Medicaid Fraud and Abuse Division Annual Report

1999-2000

Office of the Kansas Attorney General
Carla J. Stovall

Annual Report
1999-2000

Purpose

The purpose of the state Medicaid fraud control unit is to deter and eliminate fraud in the State Medicaid Program through a single, identifiable entity of state government that can investigate and prosecute Medicaid providers across the state. The United States Department of Health and Human Services' Office of Inspector General provides funding and works in partnership with each state's Medicaid fraud control unit.

Federal Law defines the responsibilities of the MFCU's

Every MFCU is to:

1. Conduct a statewide program for investigating and prosecuting violations pertaining to fraud in the administration of the Medicaid program or the activities of Medicaid providers;
2. Review complaints alleging abuse or neglect of patients and misappropriations of patients' private funds by programs receiving Medicaid payments; and
3. Maintain staff to include attorneys experienced in investigation or prosecution of civil and/or criminal fraud, auditors experienced in commercial and/or financial records, investigators experienced in commercial and/or financial investigations, and other professional staff knowledgeable about the provision of medical assistance and the operation of health care providers.

Authority for Prosecution

The Kansas Attorney General's Medicaid Fraud and Abuse Division receives its specific authority from the Kansas Medicaid Fraud Control Act ("the Act") - K.S.A. 21-3844, *et seq.* The Act provides in part:

K.S.A. 21-3852. (a) There is hereby created within the office of the attorney general a Medicaid fraud and abuse division.

"(b) The Medicaid fraud and abuse division shall be the same entity to which all cases of suspected Medicaid fraud shall be referred by the department of social and rehabilitation services, or its fiscal agent, for the purpose of investigation, criminal prosecution or referral to the district or county attorney for criminal prosecution.

"(c) In carrying out these responsibilities, the attorney general shall have all the powers necessary to comply with the federal laws and regulations relative to the operation of the Medicaid fraud and abuse division, the power to investigate and criminally prosecute violations of this act, the power to cross-designate assistant United States attorneys as assistant attorneys general, the power to issue, serve or cause to be issued or served subpoenas or other process in aid of investigations and prosecutions, the power to administer oaths and take sworn statements under penalty of perjury, the power to serve and execute in any county, search warrants which relate to investigations authorized by this act, and the powers of a district or county attorney."

Background of the Division

The Kansas Medicaid Fraud and Abuse Division was established in 1995. Application for certification as a state Medicaid Fraud Control Unit was submitted by Attorney General Carla Stovall and Governor Bill Graves to the United States Department of Health and Human Services in August 1995. The Office of Inspector General certified the Division in October 1995 and has granted continuing certification annually thereafter. Certification establishes that the Division meets the federal requirements set forth at 42 CFR 1007.15.

Staffing

The Division staff consists of a Deputy Attorney General as Director, one Assistant Attorney General, an Auditor, a Research Analyst, a Chief Investigator and three Fraud Investigators. The staff are professionals with extensive and complimentary experience in the investigation of fraud and physical abuse cases.

Staff Qualifications

The **Deputy Attorney General** is a prosecutor experienced in investigating and prosecuting white collar and violent crimes and most recently served from 1997 until this year as an assistant attorney general prosecuting cases in the Medicaid Fraud and Abuse Division.

The **Assistant Attorney General** is an experienced criminal prosecutor with a background in all aspects of prosecution at the state level.

The **Chief Investigator** has extensive experience investigating white collar crime. Before joining the Division, he served for 25 years in the United States Postal Inspection Service and the Office of Criminal Investigations of the Food and Drug Administration. (He also served on special details assigned to the United States Congress.)

The **Auditor** is an experienced white collar crime investigator. Before joining the Division he served for 25 years as an agent with the United States Internal Revenue Service.

The **Investigators** bring direct experience in nursing in the private sector, regulation and oversight of medical providers at the state level, and extensive criminal investigation experience at the local and state level involving both crimes against persons and property/financial crimes.

The **Research Analyst** has significant and varied experience in data analysis of both private insurance and medicare billing.

