

Department of Health and Human Services
Office of Inspector General



District of Columbia Medicaid Fraud Control Unit: 2022 Onsite Review

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Unit Case Outcomes

Federal fiscal years (FYs)
2019–2021:

- 29 indictments
- 16 convictions
- 25 civil settlements and judgments
- \$21.5 million in recoveries

Unit Snapshot

The District of Columbia Medicaid Fraud Control Unit (MFCU or Unit) is located within the District of Columbia Office of Inspector General (OIG). At the time of our onsite review in September 2022, the Unit had a total of 21 staff.

Why OIG Did This Review

The U.S. Department of Health and Human Services (HHS) OIG administers the MFCU grant awards, annually recertifies each Unit, and oversees the Units' performance in accordance with the requirements of the grant. As part of this oversight, OIG conducts periodic reviews of Units and issues public reports of its findings.

The primary purpose of this review was to examine two areas of concern that we identified during our ongoing administration and oversight of the District of Columbia MFCU: (1) the Unit's law enforcement authority and (2) fraud referrals from managed care organizations (MCOs). As part of this review, we also examined the Unit's performance and operations.

District of Columbia Medicaid Fraud Control Unit: 2022 Onsite Review

What OIG Found

We made two findings based on our review of areas of concern identified during our ongoing administration and oversight activities: the Unit's law enforcement authority and fraud referrals from MCOs. We found that the Unit's limited law enforcement authority and the lack of adequate policies and procedures to address its limited authorities posed challenges during our review period of FYs 2019–2021. A few months after our onsite review, the District of Columbia OIG succeeded in obtaining a legislative amendment from the District of Columbia Council. The legislation, which was enacted in January 2023 as the Inspector General Enhancement Amendment Act of 2022, provides Unit investigators with enhanced law enforcement authorities. Despite the challenges associated with its limited law enforcement authority, we observed that the Unit maintained strong working relationships with Federal and District partners, including HHS OIG, the Federal Bureau of Investigation, the U.S. Attorney's Office, and the District's Department of Health Care Finance's Division of Program Integrity. Further, we found that the Unit received few fraud referrals from MCOs during our review period but has begun to take steps to increase these referrals.

We also made two findings related to other aspects of the Unit's operations. We found that, for cases open longer than 90 days, 41 percent lacked documentation of periodic supervisory reviews consistent with Unit policy. We also found that the Unit did not always report convictions or adverse actions to Federal partners within the appropriate timeframes. These operational issues have persisted since our previous onsite review in 2015; however, we found that the Unit has improved in both areas since that time.

What OIG Recommends

To address the findings, we recommend that the Unit (1) develop policies and procedures to implement the District of Columbia OIG's expanded law enforcement authority and ensure that Unit investigators receive training on the new authorities; (2) build upon its efforts with the District's Medicaid agency to increase fraud referrals from the MCOs; (3) ensure that supervisory reviews of case files are conducted and documented in accordance with Unit policy; and (4) ensure that all convictions and adverse actions are reported to Federal partners within the appropriate timeframes. The Unit concurred with all four recommendations.

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BACKGROUND

OBJECTIVES

1. To examine two areas of concern identified during our ongoing administration and oversight activities of the District of Columbia Medicaid Fraud Control Unit (MFCU or Unit): limitations on the MFCU's law enforcement authority and the adequacy of managed care fraud referrals.
 2. To examine the Unit's performance and operations.
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Medicaid Fraud Control Units

MFCUs investigate (1) Medicaid provider fraud and (2) patient abuse or neglect, and prosecute those cases under State law or refer them to other prosecuting offices.^{1, 2, 3} Under the Social Security Act (SSA), a MFCU must be a "single, identifiable entity" of State government, "separate and distinct" from the State Medicaid agency, and employ one or more investigators, attorneys, and auditors.⁴ Each State must operate a MFCU or receive a waiver.⁵ Currently, 50 States, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands operate MFCUs.⁶

MFCUs are funded jointly by Federal and State Governments. Each Unit receives a Federal grant award equivalent to 90 percent of total expenditures for new Units and 75 percent for all other Units.⁷ In Federal fiscal year (FY) 2022, combined Federal and State expenditures for the MFCUs totaled approximately \$343 million, of which approximately \$257 million represented Federal funds.⁸

¹ SSA § 1903(q)(3)-(4). Regulations at 42 CFR § 1007.11(b)(1) clarify that a Unit's responsibilities include the review of complaints of misappropriation of patients' private funds in health care facilities.

² As of December 27, 2020, MFCUs may also receive Federal financial participation to investigate and prosecute abuse or neglect of Medicaid beneficiaries in a noninstitutional or other setting. Consolidated Appropriations Act, 2021, Public Law 116-260, Division CC, Section 207.

³ References to "State" in this report refer to the States, the District of Columbia, and the U.S. territories.

⁴ SSA § 1903(q).

⁵ SSA § 1902(a)(61).

⁶ The territories of American Samoa, Guam, and the Northern Mariana Islands have not established Units.

⁷ SSA § 1903(a)(6). For a Unit's first 3 years of operation, the Federal Government contributes 90 percent of funding, and the State contributes 10 percent. Thereafter, the Federal Government contributes 75 percent, and the State contributes 25 percent.

⁸ OIG analysis of MFCUs' reporting of expenditures for FY 2022. Unless stated otherwise, all FYs are from October 1 through September 30.

OIG Grant Administration and Oversight of MFCUs

The U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) administers the grant award to each Unit and provides oversight of Units.^{9, 10} As part of its oversight, OIG conducts desk reviews of each Unit during the annual recertification process. OIG also conducts periodic inspections and reviews. Finally, OIG provides ongoing training and technical support to the Units.

In its annual recertification review, OIG examines the Unit's reapplication materials, case statistics, and questionnaire responses from Unit stakeholders. Through the recertification review, OIG assesses a Unit's performance, as measured by the Unit's adherence to published performance standards;¹¹ the Unit's compliance with applicable laws, regulations, and OIG policy transmittals;¹² and the Unit's case outcomes.

OIG further assesses Unit performance by conducting inspections and reviews on selected Units, which includes evaluating Units' effectiveness in investigating cases of possible fraud and patient abuse and neglect.¹³ These inspections and reviews result in public reports of findings and recommendations for improvement. In these reports, OIG may also provide observations regarding Unit operations and practices, including beneficial practices that may be useful to share with other Units. OIG also provides training and technical assistance to Units, as appropriate, during inspections and reviews.

