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August 14, 2026

The Honorable Robert F. Kennedy, Jr.
Immediate Office of the Secretary
U.S. Department of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

Dear Secretary Kennedy:

Thank you for your leadership in promoting an anti-fraud agenda consistent with the President's vision of protecting our nation's safety net programs for the beneficiaries of today and tomorrow. However, we write to you with deep concern that several of the actions and inactions by your agency are inconsistent with both the spirit and words that you yourself have regularly voiced, but more importantly, those of our President who has made curbing fraud, waste and abuse a cornerstone of his Administration.

As background, the United Council on Welfare Fraud (UCOWF) is the only national organization of investigators dedicated to protecting our nation's public assistance programs from fraud, waste and abuse (FWA). We are the professionals dedicated to the prevention, investigation and prosecution of fraud, 24-7, 365 days-a-year, safeguarding billions of taxpayer dollars to ensure our nation's welfare programs remain strong to assist those in need. Further, as we have noted in all our interactions with the Administration, your HHS team and congressional leaders, it is our sincerest desire to partner with you on FWA.

Our strong commitment to a collaborative partnership makes the Agency's July 28, 2026 webinar ((https://www.medicaid.gov/resources-for-states/cmcs-medicaid-and-chip-all-state-calls/cmcs-medicaid-and-chip-all-state-calls-2026) on the so-called SMDL #24-005 guidance deeply concerning. In plain English, the Biden-era policy in SMDL #24-005 issued by former HHS Secretary Becerra, not only forbade states' recovery of proven fraud but also any investigation at the risk of states losing their FMAP monies. This is particularly germane to today's HHS FWA agenda as this pertains to the pursuit of Medicaid beneficiary enrollment fraud and overpayment recoveries. Per the webinar's slides, CMS says the following:

- "The rescission of SMDL #24-005 did not change the underlying Constitutional principles and federal laws governing sanctions and penalties for Medicaid beneficiary eligibility related fraud and abuse."
- "State Medicaid agencies should consult with their legal counsel on court orders, criminal or civil penalties, or administrative penalties that they are concerned may be inconsistent with federal Medicaid statute and regulations."

Without trying to suggest parsing of words or asserting any motivations on the part of staff, this is not guidance that would survive legal scrutiny. Citing the U.S. Constitution and not the U.S. Code is simply not satisfactory reliance for the states who require that CMS/HHS be true partners in helping buttress the surety and soundness of the program. Anything less is not only lacking credibility – even if they fig-leaf cite the U.S. Constitution as if that has ever passed muster – but worse it leaves policy up to individual state interpretation creating a patchwork quilt of standards. This is unacceptable for the nation's largest and most expensive entitlement program. Further, it can only serve to help create other similar national embarrassments for the program that you and CMS Administrator Oz have personally highlighted these past few months.

The only impactful citations that CMS might have considered offering albeit still incorrectly as they are silent on the standards for evidentiary burden of proof for the establishment of individual enrollment fraud is 42 U.S.C. § 1396a(a)(3) and 42 C.F.R. Part 431, Subpart E. Together, these simply establish the legal mandate requiring State Medicaid Agencies to provide an opportunity for a 'fair hearing' to any individual whose claim for medical assistance is denied, reduced, terminated, or not acted upon with reasonable promptness. Instead, again, CMS simply cited the U.S. Constitution – no particular Article. Just the U.S. Constitution.

Further, the continued suggestion during the webinar itself that beneficiary enrollment fraud should be taken directly to law enforcement confuses the standards established for provider fraud as set forth in statute and legal precedent for the Medicaid Fraud Control Units (MFCUs), who are legally prohibited from doing any work on beneficiary fraud unless its directly connected to an ongoing provider prosecution. Again, putting us back into pay and chase and more importantly dramatically limiting the ability of states to enforce CMS's rules, underscoring the need for guidance.

Practically speaking, this was a webinar with State Medicaid Directors, and we believe done in a manner to avoid legitimate legal and policy scrutiny, especially from the individuals who daily have to effectuate CMS policy. If it had, we believe there'd have been open criticism of this 'guidance', immediately discounting it as of little utility.

