



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



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TO: All State Medicaid Fraud Control Units
/S/

FROM: Stuart Wright
Deputy Inspector General
for Evaluation and Inspections

SUBJECT: State Fraud Policy Transmittal No. 2013-1:
MFCU Authority in Personal Care Waiver Cases

The purpose of this policy transmittal is to clarify the authority of Medicaid Fraud Control Units (MFCUs or Units) to pursue cases involving Medicaid personal care waiver programs in which beneficiaries hire their own caregivers, monitor services, and bill and receive payments from Medicaid. Specifically, this transmittal clarifies the extent to which the “recipient fraud” prohibition in 42 CFR § 1007.19(e)(5) prohibits Federal Financial Participation (FFP) for cases involving fraud allegedly committed by beneficiaries as part of their increased role in personal care waiver programs. As explained below, we interpret the regulations to allow a MFCU to claim FFP for such cases, as long as the cases are not based solely on the beneficiary’s eligibility for services.

OIG Interpretation: The provision in section 1007.19(e)(5) of the MFCU regulations that prohibits FFP for cases of “suspected recipient fraud” does not prohibit FFP for cases in which beneficiaries allegedly committed fraud in conjunction with their increased role in personal care waiver programs.

Discussion: Section 1007.11(a) of the regulations, in describing broadly the fraud-related duties and responsibilities of a MFCU, states:

The [U]nit will conduct a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.

On the other hand, section 1007.19(e) of the regulations describes several activities for which FFP is specifically unavailable, including: “(5) The investigation and prosecution of cases of suspected recipient fraud not involving suspected conspiracy with a provider. . . .” This is generally known as the “recipient fraud prohibition.”

We understand that the beneficiaries in personal care waiver programs have an increased role in the provision of medical assistance. Under these programs, beneficiaries may submit claims and receive payment from Medicaid, may be responsible for hiring their own caregivers, and may be required to monitor the activities of the caregivers.

The recipient fraud prohibition does not preclude FFP for the investigation and prosecution of cases in which beneficiaries in personal care waiver programs are alleged to have submitted, or caused others to submit, false claims to the Medicaid program. The broad authority under section 1007.11(a) allows Units to receive FFP for the investigation and prosecution of cases involving fraud in the “provision of medical assistance.” In situations in which a beneficiary allegedly commits fraud under a personal care waiver program, the provision of medical assistance is directly connected to the beneficiary’s increased role in submitting claims, receiving payment, hiring his or her own caregiver, or monitoring the caregiver. Therefore, FFP is allowable for these types of cases.

If the Unit determines in an initial review that a case may constitute “recipient fraud” with regard to the establishment of Medicaid eligibility, the Unit should—unless the recipient is alleged to have engaged in a conspiracy with a provider—refer the case to another agency that has responsibility for welfare or recipient fraud cases. Such FFP-ineligible situations include a beneficiary’s alleged submission of false information to establish Medicaid eligibility or a beneficiary’s sale of eligibility documentation so that another individual may falsely obtain Medicaid services.

Please note that this policy transmittal relates only to whether a MFCU may receive FFP. A MFCU’s ability to investigate or prosecute a case may also be limited by its jurisdiction and authority as provided under State law.

If you have any questions, please contact Richard Stern, Director, Medicaid Fraud Policy and Oversight Division, at (202) 619-0480.