District of Columbia MFCU

The District of Columbia MFCU is located within the District of Columbia OIG. At the time of our onsite review in September 2022, the Unit had 21 employees—11 investigators (including the MFCU director, a Special Agent in Charge, and an Assistant Special Agent in Charge), 3 attorneys (including the deputy director), 4 auditors, and 3 other staff (including analysts). During our review period of FYs 2019–2021, the Unit spent approximately \$9.6 million (with a District share of approximately \$2.4 million).

⁹ As part of grant administration, OIG receives and examines financial information from Units, such as budgets and quarterly and final Federal Financial Reports that detail MFCU income and expenditures.

¹⁰ The SSA authorizes the Secretary of Health and Human Services to award grants (SSA § 1903(a)(6)) and to certify and annually recertify the Units (SSA § 1903(q)). The Secretary delegated these authorities to OIG in 1979.

¹¹ MFCU performance standards are published at [77 Fed. Reg. 32645](#) (June 1, 2012). The performance standards were developed by OIG in conjunction with the MFCUs and were originally published at 59 Fed. Reg. 49080 (Sept. 26, 1994).

¹² OIG occasionally issues policy transmittals to provide guidance and instruction to MFCUs. Policy transmittals are located at <https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/index.asp>.

¹³ 42 CFR § 1007.17(c)(4)-(5).

Referrals

During FYs 2019–2021, the Unit reported receiving referrals of Medicaid provider fraud from the State Medicaid agency, known as the Department of Health Care Finance (DHCF), among other sources. The Unit received referrals of patient abuse or neglect primarily from the District’s Department of Disability Services and the Department of Health. See Appendix A for a list of Unit referrals by source for FYs 2019–2021.

When the Unit receives a referral of fraud or patient abuse or neglect, the Unit’s Special Agent in Charge reviews the information to determine whether (1) immediate action is required; (2) the referral has merit; (3) the referral falls within the Unit’s jurisdiction; and (4) appropriate action should be recommended to the director and deputy director, who make the final decision on whether to open the referral as a case. When a referral is declined, the Unit may refer the matter to another District or Federal entity.

Investigations

Once the Unit opens a case, Unit management assigns the matter to a team consisting of an investigator; an attorney; and, if needed, an auditor and/or a program analyst. The team works together to form a plan for the investigation and prosecution of the case, which it may modify as the case proceeds. Unit investigators typically specialize in either fraud cases or patient abuse and neglect cases. Investigators participate in periodic supervisory reviews of their caseloads with the Special Agent in Charge. Upon completion of an investigation, criminal cases are presented either to the U.S. Attorney Office’s Criminal Division or to its Superior Court division. Assistant U.S. Attorneys and MFCU attorneys, designated as Special Assistant U.S. Attorneys (SAUSAs) in the Superior Court division, determine whether there is sufficient evidence to accept cases for criminal prosecution. Civil cases are presented to the District of Columbia Attorney General’s Office or to the Civil Division of the U.S. Attorney’s Office.

Law enforcement jurisdiction. During our review period, the law enforcement authority of the District of Columbia OIG was governed by the Office of the Inspector General Law Enforcement Powers Amendment Act of 1998.¹⁴ The Act authorized District of Columbia OIG criminal investigators, which includes the MFCU investigators, to (1) carry firearms within the District of Columbia, or at a District government facility located outside of the District, while performing official duties; (2) make arrests without a warrant upon probable cause for felony violations that occur in their presence, provided that the arrest is made while performing official duties within the District or at a District government facility outside of the District; and (3) serve as an affiant for or execute search warrants if the warrant is issued upon probable cause under the authority of the District of Columbia or the United States.

¹⁴ District of Columbia Law No. 12-190 (1999).

Prosecutions

The District of Columbia OIG, where the MFCU is located, has limited prosecutorial authority.¹⁵ In the District of Columbia, the U.S. Attorney's Office has responsibility both for the prosecution of Federal criminal violations and for criminal violations of District of Columbia law. The MFCU therefore refers criminal fraud cases either to the Criminal Division in the U.S. Attorney's Office, which prosecutes Federal crimes, or to the Superior Court Division, which has responsibility for local criminal violations. According to the MFCU, most of its criminal fraud cases are prosecuted by the Criminal Division of the U.S. Attorney's Office. The MFCU has two attorneys designated as SAUSAs—one of the SAUSAs handles fraud prosecutions and the other SAUSA handles patient abuse and neglect prosecutions. The designation of these attorneys as SAUSAs allows the Unit to prosecute fraud cases through the Superior Court Division of the U.S. Attorney's Office (when the Criminal Division cannot accept a case). It also allows the Unit to prosecute patient abuse or neglect cases through the Superior Court Division.

For civil cases, the MFCU may refer cases to the Civil Division of the U.S. Attorney's Office or to the Attorney General's Office for prosecution.¹⁶ If a case is declined for criminal prosecution in the Criminal Division of the U.S. Attorney's Office, the case may be referred for legal consideration to the U.S. Attorney's Office Superior Court Division or the District of Columbia Office of Attorney General's Civil Division, or for administrative action by DHCF.

District of Columbia Medicaid Program

DHCF administers the District of Columbia Medicaid program, which includes Medicaid fee-for-service and managed care programs.¹⁷ As of September 2022, the program served more than 270,000 enrollees and total program expenditures were approximately \$3.9 billion.^{18, 19} During our review period, the District of Columbia had

¹⁵ District of Columbia Code § 4-804.

¹⁶ The Unit refers cases to the District's Attorney General's Office for prosecution under the District's False Claims Act or other applicable civil statutes.

¹⁷ DHCF, *Medicaid Managed Care Performance Report (January 2021–December 2021)*. Accessed at https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/DHCF-CY2021-Medicaid-Managed-Care-Report.pdf on March 13, 2023.

¹⁸ The Centers for Medicare & Medicaid Services (CMS), *State Medicaid and CHIP Applications, Eligibility Determinations, and Enrollment Data*, September 2022. Accessed at <https://www.medicare.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/report-highlights/index.html> on March 13, 2023.