To be clear, CMS has traditionally included several groups who were NOT invited to the webinar, including the CMS Fraud & Abuse Technical Advisory Group (FA-TAG) and the CMS Beneficiary Fraud Technical Advisory Group (BF-TAG). In fact, CMS has not reconvened the BF-TAG since questions were first raised about the lack of SMDL #24-005 guidance. Additionally, seemingly because we/UCOWF raised concerns, CMS reversed two-plus decades of collaboration and now excludes our representative(s) from its calls. So, you can see how it's hard – if not impossible - to partner with any organization that doesn't want to give you either the rules of the road or at least discuss the rationale(s) motivating its policies.

CMS fully understands and regularly promulgates guidance, but this issue of enforcing the President's Executive Orders related to curbing fraud, waste and abuse seems to be a bridge too far for the agency, especially as it pertains to the pursuit of Medicaid beneficiary fraud and overpayment recoveries. UCOWF has repeatedly raised these concerns. (links to letters attached below)

Again, all we are seeking on behalf of the states is immediate and clear guidance from your Agency related to the December 5, 2024 memo which was rescinded on May 1, 2025 (SMDL #24-005). As you will see in our noted previous correspondence, UCOWF is requesting clarification on the recovery of Medicaid improper payments, repayment of recoveries and federal share, Medicaid Fraud Control Units (MFCUs), and details on administrative sanctions and recovery options. Again, this is not an atypical request but consistent with all prior CMS actions involving recissions.

Lastly, and I am sure you've heard about this from your colleagues at the U.S. Department of Agriculture, but this continuing lack of clarity from CMS is restricting not only our work in Medicaid but also the Administration's SNAP reforms due to states' integrated eligibility systems. This conflicting guidance limits state program integrity options - hurting beneficiaries. In fact, this disconnect has been noted across the country, as part of several states' excuses for some of their rampant fraud.

To be clear, Mr. Secretary, we genuinely want to partner with you and President Trump to curtail fraud, waste and abuse, but the actions of your Agency must match its words. Absent your affirmative action in this matter will only serve to continue this pro-fraud Biden-era policy. Finally, UCOWF has repeatedly offered CMS its suggestions for possible guidance for the recission of SMDL #24-005, and we would be happy to update this, if it would be constructive.

As always, we look forward to helping you advance our shared goals of protecting beneficiaries and taxpayers alike. Bottom line, Mr. Secretary, you can't address affordability without first fully addressing fraud.

Sincerely,

Keith Miskie, President
United Council on Welfare Fraud

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Senator Grassley, Chair, Senate Judiciary Committee
Senator Johnson, Chair, Senate Budget Committee
Senator Paul, Chair, Senate Homeland Security & Government Affairs Committee
Congressman Arrington, Chair, House Budget Committee
Congressman Burchett, Chair, House DOGE Subcommittee
Congressman Comer, Chair, House Oversight & Accountability Committee
Congressman Gill, Chair, Task Force on Defending Constitutional Rights & Exposing Institutional Abuses
Congressman Guthrie, Chair, House Energy & Commerce Committee
Congressman Pfluger, Chair, Republican Study Committee

Attachments:

- UCOWF letter to CMS (3/9/25) https://www.ucowf.net/assets/pdf/UCOWF+letter+to+CMS+re+5Dec2024+Memo/
- UCOWF letter to CMS (6/20/25) https://www.ucowf.net/assets/pdf/UCOWF+letter+to+CMS+re+Recission+of+5Dec2024+Memo/
- UCOWF letter to CMS (10/23/25) https://www.ucowf.net/assets/pdf/UCOWF+letter+regarding+CMS+Guidance+on+FWA_23Oct2025/
- UCOWF letter to House Chairman Comer (1/5/26) https://www.ucowf.net/assets/pdf/UCOWF+letter+to+House+Oversight+regarding+MN+Fraud+Hearing+and+CMS+Guidance+on+FWA_5Jan2026/
- UCOWF response to CMS CRUSH RFI (3/30/26) https://www.ucowf.net/assets/pdf/UCOWF+Response+to+CMS+CRUSH+RFI+CMS-6098-NC+30March2026/
- UCOWF letter to CMS Deputy Administrator Brillman (7/13/26) https://www.ucowf.net/assets/pdf/UCOWF+-+Brillman+-+7-13-26/