WASHINGTON STATE MEDICAID FRAUD CONTROL UNIT

2016 ANNUAL REPORT

TO THE OFFICE OF THE INSPECTOR GENERAL

OFFICE OF THE ATTORNEY GENERAL

WASHINGTON STATE MEDICAID FRAUD CONTROL UNIT

WASHINGTON STATE MEDICAID FRAUD CONTROL UNIT (WAMFCU)

The Washington State Medicaid Fraud Control Unit is a law enforcement section within the Attorney General's Office. The Unit is responsible for the criminal and civil investigation and prosecution of healthcare provider fraud committed against the state's Medicaid program. In addition, the Unit investigates and prosecutes abuse and neglect involving residents residing in long-term care facilities that receive Medicaid funding along with local statewide law enforcement authorities.

The Unit's personnel consist of attorneys, investigators, analysts, auditors, and administrative and legal assistants who work full-time on Medicaid fraud cases throughout the state. Throughout the country, the Unit collaborates with local law enforcement, county prosecutors, the Federal Bureau of Investigation, the Office of Inspector General for the Federal Department of Health and Human Services, and U.S. Attorneys' Offices. Although Washington has codified specific statutory schemes to address Medicaid fraud (RCW 74.09 and RCW 74.66) the Unit regularly uses a full complement of state and federal criminal statutes and civil common laws to address fraud.

The Unit maintains a diverse caseload of investigations and prosecutions of home care providers to health care professionals, durable medical equipment providers, pharmacies, pharmaceutical manufacturers, and others. Funding for the Unit is pursuant to an annual federal grant (75 percent) matched by state funding (25 percent).

THE UNIT ADDRESS IS:

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Medicaid Fraud Control Unit
2425 Bristol Court SW
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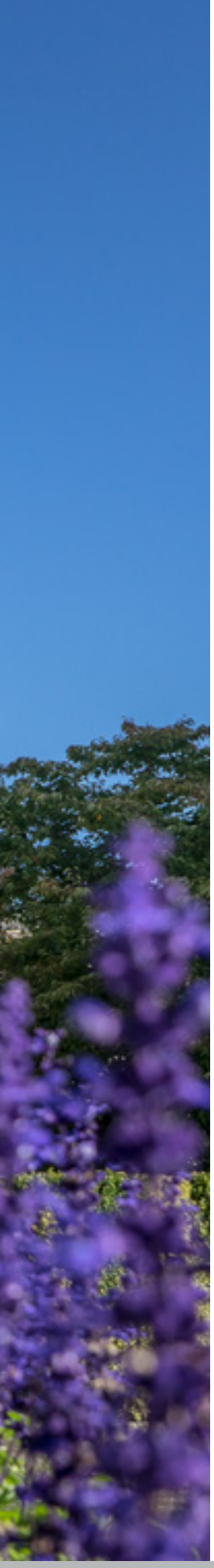

I. OVERVIEW – WASHINGTON STATE MEDICAID PROGRAM

The Medicaid Single State Agency is the Washington State Health Care Authority (HCA). HCA purchases health care for Medicaid clients through Washington Apple Health Program (Medicaid). Pursuant to an interagency agreement, the Department of Social and Health Services (DSHS) administers the Medicaid long-term care programs.

HCA uses two methods to purchase health care for Medicaid clients. More than 80% of the Washington State's 1.77 million Medicaid clients are enrolled in Medicaid managed care and Primary Care Case Management (PCCM). This accounts for over 70% of the Medicaid budget. Apple Health and PCCM providers are managed care organizations (MCO) contracted to provide Medicaid covered services. The MCOs are paid a capitated monthly premium for Medicaid enrollees.

The remaining Medicaid clients are seen by providers across the state on a fee-for-service basis. There are approximately 119,000 actively participating Medicaid providers. This number is growing with the implementation of the Affordable Care Act.

The Washington State Medicaid Fraud Control Unit (WAMFCU or Unit) is responsible for policing both Medicaid providers and Medicaid program expenditures. The numbers of Medicaid eligible clients and total Medicaid expenditures have increased the past few years. According to HCA, the state 2016 budget for the Medicaid program was $7.48 billion.

The WAMFCU and HCA have a Memorandum of Understanding (MOU) pursuant to 42 CFR 1007.9(d) regarding the detection and prosecution of fraud in the state Medicaid program. The current MOU was renegotiated and signed on December 15, 2014.

Both by federal regulation, statutes and the MOU, the Single State Agency (SSA) has a responsibility to prevent and detect Medicaid fraud and abuse and make referrals to the WAMFCU when fraud or abuse is suspected. In Washington, the SSA is the Health Care Authority (HCA) agency. The HCA, Office of Audit and Accountability (Fraud Program) is tasked with the Surveillance Utilization Review Subsystem (SURS) function required under 42 CFR 456.1 (iii). The Office of Audit and Accountability (Fraud Program) is responsible for analyzing and monitoring program operations, managing fiscal aspects of the program, developing, setting and evaluating reimbursement rates, validating and disseminating program data and conducting audits and medical reviews. HCA has recently reorganized to align its operations with the significant shift from fee for service to a Medicaid managed care health care delivery model.

II. UNIT HISTORY

The WAMFCU was established in August 1978 as a part of DSHS's Office of Special Investigation (OSI). The WAMFCU continued as a sub-unit of OSI with OSI investigators assigned full time to Medicaid investigations. The "Special Prosecutors" were provided through a contract to the Unit. Unit administration and direction was provided through OSI. Attorney General involvement resulted from OIG certification findings in the early 1980s. In October 1982, the WAMFCU was reorganized through an interagency agreement between DSHS and the AGO agreeing to transfer the entire WAMFCU staff to the AGO in April 1988.

