

**Department of Health and Human Services  
Centers for Medicare & Medicaid Services**

**Medicaid Integrity Program  
North Dakota Comprehensive Program Integrity Review  
Final Report  
December 2008**

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December 2008**

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## **INTRODUCTION**

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The Centers for Medicare & Medicaid Services' (CMS) Medicaid Integrity Group (MIG) conducted a comprehensive program integrity review of the North Dakota Medicaid Program. The onsite portion of the review was conducted at the North Dakota Department of Human Services (NDDHS) offices. The team also visited the State Attorney General's (AG) office.

This review focused on the activities of the State's Surveillance and Utilization Review (S/UR) Unit, which is primarily responsible for Medicaid program integrity. This report describes three effective practices, four regulatory compliance issues, and one vulnerability in the State's program integrity operations.

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## **THE REVIEW**

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### ***Objectives of the Review***

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

### ***Overview of North Dakota's Medicaid Program***

The NDDHS administers the North Dakota Medicaid program. Based on CMS-64 reports for Federal fiscal year (FFY) 2007, total State and Federal Medicaid expenditures in North Dakota were \$538,575,938. The Federal medical assistance percentage for North Dakota during that same timeframe was 64.72 percent. NDDHS processed an average of 2,625,171 claims for the past three State Fiscal Years (SFYs).

As of the SFY ending June 30, 2007, the program served 75,470 recipients. The program had 12,731 enrolled providers, with about half of the providers actively submitting claims. Currently, all North Dakota providers bill on a fee-for-service basis. However, the provider community also includes a Primary Care Case Management program serving approximately 28,000 recipients within a limited eligibility pool (pregnant women, children age 6-19, and non-disabled individuals) and approximately 700 Qualified Service Providers for home and community-based Medicaid waiver services. Effective December 2006, the State's only Medicaid-contracted managed care organization stopped serving Medicaid clients and the contract terminated.

### ***Surveillance and Utilization Review Unit***

Within the Medical Services Division (MSD), the S/UR Unit, also known as the Fraud and Abuse Unit, is responsible for carrying out the program integrity function within the NDDHS. The unit consists of one full-time S/UR administrator and 1.5 full-time equivalent analysts. A

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number of clinical professionals from the MSD are also available to consult on a part-time basis to the S/UR Unit, including a physician, pharmacist, dentist, nurses, and an optometrist. In addition to provider fraud and abuse investigations, the S/UR Unit is also responsible for third party liability (TPL) and recipient fraud recoveries.

The table below presents the total number of audits and amounts collected in the past three SFYs as a result of North Dakota's Medicaid program integrity activities.

**Table 1**

State Fiscal Year	Number of Audits Performed	Number of Full Investigations	Recoveries (includes TPL)
2005	74	58	\$57,556
2006	76	45	\$50,507
2007	85	25	\$3,009

At the time of the review, the State was unable to break out TPL from fraud or abuse recoveries. In addition, the comparatively low figure for SFY 2007 occurred at a time of transition from the previous program integrity administrator to the current administrator. The State has been reconstructing its program integrity operations since the recent turnover of key staff. The State is implementing a new Medicaid Management Information System (MMIS) system later this year which they believe will improve their program integrity capabilities and recoveries.

### ***Methodology of the Review***

In advance of an onsite visit, the review team requested that North Dakota complete a comprehensive review guide and supply documentation to support its answers to the review guide. The review guide included such areas as provider enrollment, claims payment and post-payment review, managed care, and the Surveillance and Utilization Review Subsystem. A four-person team reviewed the answers and materials that the State provided in advance of the onsite visit.

During the week of March 24, 2008, the MIG review team visited the NDDHS offices and the AG's office. The team conducted interviews with numerous NDDHS officials including staff from the NDDHS units responsible for long term care waiver and managed care programs. Because North Dakota has a U.S. Department of Health and Human Services (HHS) waiver from the requirement to operate a Medicaid Fraud Control Unit (MFCU), the team met with the Assistant AG assigned as civil counsel to the NDDHS.

### ***Scope and Limitations of the Review***

This review focused on the activities of the S/UR Unit. The portion of North Dakota's State Children's Health Insurance Program operating as a Medicaid expansion program and serving approximately 700 children a month was also included in this review. Unless otherwise noted, NDDHS 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, financial, or collections information that NDDHS provided.

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## RESULTS OF THE REVIEW

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### *Effective Practices*

The State has highlighted several practices that demonstrate its commitment to program integrity. These practices involve effective and open communication within the agency, excellent relations with the U.S. Department of Health & Human Services, Office of Inspector General (HHS-OIG), and creative use of staff across different sections of the program.

