Medicaid Fraud Control Units an Overview

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THE BEGINNING

- President Lyndon Johnson's "Great Society"
- Significant evidence of a lack of medical care available to the elderly and economically disadvantaged
- Congress created the Medicare & Medicaid programs (Titles XVIII and XIX of the Social Security Act)

MEDICAID – Title XIX

- State-run program, jointly funded by federal and state funds, to provide medical care to economically disadvantaged
- Federal share - Federal Medical Assistance Percentage (FMAP) determined annually by comparing state's average per capita income with national income average
- FMAP ranges from 50 to 83 percent
- Each state, within federal guidelines, determines type, duration and scope of services and sets rate of payment
- Total Medicaid budget for FY 2009: $384 billion
- Affordable Care Act (P.L. 111-152) greatly expands eligibility in 2014
- Prescription drug benefits are included in each state plan

MEDICARE – Title XVIII

- Federally funded healthcare program that provides care to persons 65 or over
- Total Medicare budget for FY 2009: $509 billion
- "PART A" pays for inpatient hospital, home health, skilled nursing, and hospice
- "PART B" or Supplemental Medical Insurance (SMI) pays for physician services, outpatient hospital, home health, and other services
- "PART C" Medicare Advantage Program – gives beneficiaries option to participate in managed care plans
- "PART D" provides subsidy for prescription drugs, on a voluntary basis, for drugs not covered by Part A or B
- For more details about both programs, see Tab 6 NAMFCU Resource CD

Children's Health Insurance Program (CHIP) – Title XXI

- Funding extended thru 2015
- States may elect to provide coverage to qualifying children under Medicaid program.
- OR through a state program separate from Medicaid

MEDICAL SERVICES PAID BY THE MEDICAID PROGRAM

MANDATORY SERVICES

- Inpatient hospital
- Outpatient hospital
- Lab / X-ray
- Long term care
- Early Periodic Screening Diagnostic and Treatment (EPSDT) [for children]

MEDICAL SERVICES PAID BY THE MEDICAID PROGRAM

MANDATORY SERVICES

- Family planning services and supplies
- Rural health clinics
- Nurse-Midwife
- Pediatric and family nurse practitioner services
- Pregnancy – related services
- Physicians
- Prescription drugs
- Nursing facility services for persons aged 21 or older
- Home health care for persons eligible for skilled-nursing services
- Vaccines for children

MEDICAL SERVICES PAID BY THE MEDICAID PROGRAM

OPTIONAL SERVICES

- Nursing facility services for children under age 21
- Intermediate care facilities for mentally retarded
- Dental/ dentures
- Rehabilitation and physical therapy services
- Hospice

MEDICAL SERVICES PAID BY THE MEDICAID PROGRAM

OPTIONAL SERVICES

- Transportation
- Durable Medical Equipment (DME)
- Optometry and eyeglasses
- Prescribed drugs and prosthetic devices
- Home and community based care to certain persons with chronic impairments
- Targeted case management services

Cross- Over Claims

- Medicare beneficiaries with low income may also be eligible for Medicaid
- These beneficiaries may have supplemented services under Medicaid
- Services Including: Eyeglasses, hearing aides, nursing facility care beyond the 100-day limit of Medicare, prescription drugs
- For enrollees in both programs, services paid for by Medicare first before any payments by Medicaid
- Medicaid always “payer of last resort”

HISTORY OF MFCU PROGRAM

- Congress failed to provide safeguards in Medicaid program
- There was no specific state or federal law enforcement agency to monitor program

HISTORY OF MFCU PROGRAM

- Numerous Congressional hearings were held in the mid-1970s on fraud and abuse in nursing homes, clinical labs and other Medicare/Medicaid providers

- New York Model: Appointment of Special Prosecutor who created a task force with dedicated staff to investigate and prosecute Medicaid fraud

MFCU PROGRAM

- MFCUs have approximately 2,000 staff nationwide
- Until 1995, the MFCU program was voluntary. Federal law now requires each state to have a MFCU or submit a waiver to the Secretary of HHS
  - 49 states and the District of Columbia have MFCUs
  - North Dakota does not have a MFCU

MFCU PROGRAM

- 43 MFCUs are in offices of the Attorney General
- 7 MFCUs are in other state agencies
- Connecticut, District of Columbia, Georgia, Illinois, Iowa, Tennessee, West Virginia
- Although the territories, American Samoa, Guam, Puerto Rico and the Virgin Islands participate in the Medicaid program, they do not have MFCUs