During the 2012 legislative session, the Washington Legislature significantly broadened the MFCU's mission by enacting the Medicaid Fraud False Claims Act (FCA). This Act expands the WAMFCU's historical criminal authority by authorizing the Unit to prosecute fraud using civil tools. The Act authorizes the Attorney General to (1) bring civil fraud actions against Medicaid providers and (2) to intervene in qui tam actions filed by private citizens in the name of the State against Medicaid providers. Laws of 2012, ch. 241 (codified at chapter 74.66 RCW). Because Washington enacted a False Claims Act that conformed to the Federal False Claims Act, it was designated as Deficit Reduction Act (DRA) compliant, which entitles Washington to an additional 10% share of Medicaid recoveries secured by the WAMFCU. This means that rather than receiving the general 50% of recovered dollars, with the other 50% being returned to the federal government, Washington now receives 60% of those recoveries in False Claims Act cases.

On December 30, 2016, OIG informed WAMFCU that because our state False Claims Act does not contain a section that increases civil penalties to be equivalent to the federal False Claims Act, effective December 31, 2018, Washington would no longer be in compliance and would lose its DRA compliance status. While RCW 74.66.020(5) does call for rulemaking to adjust the penalties to be equivalent to the federal inflation adjusted penalties, this is not deemed adequate by OIG, which requires that the state FCA statute itself contain the automatic adjustment to conform to the federal penalties that will adjust every August 1 of each year going forward. OIG recommended that our State statute reference the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 or the Federal False Claims Act in its civil penalties provision rather than state the exact dollar amount of the civil penalties authorized under our State statute. While early in 2017 we will continue to engage in rulemaking in compliance with Washington's statute, it is important that in the 2018 legislative session we bring our state FCA statute into DRA compliance by tying the fine to the federal inflation adjusted amount. This will enable Washington to continue to receive a 10% bump in FCA recoveries.

The Joint Legislative Audit and Review Committee conducted its sunset review and audit of the AGO's implementation of the FCA in 2015. Going into the 2016 legislative session, JLARC recommended reauthorization of the FCA stating, "The Legislative Auditor recommends that the Legislature reauthorize the Medicaid Fraud False Claims Act because: The Act allows the state to pursue civil cases against Medicaid fraud that it would lack authority to pursue otherwise; and Medicaid fraud recoveries have increased since the Act was enacted in 2012. In addition, JLARC staff did not find evidence that private individuals have brought frivolous cases against Medicaid providers under the Act." After considering the JLARC report, the 2016 Legislature repealed the sunset provision on all aspects of the FCA, except the qui tam (whistleblower provision). As to the qui tam provision, the 2016 Legislature extended the sunset out to 2023.

III. UNIT ORGANIZATION & OPERATION

The WAMFCU is located organizationally in the AGO Corrections Division of the Office of Attorney General, with offices in Olympia and Spokane. The Director of the Unit reports to the Division Chiefs of the Corrections Division and the Spokane Division. The entire Unit, including the Spokane WAMFCU employees, is managed by the Director in conjunction with the Deputy Director, the Civil Section Chief, the Chief Investigator, and the Administrative Lead. All Unit personnel report to the Director through their respective supervisors, with the exception of the half-time secretary, who reports for administrative purposes to the Spokane Administrative Lead, but reports for all WAMFCU-related issues through the WAMFCU Administrative Lead, and the 33 percent receptionist, who reports to the Corrections Division Administrative Lead.

The Chief Investigator evaluates all fraud referrals that are not qui tam lawsuits. Under the direction of the Deputy Director, a Legal Assistant 3 reviews all vulnerable adult abuse referrals to determine jurisdiction. Where jurisdiction is confirmed each referral is then reviewed by an Investigator responsible for the Special Victims Unit Intake, to assess for investigative viability.

Upon the receipt of a referral of possible Medicaid provider fraud or vulnerable adult abuse, an initial investigative and/or legal review is conducted. In all cases where the WAMFCU has jurisdiction and a decision is made to open a referral for further investigation, a Criminal Matter Opening Form is completed. A case file is prepared, a case number assigned, and the information is entered into the WAMFCU case database. All referrals are recorded and for those referrals that are not opened for further investigation, the reason for declining the referral is maintained.

All open investigations are managed by a team that includes an attorney, an investigator, and an analyst with access to the Unit auditors, financial examiners, and other staff. If necessary, additional investigators may be assigned to a case. The team reviews the open investigation at least monthly and additional case reviews occur on an as needed basis. Cases are reviewed bi-monthly (every 2 weeks) by Supervisors who brief the Chief on a bi-monthly basis as well. The Director, Deputy Director, Civil Section Chief, and Chief Investigator meet regularly to review criminal and civil cases.

The Legal Administrative Manager sends notification of criminal case closures to various divisions within HCA or DSHS for initiation of program recommendations, provider termination or administrative recovery actions. The Director or Deputy Director and Civil Section Chief are responsible for approving the declination or closure of civil matters.

