

**Department of Health and Human Services
Centers for Medicare & Medicaid Services**

**Medicaid Integrity Program
South Dakota Comprehensive Program Integrity Review
Final Report
January 2009**

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INTRODUCTION

The Centers for Medicare & Medicaid Services' (CMS) Medicaid Integrity Group (MIG) conducted a comprehensive program integrity review of the South Dakota Medicaid Program. The onsite portion of the review was conducted at the offices of the South Dakota Department of Social Services, Division of Medical Services (SDMA). The MIG review team also visited the office of the Medicaid Fraud Control Unit (MFCU).

This review focused on the activities of the Surveillance and Utilization Review System (SURS) Unit, which is responsible for Medicaid program integrity oversight. This report describes three effective practices, two areas of vulnerability and five regulatory compliance issues in the State's program integrity operations.

THE REVIEW

Objectives of the Review

1. Determine compliance with Federal program integrity laws and regulations;
2. Identify program vulnerabilities and effective practices;
3. Help South Dakota improve its overall program integrity efforts; and
4. Consider opportunities for future technical assistance.

Overview of South Dakota's Medicaid Program

The SDMA administers the Medicaid Program. As of the State Fiscal Year (SFY) ending June 30, 2007, the program served 128,479 recipients, all of whom were enrolled in fee-for-service (FFS). SDMA provides medical services through primary care case management on an FFS basis and dental services through an administrative services contract. SDMA processes all medical and non-dental claims and uses a contractor who processes all dental claims. During SFY 2007, the total number of active medical and dental providers was 10,946. Medicaid expenditures in South Dakota for SFY 2007 totaled \$652,357,719. In Federal Fiscal Year 2007, the Federal medical assistance percentage was 62.92 percent.

Program Integrity Section

The SURS Unit is the organizational component dedicated to the prevention and detection of provider fraud, abuse and overpayments. At the time of the review, the SURS Unit had approximately four full-time equivalent staff and one supervisor reporting to the Medicaid Director. Some program integrity functions are also performed by managed care and provider enrollment staff. The table below presents the total number of investigations, sanctions, identified overpayments, and amounts recouped in the past three SFYs as a result of program integrity activities.

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Table 1

SFY	Number of Full Investigations	Number of State Administrative Actions or Sanctions (Approximation)	Amount of Overpayments Identified	Average Recovery per Case Review
2005	102	33	\$ 1,123,285.47	\$ 11,013
2006	102	43	\$ 2,383,248.31	\$ 23,365
2007	158	60	\$ 1,332,360.30	\$ 8,433

Methodology of the Review

In advance of the onsite visit, the review team requested that South Dakota complete a comprehensive review guide and supply documentation in support of its answers. The review guide included such areas as provider enrollment, claims payment and post-payment review, managed care, surveillance and utilization review subsystem, and the MFCU. A five-person review team reviewed the responses and materials that the State provided in advance of the onsite visit.

During the week of April 29, 2008, the MIG review team visited the SDMA and MFCU offices. The team conducted interviews with numerous SDMA officials, as well as with staff from the State’s dental contractor, and the MFCU.

Scope and Limitations of the Review

This review focused on the activities of the SURS Unit, but also considered the work of other components and contractors responsible for a range of program integrity functions, including provider enrollment, contract management, and provider training. South Dakota operates an expansion State Children’s Health Insurance Program (SCHIP) under Title XIX of the Social Security Act. The State’s SCHIP operates under the same billing and provider enrollment policies as South Dakota’s Title XIX program. The same findings, vulnerabilities, and effective practices discussed in relation to the Medicaid program also apply to the Medicaid portion of SCHIP.

Unless otherwise noted, SDMA provided the program integrity-related staffing and financial information cited in this report. For purposes of this review, the review team did not independently verify any staffing or financial information that SDMA provided.

RESULTS OF THE REVIEW

Effective Practices

The State has highlighted several practices that demonstrate its commitment to program integrity. These practices involve the effective and open communication between the agency and the MFCU, quality control monitoring to ensure the Medicaid management information system (MMIS) is paying correctly, and the Medicaid Director’s direct involvement with program integrity.

