Contents of Presentation:

1. Role of the MFCU in Healthcare Fraud Investigations.
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Healthcare Fraud

*The problem is so large that at its current growth rate, many experts in the industry, including CMS and the NHCAA, have projected healthcare fraud, waste, and abuse to rise as high as $330 billion by 2013.*

- George Lazenby
From 1991 – 2011
Prosecutions for healthcare fraud increased in the US by

822%

Fraud Prevention and Prosecution is Essential and Successful

- Over $300 million in civil recoveries since January 2008
- Intervention in federal lawsuits to obtain restitution for Kentucky’s Medicaid Program
- Every $1 the Federal Government Invests in Medicaid Fraud Prevention and Prosecution Resulted in a Savings of approximately $1.55
- Every $1 the Commonwealth of Kentucky Invested in MFCU in 2011 Resulted in a Return of approximately $8.25

Medicaid

- Title XIX of the Social Security Act
- State run program, jointly funded by federal and state funds, to provide medical care to economically disadvantaged
- Federal share determined annually by comparing state's average per capita income to the national average income
- Ranges from 50 to 83 percent
Medicaid Fraud & Abuse Control Unit

- Federal law requires each state to have a MFCU or to provide a waiver to the Secretary of HHS
- 49 states and the District of Columbia have MFCUs
- Kentucky MFCU began in 1980.

44 MFCUs are in the Office of the Attorney General
- 6 are in other state agencies such as the State Police

Investigate and prosecute healthcare provider fraud in the Medicaid program.
- Fraud in the administration of the program
- Recipient fraud investigated and prosecuted by KY HFS OIG / Commonwealth and County Attys.
Identify overpayments made by the program to Medicaid providers and attempt to collect overpayments or refer for collection

Work with KY HFS.

Can bring civil actions against providers.

Review and investigate complaints of resident abuse or neglect in healthcare facilities receiving Medicaid funding

May investigate abuse or neglect of Medicaid patient in non-Medicaid facility.

May review complaints of misappropriation of resident’s private funds in facilities

By facility personnel only. May not investigate misappropriation of funds by family members or others.
Kentucky MFCU Jurisdiction

I. Provider Fraud
   -Prosecuted under KRS 194A.505 “Prohibited Activities”
   -Prosecuted under KRS 205.8463 “Fraudulent Acts”
   -MFCU has original jurisdiction to prosecute

II. Patient Abuse and Neglect
   -Medicaid patients and/or Medicaid facilities
   -Prosecuted under KRS 209.990(2)-(4)
   -Commonwealth Attorneys have original jurisdiction to prosecute

III. Civil Cases
   -AWP Litigation
   -Global Settlements
   -Other Litigation

Federal Regulations
42 C.F.R. 1007.1 – 1007.21

- Statewide prosecutorial authority options:
  - Direct MFCU prosecutors
  - Local prosecutors
  - Federal prosecutions

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 state Medicaid agency funds go to MFCU or vice versa
Federal Regulations
42 C.F.R. 1007.1 – 1007.21

- Staffed by Investigators, Auditors, & Prosecutors
- One or more attorneys with experience in the investigation and prosecution of civil or criminal fraud
- Senior investigators with substantial experience in commercial or financial investigations
- One or more experienced auditors capable of reviewing financial records
- Must work Medicaid matters exclusively.

Kentucky MFCU

- Director
- Assistant Director / Litigation Manager
- Investigative Manager
- Audit Manager
- Investigative Supervisors
- 6 attorneys (3 civil; 3 criminal)
- 8 investigators
- 3 auditors
- Nurse / Certified Medical Coder
- Nurse / Patient Abuse Expert
- Admin. Asst. and Paralegal

MFCU Interactions 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 Interactions with the Medicaid Program
(42 CFR 455.21)

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

Payment Suspension Regulations

- Affordable Care Act (ACA) prohibits payment by the Medicaid program of federal financial participation (percent of state Medicaid funding that comes from federal government) when the state fails to suspend payments to a provider when an investigation is pending of a credible allegation of fraud.

  - Credible allegation of fraud is defined as one that has been verified by the state and has some reliability from any source.
  - Allows for continuation of payments if there is a certification that suspension of payment would hinder a law enforcement investigation.

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 5 years
Provider Exclusions
(42 USC 1320a-7 and 42 CFR 1001 et. Seq.)

- **Permissive:** Derivative or non-derivative results from actions by a court, licensing board or agency.