The Unit attorneys prosecute, or may refer for prosecution or other appropriate action, all criminal and civil cases resulting from Unit investigations. For cases prosecuted by the Unit, the attorneys handle all stages of the criminal or civil prosecution to include case filing, arraignment, bail hearings, discovery, motions, trials, pleas or settlements, sentencing, and appeals. The Unit also works with the National Association of Medicaid Fraud Control Units (NAMFCU) on a number of cases including global cases involving large corporations and other civil/qui tam cases. Our FCA attorneys and auditors have been assigned to 49 Global case intake teams, 17 Global investigative teams, 13 Global settlement teams and three litigation teams. In addition, the civil team has intervened in 5 Global cases in federal court, and there have been 6 in-state qui tam cases filed in Washington Superior Courts. Carrie Bashaw, Senior Counsel, has been appointed to the highly influential NAMFCU Global Case Committee. This is the culmination of WAMFCU's four and a half year journey to take a national leadership role and is attributable to Ms. Bashaw's extraordinary litigation and leadership skills. The appointment puts WAMFCU at the center of decision making on the key multistate qui tam cases.

MEDICAID FRAUD CONTROL UNIT PERSONNEL ROSTER: *December 31, 2016*

NAME	POSITION NUMBER	POSITION	FTE
Walsh, Douglas	0284	AAG, Director	1.00
Payne, Larissa	0852	AAG, Deputy Director	1.00
Vacant	2065	AAG, Civil Section Chief	1.00
Bashaw, Carrie	2214	AAG, Senior MFCU Counsel	1.00
Crick Peters, Melody	2067	AAG	1.00
Kuehn, Matthew	2085	AAG	1.00
Parkman, Sarah	2066	AAG	1.00
Raap, Marty	1294	AAG	1.00
Vacant	2071	AAG	1.00
Vacant	0454	AAG	1.00
La Monica, Richard	1346	Chief Investigator	1.00
Scott, Tim	1903	Senior Investigator Analyst	1.00
Franklin, Jacqueline	2113	Investigator Analyst Supervisor	1.00
Hartley, Jeffrey	0664	Investigator Analyst Supervisor	1.00
Odiorne, Sally	0673	Senior Investigator Analyst	1.00
Vacant	1930	Senior Investigator Analyst	1.00
Winkelman, Sonja	2068	Investigator Analyst Supervisor	1.00
Brearty, Michael	0665	Investigator Analyst Supervisor	1.00
Pifko, Patty	2117	Financial Examiner	1.00
Hartnett, Ted	1463	Financial Examiner	1.00
Calhoun, Deb	0667	Investigator Analyst	1.00
Clifford, Christine	0663	Investigator Analyst	1.00
Lee, Doug	0672	Investigator Analyst	1.00
Lewin, Nancy	2089	Investigator Analyst	1.00
McDonald, David	2070	Investigator Analyst	1.00
Harker, Rodney	1902	Investigator Analyst	1.00
Purdy, Cynthia K.	0669	Investigator Analyst	1.00
Triplett-Kolerich, Kim	2080	Investigator Analyst	1.00
Lamb, Lori	0668	Paralegal 2	1.00
Weatherly, Saphron	2114	Paralegal 2	1.00
Hemminger, Sandra L.	1344	Criminal Information Analyst	1.00
Heatwole, Eliza R.	0461	Legal Administrative Manager	1.00
Egen, Danni	1646	Legal Assistant 4	1.00
McMullin, Darcie	0833	Legal Assistant 3	1.00
Sobol, Kimberly	2076	Legal Assistant 4	1.00
Gilletti, Elizabeth	2104	Legal Assistant 3	1.00
Gordon, Debbie	0674	Legal Assistant 2	1.00
Loree, Margo	1940	Legal Assistant 3(50 percent)	0.5
Vacant	1807	Legal Office Assistant (33 percent)	.33
TOTAL:			**37.83**

IV. UNIT PERFORMANCE (2015) AND PROJECTIONS (2016) (BOTH INCLUDE NEW QUI TAM CASES)

(a) Investigations Fraud

Investigations Initiated: 77

PROVIDER TYPE

5 Nursing Facility
1 Mental Health Facility (Non-Residential)
2 Other Facility
1 Family Practice
1 Obstetrician/Gynecologist
1 Pediatrician
2 Surgeon
1 Cardiologist
3 Dentists
1 Other Practitioner
1 Pharmacist
1 Transportation
1 Dialysis Center
2 Personal Care Services Agency
10 Personal Care Services Attendant
2 Ambulance
4 DME
4 Lab (Clinical)
1 Lab (Radiology)
2 Lab (Other)
2 Medical Device Manufacturer
17 Pharmaceutical Manufacturer
3 Pharmacy (Institutional Wholesale)
8 Pharmacy (Retail)
1 Medicaid Program Administration
1 Managed Care

SOURCE

6 Medicaid Agency SUR/S
16 Medicaid Agency – Other
7 Law Enforcement
56 Private Citizen
17 HHS/OIG Investigation
5 Other
1 Adult Protective Services
2 Managed Care
1 Prosecutor

Investigations Closed: 95

PROVIDER TYPE

1 Assisted Living Facility
2 Other Facility Non Residential
1 Nursing Facility
1 Mental Health Facility Non Residential
3 Surgeon
2 Pediatrician
2 Dentists
1 Audiologist
1 Hospice
1 Nurse
4 Personal Care Services Agency
17 Personal Care Services Attendant
5 DME
2 Ambulance
10 Lab (Clinical)
1 Lab (Radiology)
1 Lab (Other)
1 Pharmacist
21 Pharmaceutical Manufacturer
4 Medical Device Manufacturer
7 Pharmacy (Institutional Wholesale)
3 Pharmacy (Retail)
2 Managed Care Organization