Interagency Partnerships

Kansas Medicaid Program

The Kansas Medicaid program's budget in state fiscal year 2000 is approximately $1.1 billion per year. Medicaid services are delivered to approximately 250,000 persons in 105 counties throughout the state. On average, the Medicaid program devotes 37% of total expenditures to adult care homes. Seventy-five percent of expenditures are paid on behalf of recipients who receive Supplemental Security Income or who are either aged or have a disability and incomes insufficient to meet their medical costs.

Provider Fraud

The Kansas Attorney General's Medicaid Fraud and Abuse Division works with the Kansas Medicaid agency, the Department of Social and Rehabilitation Services (SRS), pursuant to a Memorandum of Understanding (MOU). The MOU terms set forth the responsibilities of the Medicaid agency and the Division in the referral, review and prosecution of cases.

In addition to the state Medicaid agency as a referral source, the Division receives reports of fraud from federal, state, and local law enforcement agencies, social service agencies, regulatory boards and the general public.

The MFCU has effective working relationships with the Medicaid fiscal intermediary, Blue Cross and Blue Shield of Kansas, and the Program Integrity Section of SRS. The MFCU maintains constant communication with the single state agency and the fiscal intermediary in the following ways:

1. Monthly meetings between Division staff, fiscal intermediary staff, and Medicaid agency staff,

2. Use of a referral form, and

3. Individual case consultations.

Abuse/Neglect

The Division reviews complaints of abuse, neglect and misappropriation of patients' private funds by obtaining information from four state level agencies: the Department of Social and Rehabilitation Services (SRS), the Kansas Department of Health and Environment (KDHE), and the Kansas Department on Aging (KDOA) and Adult Protective Services. The Division also assists local law enforcement agencies with both investigation and prosecution.

KDHE is the state agency with regulatory and licensing authority over nursing homes and adult care facilities. The Division reviews all category 1 and 2 severity level incident reports KDHE receives. Recently, the Division negotiated with KDHE to obtain computerized access to this information; with HCFA's authorization, the Division also has computerized access to the Minimum Data Sets (MDS).

Collaborative Efforts

The Division's investigators routinely work with federal investigation agencies on cases involving Medicaid and other federally funded health care programs. The Director and Chief Investigator are members of the Health Care Fraud Working Group, which is jointly sponsored by the Federal Bureau of Investigation and the United States Attorneys' Offices for the District of Kansas and the Western District of Missouri. In addition, the Director is in the process of becoming cross-designated to work with the United States Attorney in the prosecution of fraud cases in federal district court.

The Division also works closely with the following regulatory and licensing entities to receive and refer cases:

Kansas Board of Healing Arts;

Kansas Board of Nursing;

Kansas Dental Board;

Kansas Board of Pharmacy;

Kansas Insurance Department;

Kansas Department on Aging;

Long Term Care Ombudsman.

Medicaid Fraud and Abuse Division Case Activity

The Chief Investigator and the Director serve as contacts to receive reports of fraud and abuse. The Division uses an assessment process that is designed to effectively review referrals and complaints to identify those matters which have substantial potential for criminal prosecution. The Research Analyst has online access to Medicaid billing information and routinely is involved in the assessment process. Those matters that do not merit further investigation are referred, when possible, to the appropriate regulatory, civil recoupment or law enforcement authority.

Current Case Activity

The cases under investigation by the Division involve a wide range of Medicaid services and provider groups. Affected Medicaid recipients are receiving the services in long term care settings, community-based settings, and traditional medical services delivery systems. The cases are located in rural and urban areas throughout the state.

Case Data Information

At the beginning of the reporting period, the Division had 145 open cases involving 14 out of 22 provider categories for which Medicaid will pay for services. Currently, the Division has 83 open cases involving 13 provider groups.

In addition to state prosecutions, settlements and program exclusions described below, during the reporting period the Division referred 44 cases to SRS, one to local law enforcement for prosecution, one to a state licensing board, one to the U.S. Department of Health and Human Services, and one case was referred to both the criminal division and the civil enforcement division of the United States Attorney's Office.

State Prosecutions

The Division prosecuted the following criminal cases:

<u>State of Kansas v. Deborah R. Ullery</u>, Shawnee County District Court Case No. 99-CR-966:

Deborah Ullery was charged with one felony count of Medicaid fraud in Shawnee County District Court in Topeka, Kansas. Ullery allegedly claimed she provided personal care attendant services to Glenn Miller, a former Medicaid Home and Community Based Services recipient. Miller was charged in a separate case with two felony counts of Medicaid fraud.

