AUDITOR GENERAL

WILLIAM O. MONROE, CPA

DEPARTMENT OF LEGAL AFFAIRS

MEDICAID FRAUD CONTROL UNIT PRIOR AUDIT FOLLOW-UP

Operational Audit

SUMMARY

The Department of Legal Affairs, Medicaid Fraud Control Unit (MFCU), is responsible for investigating and prosecuting corruption in the administration of the Medicaid Program and fraud perpetrated by medical service providers. In audit report Nos. 2004-033 and 2006-028, we disclosed significant findings related to the MFCU's operations. The scope of the current audit focused on the status of those findings during the period July 2005 through February 2007. Our audit indicated that Department management implemented sufficient corrective action to resolve the prior audit findings, except as noted below.

Finding No. 1: MFCU case files did not always include documentation of the calculation of Medicaid overpayments.

Finding No. 2: Amounts due to the Medicaid Program were not always timely remitted.

BACKGROUND

In accordance with Federal regulations and State law, the State has established three separate entities that are responsible for the investigation of Medicaid fraud or abuse. The Agency for Health Care Administration (AHCA) is responsible for analyzing paid claims data to detect potential fraud, abuse, or errors and investigating cases related to abuse or errors; the Department of Law Enforcement, Division of Public Assistance Fraud, is responsible for recipient fraud cases; and the Department of Legal Affairs, MFCU, is responsible for cases related to corruption in the administration of the Medicaid program and provider fraud committed by doctors, clinics, and other health care providers who bill for services not performed, overbill for services provided, and bill for tests, services, and products not medically necessary. MFCU is also responsible for investigating the abuse, neglect, or exploitation of residents in any long-term care facility that accepts Medicaid funds. In addition to these responsibilities, MFCU represents the State in prosecuting civil and criminal court actions against alleged perpetrators of Medicaid fraud.

Department records show that MFCU closed 1,270 cases during the period July 2005 through February 2007. Of the 1,270 cases closed, 392 (31 percent) were closed due to lack of evidence or no evidence of fraud or abuse; 487 (38 percent) were unfounded; and 88 (7 percent) resulted in convictions or settlements. The remaining cases were closed due to administrative referrals, pretrial interventions, or other reasons. Active Department investigations at February 28, 2007, totaled 911.

Restitution payments resulting from legal settlements or court orders are to be collected by MFCU. United States Department of Health and Human Services (USDHHS) policy requires MFCU ensure that restitution received through negotiated settlements or court orders is used to reimburse or make the Medicaid Program whole for both the State and Federal share of overpayments before it is used to pay for investigative costs, penalties, or damages. According to Department

records, for those cases closed during the period July 2005 through February 2007, total restitution due was approximately $124.7 million.

We conducted this audit to follow up on the status of corrective actions taken in response to the MFCU findings presented in audit report Nos. 2004-033 and 2006-028, dated August 2003 and September 2005, respectively. Our audit indicated that Department management implemented sufficient corrective action to resolve the prior audit findings, except as noted below.

FINDINGS AND RECOMMENDATIONS

Finding No. 1: Determination of Restitution

As indicated above, United States Department of Health and Human Services (USDHHS) policy requires MFCU ensure that restitution received through negotiated settlements or court orders is used to reimburse or make the Medicaid Program whole for both the State and Federal share of overpayments before it is used to pay for investigative costs, penalties, or damages. In order to document MFCU's determination of the reimbursement amounts due to the Medicaid Program and MFCU's compliance with USDHHS policy, it is imperative that MFCU staff document and retain the calculations made during their investigations into Medicaid overpayments.

Our review of 20 closed cases that resulted in settlements or court-ordered restitution totaling approximately $4.3 million, disclosed that case files did not always include documentation of the calculation of Medicaid overpayments. As indicated by the following, we noted 9 instances in which MFCU staff did not fully comply with the documentation requirements included in the Office of the Attorney General's Medicaid Fraud Standard Operating Procedure.

- For 7 cases, MFCU staff provided a narrative explanation describing how restitution amounts were derived or negotiated. However, even with assistance from MFCU staff, we were unable to determine how the Medicaid overpayment portions of the restitution amounts were calculated. For the 7 cases, restitution collections totaled approximately $1.5 million.
- For 2 additional cases, the MFCU case files did not include documentation of the calculation of the Medicaid overpayments. However, subsequent to audit inquiries, MFCU staff was able to locate from other internal sources documentation supporting the calculations and added the documentation to the respective case files.

Failure to document in the case files the determination of the Medicaid overpayment may preclude the Department from demonstrating the extent to which Medicaid was made whole prior to using restitution to pay for investigative costs, penalties, or damages.

Recommendation: MFCU should take steps to better ensure staff compliance with established procedures. Such steps might include enhanced supervisory monitoring of procedural compliance.

Finding No. 2: Processing Restitution Payments

For cases handled by MFCU in which restitution is awarded to the State upon execution of a settlement agreement or court order, the Department is responsible for the receipt, deposit, and distribution of the restitution.

Our review of 41 checks totaling $3.8 million and received for restitution disclosed that amounts due to the Medicaid Program were not all timely remitted. Specifically, we noted:

- On July 25, 2006, the date the settlement agreement was signed, MFCU requested Finance and Accounting transfer a restitution payment of $50,000 to AHCA. However, accounting records show that the restitution was not transferred to AHCA until November 9, 2006, 76 working days after the request was made.
- One restitution payment of $79,500, of which $4,426 was due to AHCA, was deposited by Finance and Accounting on November 17, 2005. The transfer to AHCA was made 55 working days later on February 9, 2006. According to MFCU records, the deposit was entered into the accounting system incorrectly thereby causing the delay in transferring the amount due.