SOURCE

5 Medicaid Agency SUR/S
17 Medicaid Agency – Other
50 Private Citizen
19 HHS/OIG Investigation
7 Law Enforcement
1 Provider
1 State Agency
1 Adult Protective Services
1 Managed Care Organization
1 Prosecutor
4 Other

(a-1) Investigations Resident Abuse

Investigations Initiated: 5	Investigations Closed: 5
PROVIDER TYPE 1 Nursing Facilities 1 Assisted Living Facility 1 Nurse's Aide 2 Personal Care Services Aide	**PROVIDER TYPE** 2 Nursing Facilities 1 Assisted Living Facility 1 Nurses Aide 1 Obstetrician/Gynecologist
SOURCE 3 Medicaid Agency – Other 1 Law Enforcement 1 Prosecutor	**SOURCE** 3 Medicaid Agency - Other 1 Medicaid Agency – SURS 1 Other

(a-2) Patient Funds

Investigations Initiated: 0	Investigations Closed: 0

(b) Number of cases prosecuted or referred for prosecution: **26 (10 criminal 16 civil)**

The number of cases finally resolved and their outcome: **(see litigation section VI).**

The number of cases investigated but not prosecuted or referred for prosecution because of insufficient evidence: **72***

**This total reflects all cases investigated, reviewed and closed (both fraud and resident abuse) without prosecution, settlement, or referral for prosecution due to insufficient evidence, statute of limitations, low damages, or prioritization of limited resources.*

(c) The number of complaints received regarding abuse and neglect of patients in health care facilities: **2,078**

Number of such complaints investigated by the Unit: **5**

The number referred to other identified state agencies: **3**

(d) (1) The number of recovery actions initiated: **0**
(2) The number of recovery actions referred to another agency: **4**
(3) The total amount of overpayments identified by the Unit: **$12,844.75**

(e) The number of recovery actions initiated by the Medicaid agency under its agreement with the Unit: **0**

The total amount of overpayments actually collected by the Medicaid agency under this agreement: **$0.00**

(f) Projections for the succeeding 12 months for the items listed in paragraphs (a) through (e).

(1) Investigations initiated: **Between 20 to 24 fraud investigations and between 3 to 4 abuse and neglect cases**

(2) Number of prosecutions initiated: **between 10 and 13**

(3) Number of cases investigated but not prosecuted or referred for prosecution because of insufficient evidence: **Approximately 15**

(4) Number of complaints received regarding abuse and neglect of patients in health care facilities: **Between 1,400 to 1,900**
Number of such complaints investigated by the Unit: **Between 3 to 4**
Number referred to other state agencies: **10 to 15**

(5) Number of recovery actions initiated by the Unit: **0**
Number of recovery actions referred to another agency: **10 to 15**
Total amount of overpayments identified by the Unit: **$30,000**
Total amount to be collected by the Unit: **$30,000**

(6) Number of recovery actions initiated by the Medicaid agency under its agreement with the Unit:
Total amount to be collected: **$30,000**

V. COSTS INCURRED BY THE UNIT IN 2016

FUND EXPENDITURE

1. Personnel and Fringe Benefits	$3,477,525.19
2. Equipment (over $5,000)	$0.00
3. Travel	$123,240.14
4. Supplies total	$18,570.22
5. Contractual Services	$96,479.24
6. Communications	$38,724.30
7. Vehicle Maintenance	$3,450.09
8. Other	$402,080.23
Total Expenditures*	**$4,160,069.41**
Indirect Costs**	$417,366.00
Total Including Indirects	**$4,577,435.41**
Federal Share	$3,433,076.56
Non-Federal Share (state)	$1,144,358.85

**total unit expenditures include all federal and state moneys (not including indirects)*
***pursuant to indirect cost agreement at 12 percent*

VI. CRIMINAL AND CIVIL LITIGATION: COMPLETED CASES

Below is a summary of the WAMFCU litigation matters resolved in calendar year 2016. These summaries include cases directly investigated and prosecuted by Unit staff, as well as those prosecuted by other law enforcement agencies with substantial WAMFCU assistance:

HOME HEALTH CARE PROVIDERS

State v. BriAnna Bowden
Snohomish County Superior Court
WAMFCU Case #15-06-09
Criminal Cause #16-1-00572-6

On October 19, 2016, Brianna Bowden was found guilty in a jury trial of one count of Theft in the First Degree and four counts of Medicaid False Statement. She was sentenced to 60 days incarceration, 6 months community supervision, and was ordered to repay $5,376 in restitution and $800 in costs/fees. Bowden contracted to provide in-home care to a Medicaid client through the Health Care Authority, Community Options Program Entry System. The evidence at trial established that she knowingly and intentionally submitted claims for the provision of services in Washington State for five months, when in fact the client had moved to California.

State v. Bessie Miller
Thurston County Superior Court
WAMFCU Case #15-03-10
Criminal Cause #15-1-01626-34

On February 2, 2016 Bessie Miller pled guilty as charged to one count of Theft in the Second Degree and one count of Medicaid False Statement. She was sentenced to 30 days incarceration converted to 240 hours Community Service, 6 months community custody, and was ordered to pay $6,517 in restitution and $800 in costs/fees. The investigation revealed that the defendant contracted to provide in-home care to a Medicaid client through the Health Care Authority, Community Options Program Entry System and from May 1, 2010 and November 7, 2011, she was supposedly providing care in Wenatchee, Washington but the client had moved to another city--an approximate 2 hour drive away.

