



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

**Office of the Attorney General
and
Texas Health and Human
Services Commission**

**Joint Semi-Annual Interagency
Coordination Report**

March 1, 2009 through August 31, 2009



TEXAS

Health and Human
Services Commission

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Pursuant to §531.103, Texas Government Code, as adopted by Senate Bill 30, 75th Legislature, 1997

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Activities of the Health and Human Services Commission, Office of the Inspector General and the Office of the Attorney General in Detecting and Preventing Fraud, Waste, and Abuse in the State Medicaid Program

RECENT DEVELOPMENTS

The Health and Human Services Commission (HHSC) and the Office of the Attorney General (OAG) continue to build upon the success of their efforts in detecting and preventing fraud, waste, and abuse in the Medicaid program. Reinforced by legislative action, the two agencies are making timely and relevant referrals to each other, and cooperative efforts have resulted in a number of successful investigations of fraudulent providers.

The HHSC Office of Inspector General (OIG) and the OAG Medicaid Fraud Control Unit (MFCU) recognize the importance of partnership and regular communication in the coordinated effort to fight fraud and abuse in the Medicaid program. Activities in the latest biannual reporting period continue to reflect progress and success in this area. For example, the following has occurred in the last six months:

- OIG and MFCU staff have worked jointly to improve communication, to share resources and information regarding providers under investigation, and to ensure parallel criminal and administrative actions result in the most successful case dispositions.
- OIG and MFCU have shared information developed through claims analysis, investigative findings, and prosecution analysis to improve deficiencies in Medicaid policy that allow for exploitation and abuse of the Medicaid program.
- Quarterly meetings have continued between OIG and MFCU executive management to ensure that collaboration is occurring at all levels of both organizations.
- OIG and MFCU have continued to work collaboratively with Medi-Medi to provide feedback to the Centers for Medicare and Medicaid Services (CMS) on the One Program Integrity database project. CMS is the federal agency that administers Medicare, Medicaid, and the Children's Health Insurance Program.
- OIG and MFCU have continued to attend quarterly meetings with the Medi-Medi contractor, law enforcement, and other stakeholders to discuss investigation leads and share case information.
- Both agencies have continued to uphold their commitment to promptly send and/or act upon referrals. The ensuing working relationship between the two agencies is recognized by other states as highly effective.
- Monthly meetings have continued between OIG and MFCU staff to discuss referrals of cases and other mutually beneficial projects that aid investigative activities by both entities.
- Communications on cases have remained consistent and ongoing throughout all staff levels, ensuring all case resources and knowledge are shared and efforts are not duplicated.
- In locations throughout the state where OIG does not office field investigators, MFCU investigators have assisted in conducting on-site provider verifications for provider types that have shown a higher propensity towards potential fraud.

OTHER DEVELOPMENTS

The 78th Texas Legislature afforded MFCU a unique opportunity for expansion. With agreement from the United States Department of Health and Human Services, Office of Inspector General, the unit has grown from 36 staff to nearly 200. Field offices are open in Corpus Christi, Dallas, El Paso, Houston, Lubbock, McAllen, San Antonio, and Tyler. Both formal and informal task forces have been formed with the unit's federal and state investigative partners in conducting its criminal investigations. The addition of staff from HHSC-OIG and MFCU located in several of the same key areas of the state has improved the ability of both to cooperatively investigate their cases and improved communication at the local level.

MEMORANDUM OF UNDERSTANDING (MOU)

As required by HB 2292 of the 78th Texas Legislature, the MOU between MFCU and HHSC-OIG was updated and expanded in November 2003. It continues to ensure the cooperation and coordination between the agencies in the detection, investigation, and prosecution of Medicaid fraud cases and has proven beneficial to both agencies. MFCU and OIG are in current collaboration to update the existing MOU.

THE HEALTH AND HUMAN SERVICES COMMISSION OFFICE OF INSPECTOR GENERAL

The 78th Texas Legislature created OIG to strengthen HHSC's authority to combat waste, abuse, and fraud in health and human services programs. OIG provides program oversight of health and human service (HHS) activities, providers, and recipients through its Compliance, Chief Counsel, and Enforcement Divisions,¹ which are designed to identify and reduce waste, abuse, or fraud, and improve HHS system efficiency and effectiveness. Specifically, the Chief Counsel and Enforcement Divisions play an intricate role in coordinating with the OAG as it relates to provider investigations and sanction actions.