High level of cooperation with the MFCU

SDMA and the MFCU have a high level of cooperation and respect between the two agencies. They meet quarterly to discuss issues and cases, as well as the post-investigation/post-conviction status of cases.

MMIS quality control monitoring

The SURS Unit reviews a randomly sampled paid claims report from MMIS on a weekly basis to ensure that the MMIS is paying according to existing rules and regulations and that providers are billing in accordance with program guidelines. The reports have identified areas of questionable billing practices and payment issues resulting from MMIS enhancements and other changes that would otherwise not have been detected.

Medicaid Director's active involvement in program integrity

South Dakota's Medicaid Director has an in-depth knowledge of program integrity functions and systems within the agency and MFCU. The Medicaid Director actively participated throughout the Medicaid program integrity review and appeared truly committed to the concept of program integrity.

Regulatory Compliance Issues

The State is not in compliance with Federal regulations related to required disclosure and notification activities.

The dental contractor's provider credentialing application does not request ownership, control, and relationship information. SDMA does not request disclosure of ownership or control information from the dental contractor, which functions as a fiscal agent.

Under 42 CFR § 455.104(a)(1), a provider, or "disclosing entity," that is not subject to periodic survey under § 455.104(b)(2) must disclose to the Medicaid agency, prior to enrolling, the name and address of each person with an ownership or controlling interest in the disclosing entity or in any subcontractor in which the disclosing entity has a direct or indirect ownership interest of 5 percent or more. Under § 455.104(a)(2), a disclosing entity must disclose whether any of the named persons is related to another as spouse, parent, child, or sibling. Moreover, under § 455.104(a)(3), there must be disclosure of the name of any other disclosing entity in which a person with an ownership or controlling interest in the disclosing entity has an ownership or controlling interest. In addition, under § 455.104(c), provider agreements and fiscal agent contracts must disclose ownership or control information as required by this section.

The dental credentialing application does not request all of the required disclosures. Therefore, the interrelationships of entities, related organizations, and subcontractors cannot be established. The absence of required information hinders SDMA's ability to determine when a provider seeking to enroll in Medicaid has an ownership or control interest in an excluded related organization. Similarly, the State's dental contract does not have provisions in place to collect all the disclosures from the dental contractor as required under this regulation.

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Recommendation: Modify the credentialing application and contract to request information required to be disclosed under 42 CFR § 455.104.

SDMA provider enrollment and dental credentialing applications do not require disclosure of business transactions.

The regulation at 42 CFR § 455.105(b)(2) requires that, upon request, providers furnish to the State or HHS information about certain business transactions with wholly owned suppliers or any subcontractors.

South Dakota's FFS and dental provider enrollment agreements and applications do not require provision of business transaction information.

Recommendation: Modify the provider agreements to require disclosure upon request of the information identified in 42 CFR § 455.105.

The State's enrollment process and dental credentialing application forms do not capture criminal conviction information.

The regulation at 42 CFR § 455.106 stipulates that providers must disclose to Medicaid agencies any criminal convictions related to Medicare, Medicaid, or Title XX programs at the time they apply or renew their applications for Medicaid participation or at any time on request. The regulation further requires that the Medicaid agency notify HHS-OIG whenever such disclosures are made.

South Dakota's provider enrollment and dental credentialing application forms do not solicit health care-related criminal conviction information. While the SDMA provider Ownership/Controlling Interest and Conviction Information form requires felony conviction information, the form does not explicitly ask whether a provider or managing employee or anyone with a controlling interest has been convicted of a health care-related crime in any program under Medicare, Medicaid, or Title XX. The omission to collect required criminal conviction information prevents South Dakota from forwarding information on providers, owners, agents and managing employees to HHS-OIG within 20 working days, as is required by the regulation.