The timely remittance of restitution to AHCA allows those moneys to be more timely used for authorized Medicaid Program purposes.

Recommendation: The Department should coordinate efforts between MFCU and Finance and Accounting to ensure restitution amounts are timely remitted to AHCA.

OBJECTIVES, SCOPE, AND METHODOLOGY

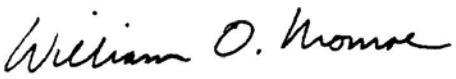
This operational audit focused on a follow-up on prior audit findings related to the Medicaid Fraud. Our objectives were to:

- Evaluate the effectiveness of established internal controls in achieving management's control objectives in the categories of compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- Evaluate management's performance in achieving compliance with controlling laws, administrative rules, and other guidelines; the economic, efficient, and effective operation of State government; the validity and reliability of records and reports; and the safeguarding of assets.
- Determine whether the management has corrected, or is in the process of correcting, all deficiencies disclosed in the prior audit report Nos. 2004-033 and 2006-028.

In conducting our audit, we interviewed Department personnel, observed selected operations, tested selected Department records and transactions, and completed various analyses and other audit procedures as deemed necessary. Our audit included examinations of various transactions, as well as events and conditions, occurring during the period July 2005 through February 2007.

AUTHORITY

Pursuant to the provisions of Section 11.45, Florida Statutes, I have directed that this report be prepared to present the results of our operational audit.



William O. Monroe, CPA
Auditor General

MANAGEMENT RESPONSE

In a memorandum dated August 16, 2007, the Department's Inspector General provided a response to our preliminary and tentative audit findings. The memorandum is included at the end of this report as **APPENDIX A**.

To promote accountability in government and improvement in government operations, the Auditor General makes operational audits of selected programs, activities, and functions of State agencies. This operational audit was conducted in accordance with applicable ***Generally Accepted Government Auditing Standards***. The audit was conducted by Susan C. Phelan, CPA, and supervised by Nancy C. Tucker, CPA. Please address inquiries regarding this report to Nancy C. Tucker, CPA, Audit Manager, by e-mail (**nancytucker@aud.state.fl.us)** or by telephone (850-487-4370).

This report and other audit reports prepared by the Auditor General can be obtained on our Web site (**http://www.state.fl.us/audgen**); by telephone (850-487-9024); or by mail (G74 Claude Pepper Building, 111 West Madison Street, Tallahassee, Florida 32399-1450).

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APPENDIX A
MANAGEMENT RESPONSE

BILL McCOLLUM
ATTORNEY GENERAL
STATE OF FLORIDA

OFFICE OF THE ATTORNEY GENERAL
Office of Inspector General

James D. Varnado
Inspector General

PL-01, The Capitol
Tallahassee FL 32399-1050
Telephone (850) 414-3456, SunCom 994-3456
Fax (850) 922-3854

MEMORANDUM

TO: William O. Monroe, Auditor General, Office of the Auditor General

FROM: James D. Varnado, Inspector General

CC: Nancy C. Tucker, CPA, Audit Manager, Office of the Auditor General

DATE: August 16, 2007

SUBJECT: MFCU Prior Audit Follow-up

Below are Departmental responses to your preliminary and tentative audit findings and recommendations. These are being submitted to you pursuant to your directions as stated in your letter of July 17, 2007, and in regard to your Operational Audit of the Department of Legal Affairs, Medicaid Fraud Control Unit Prior Audit Follow-up, for the period July 2005 through February 2007.

Finding No. 1: Determination of Restitution

Recommendation: MFCU should take steps to better ensure staff compliance with established procedures. Such steps might include enhanced supervisory monitoring of procedural compliance.

Response: Since the previous audit, the Medicaid Fraud Control Unit has implemented procedures and controls that have greatly improved the accuracy and completeness of documentation maintained in the Case Tracking Database and the associated case files. Some of these enhancements include the establishment and verification of required Case Tracking Database fields; establishment of guidelines relating to, and the performance of management reviews of Time Tracking Database entries; performance of independent case file audits; and thorough and consistent documentation of investigative cost calculations. Management will further evaluate the current case file policies and procedures in order to develop and implement new procedures and/or controls as appropriate. An independent case closing review is already under development. The review is being designed to ensure that all aspects of a case, including the calculation of the Medicaid overpayment, are properly supported, documented and retained in the case file.

MEMORANDUM

Finding No. 2: Processing Restitution Payments

Recommendation: The Department should coordinate efforts between MFCU and Finance and Accounting to ensure restitution amounts are timely remitted to AHCA.

Response: The Department concurs with the recommendation and is reviewing procedures relative to submission of restitution to AHCA. The Medicaid Fraud Control Unit reconciles the MFCU accounts receivable balances maintained in the Case Tracking Database to those balances maintained in FLAIR, on a monthly basis; the AHCA accounts receivable balances maintained in the Case Tracking Database to those balances maintained by AHCA, on a quarterly basis; and the revenue received by the Unit to the revenue reported in FLAIR, on a quarterly basis. During these reconciliations Finance and Accounting is notified of any discrepancy regarding revenue, receivables, or the transfer of restitution. Both of the untimely transfers resulted from errors that were detected by current internal controls and were self-corrected prior to the audit.

If you have any questions or would like further information, please feel free to contact me at 850-414-3456.

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