¹⁹ OIG, *MFCU Statistical Data for FY 2022*. Accessed at https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/expenditures_statistics/fy2022-statistical-chart.pdf on July 13, 2023.

three managed care organizations (MCOs).²⁰ In 2021, the MCOs provided health care services to approximately 81 percent of the District’s Medicaid enrollees.²¹

Medicaid Program Integrity

The Division of Program Integrity within DHCF is responsible for the District’s Medicaid program integrity efforts and conducts preliminary investigations on all potential fraud referrals, including those received from the District’s three MCOs, as well as referrals that are self-generated from analysis of Medicaid claims data.²² Upon completing a preliminary investigation, DHCF refers cases of suspected provider fraud to the MFCU. According to the memorandum of understanding (MOU) between DHCF and the MFCU, after receiving the referral from DHCF, the MFCU has 20 days to decide and inform the program integrity unit as to whether the MFCU will open a full investigation or decline the referral.

Previous OIG Reports and Oversight

OIG conducted a previous onsite review of the District of Columbia MFCU in 2015.²³ In that review, which covered FYs 2012–2014, OIG found that (1) there were investigative delays in 20 percent of cases, which was explained in part by a lengthy document clearance process (e.g., subpoena approval), and 68 percent of case files lacked documentation of supervisory reviews; (2) Unit staff lacked knowledge on how to use its case management system to efficiently access case information; (3) the Unit investigated seven cases that were not eligible under Federal regulations for Federal matching funds; (4) until July 2015, the Unit’s MOU with DHCF was out of date and did not reflect Federal legal requirements, and formal communication between the agencies was infrequent; and (5) the Unit did not report all convictions to OIG or adverse actions to the National Practitioner Data Bank (NPDB) within the required timeframes. OIG also observed that the Unit did not have a process for reporting collections information and that policies and procedures were not widely circulated to staff.

²⁰ DHCF, *Medicaid Managed Care Performance Report (January 2021-December 2021)*, p. 2. Accessed at https://dhcf.dc.gov/sites/default/files/dc/sites/dhcf/page_content/attachments/DHCF-CY2021-Medicaid-Managed-Care-Report.pdf on July 13, 2023. During our review period, most Medicaid managed care enrollees in the District of Columbia were enrolled in one of three MCOs: AmeriHealth Caritas, CareFirst BlueCross BlueShield Community Health Plan, and MedStar Family Choice. A smaller number were enrolled in Health Services for Children with Special Needs.

²¹ CMS, *2019, 2020, and 2021 Medicaid Managed Care Enrollment Summary*. Accessed at <https://www.medicare.gov/medicaid/managed-care/enrollment-report/index.html> on September 20, 2023. The percentage of people enrolled in Medicaid managed care in the District of Columbia increased from 73 percent in 2019 and 2020 to 81 percent in 2021. In 2021, 231,323 of the 285,297 people enrolled in Medicaid in the District were enrolled in comprehensive managed care, compared to 193,692 of the 265,501 enrollees in 2020 and 194,136 of the 267,329 enrollees in 2019.

²² DHCF, *About the Division of Program Integrity (DPI)*. Accessed at <https://dhcf.dc.gov/page/about-division-program-integrity-dpi> on March 21, 2023.

²³ OIG, *District of Columbia Medicaid Fraud Control Unit: 2015 Onsite Review*, OEI-07-14-00660, September 2015.

OIG recommended that the Unit (1) ensure that periodic supervisory reviews are documented in Unit case files; (2) ensure that delays in case progress are limited to situations imposed by resource constraints or other exigencies, and documents are cleared timely; (3) ensure that use of its case management system allows for efficient access to case information; (4) repay Federal matching funds spent on the cases that were not eligible for Federal funding and implement procedures to ensure that cases are within grant authority; (5) communicate regularly with DHCF; and (6) ensure that all relevant information is reported to OIG and the NPDB within the required timeframes. On the basis of information received from the Unit, OIG considered the recommendations implemented as of February 2018.

Methodology

We conducted an onsite review of the District of Columbia MFCU in September 2022. The review team consisted of OIG evaluators, OIG agents, OIG attorneys, and the director of another State MFCU. Our review covered the 3-year period of FYs 2019–2021; however, we considered legislative activity by the District of Columbia Council that occurred after FY 2021. The primary purpose of this review was to examine two areas of concern that we identified during our ongoing administration and oversight of the Unit: limitations on the law enforcement authority of the MFCU, and the adequacy of fraud referrals from MCOs. As part of this onsite review, we also examined the Unit’s operations and adherence to the 12 MFCU performance standards and applicable Federal laws, regulations, and policy transmittals. In examining the Unit’s operations and performance, we applied the published MFCU performance standards, but we did not assess adherence to every performance indicator for every standard.

We based the inspection on an analysis of data and information from seven sources: (1) a review of Unit documentation; (2) a review of financial documentation; (3) structured interviews with key stakeholders; (4) structured interviews with Unit management and selected staff; (5) a review of a random sample of case files that were open at any point during the review period; (6) a review of convictions submitted to OIG for program exclusion and adverse actions submitted to the National Practitioner Data Bank (NPDB) during the review period; and (7) observation of Unit operations. See Appendix B for a detailed methodology.

Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency (CIGIE). These inspections differ from other OIG evaluations in that they support OIG’s direct administration of the MFCU grant program, but they are subject to the same internal quality controls as are other OIG evaluations, including internal and external peer review.

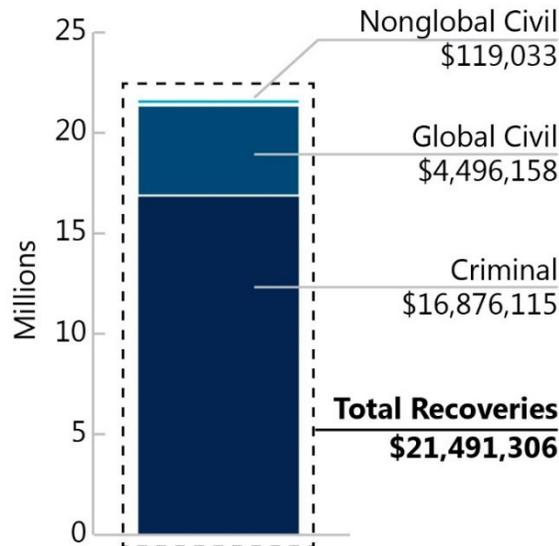
CASE OUTCOMES

The Unit reported 29 indictments, 16 convictions, and 25 civil settlements and judgments for FYs 2019–2021.