MFCU JURISDICTION

- Investigate and prosecute healthcare provider fraud in the Medicaid program, or refer for prosecution
  - Fraud in the administration of the program

MFCU JURISDICTION

- Identify overpayments made by the program to Medicaid providers and attempt to collect overpayments or refer for collection
- Review complaints of resident abuse or neglect in healthcare facilities receiving Medicaid funding
- May review complaints of the misappropriation of resident's private funds in facilities

EXTENDED MFCU JURISDICTION

- Ticket to Work and Work Incentive Improvement Act (1999), P.L. 106-170
- Authorized MFCUs to:
  - Investigate and prosecute fraud involving other federally funded healthcare programs where there is a Medicaid nexus (e.g., Medicare)

EXTENDED MFCU JURISDICTION

- Investigate and prosecute resident abuse and neglect in facilities not receiving Medicaid funding

- While both additional authorities are optional, OIG must approve cases involving other federally funded programs

FEDERAL REGULATIONS
42 C.F.R. 1007.1-1007.21

- **MFCUs must be a separate identifiable unit of state government**
- **Statewide prosecutorial authority options**
  1. **Direct MFCU prosecution**
  2. **Local prosecution (referrals)**
  3. **Federal prosecution**
     - **Cross-designation of MFCU attorneys or referral**

FEDERAL REGULATIONS
42 C.F.R. 1007.1-1007.21

- Staffed by investigators, auditors, and prosecutors (Task Force approach)
  - One or more attorneys with experience in the investigation and prosecution of civil or criminal fraud
  - Senior investigator with substantial experience in commercial or financial investigations
  - One or more experienced auditors capable of reviewing financial records

FEDERAL REGULATIONS
42 C.F.R. 1007.1-1007.21

- **MFCU must be independent of the Medicaid agency**
- **No Medicaid agency official has authority to review Unit activities**
- **No Medicaid agency funds go to MFCU or vice versa**

FEDERAL REGULATIONS

42 C.F.R. 1007.1-1007.21

- **Unit must have an agreement with Medicaid agency - Memorandum Of Understanding (MOU) [See Resource CD]**
- **Coordination of state anti-fraud efforts in one office**

ACTIVITIES PROHIBITED BY FEDERAL REGULATIONS

- Investigating cases of program abuse (as opposed to fraud)
- Screening claims, analysis of patterns, or routine verification with recipients whether services are received (data mining)
- Recipient fraud (unless suspected conspiracy with provider)

MFCU INTERACTION WITH THE MEDICAID PROGRAM (42 CFR 455.21)

- **The Medicaid program must:**

  (1) Refer all cases of suspected fraud to the MFCU

  (2) Promptly comply with a request to:

  A. Be given access to and be provided free copies of agency records kept by the agency

  B. Be provided computerized data (without charge and in the form requested by the MFCU)

MFCU INTERACTION WITH THE MEDICAID PROGRAM (cont.)

C. Be given access to any information kept by providers which is accessible by the agency

(3) Initiate any available administrative or judicial action to recover improper payments to a provider upon referral from the MFCU

MFCU ACCESS TO PROVIDER RECORDS

- The provider must give the MFCU access to records

  42 CFR 431.107: The state plan requires that providers "on request, furnish to the… MFCU…any information…regarding payments claimed by the provider for furnishing services under the plan;…" 42 USC 1320a-7(b) (12) allows the Inspector General to exclude those providers who fail to grant immediate records access to a MFCU.

- Access must be coordinated with OIG

CRIMINAL PROSECUTION

- **CRIMINAL**
  - General state criminal statutes
  - Specific state statutes
  - Various federal statutes

CIVIL PROSECUTION

- **FRAUD AND NEGLECT**
  - Federal False Claims Act
  - Civil Monetary Penalty Law (CMPL)
    - Specified state statutes
    - Common law causes of action
    - Referral to HHS/OIG

PROVIDER EXCLUSIONS

42 USC 1320a-7 and 42 CFR 1001 et. seq.

- **Mandatory: Criminal conviction related to health care delivery . . . or . . . Conviction related to the neglect or abuse of a patient in connection with the delivery of health care services. MINIMUM FIVE YEARS.**

- **Permissive: Derivative or non-derivative results from actions by a court, licensing board or agency. Non-derivative exclusions include excessive charges, unnecessary services, kickbacks, failure to disclose or supply information.**

PROFESSIONAL BOARDS AND STATE LICENSING

- Each state will administer disciplinary proceedings against the various professional licenses or certifications held by Medicaid providers

  - When investigating a particular provider, make sure to check with the appropriate board to determine what type of complaints, if any, have been filed against the provider

