Department of Health and Human Services

Centers for Medicare & Medicaid Services

Medicaid Integrity Program

Louisiana Comprehensive Program Integrity Review

Final Report

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INTRODUCTION

The Centers for Medicare & Medicaid Services' (CMS) Medicaid Integrity Group (MIG) conducted a comprehensive program integrity review of the Louisiana Medicaid Program. The MIG review team conducted the onsite portion of the review at the offices of the Bureau of Health Services Financing (BHSF). The review team also visited the offices of the Medicaid Fraud Control Unit (MFCU) and the fiscal agent.

This review focused on the activities of the State's Program Integrity Unit (PI Unit), which is responsible for Medicaid program integrity. This report describes four effective practices, four regulatory compliance issues, and three vulnerabilities in the State's program integrity operations.

THE REVIEW

Objectives of the Review

1. Determine compliance with Federal program integrity laws and regulations;
2. Identify program vulnerabilities and effective practices;
3. Help Louisiana improve its overall program integrity efforts; and
4. Consider opportunities for future technical assistance.

Overview of Louisiana's Medicaid Program

The BHSF administers the Louisiana Medicaid Program. As of the State fiscal year (SFY) ending June 30, 2008, the program served 1,030,349 recipients, all of them on a fee-for-service (FFS) basis, with Medicaid expenditures totaling $6,738,637,953. The Federal medical assistance percentage for Louisiana during that same time period was 72.47 percent. The State had 32,234 participating providers as of June 30, 2008.

Program Integrity Unit

The PI Unit, within the BHSF Office of Management and Finance, is the organizational component dedicated to the program integrity function. The unit consists of one section chief and nine full-time equivalent staff. No vacancies were reported at the time of the review. Louisiana's PI Unit and fiscal agent maintain an array of responsibilities that include, but are not limited to: (1) auditing billings to the Medicaid program for occurrences of fraud, waste or abuse through pre- and post-payment reviews, (2) managing the provider enrollment unit, (3) conducting provider and recipient educational presentations, (4) sending control memos to the fiscal agent for corrections/updates/changes to the Medicaid Management Information System (MMIS), (5) developing samples and extrapolations, (6) conveying excluded provider information from the List of Excluded Individuals/Entities (LEIE) to the fiscal agent, (7) processing provider appeals, and (8) serving as a resource and research point of contact for other program units which require clarification of coverage and billing issues. The average annual

overpayment collected by the PI Unit in the past three SFYs as a result of program integrity activities was $1,661,657.

Methodology of the Review

In advance of the onsite visit, the review team requested that Louisiana complete a comprehensive review guide and supply documentation in support of its answers. The review guide included such areas as program integrity, provider enrollment/disclosure, and the MFCU. A four-person review team reviewed the responses and materials that the State provided in advance of the onsite visit.

During the week of February 9, 2009, the MIG review team visited the BHSF, fiscal agent, and MFCU offices. The team conducted interviews with numerous BHSF officials, as well as with staff from the State's provider enrollment contractor and the MFCU. The team also conducted sampling of provider enrollment applications, case files, selected claims, and other primary data to validate the State's program integrity practices.

Scope and Limitations of the Review

This review focused on the activities of the PI Unit, but also considered the work of other components and contractors responsible for a range of program integrity functions, including provider enrollment and non-emergency medical transportation (NEMT). Louisiana operates a combination Children's Health Insurance Program (CHIP) under the same FFS billing and provider enrollment policies as Louisiana's Title XIX program. The same findings, vulnerabilities, and effective practices discussed in relation to the Medicaid program also apply to the Medicaid portion of CHIP. Unless otherwise noted, BHSF provided the program integrity-related staffing and financial information cited in this report. For purposes of this review, the review team did not independently verify any staffing or financial information that BHSF provided.

RESULTS OF THE REVIEW

Effective Practices

The State has highlighted a practice that demonstrates its commitment to program integrity involving open communication and close cooperation between the PI Unit and the MFCU.

Effective working relationship with the MFCU

Both the PI Unit and the MFCU indicated in separate interviews that they have a close and effective working relationship. Both units observed that each provides valuable training to the other and that the Memorandum of Understanding provides for this cooperative environment. The collaboration has made each unit more effective in its various roles. This is demonstrated by the MFCU's observation that it always receives well-documented cases from the PI Unit. According to the PI Director, PI Unit staff meets with MFCU staff on a regular basis to discuss pending and active cases. The PI Director gives the MFCU free rein to talk with different sections within the Medicaid

agency, knowing that the MFCU will provide complete reports on the status of pending cases.

Additionally, the CMS review team identified three practices that are particular noteworthy. The CMS recognizes the PI Unit's close relationship with the fiscal agent's provider enrollment staff, the PI Unit's successful collaboration with a sister agency in oversight of mental health rehabilitation (MHR) providers, and its effective oversight of the NEMT program.