The criminal complaint against Ullery alleged that between May and July, 1998, Ullery signed time sheets claiming payment for services that she did not provide. Ullery was charged with defrauding the Medicaid program of more than $4,000. A jury acquitted Ullery in September 1999.

<u>State of Kansas v. Paul Jeffery Wright, D.D.S. Chartered</u>, Sedgwick County District Court Case No. 99-CR-1472, Dr. Paul J. Wright, D.D.S., 99-CR-1473 and Janet Wright, 99-CR-1474:

Dr. Paul J. Wright, D.D.S., his wife Janet Wright, and Dr. Wright's corporation were charged with one count each of Medicaid fraud in Sedgwick County District Court in Wichita, Kansas. According to the criminal complaint, between July 1996 and February 1998 the three defendants filed fraudulent claims with the Kansas Medicaid program for services that were not provided and for services that Dr. Wright alleged he provided when, in fact, another dentist provided them.

In November 1999, Dr. Jeffery Paul Wright, D.D.S., Chartered pleaded guilty to one felony count of Medicaid fraud and paid $25,000 in restitution and investigation costs. Dr. Wright and Janet Wright each pleaded guilty to one misdemeanor count of failing to maintain adequate records. Dr. Wright agreed to a lifetime exclusion from participating in the Medicaid program. Janet Wright paid $25,000 in restitution and investigation costs.

On April 20, 2000, the OIG excluded the corporation and both Dr. and Janet Wright.

State of Kansas v. Diana Askew, Finney County District Court Case No. 99-CR-398.

Diana Askew was charged on July 26, 1999, with one count of Medicaid fraud. Askew was supposed to provide personal care attendant services to a Home and Community Based Services recipient. The criminal complaint alleged that between August 1996 and January 1999, Askew claimed she was providing personal care attendant services when she was actually out of town on business trips for her employment with a local office of SRS (Kansas Department of Social and Rehabilitation Services). On May 24, 1999, Askew entered a plea of no contest to a charge of failing to maintain adequate Medicaid records, a class A misdemeanor. She paid full restitution and investigation costs. On June 27, 1999, she was given a suspended sentence of 90 days in the Finney County jail.

State of Kansas v. Fidelia Okoronkwo, Shawnee County District Court Case No. 99CR3167.

On August 9, 1999, Okoronkwo was charged with involuntary manslaughter in connection with an incident that took place on October 21, 1997. The criminal complaint alleges that Okoronkwo, a certified nurse's aid/certified medication aide, fed a 93 year-old adult care home resident food that had not been pureed in accordance with the resident's dietary orders and that the resident choked and died. A jury trial is scheduled for December 11, 2000. The charge is merely an accusation and the defendant is presumed innocent until and unless proven guilty.

State v. Grant England, Wyandotte District Court Case No. 99CR1965.

On September 27, 1999, England was charged with one count of Medicaid fraud. The criminal complaint alleged that England was a Home and Community Based Services personal care attendant who claimed he provided services during the time that he was incarcerated in a county jail. On October 29, 1999, England pled guilty to attempted Medicaid fraud.

State of Kansas v. Nadeane Loudermilk, Osage County District Court Case No. 00CR86.

On February 14, 2000, Loudermilk was charged with one count of Medicaid Provider fraud. According to the criminal complaint, Loudermilk completed time sheets claiming that personal care attendant services were provided in January, February and March 1999, when, in fact, the services were not provided.

On July 18, 2000, Loudermilk pleaded guilty as charged and agreed to pay full restitution and investigation costs. Sentencing is scheduled for August 14, 2000.

State of Kansas v. Frank Bentley, Shawnee County District Court Case No. 00CR473.

On February 28, 2000, Bentley was charged with one felony count of Medicaid Provider fraud. According to the complaint, Bentley submitted time sheets claiming that he provided personal attendant care services to a Home and Community Based Services recipient in September 1998, and June 1999 during times that he was actually working as a security guard and, in fact, did not provide the services. Further court proceedings are scheduled for August 1, 2000. The charge is merely an accusation and the defendant is presumed innocent until and unless proven guilty. A jury trial is scheduled for July 24, 2000.

