Susan Montee, JD, CPA
Missouri State Auditor

OFFICE OF ATTORNEY GENERAL

Medicaid Fraud Control Unit

November 2009

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Office of the
Missouri State Auditor
Susan Montee, JD, CPA

November 2009

YELLOW SHEET

The following finding was included in our audit report on the Office of the Attorney General, Medicaid Fraud Control Unit.

The State Auditor is required by state law to conduct an audit of the Medicaid Fraud Control Unit (MFCU) " . . . to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office." In 2008, the MFCU collected over $13 million.

The report does not separately indicate the total amount of overpayments identified as a result of completed investigations. The overpayments reported include applicable damages ordered by the court. This condition was also noted in the prior report.

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OFFICE OF ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT

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STATE AUDITOR'S REPORT

SUSAN MONTEE, JD, CPA

Missouri State Auditor

Honorable Jeremiah W. (Jay) Nixon, Governor
and
Members of the General Assembly
and
Honorable Chris Koster, Attorney General
Jefferson City, Missouri

We have audited the Office of Attorney General, Medicaid Fraud Control Unit, as required by Section 191.909.1, RSMo. The scope of our audit included, but was not necessarily limited to, the year ended December 31, 2008. The objectives of our audit were to:

1. Determine the amount of money recovered by the unit.

2. Determine the amount of money invested in the unit.

3. Evaluate the unit's compliance with certain legal provisions.

Our methodology included reviewing written policies and procedures, financial records, and other pertinent documents; interviewing various personnel of the office, as well as certain external parties; and testing selected transactions.

We obtained an understanding of internal controls that are significant within the context of the audit objectives and assessed whether such controls have been properly designed and placed in operation. However, providing an opinion on the effectiveness of internal controls was not an objective of our audit and accordingly, we do not express such an opinion.

We obtained an understanding of legal provisions that are significant within the context of the audit objectives, and we assessed the risk that illegal acts, including fraud, and violations of grant agreement or other legal provisions could occur. Based on that risk assessment, we designed and performed procedures to provide reasonable assurance of detecting instances of noncompliance significant to those provisions. However, providing an opinion on compliance with those provisions was not an objective of our audit and accordingly, we do not express such an opinion. Abuse, which refers to behavior that is deficient or improper when compared with behavior that a prudent person would consider reasonable and necessary given the facts and

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circumstances, does not necessarily involve noncompliance with legal provisions. Because the determination of abuse is subjective, our audit is not required to provide reasonable assurance of detecting abuse.

We conducted our audit in accordance with the standards applicable to performance audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform our audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides such a basis.

The accompanying History and Organization is presented for informational purposes. This information was obtained from the office's management and was not subjected to the procedures applied in our audit of the Medicaid Fraud Control Unit.

The accompanying Management Advisory Report presents our finding arising from our audit of the Office of Attorney General, Medicaid Fraud Control Unit.

Susan Montee, JD, CPA
State Auditor

The following auditors participated in the preparation of this report:

Director of Audits:	John Luetkemeyer, CPA
Audit Manager:	Toni Crabtree, CPA
In-Charge Auditor:	Matthew Schulenberg
Audit Staff:	Joe Adrian

MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

OFFICE OF ATTORNEY GENERAL
MEDICAID FRAUD CONTROL UNIT
MANAGEMENT ADVISORY REPORT -
STATE AUDITOR'S FINDINGS

Annual Report

The Medicaid Fraud Control Unit's (MFCU) 2008 annual report did not include some information required by state law. We compared the information included in this report to the statutory requirements. In addition, we reviewed the supporting documentation to ensure the report information was complete and accurate.

Pursuant to Section 191.909.1, RSMo, the Attorney General's office is to report annually, by January 1 of each year, the following activities related to the MFCU:

"(1) The number of provider investigations due to allegations of violations under sections 191.900 to 191.910 conducted by the attorney general's office and completed within the reporting year, including the age and type of cases;

(2) The number of referrals due to allegations of violations under sections 191.900 to 191.910 received by the attorney general's office;

(3) The total amount of overpayments identified as the result of completed investigations;

(4) The amount of fines and restitutions ordered to be reimbursed, with a delineation between amounts the provider has been ordered to repay, including whether or not such repayment will be completed in a lump sum payment or installment payments, and any adjustments or deductions ordered to future provider payments;

(5) The total amount of monetary recovery as the result of completed investigations;

(6) The total number of arrests, indictments, and convictions as the result of completed investigations."

Additionally, the state auditor is required to conduct an audit of the MFCU ". . . to quantitatively determine the amount of money invested in the unit and the amount of money actually recovered by such office."

For the year ended December 31, 2008, the MFCU recovered the following funds:

Federal	$	615,346	(1)
State		12,679,035	(2)
Federal direct		20,294,900	(3)
Total	$	33,589,281	

(1) Federal government's share of the funds recovered by the unit. This amount includes $17,765 for court ordered reimbursement of the unit's investigation costs.
(2) State's share of the funds recovered by the unit and from multi-state cases. This amount includes $10,452 for court ordered reimbursement of the unit's investigation costs.
(3) This amount includes the federal government's share of multi-state settlements, which is remitted directly to the federal government by the multi-state trustee.

