



DEPARTMENT OF HEALTH AND HUMAN SERVICES

OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



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TO: All Medicaid Fraud Control Unit Directors

FROM: Ann Maxwell
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SUBJECT: State Fraud Policy Transmittal 2024-1
Obtaining HHS-OIG Approval for Extended Authority To Investigate and
Prosecute Medicare and Other HHS Federal Health Care Program Fraud

The purpose of this transmittal is to provide direction to Medicaid Fraud Control Units (MFCUs) when a MFCU, as part of a Medicaid fraud investigation, seeks approval to investigate or prosecute potential fraud involving Medicare or any other Federal health care program administered by the Department of Health and Human Services (HHS).

Background

Section 1903(q)(3) of the Social Security Act (Act), 42 USC § 1396b(q)(3), as implemented by Federal regulations at 42 CFR § 1007.11(a)(2), provides that a MFCU may investigate and prosecute potential fraud involving other Federal health care programs (as defined in section 1128B(f)(1) of the Act, 42 USC § 1320a-7b(f)(1)) in addition to Medicaid if the following conditions are satisfied:

- (1) a MFCU receives written approval from “the Inspector General of the relevant Federal agency,” and
- (2) the “suspected fraud or violation of law” in such case or investigation is “primarily related” to Medicaid.

The regulation further clarifies that a MFCU’s authority, including extended authority* for non-Medicaid fraud, extends to violations of criminal statutes as well as “civil false claims statutes or other civil authorities”

* We refer to the authority to investigate or prosecute potential fraud involving other Federal health care programs upon the approval of the Inspector General of the relevant Federal agency, and if the suspected fraud or violation of law is primarily related to Medicaid, as “extended authority.”

For HHS, extended authority for potential fraud typically involves the Federal Medicare program (title XVIII of the Act) but could also involve other Federal health care programs administered by HHS, such as the Children's Health Insurance Program (title XXI of the Act). A MFCU may also seek extended authority for Federal health care programs not within the responsibility area of HHS, such as the Tricare system administered by the Department of Defense.

Guidance for Obtaining Approval for Extended Authority

This transmittal provides guidance when a MFCU seeks approval to investigate and prosecute claims involving Medicare or other Federal health care programs administered by HHS, including cases investigated jointly with the HHS Office of Inspector General (HHS-OIG) that will be prosecuted by the State, as well as non-joint cases that will be investigated and prosecuted by the State. For approval involving Federal health care programs administered by other agencies, please contact a representative of the Inspector General of the non-HHS agency or ask HHS-OIG for assistance in contacting the agency.

To obtain approval for extended authority, a MFCU should provide in writing the following information to the HHS-OIG Special Agent(s) in Charge (SAC) for the MFCU's location:

- (1) the nature of the suspected fraud or violation and the referral source;
- (2) a brief explanation for concluding that the suspected fraud or violation is "primarily related" to Medicaid;
- (3) an explanation for permitting the MFCU to exercise extended authority under 42 CFR § 1007.11(a)(2), with respect to Medicare or other HHS program fraud;
- (4) the position of the local U.S. Attorney's Office(s) in permitting the MFCU to pursue a criminal prosecution or civil action on the non-Medicaid claims; and
- (5) contact information for the lead investigator or supervisor, and any special requests or information.

In most cases, the SAC will recommend concurrence and provide a written response to the MFCU within 15 working days. An Assistant Inspector General for Investigations will grant extended authority under 42 CFR 1007.11(a)(2).

The MFCU, in its annual recertification narrative provided to HHS-OIG, must report any extended investigative authority approvals it obtained from HHS-OIG and from any other Federal OIG(s). 42 CFR § 1007.17(a)(1)(i).

Any questions concerning this transmittal should be directed to the HHS-OIG Medicaid Fraud Policy and Oversight Division.