State v. Kansas v. Stefanie Munsterman, Brown County District Court Case No. 00-CR-86.

On April 12, 2000, Stephanie Munsterman was charged with one felony count of Medicaid fraud and five misdemeanor counts of filing false claims. According to the complaint, Munsterman claimed she provided Medicaid funded targeted case management services to children between December 1997 and July 1998, when, in fact, she either did not provide all the services she claimed or she provided services for less time than she claimed. The complaint also alleges that Munsterman submitted false mileage reimbursement vouchers. Further court proceedings are scheduled for August 31, 2000. The charges are merely accusations and the defendant is presumed innocent until and unless proven guilty.

Federal Prosecutions

United States v. Herbert Daniels, United States District Court for the District of Kansas Case No. 99-40099-01-DES.

Daniels is charged in a multiple count indictment with health care fraud, mail fraud and money laundering. The indictment alleges that Daniels falsified patient's files regarding their need for various types of ear, nose and throat surgeries; that he performed unnecessary surgeries; and that he filed claims for surgical procedures he did not perform. The Division, in cooperation with the United States Attorney, obtained claims data to support two mail fraud counts.

The charges are merely accusations and the defendant is presumed innocent until and unless proven guilty.

Program Exclusions

During the reporting period, the Division made 11 Conviction-Related Exclusion+ submissions to the Health and Human Services Office of Inspector General.

Local Settlements

The Division worked with the Kansas Board of Pharmacy and the Civil Litigation Division of the Kansas Attorney General's Office to reach a consent agreement wherein a local pharmacy agreed to pay a fine in the amount of $250,000 for violations of restraint of trade.

The Division also worked with SRS and obtained a settlement from another local pharmacy in a case involving allegations that the pharmacy had billed the Medicaid program for prescriptions that were not actually filled. The pharmacy agreed to enter a compliance program with SRS and pay $3,524.73 to reimburse the Medicaid Program and the Division for its investigation costs.

Global Settlements

The Division participates in national cases, described as global cases. These cases reflect the complexity of health care fraud. They are complex, multi-party, multi-state and multi-issues cases which are most effectively investigated and prosecuted through the team effort of Medicaid Fraud Divisions acting cooperatively across the country.

The cases arise because of fraudulent conduct by a provider initially discovered and investigated by another state Medicaid Fraud Division or federal investigative agency. The investigations establish that the fraudulent conduct has resulted in losses to Medicaid programs in many or all states.

Currently, the Division is participating in four separate global cases.

Case Activity Projections

The Division has progressively increased the number of investigations, prosecutions and program exclusions. The Division will attempt to continue this trend.

Training

The Division is committed to providing staff the opportunity to experience a wide variety of training targeted to educating them on the basics of health care fraud and the skills and techniques needed to understand and anticipate the changes that are happening in the field of investigation and prosecution, as well as the health care economy and public sector health care programs. A list of the training received by the Division staff is contained in Appendix A.

Public Awareness

The Kansas Medicaid Fraud and Abuse Division is dedicated to providing education to the public and Medicaid providers about the Kansas Medicaid program, state and national health care fraud issues and specific provider-oriented education. The Division regularly makes presentations to legal and health care professionals, state workers, and the general public on the content and purpose of the Kansas Medicaid Fraud Control Act, health care fraud, and abuse, neglect, and exploitation. A table describing presentations made by the Division is contained in Appendix B.

Policy and Procedure Manual

The Kansas Medicaid Fraud and Abuse Division has actively developed policies and procedures to use in the accomplishment of Division responsibilities. The topics covered address investigative and prosecution procedures, as well as office procedures. The manual is a working document that changes to reflect the need for guidance and procedures adequate to assist in the accomplishments of the tasks of the Division.

Federal Performance Standards

The Kansas Medicaid Fraud and Abuse Division is required to comply with federal performance standards. The standards are used by the United States Department of Health and Human Services, Office of Inspector General, to re-certify a Division and to assess its effectiveness during on-site reviews. Each section of this annual report is in response to specific performance standards. The Annual Report demonstrates that the Kansas Medicaid Fraud and Abuse Division has met the performance standards.