Within the Enforcement Division, the Medicaid Provider Integrity (MPI) section investigates allegations of waste, fraud, and abuse involving Medicaid providers and other health and human services programs; refers cases to Sanctions, refers cases and investigative leads to law enforcement agencies, licensure boards, and regulatory agencies; refers complaints to MFCU; and provides investigative support and technical assistance to other OIG divisions and outside agencies. Under the Chief Counsel, the Sanctions section imposes administrative enforcement intervention and/or adverse actions on providers of various state health care programs found to have committed Medicaid fraud, waste, or abuse by violating state and federal statutes, regulations, rules or directives, and investigative findings. Sanctions monitors the recoupment of Medicaid overpayments, damages, and penalties, and may negotiate settlements and/or conduct informal reviews, as well as prepare agency cases and provide expert testimony and support at administrative hearings and other legal proceedings against Medicaid providers, when applicable. Sanctions works directly with MFCU in excluding convicted providers from the Medicaid program, collecting restitution in criminal cases, and imposing payment holds at the request of the OAG. Sanctions also ensures proper accounting, reporting, and disbursement of funds awarded in litigation by the Civil Medicaid Fraud Division.

OIG has clear objectives, priorities, and performance standards that emphasize:

- Coordinating investigative efforts to aggressively recover Medicaid overpayments;
- Allocating resources to cases that have the strongest supporting evidence and the greatest potential for monetary recovery; and
- Maximizing the opportunities for case referrals to MFCU.

Medicaid Fraud and Abuse Referral Statistics

HHSC-OIG Waste, Abuse & Fraud Referrals FY2009 (3rd & 4th Quarters) Received From:

Referral Source	Received
Anonymous	46
HHSC – Commissioner's Office	1
HHSC – OIG Audit Division	1
HHSC – OIG Compliance Division	1
HHSC – OIG Medicaid Provider Integrity (MPI) Self-Initiated	9

¹ Information on specific organizational units within these Divisions may be found in OIG's Annual Report at <https://oig.hhsc.state.tx.us/Reports/reports.aspx>.

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HHSC-OIG Waste, Abuse & Fraud Referrals FY2009 (3rd & 4th Quarters) Received From:

Referral Source	Received
HHSC – OIG Utilization Review Division (UR)	5
HHSC – Rate Setting and Actuarial Services Division	1
Managed Care Organization / Special Investigation Unit	23
Parent/Guardian	26
Provider	16
Provider Self-Reported	2
Public	48
Recipient	28
Texas Attorney General Medicaid Fraud Control Unit (MFCU)	4
Texas Board of Dental Examiners	1
Texas Board of Nurse Examiners	1
Texas Department of Aging & Disability Services (DADS)	33
Texas Department of Family and Protective Services (DFPS)	1
Texas Department of State Health Services (DSHS)	5
Texas Medicaid Healthcare Partnership (TMHP)	3
Vendor Drug Program	2
Total Cases Received:	257

HHSC-OIG Waste, Abuse & Fraud Referrals FY2009 (3rd & 4th Quarters) Referred To:

Referral Source	Referred
Claims Administrator – Educational Contact	14
HHSC – Long-Term Care (LTC)	4
HHSC – OIG General Investigations Division (GI)	1
HHSC – OIG Internal Affairs Division (IA/SIU)	3
Supplemental Security Income Administration (SSI)	1
Texas Attorney General Medicaid Fraud Control Unit (MFCU)	196
Texas Board of Dental Examiners	13
Texas Board of Medical Examiners	15
Texas Board of Nurse Examiners	5
Texas Board of Optometry	2
Texas Board of Pharmacy	2
Texas Board of Physical Therapy Examiners	1
Texas Board of Psychologists	1
Texas Board of Social Work Examiners	1
Texas Department of Aging & Disability Services (DADS)	13
Texas Department of Assistive & Rehabilitative Services (DARS)	2
Texas Department of State Health Services (DSHS)	10
United States Department of Health and Human Services OIG (HHS-OIG)	34
Vendor Drug Program	6
Total:	324

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Medicaid Fraud, Abuse & Waste Workload Statistics and Recoupments – FY 2009