Close relationship with the Provider Enrollment Unit
The Louisiana PI Unit not only works closely with the provider enrollment contractor, but supervises and monitors the provider enrollment functions as well. This arrangement allows for the State and its contractor to be "joined at the hip" from the initial process of enrolling providers to performing pre-payment claims reviews and providing statistical services such as sampling and extrapolation. Since all processes and procedures used by the contractor must be approved by State staff, the PI Unit's oversight greatly speeds up communications between the entities and allows them to achieve increased efficiencies.

Effective oversight of MHR providers through the Pelican Project
In the Pelican Project, Louisiana PI Unit staff teamed up with staff from the MHR program in a sister agency to conduct a 100 percent review of all MHR providers. The project involved the monitoring and auditing of approximately 131 MHR providers and resulted in a number of major findings of fraud or abuse. These included services provided with no documentation, billings for non-covered services, altered records, staff without appropriate training qualifications, and incidents of services inappropriately billed while recipients were hospitalized or institutionalized. The Pelican Project enabled Louisiana to save $64,797,452 through cost avoidance and to make 49 overpayment recoveries that netted $585,604.54. The project also resulted in 14 referrals to the MFCU.

Effective oversight of NEMT providers
The BHSF enrolls NEMT providers and sends out a cover sheet notice on all NEMT (Type 42) provider enrollment packages. The cover sheet notice includes instructions to providers that before the enrollment process can continue the provider must check with the PI Unit to verify if an owner or co-owner has been convicted of a felony or any other criminal offense. In addition, prior authorization by a contractor is required for all transportation services, and a Medicaid Transportation form (MT3) must be signed by the recipient, provider, and the driver as proof of service.

Regulatory Compliance Issues
The State is not in compliance with four Federal regulations related to disclosure and notification activities and payment to an excluded provider.

Louisiana's notice of payment withholding does not include all required information.
The regulation at 42 CFR § 455.23(b) stipulates that the Medicaid agency's notice of withholding state that payments are being withheld in accordance with the Federal regulation. Louisiana's notice of payment withholding does not state that payments are being withheld in accordance with this provision.

Recommendation: Modify withholding letters to include language that references 42 CFR § 455.23 as required by the regulation.

Louisiana's provider enrollment form does not capture all required ownership, control, and relationship information. The State's fiscal agent contract does not require such disclosure.
Under 42 CFR § 455.104(a)(1), a provider, or "disclosing entity," that is not subject to periodic survey under § 455.104(b)(2) must disclose to the Medicaid agency, prior to enrolling, the name and address of each person with an ownership or controlling interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership interest of 5 percent or more. Additionally, under § 455.104(a)(2), a disclosing entity must disclose whether any of the named persons is related to another as spouse, parent, child, or sibling. Moreover, under § 455.104(a)(3), there must be disclosure of the name of any other disclosing entity in which a person with an ownership or controlling interest in the disclosing entity has an ownership or controlling interest. In addition, under § 455.104(c), the State agency may not contract with a provider or fiscal agent that has not disclosed ownership or control information required under this section.

The BHSF uses a basic enrollment form (PE-50) for all provider enrollments. This form is part of the enrollment package for entities which includes an entity ownership disclosure form. The PE-50 and the owner disclosure form do not capture the address of each person with an ownership or control interest in the disclosing entity or in any subcontractor in which the disclosing entity has direct or indirect ownership of 5 percent or more, as required in 42 CFR § 455.104(a)(1). In addition, neither the PE-50 nor the disclosure form has a place to list subcontractors in which the disclosing entity has a 5 percent or greater ownership. Therefore, subcontractor relationships with owners of the disclosing entity cannot be determined as required in 42 CFR § 455.104(a)(2).

Additionally, the State does not have a policy to collect similar ownership and control disclosure information for fiscal agents, as required by 42 CFR § 455.104(c). Therefore, provider enrollment staff cannot search individuals with ownership and control interests in the fiscal agent for possible exclusions.

Recommendations: Modify provider enrollment packages to request the information required under 42 CFR § 455.104(a). Modify the fiscal agent contract to require submission of the required ownership and control information and collect the required disclosures.

The State's enrollment form for individual providers does not capture criminal conviction information for agents or managing employees.
The regulation at 42 CFR § 455.106 stipulates that providers must disclose to Medicaid agencies any criminal convictions related to Medicare, Medicaid, or Title XX programs at the time they apply or renew their applications for Medicaid participation or at any time on request. The regulation further requires that the Medicaid agency notify the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG) whenever such disclosures are made.

The BHSF individual provider enrollment package includes a disclosure of information page that asks about criminal conviction information only for the individual enrolling. The forms do not ask for health care-related criminal conviction information for agents or managing employees as required in 42 CFR § 455.106(a)(1).