Significant Fraud Issues

- Unnecessary Hospital Admissions.
- Unnecessary Surgical Procedures.
- Transportation Fraud.
- Durable Medical Equipment.

- Up coding.
- Urine Drug Screening.
- Not Crediting Prescriptions which are not picked up.
- Billing for Services Not Provided.

CIVIL LITIGATION

- AWP Matters
- Global Cases
- Other Litigation
Average Wholesale Price

- Since AG Conway has been in office over $90 million in state and federal Medicaid funds have been recovered in 18 AWP lawsuits.
- The suits have alleged that companies manipulate the data they report to increase the reimbursement received.

Global Matters

- The National Association of Medicaid Fraud Control Units (NAMFCU) identifies questionable practices by healthcare providers and appoints teams of attorneys and auditors from the state MFCUs to investigate.
- Federal authorities also identify issues as the result of their investigations and *qui tam* litigation.

Global Matters

- If improper activities are identified litigation may be filed or negotiations aimed at a settlement initiated. The goal of these matters is to settle on behalf of all states and the federal government.
Global Matters

- Upon a proposed settlement the individual states are offered settlement amounts and decide whether to join.
- During AG Conway’s terms over $110 million in state and federal Medicaid funds have been recovered as Kentucky’s share of global recoveries.

Other Litigation

- On some occasions the Attorney General will decide to take independent action to recover Medicaid funds based upon fraudulent acts by a health care provider. This may be independent of criminal prosecution.

Commonwealth of Kentucky v. Purdue Pharma et.al.

- In 2007, at the conclusion of a four year investigation into allegations that it illegally marketed the pain reliever OxyContin, the U.S. and 49 states settled Medicaid claims with Purdue Pharma. Four Purdue executives, including their chief counsel, pleaded guilty in federal court in Virginia to felony charges. Despite paying Virginia $60 million Purdue only offered Kentucky $500,000. Kentucky rejected the settlement offer.
Later in 2007 then Attorney General Stumbo filed a lawsuit in Pike County Circuit Court seeking Medicaid and other OxyContin-related damages from Purdue. The Pike County Attorney joined the lawsuit seeking damages to Pike County.

Purdue immediately moved the lawsuit to federal court and then petitioned to have it made part of a pending multi-district anti-trust lawsuit in New York City.

Attorney General Conway inherited the lawsuit when he took office late in 2007.

Over the next five years Kentucky fought to have the case returned to Pike County. In 2012 the federal court in NY City ordered it remanded and in early 2013 the U.S. 2nd Circuit affirmed and the case returned to Kentucky.

Instead of answering pleadings in Pikeville, Purdue filed motions in the federal court in Virginia that heard the earlier criminal pleas and the Franklin County, Ky. Circuit Court which had overseen a procedural matter in an unrelated case seeking to enjoin the Pike Circuit Court.

Both courts rejected Purdue.

Pike County accepted a $4 million settlement from Purdue and is no longer a party.

As a result of Purdue failing to answer Requests for Admissions in a timely manner the Pike Circuit Court ruled that Purdue has admitted it illegally marketed OxyContin in Kentucky.

Purdue sought to change venue to Franklin County arguing it can not get a fair trial in Pikeville. The Court rejected this motion in September 2013.
Fraud Control Under the Affordable Care Act

- Kentucky has elected to expand Medicaid coverage under the Affordable Care Act.
- As a result it is estimated one-third of Kentuckians will now be eligible for Medicaid coverage.
- There are currently 640,000 uninsured Kentuckians, or 17.5 percent of the state’s population under age 65. 308,000 of these uninsured individuals will be eligible for Medicaid and most of the rest can gain subsidized coverage through the Health Benefit Exchange, including 276,000 individuals whose income is between 138% and 400% FPL.

Kentucky is ranked:
- 50th in smoking
- 40th in obesity
- 43rd in sedentary lifestyles
- 41st in diabetes
- 44th in poor mental health days1
- 49th in poor physical health days2
- 50th in cancer deaths
- 49th in cardiac heart disease
- 43rd in high cholesterol
- 48th in heart attacks
- 44th in annual dental visits

A Perfect Storm?
- A large uninsured population with significant health issues is suddenly eligible for health care coverage.
Fraud Control Under the Affordable Care Act

- Problems:
  - Who is going to provide the care?
  - Is the system prepared to process the new enrollees?
  - What safeguards are in place to catch fraud?
  - Managed Care Plans