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June 20, 2025
<Sent via e-mail>

The Honorable Mehmet Oz
Administrator
Centers for Medicare & Medicaid Services
Department of Health and Human Services
c/o Stephanie Carlton, Chief of Staff

RE: Recission of SMD #24-005 and Request for Clarification

Dear Dr. Oz,

The United Council on Welfare Fraud (UCOWF) is writing to request clarification for States on prior guidance regarding Medicaid beneficiary fraud and overpayment recoveries.

Recission of SMD #24-005
On behalf of the UCOWF members and welfare fraud investigators across the nation, we write to express our sincere appreciation to CMS for rescinding SMD #24-005, Protecting Medicaid Beneficiaries Against Impermissible Fraud and Abuse Sanctions on May 1, 2025. This action reflects recognition of the concerns we raised in our April 3, 2025, letter to CMS on behalf of state and county welfare fraud investigators and program integrity professionals nationwide, and we thank you for your responsiveness and leadership.

With the memo rescinded, we respectfully request CMS issue clarification to States on a couple of remaining areas of concern relating to Medicaid program integrity:

1. Clarification on CMS Guidance on Recovery of Medicaid Improper Payments
State Medicaid agencies must retain the ability—and indeed be *expected*—to recover overpayments made on behalf of ineligible beneficiaries, particularly when caused by intentional misrepresentation or failure to report changes in circumstances. On October 17, 2022, CMS issued a Covid Pandemic Health Emergency (PHE) Frequently Asked Questions on Unwinding to all Medicaid agencies.[1]

At issue was guidance on Fraud & Abuse/Recoupment (Question 31) that stated, "*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.*"

This FAQ comment preceded the rescinded guidance, remains a source of confusion amongst State investigators, recovery specialists, and policy/ program administrators. The guidance also conflicts with President Trump's Executive Orders, including a June 6, 2025, memo to HHS and CMS on "*Eliminating Waste, Fraud, and Abuse in Medicaid*" and Executive Order #14243, "Stopping Waste, Fraud, and Abuse by Eliminating Information Silos."[2]

[1] https://www.medicaid.gov/sites/default/files/2022-10/covid-19-unwinding-faqs-oct-2022.pdf
[2] https://www.whitehouse.gov/presidential-actions/2025/06/eliminating-waste-fraud-and-abuse-in-medicaid/ and https://www.whitehouse.gov/presidential-actions/2025/03/stopping-waste-fraud-and-abuse-by-eliminating-information-silos/

2. Clarification on Repayment of Recoveries and Federal Share

There have been both HHS OIG and GAO reports/audits which outline States must remit to CMS the FMAP share of overpayment recoveries, not simply the establishment of a claim.[3] UCOWF believes that clear guidance from CMS, along with modifications of the CMS-64 Form, can clearly convey the expectation that States can and will establish Medicaid beneficiary overpayment claims based on state/federal share of payments (capitation rates), AND, remit the appropriate federal share once collected.

3. Clarification on Medicaid Fraud Control Units (MFCUs)

Both the rescinded SMD #24-005 and 2022 FAQ implied that State MFCUs are the sole entities responsible for investigating beneficiary fraud. This interpretation overlooks both statutory limitations and practical realities. MFCUs are primarily tasked with provider fraud and are often organizationally and physically separate from the eligibility offices that detect, prosecute, and recover recipient fraud. At least 35 States currently use an integrated eligibility system that processes Medicaid and other programs (such as SNAP, TANF, CHIP, etc) in a single platform for applicants.

State welfare fraud investigators—many of whom are UCOWF members—are embedded in the agencies responsible for eligibility determinations and are specifically trained to investigate, prevent, and pursue administrative or criminal remedies against recipients who commit fraud. These teams are best positioned to detect discrepancies at the point of application, during redeterminations, or through case monitoring.

To preserve effective program integrity functions, we respectfully request CMS formally clarify that:

- State program integrity units retain authority and responsibility to investigate beneficiary fraud, not just MFCUs.
- States must address this expectation in their respective State Plans.
- MFCUs should continue to focus primarily on provider fraud.
- States may utilize both administrative and criminal processes to pursue improper payments caused by beneficiary fraud.
- CMS will enforce the FMAP penalty provisions of the **Medicaid Extenders Act of 2019** (*Public Law 116-3, enacted January 24, 2019)* for States failing to conduct required eligibility verifications on all applications and redeterminations – including ex-parte reviews.

4. Administrative Sanctions and Recovery Options

Despite administrative Due Process procedures in place for States to address eligibility determinations, allegations of fraud/waste/abuse and improper payment claims in other safety-net programs, no administrative penalties exist to combat Medicaid beneficiary fraud,

[3] **GAO-23-106025**, "CMS Oversight and Guidance Could Improve Recovery Audit Contractor Program," June 2023: https://www.gao.gov/assets/gao-23-106025.pdf.
GAO #107710, "Recovery of Federal Share of Medicaid Overpayments," October 1978: https://www.gao.gov/assets/107710.pdf.
HHS OIG A-07-19-02816, "Colorado Did Not Report and Refund the Correct Federal Share of Medicaid-Related Overpayments for Some Cases Identified by the State's Program Integrity Section," May 2024: https://oig.hhs.gov/documents/audit/9888/A-07-19-02816.pdf
HHS OIG A-06-23-09002, "Twelve Selected States Did Not Accurately Calculate the Federal Share of Medicaid Collections Subject to the Increased Covid-19 Federal Medical Assistance Percentages," December 2024: https://oig.hhs.gov/documents/audit/10125/A-06-23-09002.pdf

such as temporary/term limited or permanent program disqualifications. No common strategy, fraud framework, or collections regulations satisfactorily address these shortcomings.

Administrative sanctions act as a deterrence to eligibility fraud in all other means-tested assistance programs using established due process procedures that protect recipients against unwarranted penalties. We encourage CMS to design regulations that update this deficiency in program rules to restore Medicaid program integrity.

To address the enforcement of improper payment recoveries, we respectfully request CMS to spearhead an initiative with the Department of Treasury to add Medicaid to the Treasury Offset Program and to provide fiscal incentives for States attempting to address recipient/beneficiary oversight and recovery efforts.

In Closing

UCOWF appreciates your leadership in rescinding SMD 24-005 and respectfully requests CMS to provide clear guidance and rulemaking to address the remaining concerns and inequitable state/county program integrity oversight and administration of the Medicaid program as outlined in this letter.

We appreciate the opportunity to work collaboratively with CMS to protect the integrity of Medicaid and other public assistance programs. We stand ready to assist your team in shaping future guidance that reflects the operational realities of State Medicaid administration and ensures taxpayer resources are safeguarded.

Thank you again for your leadership and support.

Sincerely,

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