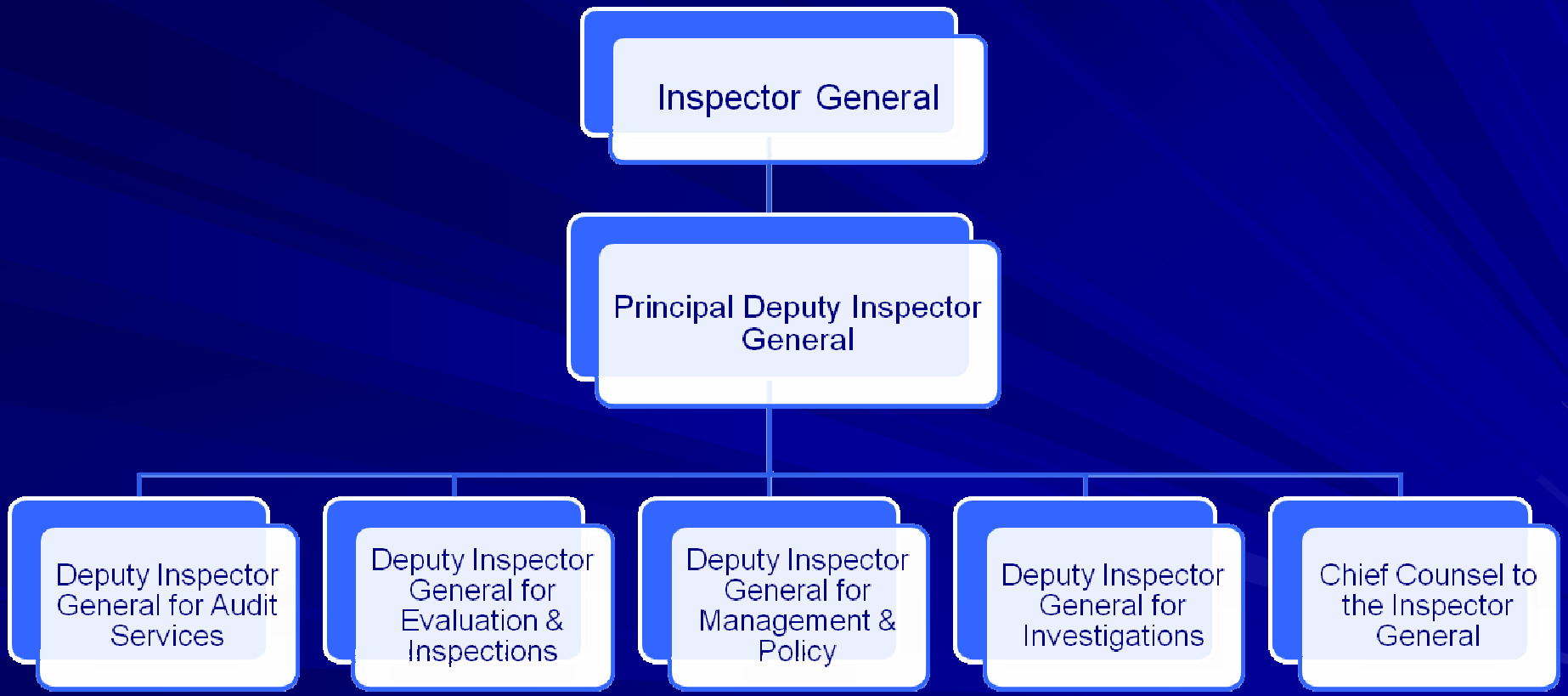
HEALTH INTEGRITY AND PROTECTION DATA BANK (HIPDB)

- National Health Care Fraud database for the reporting of specific final adverse actions against health care practitioners, providers and suppliers
- Maintained by HHS; provides a resource; requires a query fee

HEALTH INTEGRITY AND PROTECTION DATA BANK (HIPDB)

- As of October 1, 1999, all federal/state agencies (including MFCUs) must report certain final adverse actions to HIPDB, including:
  - civil judgments
  - criminal convictions
  - licensing actions
  - exclusions
  - any other adjudicated actions

HHS Office of Inspector General Organization Chart



HHS/OIG OVERSIGHT OF MFCUs

- U.S. Department of Health and Human Services (HHS), Office of Inspector General (OIG) authority to certify and recertify the MFCUs
  - Process designed to ensure MFCUs comply with federal law
  - HHS/OIG Policy Transmittals [See Resource CD]
  - Examples:
  - Full Time Employee Rule (1979, 1989, 1993)
    - No exceptions unless OIG gives approval for emergency/limited time
  - Investigation and Prosecution of Civil Fraud Cases (1999)

HHS/OIG (cont.)

