



# Medicaid Fraud Control Units

Proposed rule



**Medicaid and CHIP Payment and Access Commission**

Jessica Morris and Kacey Buderer

# Overview

- Proposed rule
- Background on Medicaid Fraud Control Units (MFCUs)
- Key provisions in the proposed rule
- Relationship to ongoing MACPAC work

# Proposed Rule

- CMS proposed updates to the federal rule governing state MFCUs on September 21
- Proposed rule primarily makes technical changes and codifies changes in policy and practice
- Comments are due November 21

# Background on MFCUs

- Medicare-Medicaid Anti-Fraud and Abuse Amendments passed in 1977, allowing states to establish MFCUs
- The Office of the Inspector General (OIG) for the U.S. Department of Health and Human Services (HHS) is responsible for the funding, oversight, and recertification of state MFCUs

# What is a MFCU?

- Single identifiable entities of state governments
- Charged with investigating and prosecuting Medicaid provider fraud and patient abuse or neglect in certain facilities
- 75 percent federal matching rate
- Predominantly located in the state attorney general's office
- North Dakota and the U.S. territories also have not established MFCUs

# Scope of MFCU Authority

- The proposed rule is the first wholesale revision since 1978, primarily technical changes
- Detailed summary in Appendix
- Definitions to key terms:
  - Provider: Clarifies that providers who are not furnishing items or services under Medicaid can be the subject of a MFCU investigation or prosecution
  - Patient abuse: Now includes misappropriation of patient funds, and adds a requirement for MFCUs to investigate credible allegations

# MFCU Organization and Staffing

- Clarifies the requirements a MFCU must meet to be considered a single identifiable entity
- Requires MFCUs not located in state attorney general's offices to establish formal written procedures for referring for prosecution suspected cases of patient abuse and neglect
- Makes changes to requirements related to employee, staffing, and contracting arrangements
- Requires MFCUs to provide adequate safeguards for sensitive electronically stored information

# Communication and Collaboration with HHS OIG

- Requires collaboration on shared cases
  - (e.g. on cases involving both Medicare and Medicaid)
- Establishes circumstances that require MFCUs to seek HHS OIG permission to investigate a case
  - (e.g. cases involving both Medicare and Medicaid)
- Clarifies the data required for recertification purposes



# Communication and Collaboration with the State

- Codifies written policies and procedures
  - the difference in scope of state and MFCU responsibilities and procedures
  - the information MFCUs are required to send to the state agency
    - (e.g. If a referred matter continues to be under investigation and warrants continued payment suspension)
- However, CMS did not propose new requirements around MFCU communication or collaboration with managed care organizations (MCOs)

# MFCU Dependence on Referrals

- MFCUs are generally dependent on referrals from states and MCOs to investigate fraud
- Proposed rule would allow MFCUs to access federal funds to
  - conduct data mining activities as long as they are not duplicative of state activities
    - (e.g. MFCU's can conduct an analysis of state Medicaid claims with HHS OIG permission to identify cases)
  - increase referrals through program outreach activities
    - (e.g. educating providers, law enforcement, and the public)

# Ongoing MACPAC Work

- What are the strengths and challenges of existing federal and state managed care program integrity efforts?
- Environmental scan of existing state and federal program integrity practices
- Summer and fall 2016 interviews
  - 10 state Medicaid agencies
  - 5 state MFCUs
  - 3 MCOs
  - Several federal stakeholders, including HHS OIG

# Relationship to Ongoing MACPAC Work

- Challenges in collaboration across state and federal entities is a key theme in this work
  - Challenges in the relationship between MFCUs and MCOs, especially with regard to the limited number and quality of referrals from MCOs
- The proposed rule leaves a discrepancy in the requirements for communication from MFCUs and the MCOs

# Relationship to Ongoing MACPAC Work

- Proposed rule intends to clarify the roles of MFCUs as they collaborate across state and federal entities and work to promote program integrity
- Comments on the proposed rule must be submitted by November 21



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