



STATEMENT OF
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BEFORE THE
UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE FIELD HEARING

HEARING ENTITLED
“PROTECTING MEDICARE AND MEDICAID: EFFORTS TO PREVENT, INVESTIGATE AND
PROSECUTE HEALTH CARE FRAUD”

PRESENTED
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I. Introduction

Good morning, Chairman Whitehouse, and thank you for your invitation to address the Subcommittee. Thank you also for giving me the opportunity to discuss the efforts of the Rhode Island Office of Attorney General to combat Medicaid fraud.

According to U.S. Attorney General Eric Holder, health care fraud is a significant problem, estimated to cost the public and private sectors over \$60 billion each year.¹ To put this figure into perspective, consider that the infamous Bernard Madoff Ponzi scheme defrauded investors of approximately \$65 billion. Analyst Harry Markopolos has stated that healthcare fraud is so pervasive, “Wall Street is second fiddle to the health care industry.”²

Each state (except North Dakota) has its own Medicaid Fraud Control Unit (MFCU) to investigate and prosecute Medicaid fraud as well as patient abuse and neglect in health care facilities. States administer the MFCUs, but they are jointly funded on a matching basis with the Federal Government. (The Federal Government pays 90 percent of a Unit's costs for the first three years of a Unit's operation and 75 percent for subsequent years; the States pay the remaining portion.) MFCUs operate on an interdisciplinary model and must employ investigators, auditors and attorneys. The MFCUs are required to have statewide authority to prosecute cases or to have formal procedures to refer suspected criminal violations to an office with such authority. The MFCUs' investigative authority extends to Medicaid-funded facilities and to "board and care" facilities that do not receive Medicaid funding. The U.S. Department of Health and Human Services Office of Inspector General, or another agency's Inspector General, may in some circumstances permit the Units to investigate fraud in Medicare or other Federal programs.³

In Rhode Island, the MFCU is housed in the Office of Attorney General. The Rhode Island Office of Attorney General Medicaid Fraud Control Unit is comprised of 11 staff members (including two attorneys, four fraud investigators, two patient abuse and neglect investigators, a nurse investigator and an auditor) who solely work on Medicaid fraud and patient abuse and neglect cases. The MFCU receives referrals from the Medicaid Single State Agency (Department of Health and Human Services Office of Health and Human Services – OHHS).

The State of Rhode Island's total unaudited Medicaid expenditures for fiscal year 2011 was nearly \$1 billion. The MFCU's budget for FY2011 was approximately \$1.3 million – or about one tenth of one percent of the total Medicaid budget.

¹ Remarks by U.S. Attorney General Eric Holder, first National Summit on Health Care Fraud, January 28, 2010.

² CNN interview of financial analyst Harry Markopolos by Dr. Sanjay Gupta, July 3, 2010.

³ United States Department of Health & Human Services – Office of Inspector General. Information available at <http://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/index.asp> (last visited March 21, 2012).

II. Prevention

My administration has made detecting and prosecuting Medicaid fraud a priority. As such, we aim to take several approaches toward the prevention, investigation and prosecution of fraud and abuse. I will first discuss ongoing prevention efforts. These efforts include collaboration and information sharing, background screenings for healthcare workers and fraud training for police officers and healthcare professionals.

The Rhode Island MFCU strives to maintain an extremely cooperative relationship with appropriate state and federal agencies, including local HHS investigators, the United States Attorney's Office and local FBI and DEA offices.

In addition, the MFCU participates on various task forces and committee memberships, which include the United States Attorney's Healthcare Supervisor's Task Force, the Lieutenant Governor's Long-Term Care Coordinating Council, the New England Law Enforcement Association Executive Board, Citizens Commission on Safety and Care of the Elderly, National White Collar Crime Center, National Association of Drug Diversion Investigators, Equal Employment Opportunity Commission and the American Nurses Association. The MFCU Director is on the National Association for Medicaid Fraud Control Units (NAMFCU) Qui Tam Subcommittee and is also the Northeast Regional Executive Committee Representative to NAMFCU.

The MFCU is working to combat Medicaid fraud by opening pathways to increase the amount of investigation referrals. In order to open lines of communication, this office has endeavored to hold regular meetings with the state OHHS, managed care organizations (MCOs) and the Rhode Island Department of Health so that the different entities may find common ground in the desire to combat fraud and increase referrals. In addition to investigation and criminal charges, the MFCU seeks to recoup monies that were fraudulently obtained by providers.

Beyond regular meetings with MCOs and the Rhode Island Department of Health, the MFCU meets quarterly with the Alliance for Better Long-Term Care and the State of Rhode Island Long-Term Care ombudsman, Kathy Heren. These meetings have incorporated members of the Rhode Island Department of Elderly Affairs, the Rhode Island Department of Health Legal Counsel, members of the Rhode Island Department of Health Facilities Regulation section, the United States Attorney's Office healthcare prosecutor and others in an effort to keep communications open on matters of joint interest in the healthcare community.