Of the 16 convictions reported by the Unit, 14 involved provider fraud and 2 involved patient abuse or neglect.



The Unit reported combined civil and criminal recoveries of \$21.5 million for FYs 2019–2021.



Source: OIG Analysis of Unit statistical data, FYs 2019–2021.

Note: "Global" civil recoveries derive from civil settlements or judgments in global cases, which are cases that involve the U.S. Department of Justice and a group of State MFCUs and are facilitated by the National Association of Medicaid Fraud Control Units.

FINDINGS

Our review examined two areas of concern identified during our ongoing administration and oversight activities of the District of Columbia MFCU: (1) the Unit's law enforcement authority and (2) fraud referrals from MCOs. We also conducted a general assessment of whether the Unit complied with legal requirements and adhered to the 12 MFCU performance standards. We found that the Unit addressed our primary concern regarding its law enforcement authority by succeeding in obtaining a legislative amendment to expand its authorities. However, we made findings regarding the Unit's lack of adequate policies and procedures to address its limited authorities during our review period; the low number of managed care fraud referrals; and two operational issues concerning supervisory reviews and reporting to Federal partners that have persisted since our previous onsite review in 2015.

The Unit's limited law enforcement authority and lack of adequate policies and procedures posed challenges during our review period; the Unit succeeded in obtaining a legislative amendment to expand its authorities

During our review period of FYs 2019–2021, the statutory authority of the District of Columbia OIG limited the Unit's law enforcement powers to the District of Columbia or District of Columbia facilities in other jurisdictions, and the Unit lacked similar authority to conduct operations in Maryland, Virginia, or other jurisdictions where District of Columbia Unit investigators may have needed to operate.²⁴ Unit investigators were also limited in the types of law enforcement activities they could conduct within the District.²⁵ The District of Columbia OIG succeeded in obtaining an amendment to the District of Columbia Code in January 2023, expanding the law enforcement authority of Unit investigators, and thus addressing our primary concern giving rise to this review.

As part of its oversight, HHS OIG evaluates whether Units "effectively carr[y] out the functions and requirements" for the program as established by statute, which includes taking into consideration Units' "effectiveness in... investigating cases of possible fraud."²⁶ We found that the District of Columbia Unit's limited law enforcement authority for its investigators posed challenges to conducting investigations during our review period. Due to the close proximity of the District of Columbia to the

²⁴ The District of Columbia OIG includes an Investigations Unit, in addition to the MFCU, which also employs investigators subject to the same statutory jurisdiction. We did not evaluate the impact of the law enforcement limitations on the Investigations Unit.

²⁵ District of Columbia Law No. 12-190 (1999).

²⁶ SSA § 1902(a)(61). See 42 CFR § 1007.17(c)(4).

surrounding States of Maryland and Virginia and the small size of the District, the Unit's cases frequently involved investigative operations outside of District boundaries. As a result, Unit investigators had to rely on other law enforcement partners, such as the Federal Bureau of Investigation (FBI) or the Metropolitan Police Department, to collect evidence and to complete investigations. For example, the Unit relied on the Metropolitan Police Department or Federal law enforcement partners to make arrests of suspects because the Unit did not have authority to do so in many cases.²⁷ Further, the Unit was unable to execute search warrants outside of the District of Columbia and relied on Federal partners, such as HHS OIG's Office of Investigations (OI), to perform that function.

According to Unit management, the limited law enforcement authority affected investigator morale, as investigators were at times not able to be equal partners. In addition, staff and management reported that cases could have progressed more quickly if they did not have to rely on other agencies to perform these elements of their work. For example, management explained that relying on partner agencies could result in investigative delays if Unit cases did not receive adequate resources or priority from those agencies.

Unit management and staff acknowledged that the limited law enforcement authority presented challenges to conducting investigations; however, we found at the time of our review that the Unit had taken steps to overcome these challenges and was able to operate effectively despite the limitations. In interviews, Unit management and staff reported that the Unit built partnerships with Federal and District law enforcement agencies to assist the Unit with investigative tasks, as described above. At the time of our review, the Unit's Federal law enforcement partners, such as HHS OIG and the FBI, reported collaborative working relationships with Unit investigators. Unit investigators also reported adapting investigative practices to ensure that investigations could progress despite the limitations. For example, investigators reported that when an investigation required Unit investigators to conduct interviews in another jurisdiction, they typically asked the subject(s) to enter the District to do the interview or would conduct it over the telephone.

²⁷ The Unit could only make arrests without a warrant upon probable cause for felony violations that occurred in a Unit investigator's presence, provided that the arrest was made while the investigator was performing official duties within the District or at a District government facility outside the District.

Despite the Unit taking steps to address the challenges associated with its law enforcement authority, we found that the Unit did not have adequate policies and procedures to address its limited authorities during our review period. The Unit's official policies and procedures manual, last updated in November 2014, contained investigative procedures, but those procedures did not address the limitations surrounding the Unit's law enforcement authority. Unit management and staff reported that an interim version of the manual was developed in 2018 and that management was in the process of updating the manual at the time of our review.²⁸ Further, Unit management and staff reported that policies surrounding the Unit's law enforcement jurisdiction were communicated to staff informally (e.g., verbally, in PowerPoint presentations, by email) by the District of Columbia OIG and Unit management and were not always widely distributed.²⁹ The Unit also had interim District of Columbia OIG-wide policies surrounding use of force and firearm use that addressed certain aspects of the limitations, such as the circumstances under which investigators can carry firearms during their official duties.³⁰ However, we found that there were no comprehensive written guidelines regarding the Unit's law enforcement authorities, which caused confusion among Unit staff and law enforcement partners. For example, some staff reported instances of not knowing what law enforcement activities the Unit could conduct because policies were made verbally and not distributed widely to staff.

Performance Standard 3(a): The Unit has written guidelines or manuals that contain current policies and procedures, consistent with these performance standards, for the investigation and (for those Units with prosecutorial authority) prosecution of Medicaid fraud and patient abuse and neglect.