Action	1st Quarter FY2009	2nd Quarter FY2009	3rd Quarter FY2009	4th Quarter FY2009	Total FY2009
Medicaid Provider Integrity					
Cases Opened	178	128	145	112	563
Cases Closed	153	95	96	101	445
Referrals to MFCU	31	43	101	95	270
Referrals to Other Entities	25	22	57	71	175
MPI Cases Referred to Sanctions	3	4	6	16	29
On-site Provider Verifications	90	65	45	46	246
Medicaid Fraud & Abuse Detection System²					
Cases Opened	793	832	1363	1009	3997
Cases Closed	1,183	951	997	1110	4241
Sanctions Recoupments³	\$41,007,276	\$1,920,187	\$16,564,051	\$2,938,988	\$62,430,502
Providers Excluded	118	238	186	103	645

² MFADS is a detection source and as such the numbers are duplicated within sections that work or take action on MFADS generated cases.

³ May include OAG identified amounts and Medicaid global settlements. Amounts listed in OAG's statistics may also include potential overpayments identified by OIG. The amount reported includes recoveries and civil monetary penalties.

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OFFICE OF THE ATTORNEY GENERAL MEDICAID FRAUD CONTROL UNIT

For over 30 years, the Texas Medicaid Fraud Control Unit (MFCU) has been conducting criminal investigations into allegations of fraud, physical abuse, and criminal neglect by health care providers in the Medicaid program. MFCUs are operating in 49 states and Washington, D.C., all with similar goals.

The staff increase mandated by the 78th Texas Legislature in House Bill 2292 brought Texas in line with other states with similar numbers of Medicaid recipients and Medicaid spending. The legislature appropriated funding that, when combined with federal grant funds, authorized expansion of the unit from 36 staff to 208. Currently, 55 investigators are commissioned peace officers. Field offices are open in Corpus Christi, Dallas, El Paso, Houston, Lubbock, McAllen, San Antonio, and Tyler. Two teams are located in the Dallas office and three teams are located in the Houston office. Cross-designated Special Assistant U.S. Attorneys work within each of the four federal judicial districts. Assistant Attorneys General also work Medicaid fraud and abuse cases within the state criminal justice system, either as assistant prosecuting attorneys for a county or as district attorneys pro tem.

Referral Sources

MFCU receives referrals from a wide range of sources including concerned citizens, Medicaid recipients, current and former provider employees, HHSC-OIG, other state agencies, and federal agencies. MFCU staff review every referral received. MFCU then investigates referrals that have a substantial potential for criminal prosecution. The current addition of staff and field offices has enabled the unit to respond quickly and efficiently to the referrals investigated. The following chart provides a breakdown of referral sources for this reporting period.

Referral Source	Received
Department of Aging and Disability Services	209
Federal Bureau of Investigation	5
Health & Human Services Commission - Office of Inspector General	216
Law Enforcement	2
Medicaid Fraud Control Unit Self-Initiated	35
Medicare Contractors	3
National Association of Medicaid Fraud Control Units	14
Office of the Attorney General	17
Providers	8
Public	103
Texas Department of Family and Protective Services	21
U.S. Department of Health and Human Services, Office of Inspector General	10
Other	25
TOTAL	668

Criminal Investigations

MFCU conducts criminal investigations into allegations of fraud, physical abuse, and criminal neglect by Medicaid healthcare providers. The provider types cover a broad range of disciplines and include physicians, dentists, physical therapists, licensed professional counselors, ambulance companies, case management centers, laboratories, podiatrists, nursing home administrators and staff, and medical equipment companies. Common investigations include assaults and criminal neglect of patients in Medicaid facilities, fraudulent billings by Medicaid providers, misappropriation of patient trust funds, drug diversions, and filing of false information by Medicaid providers. Unit investigators often work cases with other state and federal law

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enforcement agencies. Because MFCU's investigations are criminal, the penalties assessed against providers can include imprisonment, fines, and exclusion from the Medicaid program. The provider is also subject to disciplinary action by his or her professional licensing board.

During this reporting period, MFCU state prosecutors have been deputized by various district attorneys to prosecute Medicaid fraud cases. As the unit continues to offer its expertise to assist local district attorneys in prosecuting MFCU cases, this trend is expected to continue. MFCU's partnership with the four federal judicial districts has proven to be especially beneficial in increasing the number of Medicaid fraud cases prosecuted through the federal system. Under this arrangement, MFCU Assistant Attorneys General have been cross-designated as Special Assistant U.S. Attorneys (SAUSAs). They are housed primarily in the federal district offices. As SAUSAs, they are authorized to prosecute Medicaid fraud cases in federal court through the authority of the U.S. Attorney's Office.

