United Council on Welfare Fraud
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**April 9, 2025**
*<Sent via e-mail>*

Stephanie Carlton
Chief of Staff and Deputy Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
Stephanie.Carlton@cms.hhs.gov

RE: SMD #24-005 CMS Letter to State Medicaid Directors

Dear Ms. Carlton,

The United Council on Welfare Fraud (UCOWF) is writing to bring your attention to a CMS guidance letter we believe has caused great confusion and misunderstanding amongst State Medicaid Directors regarding Medicaid beneficiary fraud and overpayments.

**What Is UCOWF?**

For reference, UCOWF is the only national association singularly focused on the prevention, detection and prosecution of welfare fraud. For over fifty years, UCOWF has advocated for stronger policies to strengthen America's social safety net programs. As a 501(c)(3) nonprofit organization, UCOWF continues to ensure our nation's critical public assistance programs are safeguarded and that taxpayer resources reach society's vulnerable citizens while also connecting policymakers, fraud investigators, and key agency personnel to real world practices resulting in outcomes that reflect program purpose and intent. UCOWF members include county and state investigators conducting administrative and criminal investigations into recipient/beneficiary fraud, as well as the attempt to recover funds lost to fraud.

**Background Information**

On October 17, 2022, CMS issued Covid Pandemic Health Emergency (PHE) Frequently Asked Questions on Unwinding to all Medicaid agencies.[1] At issue was guidance on Fraud & Abuse/Recoupment:

**Fraud & Abuse/Recoupment**

**Q31: Can a state recover or recoup the cost of services from a beneficiary who committed Medicaid fraud or abuse?**

**A:** No. States cannot recover or recoup the cost of services from a beneficiary, even if they have been found after an administrative or criminal proceeding to have committed Medicaid beneficiary fraud or abuse. States must continue furnishing Medicaid to all beneficiaries until they are determined ineligible per 42 CFR § 435.930(b), and such recovery or recoupment would effectively represent a retroactive termination of Medicaid eligibility, which would violate a beneficiary's due process rights under section 1902(a)(3) of the Act, 42 CFR part 431 subpart E, and relevant Supreme Court due process jurisprudence (*see* Goldberg v. Kelly, 397 U.S. 254 (1970) and its progeny).

The only circumstances under which a state may recover funds from a beneficiary are those explicitly provided for in federal statute and regulation. These include: (1) liens placed on a beneficiary's property when a court judgment finds that Medicaid benefits were improperly paid under section 1917(a) of the Act and 42 CFR § 433.36(g)(1); (2) estate recovery proceedings required under section 1917(b)(1) of the Act; and (3) benefits provided pending the outcome of a fair hearing under 42 CFR § 431.230 (except that benefits provided pending the outcome of a fair hearing during the PHE may not be recouped, and states that do so risk losing enhanced match claimed pursuant to section 6008 of the FFCRA; *see* footnote 9 in the March 2022 SHO Letter # 22-001).

[1] https://www.medicaid.gov/sites/default/files/2022-10/covid-19-unwinding-faqs-oct-2022.pdf

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As a result of this guidance, many state agencies refrained from pursuing recovery of improper payments or instances of beneficiary fraud—even in cases where the fraud occurred prior to the Public Health Emergency (PHE) or was the result of an enrollee's failure to report changes in circumstances, such as increases in income that would have rendered them ineligible for benefits. This FAQ guidance conflicts with numerous state laws, regulations, and agency policies that specifically address Medicaid beneficiary fraud and the recovery of improperly paid benefits.

The guidance also reflects a fundamental misunderstanding of how states administer public benefit programs, particularly those that involve both federal and state funding, such as Medicaid. CMS appears to assume that the responsibility for investigating and recovering beneficiary fraud rests solely with Medicaid Fraud Control Units (MFCUs). In practice, however, MFCUs primarily focus on provider and licensing fraud and are statutorily limited in their ability to investigate beneficiary fraud.

Most states rely on Integrated Eligibility Systems to streamline eligibility determinations across multiple programs, including Medicaid, the Supplemental Nutrition Assistance Program (SNAP), and Temporary Assistance for Needy Families (TANF). The state and county agencies responsible for eligibility determinations also have well-established processes and authority to investigate, address, and recover overpayments related to beneficiary fraud. These activities often focus on the recovery of state funds, including Medicaid capitation payments made on behalf of ineligible individuals.

By disregarding these state processes and statutory authorities, the FAQ guidance undermines program integrity efforts at the state level and impedes the appropriate recovery of taxpayer-funded benefits that were improperly paid.

UCOWF even addressed this issue in response to a request for our subject matter expertise for the House Budget Committee and House Oversight and Accountability's Improper Payment Working Group.[2]

**December 5, 2024 CMS Memo**

During the "Lame Duck" period between the November election and January inauguration, CMS Deputy Administrator and Director Daniel Tsai doubled-down on the issue and published SMD#24-005, "Protecting Medicaid Beneficiaries Against Impermissible Fraud and Abuse Sanctions."[3]

This memo not only protects fraudsters and prohibits State's from common-sense program integrity measures and recoveries of taxpayer funds lost to eligibility fraud, it threatens to withhold FMAP funds, even if state investigators are following state law:

> As noted above, CMS expects state Medicaid agencies to promptly cease the use of any sanctions or penalties for beneficiary fraud and abuse that are inconsistent with this guidance, including administrative recoupment activities and lock-outs, unless expressly permitted in federal statute and/or regulations. State Medicaid agencies that continue such prohibited actions may be subject to compliance action, including the withholding of federal financial participation, per section 1904 of the Act and 42 CFR § 430.35.

This guidance also directly conflicts with President Donald J. Trump's priorities to eliminate fraud, waste, and abuse in government programs.

[2] https://www.ucowf.net/assets/pdf/UCOWF+RFI+Response+on+Improper+Payments_FINAL/
[3] https://www.medicaid.gov/federal-policy-guidance/downloads/smd24005.pdf

**Closing**

UCOWF respectfully requests CMS rescind the December 5, 2024 guidance letter and reissue helpful guidance that seeks to encourage agencies to address Medicaid beneficiary fraud, as well as helpful guidance and encouragement to recover both state and federal funds involved with eligibility payments lost to fraud in both administrative and criminal proceedings. Due process that affords beneficiaries the means to dispute state findings are well established and should remain in place.

UCOWF remains dedicated to improving program integrity, and we believe this administration has the opportunity to provide common sense guidance on this issue. We remain committed to assist you and your staff in promoting anti-fraud initiatives and restoring public trust in the effective stewardship of taxpayer funds.

We appreciate your consideration and stand ready to provide any additional information or assistance you may require in supporting these efforts.

Sincerely,

**Ashley Wilkes, President**
**United Council on Welfare Fraud**
www.ucowf.net