A few months after our onsite review of the Unit, the District of Columbia OIG succeeded in obtaining a legislative amendment intended to address the law enforcement limitations.³¹ The legislation, which was signed by the mayor of the District of Columbia and enacted in January 2023 as the Inspector General Enhancement Amendment Act of 2022, provides District of Columbia OIG investigators, including the Unit, with enhanced law enforcement authorities. Specifically, the legislation gives investigators expanded authorities, such as the ability to (1) make an arrest without a warrant if there is probable cause of a committed felony; (2) apply for and execute arrest warrants; (3) directly enter into agreements with Federal partners; and (4) carry less lethal weapons. The new authority specifies that District of Columbia OIG criminal investigators may perform their duties within

²⁸ The Unit did not provide the interim MFCU policies and procedures manual when requested. As such, we did not assess the contents of the interim manual.

²⁹ The Unit did not provide these materials when requested. As such, we did not assess the contents of these documents.

³⁰ These interim policies, updated in January 2019, also included annual training requirements for firearm use and the use of force.

³¹ Council of the District of Columbia, *B24-0129 – Inspector General Enhancement Act of 2021*. Accessed at <https://lims.dccouncil.gov/Legislation/B24-0129> on March 13, 2023.

the District or, subject to Federal, State, and local laws, outside of the District.³² Although the expanded authorities in the legislation may address the limitations on the Unit's law enforcement authorities as described in this report, the need for adequate policies and procedures surrounding the Unit's law enforcement authority remains.

The Unit received few fraud referrals from MCOs but has taken steps to increase these referrals

Performance Standard 4(a) states that the Unit should take steps to ensure that MCOs refer all suspected provider fraud cases to the Unit. During FYs 2019–2021, the District of Columbia MFCU received a total of 208 fraud referrals, but only 3 originated from the District's MCOs. Given that 81 percent of the District's Medicaid population were enrolled in managed care in 2021, a total of 3 fraud referrals likely

underrepresents potential Medicaid provider fraud arising in the District of Columbia Medicaid managed care program.³³ The MCOs in the District of Columbia provide services for most of the District's Medicaid enrollees; the MCOs' efforts to refer potential instances of fraud in the managed care program to the DHCF's program integrity unit, and ultimately to the MFCU, are critical to ensuring Medicaid program integrity.

We found that several factors contributed to the low number of fraud referrals from the District's MCOs. Unit management reported that the Unit's communication with the MCOs was limited under the prior DHCF program integrity director, which reduced the MCO referrals to the Unit. However, management reported that communication with the MCOs increased after the new DHCF program integrity director assumed his role in November 2021. Further, Unit and DHCF program integrity management reported that the MCO Special Investigative Units (SIUs) in the District of Columbia did not typically conduct fraud investigations and that SIU staff would benefit from additional training on health care fraud. A 2023 Centers for Medicare & Medicaid Services (CMS) report focused on the District's Medicaid managed care program also encouraged DHCF to provide training and feedback to

Performance Standard 4(a): The Unit takes steps, such as the development of operational protocols, to ensure that the State Medicaid agency, managed care organizations, and other agencies refer to the Unit all suspected provider fraud cases.

³² District of Columbia Law 24-289. Inspector General Enhancement Amendment Act of 2022.

³³ CMS, *2019, 2020, and 2021 Medicaid Managed Care Enrollment Summary*. Accessed at <https://www.medicare.gov/medicaid/managed-care/enrollment-report/index.html> on September 20, 2023. The percentage of people enrolled in Medicaid managed care in the District of Columbia increased from 73 percent in 2019 and 2020 to 81 percent in 2021. In 2021, 231,323 of the 285,297 people enrolled in Medicaid in the District were enrolled in comprehensive managed care, compared to 193,692 of the 265,501 enrollees in 2020 and 194,136 of the 267,329 enrollees in 2019.

the District's MCOs regarding the quantity and quality of MCO referrals.³⁴ An official in one of the District's MCOs attributed the low number of referrals to delays caused by the shutdowns during the COVID-19 pandemic. While the pandemic likely impacted referrals, we found that CMS identified concerns regarding the low number of MCO referrals prior to the pandemic, during a 2017 program integrity review of the District.³⁵

We identified a strong and effective working relationship between the Unit and the current leadership at the DHCF program integrity unit. During interviews, the Unit and DHCF both reported that they had begun taking steps to increase referrals from the MCOs. Specifically, the two agencies shared that they had started working collaboratively to address the low number of referrals, including by developing trainings for the MCOs on identifying fraud and conducting investigations. Unit management also reported attending monthly meetings hosted by DHCF with all District agency stakeholders, including the MCOs, and noted that they had recently seen an increase in attendance and engagement from MCO staff. Unit management also explained that they had begun working on strengthening the relationships with the MCOs since the appointment of the new DHCF program integrity director.

Forty-one percent of the Unit's case files lacked documentation of periodic supervisory reviews consistent with Unit policy

Performance Standard 7(a) states that supervisory reviews should be conducted periodically, consistent with Unit policies and procedures, and noted in the case file. During our review period, the Unit policy required a supervisory review of case files every 90 days. Consistent with findings from OIG's 2015 onsite review, we found that for cases that were open longer than 90 days, 41 percent of the Unit's case files did not contain documentation of quarterly supervisory reviews.³⁶ Of these case files, 36 percent did not contain documentation of supervisory reviews every 90 days (i.e., the supervisory reviews were conducted less frequently) and 5 percent did not contain documentation of any supervisory review. See Appendix C for the point estimates and confidence intervals for the case file reviews.

³⁴ CMS, *District of Columbia Focused Program Integrity Review Final Report*, August 2023. Accessed at <https://www.cms.gov/files/document/washington-dc-fy22-focused-pi-review-report.pdf> on August 16, 2023.

³⁵ CMS, *District of Columbia Focused Program Integrity Review Final Report*, August 2017. Accessed at <https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforProfs/Downloads/DCfy17.pdf> on February 24, 2023.

³⁶ The previous OIG report found that 68 percent of the Unit's case files lacked documentation of periodic supervisory reviews.

At the time of our site visit, Unit management reported conducting periodic supervisory reviews on a bimonthly basis (i.e., in even-numbered months).³⁷ To ensure regular reviews of case files, Unit staff reported, the Unit's Special Agent in Charge now sends email appointments for the reviews every 2 months. Unit management also explained that investigators discuss their cases during team meetings and other informal conversations, often more frequently than in their scheduled supervisory reviews. Periodic supervisory review of cases during the investigation and prosecution phases can help ensure timely completion of cases, and documenting those reviews in the case files can help ensure that cases are properly managed.