State v. Tracy Lea Paradis
Thurston County Superior Court
WAMFCU Case #14-06-09
Criminal Cause #14-1-01822-7

On September 22, 2016 Tracy Lea Paradis was sentenced for three counts of Medicaid False Statement, to which she pled guilty on July 7, 2016. Paradis was sentenced as a first-time offender to 240 hours of community service, six months of community custody and was ordered to pay $3,212 in restitution and $800 in other financial obligations. The investigation revealed that Paradis falsely claimed to have provided in-home care services for a Medicaid recipient who had actually moved out of Paradis's home and acquired a new caregiver.

State v. Olivia Ramos
Thurston County Superior Court
WAMFCU Case #13-07-01
Criminal Cause #14-1-01750-6

On August 12, 2016 Olivia Ramos pled guilty as charged to one count of Theft in the Second Degree and one count of Medicaid False Statement. She was sentenced as a first-time offender to 6 months of community custody, 30 days of jail which may be served as 240 hours of community service and she was ordered to pay restitution in the amount of $4,848. She also signed a voluntary exclusion agreement with OIG for 5 years as a condition of the plea agreement.

HOME HEALTH CARE PROVIDERS cont.

State v. Santana Rae Sandoval
Benton County Superior Court

WAMFCU Case #15-03-07
Criminal Cause#16-1-00193-2

On June 8, 2016 Santana Rae Sandoval pled guilty as charged and was sentenced to one count each of Theft First Degree and Medicaid False Statement. She was given a first-time offender waiver and sentenced to six months of community custody, with the condition that she will serve 30 days of jail on the sheriff's work crew and she was ordered to pay $14,329 in restitution. The investigation revealed that Sandoval was contracted to provide in-home care for a Medicaid recipient and that between January 2014 and November 2014, she billed for in-home medical care services for several clients while also maintaining employment elsewhere.

RESIDENT ABUSE

The WAMFCU works with local law enforcement and prosecutors, either taking the investigatory and/or prosecution lead or referring causes as appropriate pursuant to the WAMFCU's Vulnerable Adult Contact Network.

State v. Larry John Lee
Pierce County Superior Court

WAMFCU Case #16-04-17P
Criminal Cause #15-1-02250-6

Larry John Lee was found guilty in Pierce County Superior Court of Murder in the Second Degree of a particularly vulnerable victim; and on June 30, 2016 he was sentenced to 220 months in prison. The Pierce County Prosecuting Attorney's Office prosecuted this case with the assistance of the Washington State MFCU. The local prosecutor requested financial information about the victim's Medicaid and Federal Assistance. Documents that were provided by the MFCU, including SER notes, showed that the defendant had been a provider for the victim thru the COPES program. This information was helpful since defense initially claimed this was just a landlord/tenant relationship.

State v. Cynthia Mary McBain
Clark County Superior Court

WAMFCU Case #13-02-06P
Criminal Cause #14-1-02353-7

On March 8, 2016 Cynthia Mary McBain was sentenced for Criminal Mistreatment in the Third Degree, following a guilty plea. She was sentenced to 364 days incarceration with 334 days suspended and 30 days converted to 240 hours of community service, two years bench probation and she was ordered to pay $3,700 restitution to the victim's daughter and $700 for the mandatory victim penalty assessment and filing fee. The investigation revealed that McBain was a Licensed Practical Nurse who, along with her husband, a Registered Nursing Assistant, owned and operated Adult Felida Homes, Inc., a small adult family home in Vancouver, Washington. In January and February 2013, a 98-year-old resident in their care developed Stage 4 decubitus ulcers on both hips with bone visible. Two doctors described the ulcers as among the worst or most advanced they had seen. When the resident was admitted to the hospital on February 1, 2013, the wounds were infected, and the resident became septic. He was not a good candidate for surgery due to his tenuous health and was released to hospice on February 7, 2013. The resident subsequently died on February 20, 2013 of Failure to Thrive and Alzheimer's disease with the decubitus ulcers and colon cancer listed as "other significant conditions contributing to death but not resulting in the underlying cause."

WAMFCU CIVIL CASES

NON QUI TAM STATE CASE

Wheelchairs Plus
Bankruptcy Court
Thurston County Superior Court

WAMFCU Case #12-10-06
Cause #15-12893-TWD
Court Cause #14-02-01500-1

In February 2016, the Bankruptcy court ordered defendant Wheelchairs Plus aka Michael Mann to pay the State Medicaid program $2,668,078. Unfortunately, defendants are without resources and payment will likely never be realized. Michael Mann sold used wheelchairs to Medicaid clients as "new." The WA Medicaid program only pays for new wheelchairs not used ones. Here, Mann would obtain used wheelchairs on Craigslist, refurbish them and sell them as "new."

JT Educational Consultants
Thurston County Superior Court

WAMFCU Case #14-02-05
Cause #14-2-02307-1

In January 2016, this matter resolved as to one defendant, Jack Hedgecock. In December 2014, WA filed a False Claims Act complaint against Hedgecock and other defendants. The case is still active as to the other defendants. The settlement resolved allegations that Hedgecock, as a JTEC consultant to Washington School Districts, caused the School Districts to submit false claims under the Medicaid Administrative Claiming program. The Washington State settlement was for $80,000 from this defendant.

NON QUI TAM GLOBAL CASE

Emeritus Senior Living (Assisted Living)

WAMFCU Case #13-06-02

In December 2016, this case settled allegations that Emeritus failed to return overpayments that it received from the Medicaid program for fee-for-service claims submitted by Emeritus. The Washington State settlement was for $280,522.

