total Referrals Received	23	61	48	55	19	29

Source: Alabama MFCU response to OIG data request.

APPENDIX C

Investigations Opened and Closed by Provider Category and Case Type, FYs 2011 Through 2013

Table C-1: Annual Opened and Closed Investigations

Case Type	FY 2011		FY 2012		FY 2013	
	Opened	Closed	Opened	Closed	Opened	Closed
Provider Fraud	23	25	30	20	12	13
Patient Abuse and Neglect	61	46	55	53	29	31
Global Cases	4	16	5	8	7	11
Total Opened and Closed	88	87	90	81	48	55

Source: Alabama MFCU response to OIG data request.

Table C-2: Patient Abuse and Neglect Investigations

Provider Category	FY 2011		FY 2012		FY 2013	
	Opened	Closed	Opened	Closed	Opened	Closed
Nursing Facility	0	0	0	0	0	0
Other Long-Term Care	0	0	0	0	0	0
Nurses/Physician's Assistants/Nurse Practitioner/Certified Nurse Aide	34	18	33	20	24	29
Home Health Aide	0	0	0	0	0	0
Nondirect Care	25	28	22	31	5	2
Other	2	0	0	2	0	0
Total	61	46	55	53	29	31

Source: Alabama MFCU response to OIG data request.

Table C-3: Provider Fraud Investigations

Provider Fraud Investigations Opened and Closed, by Provider Category	FY 2011		FY 2012		FY 2013	
	Opened	Closed	Opened	Closed	Opened	Closed
Facilities						
Hospitals	0	0	0	0	0	0
Nursing Facilities	0	0	0	9	0	0
Other Long-Term Care Facilities	0	0	0	0	0	0
Substance Abuse Treatment Centers	0	0	0	0	0	0
Other Facilities	12	16	10	6	0	4
Practitioners						
Doctors of Medicine or Osteopathy	3	0	6	1	3	1
Dentists	1	1	2	1	1	0
Podiatrists	0	0	0	0	0	0
Optometrist/Opticians	1	0	2	0	0	1
Counselors/Psychologists	1	0	4	1	2	0
Chiropractors	0	0	0	0	0	0
Other Practitioners	0	0	0	0	2	1
Medical Support						
Pharmacies	1	0	1	1	0	0
Pharmaceutical Manufacturers	0	0	1	0	1	1
Durable Medical Equipment	2	2	2	1	0	2
Laboratories	0	3	0	0	2	1
Transportation Services	0	0	1	0	0	1
Home Health Care Agencies	2	2	0	0	0	1
Home Health Care Aides	0	0	0	0	0	0
Nurses/Physician's Assistants/Nurse Practitioner/Certified Nurse Aide	0	0	0	0	0	0
Radiologists	0	0	0	0	0	0
Other Medical Support	0	1	0	0	0	0
Program Related						
Managed Care	0	0	0	0	0	0
Medicaid Program Administration	0	0	1	0	1	0
All Fraud Investigations						
Total	23	25	30	20	12	13

Source: Alabama Unit response to OIG data request.

APPENDIX D

Unit Comments



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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September 12, 2014

VIA ELECTRONIC MAIL

Ms. Suzanne Murrin
Deputy Inspector General
Office of Inspector General
Department of Health and Human Services
Room 5660 Cohen Building
330 Independence Avenue, SW
Washington, DC 20201

RE: Alabama MFCU 2014 Onsite Review

Dear Ms. Murrin:

As requested, this letter is provided in response to the recommendations contained in the draft report entitled *Alabama State Medicaid Fraud Control Unit: 2014 Onsite Review*, OEI-06-13-0060, issued by your office on August 20, 2014.

RECOMMENDATION ONE: Implement processes to ensure that investigations involve allegations of fraud or patient abuse or neglect.

RESPONSE: The Unit concurs with this recommendation, to ensure that future Unit activities comply with OIG guidelines. The Unit submits that it was operating under a good faith assumption that it was in compliance with OIG's requirement that investigations involve allegations of fraud, as it relates to the audit activities in question. As noted on page six of the draft report, the Unit consistently reported its audit activity for seven years in its annual report to OIG. The audit activity was reviewed by OIG staff during the 2008 onsite, with no finding of noncompliance. The Unit expresses concern over a finding of "significant noncompliance" in the current on-site review, as OIG knew or should have known of this issue for seven years. The Unit immediately suspended the audit activity in April 2012, when advised by OIG staff that the activity was outside the scope of the MFCU grant.

The Unit also notes that the audit activity resulted in the return of over \$7.3 million to the Alabama Medicaid Agency that would have otherwise not been recovered, as neither the Agency nor its subcontractors had taken responsibility for overseeing compliance by the service providers. The Unit also recovered its costs, in the amount of \$290,465.