1. A Unit will be in conformance with all applicable statutes, regulations and policy directives.
2. A Unit should maintain staff levels in accordance with staffing allocations approved in its budget.
3. A Unit should establish policies and procedures for its operations, and maintain appropriate systems for case management and case tracking.
4. A Unit should take steps to ensure that it maintains an adequate workload through referrals from the single State agency and other sources.
5. A Unit's case mix, when possible, should cover all significant provider types.
6. A Unit should have a continuous case flow, and cases should be completed in a reasonable time.
7. A Unit should have a process for monitoring the outcome of cases.
8. A Unit will cooperate with the OIG and other Federal agencies, whenever appropriate and consistent with its mission, in the investigation and prosecution of health care fraud.
9. A Unit should make statutory or programmatic recommendations, when necessary, to the State government.
10. A Unit should periodically review its Memorandum of Understanding (MOU) with the single State Medicaid agency and seek amendments, as necessary, to ensure it reflects current law practice.

11. A Unit director should exercise proper fiscal control over the unit resources. A report of expenditures is attached as Appendix C.
12. A Unit should maintain an annual training plan for all professional disciplines.

Appendix A

OFFICE OF THE KANSAS ATTORNEY GENERAL
MEDICAID FRAUD AND ABUSE DIVISION

TRAININGS

	TRAINING	ATTENDEES
NATIONAL	NAMFCU 1999 Annual Conference	Martha Hodgesmith
	Health Care Financing Administration 1999 Region VII Fraud Conference	Phil McManigal, Bob Swafford, Denise Desch
	Midwest Regional Nursing Home & Home Health Abuse & Neglect Prevention	Marla Myers
	Health Care Financing Administration Medicare Fraud and Abuse Training	Ron Scheid
	Investigation of Fraud in Medical Institutions	Ron Scheid
	Demonstrative Evidence for Trials	Ron Scheid
	Advanced Fraud Investigator Course	Ron Scheid
STATE	Kansas County & District Attorneys Association 1999 Fall Conference	Mike Russell, Jon Fleenor
	Firearms Qualification	Pam Horn, Bob Swafford, Phil McManigal, Marla Myers, Ron Scheid
	Law Enforcement Computer Investigations	Pam Horn
	Gun safety	Phil McManigal
	Characteristics of the criminal mind & licensing/employment considerations	Phil McManigal
	Weapon Retention	Phil McManigal
	Kansas Women Attorney 1999 Annual Conference	Martha Hodgesmith
	Attorney General's Call	Phil McManigal, Marla Myers, Ron Scheid, Pam Horn, Mike Russell, Jon Fleenor
	Interview and Interrogation Seminar	Pam Horn

	Certification testing for operation of NCIC/KCJIS computer	Pam Horn
	Officer survival tips, tactics and trends	Pam Horn
	Critical incident debrief	Pam Horn
	Domestic/Family Violence	Marla Myers
	Human Behavior; Media Relations; Verbal Judo	Pam Horn
	Major Case Squad Training School	Marla Myers
LOCAL		

Appendix B

Presentations

DATE OF PRESENTATION	TOPIC	PRESENTER	SPONSORS	LOCATION	ATTENDEES	APPROX ATTEN-DANCE
August 10, 1999	Mock Medicaid Fraud Trial	Jon Fleenor and Phil McManigal	National Association of Surveillance Officials	Kansas City	State Medicaid surveillance officials	
September 30, 1999	Adult Abuse and Exploitation	Martha Hodgesmith	6th Kansas Disability Caucus	Topeka	Persons with disabilities, service providers, family members & advocates	100
October 28, 1999	Collaboration in the Investigation and Prosecution of Elder Abuse and Financial Exploitation	Martha Hodgesmith	Kansas Department on Aging	Topeka	SRS, KDOA & other professionals who work with senior citizens	70
October 28, 1999	Medicaid Provider Fraud Prosecution - Working with the Medicaid State Agency	Martha Hodgesmith	Health Care Financing Administration	Kansas City	Federal and state Medicare, Medicaid and investigative agency personnel and employees of fiscal intermediaries	60
October 28, 1999	Managed Care Fraud	Martha Hodgesmith	Health Care Financing Administration	Kansas City		60