Recommendation: Modify the provider applications to require ownership or controlling interest and conviction disclosures to comply with regulatory requirements. Develop and implement procedures to report to HHS-OIG within 20 working days any criminal conviction disclosure.

SDMA relies on the MFCU to send provider notification of program payment withholds in cases of fraud.

The regulation at 42 CFR § 455.23(b) stipulates that Medicaid agencies send notice of withholding of program payments to providers within five days of taking such action. The notice

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must set forth the general allegations regarding the nature of the withholding action, but need not disclose any specific information concerning ongoing investigations.

SDMA does not notify a provider of payment withhold when the case is under investigation by the MFCU. The State relies upon the MFCU to send notifications but could not provide a notice that has been sent. The Memorandum of Understanding between the State and the MFCU does not include the requirement for sending notice of program payment withholding.

Recommendation: Develop a system for provider notification of program payment withholds within five days of taking such action.

SDMA does not report to the HHS-OIG adverse actions taken on provider applications.

The regulation at 42 CFR § 1002.3(b) requires reporting to HHS-OIG any adverse actions a State takes on provider applications for participation in the program. SDMA does not report program integrity adverse actions or actions to limit participation to the HHS-OIG. SDMA does not require its dental contractor to report adverse credentialing decisions. Therefore, SDMA cannot report such adverse actions in its dental program to HHS-OIG.

Recommendation: Develop and implement procedures to report to HHS-OIG all adverse actions taken against and limits placed on all providers' participation in the program.

Vulnerabilities

The review team identified two areas of vulnerability in South Dakota's program integrity practices regarding capturing disclosure information and contract monitoring for fraud and abuse efforts.

Not requesting the identities of all managing employees during the enrollment process.

Under 42 CFR § 455.101, a managing employee is defined as "a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operations of an institution, organization or agency."

SDMA does not request the identities of managing employees in either the FFS or dental enrollment processes. Thus, SDMA cannot conduct searches of databases in order to ensure that providers or entities billing Medicaid do not employ managing employees who have been excluded from the program.

Recommendation: Require disclosure of managing employees on all FFS and dental enrollment forms. Consider capturing the disclosed information in MMIS for increased searching ability.

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Not adequately monitoring the dental contractor's fraud and abuse efforts.

The State's dental contract does not require routine reporting of fraud and abuse complaints and investigations in the dental network. In addition, the State and the dental contractor do not meet regularly to discuss fraud and abuse issues within the dental network. The State's oversight of the contractor is limited to review of the monthly payment invoice.

Recommendations: Develop procedures for monitoring and routine reporting of fraud and abuse complaints and investigations to protect the overall integrity of the State's program.

CONCLUSION

The State of South Dakota applies some effective practices that demonstrate program strengths and the State's commitment to program integrity. These effective practices include:

- a high level of cooperation with the MFCU,
- a quality control tool for measuring MMIS accuracy, and
- the Medicaid Director's involvement in program integrity.

CMS supports the State's effective practices and encourages it to look for additional opportunities to improve overall program integrity.

However, the identification of five areas of non-compliance with Federal regulations is of concern and should be addressed immediately. In addition, two vulnerabilities were identified. CMS encourages SDMA to closely examine each area of vulnerability that was identified in this review.

It is important that these issues be rectified as soon as possible. To that end, we will require SDMA to provide a corrective action plan for each area of non-compliance within 30 calendar days from the date of the final report letter. Further, we will request that the State include in that plan a description of how it will address the vulnerabilities identified in this report.

The corrective action plan should address how the State of South Dakota will ensure that the deficiencies will not recur. The corrective action plan should include the timeframes for each correction along with the specific steps the State expects will occur. Please provide an explanation if correcting any of the regulatory compliance issues or vulnerabilities will take more than 90 calendar days from the date of the letter. If SDMA has already taken action to correct compliance deficiencies or vulnerabilities, the plan should identify those corrections as well.

The Medicaid Integrity Group looks forward to working with the State of South Dakota on building upon effective practices, correcting its regulatory compliance issues, and eliminating its vulnerabilities.