#### *Open communication across different units within the agency*

The staff, both within the Fraud and Abuse Unit and in other parts of the State agency, communicate well with each other. There are no artificial barriers between organizational units which limit the ability of the program integrity staff to gather information and work cohesively to resolve fraud and abuse issues. There is no hesitation to seek out someone in another division or section for questions.

#### *Communication directly with the HHS-OIG in the absence of a MFCU*

North Dakota is the only state without a MFCU. The State agency has filled this void with appropriate interaction with an in-state HHS-OIG unit. State staff regularly discuss ongoing investigations with Federal investigators and refer cases to them when necessary.

#### *Creative use of an investigative pharmacist*

There is an enthusiastic, knowledgeable, and experienced full-time investigative pharmacist who is both a subject matter expert on drug issues and committed to identifying and eliminating fraud and abuse across the program. This pharmacist is skilled at devising tracking mechanisms and at setting up creative data collection methodologies; for example, he organized the use of university students to call pharmacies with typical patient inquiries. The State has recognized this unique talent and utilizes the pharmacist to his fullest potential.

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### *Regulatory Compliance Issues*

The State is not in compliance with Federal regulations related to required disclosures and reporting requirements.

#### *NDDHS does not meet Federal disclosure requirements concerning the ownership and control of providers and subcontractors.*

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 five 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

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which a person with an ownership or controlling interest in the disclosing entity has an ownership or controlling interest.

Neither the NDDHS Medicaid Program Enrollment Questionnaire nor the Provider Agreement captures the names of individuals who own or have controlling interest in disclosing entities or providers or related subcontractors, their relationships, or the identity of other disclosing entities in which these individuals have an ownership or controlling interest. Provider enrollment applications and provider agreements across all provider types fail to capture this information.

**Recommendation:** Modify the provider applications for all provider types to require disclosure of the information identified in § 455.104.

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***NDDHS does not meet Federal regulations requiring the disclosure of business transactions.*** The regulation at 42 CFR § 455.105(b)(2) requires that, upon request, providers furnish to the State or HHS information about certain business transactions with wholly owned suppliers or any subcontractors.

NDDHS does not capture business transaction information in the provider enrollment process, nor does the provider agreement require these disclosures.

**Recommendation:** Modify provider enrollment packages to require disclosure upon request of the information identified in § 455.105.

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***NDDHS does not meet Federal regulations requiring the disclosure of criminal conviction information.***

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 HHS-OIG whenever such disclosures are made.

NDDHS requires criminal background checks on all providers, including waived providers, prior to enrollment. However, the provider enrollment packages do not request criminal conviction information for owners, persons with control interest, or agents or managing employees of the provider. The State does not have a method for forwarding these disclosures to HHS-OIG within 20 working days, as required by the regulation.

**Recommendations:** Modify enrollment packages for all provider types to require disclosure of health care-related criminal conviction information for owners, persons with control interest, agents and managing employees, in addition to providers. Refer that information to the HHS-OIG as required.

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***NDDHS does not always notify HHS-OIG of adverse actions taken on providers' participation in the Medicaid program.***

The regulation at 42 CFR § 1002.3(b) requires reporting to HHS-OIG any adverse actions a State takes on provider applications for participation in the program.

NDDHS does not collect managing employee information nor report to HHS-OIG all actions it takes on providers, including actions which limit the ability of providers to participate in the program. For example, an administrative action taken against a pharmacy provider resulting in treble damages for overcharging the Medicaid program was not reported to the OIG.

***Recommendation:*** Promptly report to HHS-OIG adverse actions taken against and limits placed on a provider's participation in the Medicaid program.

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### ***Vulnerabilities***

The review team identified one area of vulnerability in North Dakota's practices related to the lack of prepayment reviews.

#### ***Not performing prepayment reviews.***

The MSD and NDDHS Fiscal Administration staff confirmed that no prepayment reviews are done except for MMIS edits. The State relies on MMIS computer edits to prevent unauthorized payments. Prior authorization, not currently utilized, could be an option to consider for services such as multiple ultrasounds and MRIs, multiple dental fillings or crowns on children's teeth, or multiple home health visits by nurses and aides on the same date of service.

***Recommendation:*** Develop and implement a process for conducting prepayment reviews.

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## **CONCLUSION**

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

- open communication across different units within the agency,
- communication with the HHS-OIG in the absence of a MFCU, and
- creative use of an investigative pharmacist.

CMS encourages the State 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, one vulnerability was identified.

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CMS encourages DHS to closely examine the area of vulnerability that was identified in this review.

It is important that these issues be rectified as soon as possible. To that end, we will require NDDHS 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 that the State include in that plan a description of how it will address the vulnerability identified in this report.

The corrective action plan should address how the State of North Dakota will ensure that the deficiencies will not recur. The corrective action plan 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 NDDHS 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 North Dakota on building upon effective practices, correcting its regulatory compliance issues, and eliminating its vulnerabilities.