QUI TAM GLOBAL CASES

Genentech-OSI (Shields-Tarceva)

WAMFCU Case #14-10-07

In May 2016, this case settled allegations that Genetech/OSI engaged in an off label scheme regarding Tarceva, a drug used to treat second-line non-small cell lung cancer. The Washington State settlement was for $205,196.

Millennium

WAMFCU Case #14-10-02; #13-03-10; #13-01-02

In February 2016, seven qui tam cases against Millennium settled allegations that Millennium engaged in fraudulent billing when it caused physicians to submit requests for, and Millennium to subsequently bill for excessive and unnecessary urine drug screen tests without an individualized assessment of patient need. The Washington State settlement was for $425,769.

Novartis (Kester-Exjade)
US District Court, Southern District NY

WAMFCU Case #13-03-06
Cause #11-CIV-8196

In February 2016, in this intervened case, the case settled allegations against Novartis that it had engaged in an extensive kickback scheme with specialty pharmacies (Bioscrip, Accredo, US Bioservices) for the iron chelation drug, Exjade. The Washington State settlement was for $1,311,028.

QUI TAM GLOBAL CASES cont.

Olympus (Slowik-MedicaidEnrollment) WAMFCU Case #15-09-06

In May 2016, this case settled allegations that Olympus paid kickbacks to induce doctors and hospital executives to buy a wide ranging array of its endoscopes and other surgical equipment (equipment primarily employed in the course of numerous hospital procedures), and to thereby unlawfully increase sales and gain market share. The Washington State settlement was for $1,674,690.

Omnicare (Ervin-Banigan) WAMFCU Case #16-09-01

In September 2016, this case settled allegations that Omnicare manually altered the NDC field on rejected Medicaid pharmacy claims making the claims inconsistent with the underlying prescription. The Washington State settlement was for $608.

Omnicare (McCoyd-Depakote) WAMFCU Case #14-07-03

In November 2016, this case settled allegations that Omnicare conspired with Abbott Laboratories through a number of disguised kickback arrangements to increase overall utilization of Depakote and to promote misbranded Depakote. The Washington State settlement was for $114,088.

Philips Electronics (Doe-CPAP) WAMFCU Case #14-09-04

In June 2016, this case settled allegations that Philips paid kickbacks to DME suppliers for CPAP masks and related supplies. The Washington State settlement was for $609.

Qualitest Pharmaceuticals (Porter-Flouride Vitamin) WAMFCU Case #13-03-09

In February 2016, this case settled allegations that Qualitest marketed chewable fluoride supplement tablets that contained less than fifty percent of the fluoride ion claimed on the label. The Washington State settlement was for $502,495.

Salix Pharma (Peikin-Xifaxan) WAMFCU Case #12-11-01

In July 2016, this case settled allegations that Salix paid illegal kickbacks to physicians as to multiple drugs. The Washington State settlement was for $250,472.

Warner Chilcott (Alexander-Actonel) WAMFCU Case #12-11-05

In May 2016, this case settled allegations that Warner Chilcott paid illegal kickbacks to physicians and falsified prior authorization, non-formulary exception and coverage determination requests to the Medicaid programs for the drug Atelvia. Atelvia is used to treat osteoporosis. The Washington State settlement was for $152,663.

Wyeth (Kieff-Protonix) WAMFCU Case #04-07-15

In April 2016, this case settled allegations that Wyeth falsely reported Best Prices, for Protonix Oral and Protonix IV resulting in significant underpayment of Medicaid Drug Rebates owed to the States. The Washington State settlement was for $46,719,505.

VII. MONETARY OBLIGATIONS ESTABLISHED 2016

Restitution, Judgments, Penalties, Fines and Interest

CASE NAME	WAMFCU CASE #	MEDICAID RESTITUTION	CIVIL JUDGMENT	MEDICAID PENALTIES	FEES & INTEREST	OTHER ORDERED
Emeritus Senior Living	13-06-02	0.00	213,204.44	67,318.48	0.00	0.00
Genentech-OSI	14-10-07	0.00	153,430.82	51,726.09	1,039.25	0.00
JT Educational Consultants	14-02-05	0.00	80,000.00	0.00	0.00	0.00
Millennium Omni-Genetic Testing	14-10-02	0.00	14,760.58	7,048.09	0.00	1,321.87
Millennium Lab Johnson Drug Testing	13-03-10	0.00	257,987.13	123,733.73	0.00	20,918.26
Novartis	13-03-06	0.00	937,502.87	315,323.00	58,203.00	0.00
Olympus	15-09-06	0.00	1,229,430.27	430,763.87	14,495.91	0.00
Omnicare Ervin-Banigan	16-09-01	0.00	459.51	147.65	1.25	0.00
Omnicare McCoyd-Depakote	14-07-03	0.00	85,483.26	27,683.20	922.53	0.00
Philips Electronics	14-09-04	0.00	553.66	0.00	0.00	56.10
Qualitest Pharmaceuticals	13-03-09	0.00	374,957.03	114,603.45	1,263.58	11,670.98
Salix Parma	12-11-01	0.00	185,925.66	54,914.41	626.63	9,005.49
Warner Chilcott	12-11-05	0.00	106,523.06	39,380.64	1,273.23	5,486.53
Wheelchair Plus	12-10-06	0.00	552,775.00	1,828,825.00	286,478.00	0.00
Wyeth	04-07-15	0.00	39,698,309.65	7,021,195.39	0.00	0.00
State v. BriAnna Bowden	15-06-09	5,376.08	0.00	0.00	0.00	800.00
State v. Chastidy McMahon	14-10-12	2,887.46	0.00	0.00	0.00	800.00
State v. Bessie Miller	15-03-10	6,517.29	0.00	0.00	0.00	800.00
State v. Tracy Paradis	14-06-09	3,212.07	0.00	0.00	0.00	800.00
State v. Olivia Ramos	13-07-01	4,848.50	0.00	0.00	0.00	800.00
State v. Santana Sandoval	15-03-07	14,329.24	0.00	0.00	0.00	1,560.00
State v. Mario Tostado	13-11-02P	42,307.53	0.00	0.00	0.00	0.00
State v. Larry Lee	16-04-17P	0.00	0.00	0.00	0.00	3,076.00
State v. Cynthia McBain	13-02-06P	0.00	0.00	0.00	0.00	4,400.00
Abdi, Jamila	15-06-04	0.00	0.00	0.00	0.00	6,856.15
M2 Anesthesia, PLLC	14-10-04	0.00	0.00	0.00	0.00	2,988.60
TOTAL		**79,478.17**	**43,891,302.94**	**10,082,663**	**364,303.38**	**71,339.98**