RECOMMENDATION TWO: Provide training to the State Medicaid agency regarding elements of a quality fraud referral.

RESPONSE: The Unit agrees with this recommendation. The Unit has addressed this issue with the Alabama Medicaid Agency many times prior to the 2014 on-site review. While the MFCU concurs with the finding that 6 percent of its referrals for the audit period came from the Alabama Medicaid Agency, it disagrees with the conclusion that referrals are low because the Agency does not understand what a constitutes a quality fraud referral.

The Unit submits that reason for the low number of referrals is because the Alabama Medicaid Agency lacks the technology to conduct modern fraud detection. This is evidenced by the low provider recoupments by the Agency; \$862,066, \$2,666,832 and \$2,091,548 for fiscal years 2010, 2011 and 2012, respectively, as reported in the Agency's 2012 annual report.

The Unit continues to work with the Agency to improve fraud detection through the acquisition of modern data mining technology. The MFCU and the Agency participate in monthly meetings to discuss pending cases and engage in cross training in areas of mutual interest, including the development of quality referrals.

RECOMMENDATION THREE: Continue existing efforts, and initiate new efforts, to achieve a cooperative, working relationship with its Federal partners.

RESPONSE: The Unit concurs with this recommendation. The Unit will continue to work with all agencies, both state and federal, that desire to work as equals in the investigation and prosecution of healthcare fraud. Unit employees have been in contact with representatives of the USAO for the Southern District of Alabama since the onsite review was conducted in an effort to establish a cooperative working relationship between the two offices.

RECOMMENDATION FOUR: Implement procedures to ensure that the Unit transmits information about all convictions to OIG for purposes of exclusion.

RESPONSE: The Unit concurs with this recommendation. The Unit had implemented these procedures prior to the January 2014 onsite, once it became apparent that this was a recurring issue in the current onsite reviews being conducted by OIG. The Unit will continue to follow these procedures to ensure that all conviction information is transmitted to OIG, in accordance with MFCU Performance Standard 8(f).

RECOMMENDATION FIVE: Implement processes to ensure that supervisors conduct case reviews periodically, consistent with the Unit's policies and procedures.

RESPONSE: The Unit concurs with this recommendation. Immediately following the January 2014 onsite review, the Unit revised its policies and procedures to require that Unit supervisors conduct case reviews on a quarterly basis, or more often at the discretion of the supervisor. All case reviews will be documented in writing and will be scanned into the respective case file that is maintained in the Unit's electronic case management system.

The Unit objects to the "Other Observation" on page 8 of the draft report as subjective and outside the scope of the 12 performance standards. As noted in the original draft received from the review team, there are no standards for what constitutes appropriate investigative practices. For OIG to substitute its opinion for the Unit's in specific cases is inappropriate, particularly when the opinion is rendered without any knowledge of the elements of proof required by the state criminal statutes under which the Unit prosecutes cases.

In one example, the review team cites an allegation of resident abuse that had been investigated six times by the Licensure and Certification Division of the Alabama Department of Public Health prior to the complainant contacting the Unit. On six occasions, the ADPH conducted an investigation, including onsite visits, and found no evidence of the resident being abused or neglected. After ADPH advised the Unit of its findings, the Unit declined to open an investigation. For OIG to speculate that a seventh investigation by the Unit might have resulted in a different outcome is pure conjecture and inappropriate.

The review team also opined that, in cases being investigated by local law enforcement, the Unit should have opened a separate investigation. The Unit advised the review team that, when Unit staff learns of a case being worked by local law enforcement, the chief investigator contacts the local agency and offers assistance. If assistance is declined, the Unit does not open a case. There is no OIG requirement that the Unit conduct a separate investigation.

Thank you for allowing the Unit an opportunity to respond to the 2014 onsite review findings. Please do not hesitate to contact me if you need any additional information.

Sincerely,



Bruce M. Lieberman
Assistant Attorney General
Director, Medicaid Fraud Control Unit

ACKNOWLEDGMENTS

This report was prepared under the direction of Kevin K. Golladay, Regional Inspector General for Evaluation and Inspections in the Dallas regional office; Blaine Collins, Deputy Regional Inspector General; and Ruth Ann Dorrill, Deputy Regional Inspector General.

Lyndsay Patty served as the Team Leader for this study and Ben Gaddis served as the Lead Analyst. Other Office of Evaluation and Inspections staff who contributed include Maria Balderas. Office of Investigations staff provided support. Central office staff who provided support include Thomas Brannon, Michael J. Brown, Kevin Farber, Christine Moritz, and Richard Stern.

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<http://oig.hhs.gov>

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