



HB XX FALSE CLAIMS ACT AMENDMENTS (REP. BRIAN KING)

A Proven Tool to Report and Prevent Fraud in Utah Medicaid

A Utah Health Policy Project Position Paper

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SUMMARY

Medicaid fraud is an ever increasing concern for Utah policymakers. Last year, Medicaid lost an estimated \$20.2 million to fraud, including \$5.8 million in state funds. Some of these funds could be recovered using more aggressive fraud prevention efforts.ⁱ However, the state does not have sufficient resources in staff, technology, or statutory tools to effectively combat fraud. Also, as Medicaid moves toward new payment methods, traditional fraud prevention tools may not be as effective. Utah is ready for new ways to combat fraud going forward.

BACKGROUND

In 2008, the U.S. spent \$2.5 trillion on health care.ⁱⁱ An estimated 3% of all health care spending— about \$68 billion—is lost to fraud in a typical year.ⁱⁱⁱ No area of the country, including Utah, appears *any less* susceptible to this crime^{iv}

But combating Medicaid fraud is difficult. First, fraud is prominent in Medicaid because it serves the people who are least likely to notice.^v These vulnerable populations make easy targets for fraud typically perpetrated by health care providers.^{vi}

Second, the Utah Medicaid Fraud Control Unit (MFCU) does not have enough investigators who understand complex healthcare financing.^{vii} Without additional resources to hire and train personnel, the MFCU will never be able to prevent the level of fraud that is occurring.

Third, payment reforms may make combating fraud even more difficult. As Utah moves away from fee-for-service to capitated payment systems, the computer programs used to examine billing for fraud may become less effective because providers will no longer be submitting bills for services rendered.^{viii}

Frequently Asked Questions

Is Medicaid fraud a problem in Utah?

Utah Medicaid is a \$2 billion business, with the state paying \$500 million and the federal government covering the remaining \$1.5 billion. The legislative auditor estimated that Utah could save about 1% of those costs (\$5 million in state funds) by strengthening fraud prevention.

Why do payment reforms call for new tools to combat fraud?

The traditional fee-for-service payment model requires a provider to bill for each service they provide a Medicaid client. This effectively provides the state with a record of the care provided, and can be easily examined using computer systems programmed to detect fraud.

Payment reforms generally involve paying one capitated fee for *all* needed care to a Medicaid client. While these methods reduce the Medicaid bureaucracy, they also reduce the state's oversight capabilities.

FALSE CLAIMS ACT: A PROVEN TOOL TO PREVENT FRAUD IN UTAH

One way to strengthen fraud prevention in Utah is to supplement state investigation with powerful statutory tools. At the federal level, one of the most effective tools used to combat health care fraud is the False Claims Act (FCA). The FCA prohibits the submission of false claims and imposes treble (triple) damages to help deter violations.

One of the most important aspects of the FCA is its *qui tam* provision, which encourages private whistleblowers to file suit and entitles them to a share of the recovery—a powerful financial incentive for people to share knowledge of fraud with investigators.

The Deficit Reduction Act of 2005 (DRA) provides incentives for states to enact false claims acts that mirror federal law. If an act meets the DRA requirements, the state is entitled to a 10% increase in the state federal medical assistance percentage on funds recovered using the state law. That's real savings for Utah's Medicaid program.

To qualify for the DRA incentive, Utah must carefully draft its false claims act. Since 2005, 14 states have enacted acceptable laws.^{ix} However, eight states have had their acts rejected for not being effective in facilitating and rewarding *qui tam*. House Bill XX meets the DRA requirements.

CONCLUSION

As Utah wrestles with competing demands on limited general revenues it is essential to capture all potential savings within the Medicaid program. House Bill XX creates an effective False Claims Act provision for Utah Medicaid, freeing up valuable taxpayer dollars for care.

ⁱState of Utah Office of the Legislative Auditor, *A Performance Audit of Fraud, Waste, and Abuse Controls in Utah's Medicaid Program*, August 2009.

ⁱⁱCenters for Medicare and Medicaid Services, *National Health Expenditures 2009 Highlights*, 2009

ⁱⁱⁱSara Rosenberg, Nancy Lopez, Scott Stifler, *Healthcare Fraud*, October 2009

^{iv}State of Utah Office of the Legislative Auditor, *A Performance Audit of Fraud, Waste, and Abuse Controls in Utah's Medicaid Program*, August 2009.

^vNancy Lopez, Scott Stifler, Sara Rosenberg, *Health Insurance Fraud: An Overview*, June 2009.

^{vi}Sara Rosenberg, Nancy Lopez, Scott Stifler, *Healthcare Fraud*, October 2009

^{vii}National Association of Medicaid Fraud Control Units, *Medicaid Fraud Control Unit Survey*, 2009.

^{viii}Sara Rosenberg, Nancy Lopez, Scott Stifler, *Healthcare Fraud*, October 2009.

^{ix}National Association of Medicaid Fraud Control Units, *Medicaid Fraud Control Unit Survey*, 2009.

Medicaid fraud hits close to home

When my wife was finally diagnosed with bladder cancer, it was too late for treatment.



Fortunately, she was able to spend her last few months at home, surrounded by family and friends. Eventually she needed a hospital bed, wheelchair, and other medical supplies. We found a medical supply company in the area that had everything we needed—and they were prepared to bill Medicaid and Medicare.

After my wife passed away, it fell to my daughter to return the medical supplies. Although they were fully covered by Medicare and Medicaid, I asked for a copy of the bill. It showed thousands of dollars of supplies we had never used and charges for days beyond our actual rental period.

This was a case of fraud, plain and simple. Maybe the owner thought we wouldn't notice, particularly in our time of distress? Or, why would we report him, when it wasn't our money at stake? We called the Feds to turn him in and were pleased to receive a portion of the recovered funds as our reward.

Thanks to Stephanie Bartlett, second year U. of U. law student for her valuable assistance on this brief. For more information please contact Jason Cooke, jason@healthpolicyproject.org, 801-433-2299 or (512) 496-9614