The Unit did not always report convictions or adverse actions to Federal partners within the appropriate timeframes

According to Federal requirements and Performance Standard 8(f), the Unit should transmit to OIG—within 30 days of sentencing, or as soon as practicable if the Unit encounters delays in receiving the necessary information from the court—reports of all MFCU convictions for the purpose of permitting OIG to exclude the convicted parties from Federal health care programs.³⁸ We found that 13 of the Unit's 15 convictions were reported within 30 days or as soon as practicable after the information was received from the court.³⁹ However, two convictions were reported late, more than 90 days after sentencing. We found that the Unit's submission of convictions to OIG had improved since OIG's 2015 onsite review, which found that the Unit did not report any of its convictions to OIG within the required timeframe.⁴⁰ Late reporting of convictions to OIG delays the initiation of the program exclusion process, which may result in improper payments to providers by the Medicaid program or other Federal health care programs as well as possible harm to Medicaid enrollees.

Federal regulations, consistent with Performance Standard 8(g), also require that the Unit report any adverse actions of health care providers to the NPDB within 30 calendar days of the final adverse action date.⁴¹ The Unit did not report 5 of its 15 adverse actions to the NPDB within the appropriate timeframe. Of the five adverse actions submitted late, one was submitted within 31 to 60 days after the action, one

³⁷ We found that the Unit's policies and procedures manual had not been updated to reflect the change in the frequency of the supervisory reviews. We examined the Unit's case files to determine whether supervisory reviews were conducted every 90 days, consistent with the manual.

³⁸ 42 CFR § 1007.11(g), effective May 21, 2019. Performance Standard 8(f) also states that Units should transmit to OIG, for purposes of program exclusions, all pertinent information on MFCU convictions within 30 days of sentencing, including charging documents, plea agreements, and sentencing orders.

³⁹ We did not include late reporting of convictions where the MFCU encountered significant delays in receiving necessary sentencing information from the court.

⁴⁰ OIG, *District of Columbia Medicaid Fraud Control Unit: 2015 Onsite Review*, OEI-07-14-00660, September 2015.

⁴¹ 45 CFR § 60.5. Examples of final adverse actions include, but are not limited to, convictions, civil judgments (but not civil settlements), and program exclusions (SSA § 1128E(g)(1)).

was submitted between 61 to 90 days after the action, and three were submitted more than 90 days after the action. We found that the Unit's submission of adverse actions to the NPDB had improved since OIG's 2015 onsite review, which found that the Unit did not report any of its adverse actions timely.⁴² The NPDB is intended to restrict physicians, dentists, and other health care practitioners from moving State to State without disclosure or discovery of previous medical malpractice and adverse actions.⁴³ If a Unit fails to report adverse actions to the NPDB, other health care organizations may unknowingly hire individuals who have adverse actions made against them.

⁴² OIG, *District of Columbia Medicaid Fraud Control Unit: 2015 Onsite Review*, OEI-07-14-00660, September 2015.

⁴³ NPDB, About Us. Accessed at <https://www.npdb.hrsa.gov/topNavigation/aboutUs.jsp> on February 19, 2023.

RECOMMENDATIONS

From the information we reviewed, we found that the Unit's limited law enforcement authority posed challenges to conducting investigations during our review period, and the Unit did not have adequate policies and procedures regarding its limited authorities. We found that, at the time of our onsite review, the Unit had taken steps to overcome its limited law enforcement authority, including partnering with Federal and local law enforcement and modifying its investigative practices. Following our onsite review, the District of Columbia OIG succeeded in obtaining an amendment to the District of Columbia Code in January 2023, providing Unit investigators with enhanced law enforcement authorities. In our review, we also found that the Unit received few fraud referrals from MCOs during FYs 2019–2021 but has reportedly begun taking steps, in collaboration with DHCF, to increase these referrals. Additionally, we found that, for cases open longer than 90 days, 41 percent lacked documentation of periodic supervisory reviews consistent with Unit policy. Lastly, we found that the Unit did not always report convictions or adverse actions to Federal partners within the appropriate timeframes.

To address the findings identified in this report, we made the following recommendations to the District of Columbia MFCU.

We recommend that the District of Columbia MFCU:

Develop policies and procedures to implement the District of Columbia OIG's expanded law enforcement authority and ensure that Unit investigators receive training on the new authorities

The Unit should work with District of Columbia OIG officials to develop and implement written policies and procedures that address the expanded law enforcement authorities in the Inspector General Enhancement Amendment Act of 2022. The Unit, to the extent it has not done so, should also consider including policies that address operating as law enforcement officers in jurisdictions outside of the District of Columbia. The Unit should ensure that law enforcement partner agencies understand the policies and procedures surrounding its law enforcement authorities. The Unit should also ensure that policies remain up to date and that Unit staff have access to the policies and procedures.

Additionally, the Unit should ensure that all Unit investigators receive training on the new authorities to confirm that all policies and procedures are implemented appropriately in practice. The Unit should also provide guidance and/or training to Federal and District law enforcement partners on its new authorities, as applicable.

Build upon its efforts with the District's Medicaid agency to increase fraud referrals from the MCOs

To ensure that the Unit receives an adequate number of managed care fraud referrals, the Unit should continue to collaborate with the District Medicaid agency program integrity unit to conduct outreach and training with the District's MCOs. As part of these efforts, the Unit should provide periodic feedback to the MCOs on the quality of their referrals, including the types of referrals the Unit would like to receive and helpful information to include in a quality referral. The Unit should consider memorializing its ongoing and planned efforts in an MOU or other document with the District Medicaid agency program integrity unit and the District's MCOs. The Unit should also continually assess whether its efforts are helping increase referrals of potential fraud and if there are other ways to enhance its relationships with the MCOs.

Ensure that supervisory reviews of case files are conducted and documented in accordance with Unit policy

The Unit should ensure that supervisors conduct and document reviews of case files consistent with Unit policy. The Unit should also ensure that current processes for conducting and documenting supervisory reviews are included in its policies and procedures manual.

Ensure that all convictions and adverse actions are reported to Federal partners within the appropriate timeframes

The Unit should ensure that it consistently reports all convictions to OIG within 30 days of sentencing, or as soon as practicable if there are delays in receiving the necessary information from the court. The Unit should also ensure that it reports all adverse actions to the NPDB within 30 days of the action. The Unit's processes for reporting convictions and adverse actions to Federal partners should be included in its policies and procedures manual. The Unit could provide training to staff on reporting convictions and adverse actions to Federal partners and could implement automated reminders to alert staff about when to report the convictions and adverse actions.