The MFCU has jointly conducted trainings of healthcare professionals in various venues throughout the state of Rhode Island. These trainings have included the U.S. Attorney's Office, the FBI, HHS, Office of Investigations and others to present a unified front in the battle against healthcare fraud and abuse. The Attorney General's Office has also recognized a need to train police officers to detect and recognize evidence of fraudulent healthcare activities. As a result,

the RI MFCU has conducted trainings at the Rhode Island Municipal Police Training Academy, as well as the most recent training class of the Rhode Island State Police. It is the hope that the “boots on the ground” will recognize fraudulent activity and investigate or refer cases to the MFCU.

In 2002, the Rhode Island General Assembly sent a joint resolution to Congress seeking national background checks for long-term healthcare employees. Congress took action: pilot programs have been established through an offering from the Centers for Medicare and Medicaid Services (CMS) to the states via grant funding to initiate national background check programs supported by fingerprints.

This effort was designed to weed out individuals with certain criminal histories from employment that would expose them to the patients most vulnerable to abuse in long-term care facilities. The Rhode Island Medicaid Agency sought and received a \$1.3 million grant to establish a national background check pilot program in the state of Rhode Island. That grant is being implemented through the Rhode Island Office of Attorney General. We have authored enabling legislation to support the implementation of the national background check program; that legislation is in our state General Assembly this term. The passage of this legislation would require national background checks – supported by fingerprints – on all prospective employees in long-term care facilities where the employee has direct patient contact, as well as on personal care attendants in the homes of patients.

In addition to the enabling legislation for national background checks, we have also sought legislation to certify and require training of personal care attendants (PCAs) in an effort to educate and reduce fraud in this arena. The state of Rhode Island is employing advanced technology to root out fraud in this field and will continue to seek methods to allow us to find fraud while protecting Medicaid resources so that funding is available for those citizens most in need of these valuable services.

III. Investigation

Now I would like to pivot and discuss our efforts in investigation. Our investigations hinge upon data mining, referrals sent to the MFCU from other state agencies and collaboration with our federal partner agencies.

Hewlett Packard (HP) serves as fiscal intermediary under contract for OHHS. In this capacity, HP runs computer analytics and algorithms on all billing by providers of Medicaid services. This process is called data mining. The MFCU is federally prohibited from using federal matching funds to do data mining; as a result, the data mining is done through HP at the request of Medicaid single state agency and their Surveillance Utilization and Review (SUR)

unit. When outliers and anomalous activities are detected, those cases are referred to the MFCU for investigation.

The Rhode Island Secretary of Health and Human Services Steven Costantino oversees a Program Integrity Unit, which obtains the referrals sent to the MFCU for investigation. Secretary Costantino has expressed a desire to expand the Program Integrity Unit, so as to increase its productivity and obtain more referrals. An increase in referrals to the MFCU may require an addition to its investigative staff; an increase in staff would also increase recoveries to the Medicaid program, which would far exceed the cost of staffing.

The MFCU works closely with other state and federal agencies to combat fraud and abuse. Our investigators work with the United States Department of Health and Human Services Office of Investigations; we meet regularly with the supervisory agent from HHS to coordinate joint efforts, and currently have several ongoing joint investigations open. The MFCU has an investigator assigned on a part-time basis to the Food and Drug Administration (FDA) Task Force in Rhode Island. That investigator works solely on cases at the FDA that are related to Medicaid violations.

The area of personal care attendants (PCAs) and home health personnel in general is an area that, in this country, has seen an incredible amount of fraud. In several states, home health care fraud has comprised a majority of the caseload of some Medicaid fraud control units. We have gained a greater knowledge of the level of fraud involving PCAs through our investigatory efforts; this is why we have sought legislation to require background checks for PCAs to assist us in preventing fraud in this area.

IV. Prosecution

A number of these investigations will ultimately be prosecuted by the state and/or the federal government. Both civil and criminal prosecutions occur through collaboration with other governmental agencies.

The MFCU works closely with the U.S. Attorney's Office healthcare prosecutor. The director of the Rhode Island MFCU is cross-designated as a Special Assistant United States Attorney so that state cases with a federal component may be prosecuted jointly in the federal court of the District of Rhode Island.

The state of Rhode Island has a False Claims Act (FCA), which allows individuals, as well as the state, to pursue civil actions for false claims. The state has intervened in several cases involving Medicaid fraud which have been filed under the False Claims Act. These civil lawsuits

regularly result in recoveries to the state Medicaid program; in 2010, the recoveries totaled nearly \$1.1 million from various global case settlements.⁴

In addition to the civil component, the RI MFCU has handled over 1,400 cases of patient abuse and neglect in the past year.

V. Conclusion

As you can see, the Rhode Island Attorney General's Office has a mechanism that works in conjunction with state agencies, the private sector, citizens and the federal government to prevent, investigate and ultimately prosecute cases of health care fraud, particularly in Medicaid. In 2011 this process led to the recovery of nearly \$1.2 million, not including cases that are still under investigation.

But there is more to be done to prevent fraud and abuse. Additional steps that can be taken include staffing expansion, continued funding for background checks and required training of PCAs in fraud prevention.

Thank you very much for giving me the opportunity to provide you with an overview of the Rhode Island Medicaid Fraud Control Unit's mission. I look forward to continuing to work with the Committee to further the MFCU's efforts to combat Medicaid fraud, and I am happy to answer any questions.

⁴ Rhode Island Medicaid Fraud Control and Patient Abuse Unit 2011 Annual Report