ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

Prosecuting Medicaid Fraud in Texas

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Civil Medicaid Fraud Division (CMF)

Authorized by the Texas Medicaid Fraud Prevention Act (TMFPA), Human Resources Code, Chapter 36 to:

- **Investigate and prosecute "unlawful acts" under the statute**
- **Issue civil investigative demands**
- **Require sworn answers to written questions**
- **Obtain sworn testimony through examinations under oath prior to litigation**

Remedies Under the TMFPA

- Treble damages
- Up to $10,000 civil penalty per violation
- Revocation of provider agreement or license
- Automatic exclusion from participation in Medicaid for 10 years

Private causes of action or *qui tam* actions

- The OAG determines whether to prosecute on behalf of the state
- 2007 Amendment allows the "relator" to continue the suit even if the OAG does not intervene
- In either case, the Texas Medicaid Program recovers damages and the relator shares in the recovery.

(Texas retains an additional 10% of Medicaid recoveries due to compliance with the 2005 Federal Deficit Reduction Act.)

CMF Statistics

CMF Docket	FY 2010
Pending Cases/Investigations	298
Cases Closed	63
Cases Opened	94

CMF settled and recovered funds in the following matters. The recoveries listed on the next slide are the state and federal funds, after deducting the relator shares and attorney's fees.

CMF Cases FY 2010

Case	Recovery to Medicaid
State of Texas v. Mylan	$5,642,016
State of Texas v.AstraZeneca	$65,058
State of Texas v.UHS	$3,712,118
State of Texas v. Aventis	$2,783,130
State of Texas v.Otsuka	$220,745
State of Texas v. Medtronic	$449,835
State of Texas v.Pfizer	$52,379,648
State of Texas ex rel Ven-A-Care v. B.Braun	$711,000
State of Texas v.FORBA/Small Smiles	$11,062
State of Texas v. Bayshore	$330,745
State of Texas v. IVAX	$224,255
State of Texas v. Omnicare	$1,651,371
State of Texas ex rel Ven-A-Care v. Teva	$27,326,454
State of Texas v. Ortho/Dermatop	$438,182
State of Texas v. Intermune	$563,783

CMF Cases FY 2011

Case	Recovery to Medicaid
State of Texas v. Astra Zeneca	$21,674,142
State of Texas v. Novartis (TOBI)	$9,527,698
State of Texas v. Novartis/McKee	$15,190,457
State of Texas v. Glaxo	$16,679,740
State of Texas v. Ortho	$2,847,022
State of Texas ex rel Ven-A-Care v. Mylan	$53,114,656
State of Texas v. Forrest/Gobble	$7,210,383
State of Texas v. Allergan/Beilfuss	$2,657,873
State of Texas v. KOS/Cashi	$428,731

State of Texas ex rel Ven-A-Care v. Actavis

Jury verdict totaling over $170 million obtained on February 1, 2011. This is the highest known verdict to be obtained in Travis County.

CMF Pending Cases

- Caremark for failure to reimburse Medicaid for pharmacy benefits paid on behalf of dual eligible Medicaid recipients
- Janssen Pharmaceuticals and its parent company, Johnson & Johnson, regarding the marketing of the drug Risperdal.
- Par pharmaceutical companies and their subsidiaries for pricing fraud.
- Caremark for falsely rejecting reimbursement requests from Texas Medicaid.
- Wyeth for rebate fraud, as part of a national litigation team.

Medicaid Fraud Control Unit (MFCU)

MFCU conducts criminal investigations into allegations of fraud, physical abuse, and criminal neglect by Medicaid providers.

- **57,000 Active Texas Healthcare Providers**
- **3.7 Million Medicaid Recipients**
- **2,400 Long-Term Care Facilities**

Statutory Authority

MFCU is authorized by 42 CFR 1007 and defined in 1 TAC 371.1601 as the OAG division responsible for investigating and prosecuting Medicaid fraud committed by providers.

MFCU must report quarterly to the U.S. Department of Health and Human Services – Office of the Inspector General (HHSC-OIG).

Violations of state law are prosecuted under the most appropriate Penal Code statute including theft, misapplication of fiduciary property, Medicaid fraud, and tampering with a government record.

Staff and Funding

STAFF:

In 2003, MFCU had 39 employees

HB 2292, 78th Texas Legislature expanded the staff to 208.

FY 2010 FTE's = 193 which reflects recent budget cuts

FUNDING: FY 2010

	State Budget	Actual
HHS Grant	$10.5 Million	$10.1 Million
State Match*	$4.4 Million	$4.3 Million
Total	$14.9 Million	$14.4 Million

Referral Sources

Source	Number of Referrals
Dept. of Aging & Disability Services	93
FBI	7
Texas HHSC-OIG	147
Law Enforcement	9
MFCU Self-Initiated	32
National Association of MFCUs	6
Other State Agencies	4
Providers	7
Public	105
U.S. HHS-OIG	11
Other	21

Investigations

	FY-2003	FY2009	FY2010
Cases Opened	165	562	815
Pending Cases	309	1,342	1,433
Cases Presented	68	360	377
Convictions*	39	97	101
Overpayments Identified	$14.4 million	$56 million	$71.0 Million

* Approximately 36% in Federal Court

Medicaid Fraud and Abuse Referral Statistics

Action	FY 2010
Cases Opened	815
Cases Closed	935
Cases Presented	377
Criminal Charges Obtained	154
Convictions	101
Potential Overpayments Identified	$71,009,463.83
Misappropriations Identified	$69,070.75
Cases Pending	1,433

Provider Types

- **Practitioners**

  Doctors, Dentists, Podiatrists, Psychiatrists, LPCs

- **Medical Support**

  Pharmacies, Durable Medical Equipment Suppliers, Laboratories, Medical Transportation Services, Home Health Care

- **Institutions**

  Hospitals, Nursing Homes

- **Others**

  Rehab Facilities, Chemical Dependency Treatment Centers, Adult Day Care Facilities, Outpatient Care

Types of Fraud

- Billing for services not rendered
- Billing for unnecessary services
- Upcoding – Billing for a more expensive service than was provided
- Billing for services provided by unqualified staff
- Kickbacks for patients
- Padding Cost Reports
- Billing for products/drugs not needed or not delivered
- Billing for diluted or Mexican drugs
- Billing for ambulances used as a taxi

Fraud Trends

- **Home Health Care Fraud Is Increasing**
  - From 45 cases to 131 since 2006
- **DME Fraud Remains a Major Problem**
  - Wheelchairs, Incontinence Supplies, Orthopedic Equipment
- **Ambulance Cases Fraud is Tapering Off**
  - From 87 cases to 66 since 2006
- **Audiologist Fraud Is Increasing**
  - Fitting patients in Nursing Homes, Adult Day Care Centers
- **Physicians and Physician Group Fraud is increasing**
  - From 163 cases to 219 since 2006
  - Shift from Individuals to Physician Groups

Additional Tools

- Remove limitations on third-party recoveries that have greatly reduced the CMF's ability to sue for all of the fraudulent claims filed under the Medicaid program.
- Allow the state to file a lien for restitution that has been ordered by a court as a result of a felony conviction involving the state Medicaid program.
- The OAG has been working with Senator Nichols and Senator Seliger (SB 544) to assist both MFCU and CMF in investigating and prosecuting cases.