Medicaid Fraud and Abuse Referral Statistics

MFCU statistics for the first and second quarters of fiscal year 2009 are as follows.

Action	3rd & 4th Quarters FY2009
Cases Opened	414
Cases Closed	283
Cases Presented	258
Criminal Charges Obtained	105
Convictions	46
Potential Overpayments Identified	\$36,951,743.72
Misappropriations Identified	\$64,250.95
Cases Pending	1,554

OFFICE OF THE ATTORNEY GENERAL CIVIL MEDICAID FRAUD DIVISION

In early 2008, the Civil Medicaid Fraud Division (CMF) became a separate division within the OAG. Previously, CMF was a section within the Antitrust and Civil Medicaid Fraud Division from 2004-2008, and prior to that, CMF was part of the Elder Law and Public Health Division from 1999-2004. No matter where it has been located, the mission of the CMF has always been to investigate and prosecute civil Medicaid fraud cases under Chapter 36 of the Texas Human Resources Code (the Texas Medicaid Fraud Prevention Act).

Under the Texas Medicaid Fraud Prevention Act (Act), the attorney general has the authority to investigate and prosecute any person who has committed an “unlawful act” as defined in the statute. The OAG, in carrying out this function, is authorized to issue civil investigative demands, require sworn answers to written questions, and obtain sworn testimony through examinations under oath prior to litigation. The remedies available under the Act are extensive and include the automatic suspension or revocation of the Medicaid provider agreement and/or license of certain providers.

The Act also permits private citizens to bring actions on behalf of the State of Texas for any “unlawful act.” In these lawsuits, commonly referred to as *qui tam* actions, the OAG is responsible for determining whether or not to prosecute the action on behalf of the state. For most matters filed prior to May 2007, if the OAG does not intervene, the lawsuit is dismissed. However, 2007 amendments to the Act permit a citizen, known as the “relator,” to continue to pursue the lawsuit even if the OAG does not intervene. In either circumstance, the Act provides that the Texas Medicaid Program recovers its damages and that the relator is entitled to a share of the recovery. The recent amendments duplicate portions of the federal False Claims Act and permit Texas to retain an additional 10% of Medicaid recoveries that are shared with the federal government.

Civil Medicaid Fraud Statistics

CMF Docket	3 rd & 4 th Quarters FY2009
Pending Cases/Investigations	231 ⁴
Cases Closed	8
Cases Opened	38

During this reporting period, CMF settled and recovered funds in six matters:

1. State of Texas v. Eli Lilly (Zyprexa). Total recovery including state, federal, and relator’s portions was \$31,942,322.88.
2. State of Texas v. Dialysis/Cantor. Total recovery including state, federal, and relator’s portions was \$1,209,944.02.
3. State of Texas v. VAC/Alpha Therapeutic. Total recovery including state, federal, and relator’s portions was \$1,200,000.00.
4. State of Texas v. Houston Diagnostic. Total recovery including state, federal, and relator’s portions was \$650,000.00.

CMF settled seven lawsuits against Pfizer regarding the drugs Bextra, Lyrica, Zyvox, and Geodon, for \$55,376,468.86, and expects to receive those funds prior to January 1, 2010.

⁴ Of this total, 225 matters concern Medicaid fraud cases and investigations, and 6 matters relate to other issues handled by CMF attorneys.

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CMF continues to pursue significant cases against the following defendants:

1. Caremark for failure to reimburse Medicaid for pharmacy benefits paid on behalf of dual eligible Medicaid recipients
2. Merck & Co. for misrepresentations to Texas Medicaid about the safety and efficacy of Vioxx.
3. Janssen Pharmaceuticals and its parent company, Johnson & Johnson, regarding the marketing of the drug Risperdal.
4. Mylan Laboratories, Sandoz, Inc., and Teva Pharmaceuticals for pricing fraud.
5. Schein, Watson, Alparma, Par, and Barr pharmaceutical companies, and their subsidiaries for pricing fraud.
6. Caremark for falsely rejecting reimbursement requests from Texas Medicaid.
7. Forrest Laboratories regarding the marketing of Celexa and Lexapro.

CMF continues its heavy involvement in multi-state cases or investigations against Medicaid providers which are under seal and cannot be revealed at this time publicly.