2015 SUMMARY OF MONETARY OBLIGATIONS

Medicaid Restitution	$ 79,478.17
*Civil Judgments	$ 43,891,302.94
Medicaid Penalties	$ 10,082,663.00
Fines, Interest and Other Restitution	$ 364,303.38
Overpayment	$ 71,339.98

2016 TOTAL MONETARY OBLIGATIONS ESTABLISHED **$54,489,087.47**

(this includes all Medicaid and co-investigated multiple payer cases resolved)

**Civil Judgments includes Washington State's share of the settlement that was reimbursed to the federal government.*

VIII. FRAUD INITIATIVES: ENHANCED DSHS AUDIT PROGRAM

ENHANCED DSHS AUDIT PROGRAM

The WAMFCU has maintained communication and coordination with Office of Audit and Accountability (Fraud Program) to ensure that the case referral process results in a viable preliminary inquiry and meaningful case referral packet. Enhanced algorithms and continued coordination with the WAMFCU by the Payment Review Program has also increased and improved case referrals made to the WAMFCU. The Office of Audit and Accountability (Fraud Program) and WAMFCU meet monthly to discuss referrals.

TRAINING

During 2016, the WAMFCU continued to educate the Health Care Authority, Regional Care Services, Case Managers, Supervisors and Regional Service Network administrators, managed care administrators and compliance officers on our role (including Washington's new False Claims Act civil qui tam authority), our mission, and how to report Medicaid fraud and resident abuse and neglect. Specifically, the WAMFCU held 6 cross training sessions that included HCA and DSHS staff in 2016.

In addition, the WAMFCU also provided training to law enforcement, government fraud investigators, and community groups. The training provides an overview of the mission of the WAMFCU. Subject matter also included indicators of suspected fraud, various fraud schemes employed by Medicaid providers, and how to report suspected fraud.

IX. RESIDENT ABUSE/NEGLECT

WAMFCU RESIDENT ABUSE MISSION

WAMFCU's resident abuse mission is to:

1. Work in partnership with local law enforcement to respond to resident abuse referrals;
2. Train local law enforcement to improve investigations; and
3. Enhance prosecutions of the resulting cases (by supporting county prosecutors and city attorneys).

REFERRALS AND JURISDICTION

Washington State is 68,139 square miles in size. There are 214 licensed nursing homes, (of which 204 have Medicaid contracts) approximately 2,376 licensed adult family homes, and 243 licensed assisted living facilities at any given time. The state has 39 counties, each with a Sheriff and Prosecutor, and more than 250 total law enforcement agencies.

In 2016, the WAMFCU received most of its 2,078 resident abuse complaints from DSHS's Complaint Resolution Unit pursuant to a mandatory abuse reporting statute RCW 74.34.063(2). Other referrals may come from law enforcement, DSHS field staff, and the long-term care ombudsmen. The WAMFCU investigates potential felony matters of criminal mistreatment and failure to report. The WAMFCU screens referrals for possible investigation pursuant to criteria that determine whether the WAMFCU has jurisdiction, and whether there is otherwise local police expertise or local interest in investigating the matter.

When local law enforcement agencies, city prosecutors, and county prosecutors maintain primary jurisdiction over a matter, the WAMFCU works in conjunction with them to monitor these criminal allegations and provide assistance when requested

STATEWIDE AND NATIONAL NETWORKS

In 2016, the WAMFCU continued to participate in federal and local community efforts to combat abuse and neglect of vulnerable adults, including the Elder Justice Initiative and Western District of Washington U.S. Attorney's Office Elder Abuse Task Force, Federal Health Care Fraud and Social Services Working Groups through the U.S. Attorney's Office in Seattle, the Thurston County Vulnerable Adult Task Force, the statewide Adult Abuse/Neglect Response Workgroup, the Clark County Elder Justice Center, the King County Elder Abuse Council, monthly attendance at CHOW (nursing home cross-sectional regulation) meetings, quarterly meetings with DSHS Residential Care Services management, AGO Vulnerable Adult Task Force, and the King County Elder Death Review Workgroup.

Further, the WAMFCU has continued its partnership with the U.S. Department of Justice, OIG, U.S. HHS, and MFCUs from several states in its investigation regarding quality of care of a multi-state long term care corporation.