Presentations

DATE OF PRESENTATION	TOPIC	PRESENTER	SPONSORS	LOCATION	ATTENDEES	APPROX ATTENDANCE
November 18, 1999	Current Update of Medicaid Fraud and Home and Community Based Services investigations	Curt Landis	MR/DD Task Force	Salina	Home and Community Based Services Case Managers	25
January 19, 2000	Practice Guidelines for the Prevention and Reporting of Resident Neglect	Mike Russell	Kansas Health Care Association; KS Association of Homes and Services for the Aging and KS Professional Nursing Home Administrators Association	Topeka	Nursing Home Administrators	300
April 25, 2000	Division's review and use of KDHE complaint intakes and surveys	Jon Fleenor and Ron Scheid	KDHE	Topeka	Surveyors	90
April 26, 2000	Medicaid Fraud and Elder Abuse - A Survey of Kansas Statutes	Jon Fleenor	Johnson County Barristers	Lenexa	Johnson County Attorneys	30
June 12, 2000	Medicaid Fraud and Elder Abuse - A Survey of Kansas Statutes	Jon Fleenor	Kansas Long-Term Care Ombudsman Program	Topeka	Regional Ombudsman and the Statewide Volunteer Coordinator of the LTCO	6

Appendix C

State of Kansas
Office of Attorney General
Division of Medicaid Fraud and Abuse

07/14/00

Analysis of Federal Receipts and Disbursement as of 6/30/2000

	Total	Federal	State
Receipts FYE 9/30/00	$516,363.95	$352,400.00	$163,963.95
Expenditures FYE 9/30/00	($502,454.35)	($390,720.65)	($111,733.70)
Add: Accounts Payable		$0.00	$0.00
Add: Accrued Indirect Cost	$55,519.53	$55,519.53	
Unapproved Receipts for State Match	($559.20)		($559.20)
Current Year Balance	$68,869.93	$17,198.88	$51,671.05
Current Balance of Fund 2641	($48,037.29)		($48,037.29)
Fraud Recoveries not approved for state match	$0.00		$0.00
Balance of Fund 2615 – 10/1/99	$5,380.37	$445.39	$4,934.98
Cash Balance for Medicaid Fraud	**$26,213.01**	**$17,644.27**	**$8,568.74**
Vouchers Payable	5,000.00	$3,750.00	$1,250.00
Payroll P/E 6/10/00 included above		$0.00	$0.00
Pending Deposit – State Matching P/E	0.00	$0.00	
Estimated Cash Balance(Balance less expenses)	**21,213.01**	**13,894.27**	**7,318.74**
Receipts FYE 9/30/96	$520,618.01	$471,045.00	$49,573.01
Expenditures FYE 9/30/96	($495,049.46)	($445,544.51)	($49,504.95)
Totals for FYE 9/30/96	$25,568.55	$25,500.49	$68.06
Receipts FYE 9/30/97	$610,135.10	$538,200.00	$71,935.10
Expenditures FYE 9/30/97	($637,468.35)	($573,721.52)	($63,746.83)
Totals for FYE 9/30/97	($27,333.25)	($35,521.52)	$8,188.27
Receipts FYE 9/30/98	$715,098.89	$649,900.00	$65,198.89
Indirect Cost Accrued	$89,539.00	$89,539.00	
Receipts – State Restitution	$21.08		$21.08
Expenditures FYE 9/30/98	($815,375.38)	($744,391.74)	($70,983.64)
Totals for FYE 9/30/98	($10,716.41)	($4,952.74)	($5,763.67)
Receipts FYE 9/30/99	$714,784.87	$542,361.00	$172,423.87
Receipts – State Restitution	$5,665.73		$5,665.73
Indirect Cost Accrued	$92,051.00	$92,051.00	
Expenditures FYE 9/30/99	($794,640.12)	($618,992.84)	($175,647.28)
Totals for FYE 9/30/99	$17,861.48	$15,419.16	$2,442.32
Total Prior Years - Receipts	**$2,566,323.68**	**$2,201,506.00**	**$364,817.68**
Total Prior Years - Expenditures	**($2,560,943.31)**	**($2,201,060.61)**	**($359,882.70)**
Total Prior Years - Expenditures	**$5,380.37**	**$445.39**	**$4,934.98**