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DEPARTMENT OF JUSTICE
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April 4, 2017

Hon. Tom Price
Secretary
Department of Health & Human Services
xx
Washington, DC xx

Re: Medicaid Recipient Fraud

Dear Secretary Price:

As the top law officers and chief investigators of our states' respective Medicaid Fraud Control Units, we are writing to express our concerns about the ongoing impact of Medicaid recipient fraud. Medicaid recipient fraud places tremendous strain on state budgets and continues to grow at an alarming rate. In September 2016, the Department of Health and Human Services sent out a warning that improper payments under Medicaid have become so common that they will account for almost 12 percent of total Medicaid spending this year, just shy of *\$140 billion*.

A significant portion of these improper payments can be linked to fraud by beneficiaries. In May of 2015, the United States Government Accountability Office issued a report to the United States Congress that found 200 deceased individuals and 3,600 incarcerated individuals had fraudulently received Medicaid benefits totaling \$13.4 million. This report also found 199,000 individuals with nonexistent social security numbers and 4,400 individuals using a "virtual address" to improperly receive benefits totaling at least \$468.5 million.¹ With a growing number of individuals applying for Medicaid benefits, the identification, investigation, and prosecution of individuals who intentionally falsify qualifying information on their applications will not only save much-needed funding but also deter others from engaging in similar activity.

Attorneys General, and specifically their Medicaid Fraud Hotlines, receive numerous calls from individuals reporting Medicaid recipient fraud. However, we are currently prohibited from following through investigating those complaints. As a result, arrests and prosecutions of fraudulent recipients are virtually nonexistent.

Below is a list of complaints commonly received that we are currently restrained from investigating:

- Recipients who submitted a false application for Medicaid approval;
- Recipients who provided false or misleading information about income, assets, family members, or resources;

¹ United States Government Accountability Office, *MEDICAID Additional Actions Needed to Help Improve Provider and Beneficiary Fraud Controls*, GAO-15-313, May 2015 at 9-10.

- Recipients who share a Medicaid eligibility card with another individual;
- Persons who have sold or purchased a Medicaid card;
- Recipients who have diverted for resale prescription drugs, medical supplies, and/or other benefits;
- Recipients who have participated in doctor or pharmacy shopping; and/or
- Recipients who obtained Medicaid benefits to which they were not entitled through other fraudulent means.

In recent cases, investigators determined owners of Medicaid companies who were billing millions of dollars to Medicaid each year as providers also submitted \$45,000 in *personal* medical bills to the Medicaid Program; and those personal bills were paid in full². In another case, investigators prosecuted a caretaker under the Medicaid program who was also receiving Medicaid benefits despite having more than \$200,000 in his checking account at the time of arrest³. This individual was being paid twice: once by the State for *providing* Medicaid services, and a second time by the State for *receiving* services. This gross Medicaid recipient fraud and waste of taxpayer dollars must be stopped.

As the only statewide agency with capacity to investigate, arrest, and prosecute Medicaid fraud,⁴ our Medicaid Fraud Control Units are the logical entities to tackle fraud committed by Medicaid recipients. However under the current interpretation of the statutory language creating state Medicaid Fraud Control Units, as well as the regulations created as a result of that interpretation⁵ – state Medicaid Fraud Control Units are *prohibited* from investigating and prosecuting beneficiary fraud. *See*, 42 CFR 1007.19(e)(5)(expressly prohibiting federal financial participation for “investigation or prosecution of cases of suspected beneficiary fraud”). This regulation apparently arises from prior departmental interpretation of 42 U.S.C. 1396b(q)(3) of the Social Security Act which provides that, “the entity’s function is conducting a statewide program for the investigation and prosecution of violations of all applicable state laws regarding any and all aspects of fraud in connection with (A) any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this subchapter....”

Congress plainly intended to include any and *all* aspects of fraud committed against the program. We therefore write to request your agency revisit interpretation of this statutory text to evaluate whether it supports the authority of state Medicaid Fraud Control Units to investigate and prosecute beneficiary fraud. To the extent that it does, we request the appropriate administrative action be taken to revise the federal regulations and remove any unnecessary and extra-statutory restrictions currently prohibiting state Medicaid Fraud Control Units from investigating beneficiary fraud.

Our Medicaid Fraud Control Units are staffed with qualified, professional investigators and attorneys who could immediately begin the process of correcting this serious problem. Please assist us in seeking justice and saving taxpayer money by accomplishing our goal of detecting, investigating, and prosecuting all forms of fraud in the Medicaid program.

² *See Louisiana v. Chanci Shaw*, Docket No. 11-11-0604, 19th Judicial District Court.

³ Louisiana Department of Justice, Medicaid Fraud Control Unit case number 57-1594, In Re: Shonda Augustus.

⁴ Under La. R.S. 14:70.1; K.S.A. 75-725 *et seq.*

⁵ *See, e.g.*, 42 CFR 1007.19(e)(5)(expressly prohibiting federal financial participation for “investigation or prosecution of cases of suspected beneficiary fraud”).

Sincerely,

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Derek Schmidt
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