UNIT COMMENTS AND OIG RESPONSE

The District of Columbia MFCU concurred with all four of our recommendations.

First, the Unit concurred with our recommendation to develop policies and procedures to implement the District of Columbia OIG's expanded law enforcement authority and ensure that Unit investigators receive training on the new authorities. The Unit reported that the District of Columbia OIG has convened a team tasked with amending its internal policies and procedures to reflect the updated law enforcement authorities for its Investigations Unit and the MFCU. In developing the policies and procedures, the Unit reported, the District of Columbia OIG plans to consult with the Metropolitan Police Department and will use a peer review process to assess its law enforcement activities, policies, and procedures against applicable CIGIE *Quality Standards for Investigations*.

Second, the Unit concurred with our recommendation to build upon its efforts with the District's Medicaid agency to increase fraud referrals from the MCOs. The Unit reported that, through its partnership with DHCF's Division of Program Integrity, it will continue strengthening its efforts to receive referrals from the MCOs.

Third, the Unit concurred with our recommendation to ensure that supervisory reviews of case files are conducted and documented in accordance with Unit policy. The Unit reported that it has implemented a bimonthly case review process with its Special Agent in Charge to ensure that each case receives adequate supervisory review.

Fourth, the Unit concurred with our recommendation to ensure that all convictions and adverse actions are reported to Federal partners within the appropriate timeframes. The Unit explained that the instances in which it did not meet the reporting requirements were due to administrative delays. The Unit reported that it will continue its processes to ensure that adverse actions are reported within the appropriate timeframes.

In addition to the Unit's concurrence with the recommendations, the Unit provided comments that disputed the technical accuracy or completeness of several statements contained in the first finding of the report. We have, where appropriate, added additional context or explanation in this final version of the report.

In regard to the Unit's comment about its lack of authority to operate outside of the District, we note that it was correct during our review period that the District of Columbia OIG, including the MFCU, lacked authority to conduct law enforcement actions in Maryland and Virginia. This posed a particular challenge with respect to the large number of health care fraud cases involving persons or businesses which operate both in the District and in neighboring States. The District of Columbia Council, as a part of the 2022 legislation, addressed this gap by providing additional

authority, "subject to federal, state, and local laws, outside of the District."⁴⁴ This included, but is not limited to, the ability to carry firearms, make arrests, and to apply for and execute arrest and search warrants under the authority of the District or of the United States upon probable cause.

In response to the Unit's comment that HHS OIG declined to offer written support for proposed legislation regarding the authority of the District of Columbia OIG in 2022, we note that HHS OIG has a practice, consistent with our nonpartisan status, of not advocating for specific legislation pending before a State legislature.

For the full text of the Unit's comments, see Appendix D.

⁴⁴ District of Columbia Code § 1-301.115a(f-1).

PERFORMANCE ASSESSMENT

We assessed the District of Columbia MFCU’s adherence to the 12 MFCU performance standards, including its compliance with applicable laws, regulations, and policy transmittals. From this review, we found that the Unit generally operated in accordance with applicable laws, regulations, and policy transmittals in FYs 2019–2021. We made four findings that warrant further attention, which are presented here and in the body of the report. We also made observations about Unit operations and practices. The complete MFCU performance standards, including the performance indicators, were published at 77 Fed. Reg. 32645 (June 1, 2012), and appear on OIG’s website at <https://oig.hhs.gov/fraud/medicaid-fraud-control-units-mfcu/>.

Performance Standard 1: Compliance with Requirements

A Unit conforms with all applicable statutes, regulations, and policy directives.

Observation: From the information we reviewed, the District of Columbia MFCU generally complied with applicable laws, regulations, and policy transmittals.

From the information reviewed, we found that the Unit was generally in compliance with applicable requirements. However, we identified one area of concern related to the Unit’s reporting of convictions and adverse actions to Federal partners, as described in the finding on page 13.

As part of our review, we also assessed the Unit’s compliance with applicable laws as it related to its limited law enforcement authority. We found that, at the time of our review, the Unit had taken steps to address its limited law enforcement authority and appeared to be operating in compliance with all applicable laws.

Performance Standard 2: Staffing

A Unit maintains reasonable staff levels and office locations in relation to the State’s Medicaid program expenditures and in accordance with staffing allocations approved in its budget.

Observation: The Unit was nearly fully staffed at the time of our review but had vacancies during the review period.

Performance Standard 2(a) states that a Unit should employ the number of staff that is included in the Unit’s budget estimate as approved by OIG. During our review period, the Unit was approved by OIG for 23 staff. At the time of our review, the Unit employed 21 staff. However, we observed that the Unit had several vacancies during our review period—the Unit employed 19 staff during FYs 2019–2020 and 16 staff in FY 2021.⁴⁵ Among the vacancies were investigator positions and an auditor position. During

⁴⁵ The review period of FYs 2019–2021 coincided with the onset of the COVID-19 pandemic, which may have affected the Unit’s ability to hire staff.

our onsite review, Unit management reported that they had recently hired several new staff, including an investigative analyst and a data analyst, and that they planned to hire additional staff in FY 2023.

Performance Standard 3: Policies and Procedures

A Unit establishes written policies and procedures for its operations and ensures that staff are familiar with, and adhere to, policies and procedures.

Finding: The Unit’s limited law enforcement authority and lack of adequate policies and procedures posed challenges during our review period; the Unit succeeded in obtaining a legislative amendment to expand its authorities.

See page 8.

Observation: The Unit maintained a policies and procedures manual, but parts of the manual did not describe the Unit’s current practices.

Performance Standard 3(a) states that the Unit should have written guidelines or manuals that contain current policies and procedures. The Unit maintained a policies and procedures manual, which was available to staff electronically. However, we observed that the Unit’s policies and procedures manual was last updated in 2014 and did not always reflect current practice. For example, the Unit’s policies and procedures manual had not been updated to reflect a change in the frequency of conducting and documenting periodic supervisory reviews (see the finding on page 12). Further, we observed that the Unit’s referral intake process had changed during our review period; however, no updates had been made to the policies and procedures manual to reflect such change. During our onsite review, Unit management reported that they were in the process of updating the policies and procedures manual.