- Each Unit prepares an annual report and grant application
  - Grant application requests federal funding for the year
  - Annual report details MFCU accomplishments
- OIG reviews the annual report and grant application when recertifying a Unit

PERFORMANCE STANDARDS BACKGROUND

- National Association of Medicaid Fraud Control Units (NAMFCU) worked with HHS/OIG to develop performance standards
- Intended to be used by OIG during on site visits to determine whether a Unit operates effectively and efficiently
- OIG visits each MFCU every 3 to 5 years
- OIG issues written report after visit

PERFORMANCE STANDARDS (12)

1. Conform with all applicable statutes, regulations, and policy directions
2. Maintain appropriate staffing levels
3. Establish procedures and systems for case management and tracking
4. Maintain adequate workload
5. Maintain appropriate case mix
6. Maintain continuous and timely case flow

PERFORMANCE STANDARDS

7. Process for monitoring case outcomes
8. Cooperate with OIG and other federal agencies
9. Recommend necessary statutory and programmatic changes
10. Maintain current Memorandum of Understanding (MOU) with Medicaid agency
11. Director should exercise fiscal control over Unit resources
12. Maintain an annual training plan for professional staff

MFCU PROGRAM FUNDING

- Federal government provides 75% of each MFCU's budget. State contributes remaining 25%
- OIG responsible for ensuring funds are used only for Medicaid fraud activities
- OIG awarded approximately $201 million in federal funds - FY 2011

GLOBAL CASES

- U.S. Dept. of Justice (DOJ) has authority to settle Medicare and federally funded portion of Medicaid, but not state portion of Medicaid
- National or Multi-state defendants
- Global Resolution of state and federal issues
- NAMFCU Best Practices for Global Investigations and Settlements

  (See Resource CD)

GLOBAL CASES – NAMFCU's ROLE

- Since 1992, NAMFCU has settled more than 70 cases and returned more than $6 billion to state Medicaid programs
- These cases have involved labs, durable medical equipment companies, hospitals, pharmacy chains and pharmaceutical manufacturers

FEDERAL FALSE CLAIMS ACT

- Most cases originate as FCA/qui tam filings
- Qui Tam: "Who pursues this action on our Lord the King's Behalf as well as his own"
- "Relator" acts on behalf of the government
- Relator must be "original source" of information
- May collect up to 30% of recovery but is guaranteed at least 15%

DEFICIT REDUCTION ACT (DRA) OF 2005

- Created Medicaid Integrity Program (MIP)
- Dramatically increased funding and staffing to Center for Medicaid and Medicare Services (CMS)
- Statutory Requirement to develop 5-year Comprehensive Medicaid Integrity Plan
- www.cms.hhs.gov/deficitreductionact
- A state with a qualifying state false claims act is entitled to an increase of ten percent in the share of any recovery under that state act
- Jurisdictions with qui tam statutes: CA, CT, DE, DC, FL, GA, HI, IL, IN, IA, LA, MA, MD, MI, MN, NV, NH, NJ, NM, NY, NC, OK, RI, TN, TX, VA, WI

National Association of Medicaid Fraud Control Units NAMFCU

- Founded in 1978 to share information about Medicaid fraud on a nationwide basis, provide training for MFCUs, and to represent MFCUs with Congress and HHS/OIG
- Headquarters located in Washington, D.C., at the National Association of Attorneys General (NAAG)
- Executive Director: Barbara L. Zelner
- Association Administrator/Meeting Planner: Tracye Payne Wilson
- Membership and Global Case Coordinator: Taylor Rose Bartlett

NAMFCU

- Executive Committee: President, Vice-President, Director of the New York MFCU, six regional representatives, and past Presidents
- Standing Committees:

  - Finance – Association funded by annual dues assessed on each Unit. Based on federal grant
  - Training
  - Global Case Committee
  - Resident Abuse Committee

NAMFCU

- **Association Training**
  - Intro to Medicaid Fraud Training Program
  - Directors Symposium
  - Medicaid Fraud Training Program 102
  - Annual Training Program
  - ABA/NAMFCU Health Care Fraud and Civil False Claims Act *Qui Tam* Enforcement Institutes
  - Global Case Training
  - Resident Abuse Training

NAMFCU

- Several Working Groups
- Newsletter – Medicaid Fraud Report – posted on www.NAMFCU.net
- Members Page – Each MFCU has 3 individuals with a password

THANK YOU

QUESTIONS?

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