TRAINING LAW ENFORCEMENT

During 2016, the WAMFCU continued to train law enforcement to recognize criminal mistreatment, resident abuse, and to improve their response to such crimes. WAMFCU provides materials and conducts training regularly for the Basic Law Enforcement Academy and the Washington State Patrol Academy. An experienced Senior Investigator is participating on a Statewide Task Force to develop improved law enforcement training and a systemic response to abuse and neglect of vulnerable adults.

X. CIVIL & *QUI TAM* CASES

Before the Washington False Claims Act was passed during the 2012 legislative session (RCW 74.66), Washington would receive its proportional share of proceeds from civil false claim actions brought under the federal False Claims Act. However, states with qualifying false claims acts receive significant federal financial incentives. Specifically, if a false claims act complies with the federal Deficit Reduction Act (DRA), by having the key elements of the federal False Claims Act (including *qui tam* whistleblower provisions), as determined by the Inspector General of the Department of Health and Human Services, the state will receive an additional 10% of the principal amount recovered from False Claim Act lawsuits (42 U.S.C. § 1396h).

The False Claims Act empowers a person, known as a relator, to bring a civil action in the name of the State alleging a false or fraudulent Medicaid claim. The relator files the complaint in camera (under seal), and serves a copy of the complaint on the Attorney General. The Attorney General may intervene in the action and take over its prosecution. In that event, the relator continues as a party subject to limitations and is entitled to a share of the proceeds of the action or settlement of the claim. If the Attorney General does not intervene, the relator may proceed with the action. Relators are an important source of referrals related to fraud, abuse and neglect in the Medicaid program. This is particularly important in the complicated arena of fraud in the rapidly expanding managed care systems used to serve the significant number of new enrollees in Medicaid due to the Affordable Care Act. The False Claims Act encourages robust fraud detection and investigation efforts.

The Legislature authorized funding for additional positions to help administer these civil cases. Using this funding, and the associated 75% federal matching funds under the OIG grant, in 2012 the AGO created a new Civil Section within the WAMFCU and increased its staff. Importantly, the state's 25% portion of the funding for the Civil Section is derived, from the funds recovered as a result of the actions brought under the FCA (RCW 74.66).

The cases generally involve, but are not limited to, pharmaceutical manufacturers, hospitals, pharmacies, medical and dental practitioners, ancillary services such as radiology clinics and labs, or suppliers of medical devices and durable medical equipment. The cases generally involve the following issues:

- Off-label marketing by manufacturers of medical devices and drugs
- Kickbacks to doctors, clinics, hospitals
- Falsely submitting billings to Medicaid
- Misrepresenting services provided
- Failing to follow FDA quality control requirements
- Upcoding (billing for more expensive procedures than those performed)

In 2016, the MFCU received 46 qui tam lawsuits. Most of these were Global multistate cases. Given the recent filing of these matters, they have not yet resulted in recovery of Medicaid dollars. In addition, MFCU declined to intervene in 21 cases, and opened 4 civil qui tam investigations of Washington providers.

There are many cases filed around the country where Washington State is not named as a party plaintiff, but these are still cases where settlements or judgments benefit Washington. Most of these cases are managed through the NAMFCU. In 2016, NAMFCU made 22 requests for data involving multiple different provider types and there were 14 cases settled. Through those settlements, Washington recovered fraudulently obtained Medicaid dollars and penalties totaling $222,301.

XI. PROBLEMS & SOLUTIONS

STAFFING

A continuing challenge to the WAMFCU is the unique and complex nature of the cases the Unit handles. We were authorized to expand the WAMFCU by 14.5 FTEs to address the False Claims Act authority enacted during the 2012 Legislative session. Using this funding, the WAMFCU has increased its staff and created a fully functioning Civil/Qui Tam Section within the Unit.

The Unit may need to expand staffing in the months and years ahead to meet the challenges presented by the complexity of facilities and managed care organization cases and the anticipated 30% growth of Medicaid under the Patient Protection and Affordable Care Act. Although all staff persons are experienced in investigation or litigation, many are less experienced in health care fraud. One solution to this challenge is to provide specialized training such as that provided by NAMFCU, OIG, NHCAA and other health care fraud related trainings. In the past 12 months, three new Unit employees have attended NAMFCU 101, four Unit employees attended NAMFCU 102 and six employees attended NAMFCU 103 trainings. The WAMFCU Civil Section has retained a Financial Examiner position with specialized skills, education and experience to focus on the complex area of managed care organizations (MCOs). MCOs now provide the majority of Medicaid goods and services in Washington. We now operate using enhanced intake review, resulting in timely assessment, referral, or assignment of cases that will be opened for active investigation within existing resources.

To enhance case mix and referrals, MFCU conducted a joint conference with the Health Care Authority (SSA) and the MCO Special Investigative Units in August of 2016. We are also moving to establish relationships with MCO program integrity staff and doing cross training with them on a quarterly basis starting in March 2017. This will be done in conjunction with our single state agency. We also anticipate filing an application for waiver of the data mining restrictions in 2017.

The Director is also working closely with the single state agency (HCA), other regional Directors, the NAMFCU and OIG staff to ensure the Unit is in compliance with OIG performance measures and working to capacity.

XII. DRUG FREE WORKPLACE/LOBBYING

All federal grant requirements for both a drug free workplace and prohibiting inappropriate lobbying are in place and have been reviewed. The Unit is in compliance.

XIII. PERFORMANCE STANDARDS

As part of the preparation of this report, the Unit Director has reviewed the Performance Standards and indicates that the Unit is in compliance as detailed by the Director in the 2016 Certification Questionnaire.

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