Recommendation: Develop and implement procedures to collect the required disclosures for agents and managing employees in accordance with 42 CFR § 455.106. Refer that information to HHS-OIG within the timeframe specified by the regulation.

The State enrolled and made payments to an excluded provider.
The regulation at 42 CFR § 1001.1901(b) states that when a provider has been excluded by HHS-OIG, Federal healthcare programs are prohibited from paying for any items or services furnished, ordered, or prescribed by excluded individuals or entities unless and until the provider has been reinstated by HHS-OIG.

An individual provider was excluded by the HHS-OIG and terminated by the State on February 2, 1995 under her maiden name. The provider re-enrolled under her married name in 1998. The PI Unit discovered the re-enrollment on September 9, 2007, and the provider's last billing cycle was September 10, 2007. The payments made to this provider between 1998 and 2007 amounted to $1.2 million. At the time of the review, the PI Director indicated that no action had yet been taken to recover these funds.

Recommendation: Recover improper payments from the excluded provider and return the Federal portion of the payments. Modify and implement internal controls to prevent excluded providers from participating in the Medicaid program. Please refer to the June 12, 2008 State Medicaid Director Letter #08-003 on exclusions which can be found on the CMS website at http://www.cms.hhs.gov/smdl/downloads/SMD061208.pdf.

Vulnerabilities
The review team identified three vulnerabilities in Louisiana's program integrity practices. These related to ineffective exclusion searches, failure to capture managing employee information, and the non-verification of out-of-state licenses.

Not conducting complete exclusion searches.
The regulations at 42 CFR §§ 455.104 through 455.106 require States to solicit disclosure information from disclosing entities, including providers, and require that provider agreements contain language by which the provider agrees to supply disclosures upon request. Even if the State was compliant with the requirements in the regulations, the State is not maintaining complete information on owners, officers and managing employees in its MMIS. Therefore the State cannot conduct adequate searches of the LEIE or the Medicare Exclusion Database (MED).

Recommendation: Develop and implement policies and procedures for appropriate collection and maintenance of disclosure information. Conduct exclusion searches using the LEIE or the MED at enrollment, reenrollment, and at least monthly thereafter. Please refer to the June 12, 2008 State Medicaid Director Letter #08-003 on exclusions which can be found on the CMS website.

Not capturing managing employee information on provider enrollment forms.
Under 42 CFR § 455.101, a managing employee is defined as "a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operations of an institution, organization or agency." The State does not solicit managing employee information on its current FFS provider enrollment forms. Thus, the State would have no way of knowing if excluded individuals are working for providers or health care entities in such positions as billing managers and department heads.

Recommendation: Modify FFS provider enrollment packages to require the disclosure of managing employee information. Maintain such information in a database where it can be used to search for exclusions at the point of initial enrollment and periodically thereafter.

Not verifying all out-of-state licenses.
Louisiana currently requires a copy of an out-of-state provider's license prior to enrollment. State staff reviews the license to ensure that the license is current and contacts the state licensing board if an obvious problem is identified, such as an expired license. However, staff does not otherwise verify the license with the issuing state's licensing board or check if out-of-state provider licenses have limitations imposed that were never reported.

Recommendation: Develop and implement a procedure to verify that all out-of-state provider licenses are currently valid and unencumbered by restrictions.

CONCLUSION

The State of Louisiana applies some effective practices that demonstrate program strengths and the State's commitment to program integrity. These effective practices include:

- the PI Unit's effective working relationship with the MFCU,
- an effective working relationship between the PI Unit and provider enrollment staff,
- effective oversight of MHR providers through the Pelican Project, and
- effective oversight of the NEMT program

The CMS supports the State's efforts and encourages it to look for additional opportunities to improve overall program integrity.

However, the identification of four areas of non-compliance with Federal regulations is of concern and should be addressed immediately. In addition, three areas of vulnerability were identified. The CMS encourages Louisiana to closely examine the vulnerabilities that were identified in this review.

It is important that these issues be rectified as soon as possible. To that end, we will require Louisiana to provide a corrective action plan for each area of non-compliance within 30 calendar days from the date of the final report letter. Further, we will request the State include in that plan a description of how it will address the vulnerabilities identified in this report.

The corrective action plan should address how the State of Louisiana will ensure that the deficiencies will not recur. It should include the timeframes for each correction along with the specific steps the State expects will occur. Please provide an explanation if correcting any of the regulatory compliance issues or vulnerabilities will take more than 90 calendar days from the date of the letter. If Louisiana has already taken action to correct compliance deficiencies or vulnerabilities, the plan should identify those corrections as well.

The Medicaid Integrity Group looks forward to working with the State of Louisiana on correcting its areas of non-compliance, eliminating its areas of vulnerability, and building on its effective practices.