For the year ended December 31, 2008, the costs incurred to operate the MFCU were:

Salaries and wages	$	858,518	
Fringe benefits		353,362	
Travel, in-state		11,024	
Travel, out-of-state		16,996	
Supplies		25,646	
Professional development		10,659	
Communication services and supplies		12,531	
Professional services		280,545	
Housekeeping and janitorial services		192	
Maintenance and repair services		16,621	
Computer equipment		16,620	
Motorized equipment		367	
Office equipment		40	
Miscellaneous expenses		2,237	
Building lease payments		61,957	
Total	$	1,667,315	(4)

(4) In 2008, funding of these costs included federal reimbursement of $1,371,251 and federal indirect reimbursement of $143,311. The remaining balance of $152,753 was incurred by the state.

The following concern was noted:

The report does not separately indicate the total amount of overpayments identified as a result of completed investigations. The overpayments reported include applicable damages ordered by the court.

The MFCU has identified overpayments as the difference between the amount the state paid and the amount the state should have paid. According to Section 191.905.11, RSMo, any person convicted of Medicaid fraud is, ". . . required to make restitution to the federal and state governments, in an amount at least equal to that unlawfully paid to or by the person . . . ." Typically, restitution is the amount identified as the overpayment. Depending on the level of fraud, the damages can be up to three times the amount of overpayment.

The MFCU should report the overpayment/restitution amounts and damages separately.

This condition was also noted in the prior report.

WE RECOMMEND the MFCU separately account for overpayment/restitution amounts identified and court ordered damages in the annual report.

AUDITEE'S RESPONSE

The MFCU provided the following written response:

As responded to in the calendar year 2007 report, the MFCU does not keep a record of the amount of overpayments. The MFCU will comply with this recommendation and segregate restitution from damages in each case, where possible.

HISTORY AND ORGANIZATION

OFFICE OF ATTORNEY GENERAL
MEDICAD FRAUD CONTROL UNIT
HISTORY AND ORGANIZATION

The Attorney General's office is located in Jefferson City. There are branch offices in Kansas City, St. Louis, Springfield, and Cape Girardeau. The office is organized into eight divisions: Agriculture and Environment, Consumer Protection, Criminal, Financial Services, Governmental Affairs, Labor, Litigation, and Public Safety. Each division is headed by a chief counsel who is responsible for the operations of the division.

The Medicaid Fraud Control Unit (MFCU) is organizationally located within the Public Safety Division, and was created in 1994.

The MFCU conducts a statewide program for the investigation and prosecution of health care providers that defraud the Medicaid program. Additionally, the MFCU reviews complaints of abuse or neglect of nursing home residents and may review complaints of the misappropriation of patients' private funds in these facilities. The MFCU is also charged with investigating fraud in the administration of the Medicaid program and providing for the collection or referral for collection to the state Medicaid agency, the Department of Social Services (DSS). Referrals are received from the DSS's Program Integrity Unit and Investigations Unit, other state agencies, and federal agencies. Additionally, the MFCU initiates its own investigation.

The MFCU operates under the administration oversight of the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HSS), and must be recertified annually by the OIG. To receive certification, the MFCU must be separate and distinct from the state Medicaid agency (DSS). Federal regulations also prohibit 1) any official from DSS from having authority to review or overrule activities of the MFCU, 2) the MFCU from receiving funds from the DSS, 3) the MFCU from pursing recipient fraud, unless there is a conspiracy with a provider, and 4) the MFCU from engaging in the routine computer screening activities that are the usual monitoring function of DSS. In addition, the MFCU is required to enter into a Memorandum of Understanding (MOU) with the DSS which outlines each agency's responsibilities and duties to each other. An annual federal grant from HHS reimburses 75 percent of the MFCU's expenses, with the state paying the remaining 25 percent of expenses.

Section 191.905.11, RSMo, provides restitution monies recovered by the MFCU be deposited to the MO HealthNet Fraud Reimbursement Fund and appropriated to the federal government and affected state agency(s) to refund monies falsely obtained from the federal and state agency(s). For federal fiscal year 2008, monies collected were distributed between the federal and state at a rate of 62.42 percent and 37.58 percent, respectively. These rates changed in federal fiscal year 2009 to 63.19 percent and 36.81 percent, respectively. Any monies remaining in this fund after appropriation to the federal government and state agency(s) are to be used to increase the MO HealthNet provider reimbursement until it is at least one hundred percent of the Medicare provider reimbursement rate for comparable services. Any cost reimbursements for the investigation and/or prosecution of the Medicaid fraud are to be deposited to the MO HealthNet Fraud Prosecuting Revolving Fund. These monies may be appropriated to the Attorney General,

or to any prosecuting or circuit attorney who has successfully prosecuted and been awarded such costs of prosecution.

At December 31, 2008, the Office of Attorney General, Medicaid Fraud Control Unit employed 21 full-time employees, including a director, attorneys, investigators, auditors, a programmer analyst, and secretaries.