Performance Standard 4: Maintaining Adequate Referrals

A Unit takes steps to maintain an adequate volume and quality of referrals from the State Medicaid agency and other sources.

Finding: The Unit received few fraud referrals from MCOs but has taken steps to increase these referrals.

See page 11.

Performance Standard 5: Maintaining Continuous Case Flow

A Unit takes steps to maintain a continuous case flow and to complete cases in an appropriate timeframe based on the complexity of the cases.

Observation: Nearly all case files contained documentation of supervisory approval for case openings and, as appropriate, supervisory approval for case closings.

According to Performance Standard 5(b), supervisors should approve the opening and closing of all investigations. Our review found that nearly all of the case files contained documentation of supervisory approval of case openings and closings. An estimated 96 percent of case files had supervisory approval to open the case for investigation, and an estimated 97 percent of the Unit’s

closed cases contained supervisory approval to close the case. See Appendix C for point estimates and confidence intervals for our case file review.

Performance Standard 6: Case Mix

A Unit's case mix, as practicable, covers all significant provider types and includes a balance of fraud and, where appropriate, patient abuse and neglect cases.

Observation: During our review period, the Unit increased its number of patient abuse and neglect cases, and its caseload covered a broad mix of provider types.

In our review of the Unit's case information, we observed that the number of investigations related to patient abuse or neglect increased significantly, during and after our review period, from 7 percent of cases in FY 2019 to 42 percent in FY 2022. The Unit director reported taking steps to increase the number of patient abuse or neglect cases in the Unit's case mix after he was appointed in December 2019. Specifically, the Unit conducted outreach to sources of patient abuse or neglect referrals; hired an investigator to specialize in cases of patient abuse and neglect; and worked with the U.S. Attorney's Office to have one of the Unit's attorneys trained as a SAUSA to prosecute patient abuse and neglect cases in District of Columbia Superior Court Division (see also Performance Standard 10). As a result of these efforts, the Unit was able to open more of its patient abuse and neglect referrals as cases over the course of our review period.

During our review period, the Unit's cases covered 31 different provider types, including pharmaceutical manufacturers, nursing homes, dentists, and nurses.

Performance Standard 7: Maintaining Case Information

A Unit maintains case files in an effective manner and develops a case management system that allows efficient access to case information and other performance data.

Finding: Forty-one percent of the Unit's case files lacked documentation of periodic supervisory reviews consistent with Unit policy.

See page 12.

Observation: The Unit generally maintained case files in an effective manner, but the Unit's case management system and some practices did not allow for efficient access to case information.

Performance Standard 7 states that a Unit maintains case files in an effective manner and develops a case management system that allows efficient access to case information. At the time of our review, the Unit used an electronic case management system to record and track all case information. We determined that overall, the Unit maintained case files in an effective manner; however, we identified some limitations with the Unit's case management system. During our case file review, we observed that the case management system was difficult to navigate and, as a result, it was time-consuming to locate investigative documents. In interviews, several Unit staff also reported that the case management system was not user-friendly and was not designed with investigations in mind. However,

Unit management reported that the Unit planned to transition to a new case management system in 2023.

Performance Standard 7 also requires that case files include all relevant facts and information and justify the opening and closing of the cases. We observed some opportunities for improvement with regard to maintaining investigative documentation. For example, some case files lacked certain investigative documents, such as opening memorandums and interview reports. Further, we observed that many case files lacked documentation that the Unit communicated its closing decision to the referring agency. Notifying the referring agency when the Unit has closed a case helps ensure that the referring agency can pursue other administrative actions, as appropriate. On the basis of these observations, we provided the Unit with technical assistance to further enhance its case file organization.

Performance Standard 8: Cooperation with Federal Authorities on Fraud Cases

A Unit cooperates with OIG and other Federal agencies in the investigation and prosecution of Medicaid and other health care fraud.

Finding: The Unit did not always report convictions or adverse actions to Federal partners within the appropriate timeframes.

See page 13.

Observation: The Unit maintained a strong collaborative partnership with Federal law enforcement partners, including OI and the U.S. Attorney's Office.

We found that during our review period, the Unit and OI jointly investigated a total of 31 cases. An OI investigative supervisor who worked with the Unit described the communication and collaboration between OI and the Unit as exceptional. OI management and the Unit's Special Agent in Charge reported the working relationships between Unit and OI investigators as particularly strong.

We also observed positive working relationships between the Unit and the U.S. Attorney's Office in the District of Columbia. We interviewed an official in the Criminal Division of the U.S. Attorney's Office, who reported that Unit investigators provided a high level of expertise and effort on cases worked with the U.S. Attorney's Office. The official also reported having a particularly positive working relationship with the Unit's Special Agent in Charge and Assistant Special Agent in Charge. Further, an official in the Superior Court Division of the U.S. Attorney's Office reported good relationships with two of the Unit's attorneys, who are cross-designated as SAUSAs in the Major Crimes Division.

Performance Standard 9: Program Recommendations

A Unit makes statutory or programmatic recommendations, when warranted, to the State government.

Observation: The Unit made recommendations to the District of Columbia government during our review period.

Performance Standard 9(a) states that Units, when warranted and appropriate, make statutory recommendations to the State legislature to improve the operation of the Unit, including amendments to the enforcement provisions of the State code. During our review period, the Unit pursued a legislative amendment—the Inspector General Enhancement Act of 2021—with the District of Columbia Council to address its law enforcement limitations. The bill, which was enacted in January 2023 as the Inspector General Enhancement Amendment Act of 2022, gives the District of Columbia OIG investigators (including Unit investigators) enhanced law enforcement authorities, as described on pages 10 and 11.

Performance Standard 10: Agreement with Medicaid Agency

A Unit periodically reviews its Memorandum of Understanding (MOU) with the State Medicaid agency to ensure that it reflects current practice, policy, and legal requirements.

Observation: The Unit’s MOU with the State Medicaid agency reflected current practice, policy, and legal requirements.

The District of Columbia OIG and DHCF had a current MOU, amended on July 21, 2021. The MOU reflected all policy and legal requirements as well as the current practices between the parties, including addressing referrals of both suspected fraud and credible allegations of fraud to the MFCU.

Performance Standard 11: Fiscal Control

A Unit exercises proper fiscal control over its resources.

Observation: From our limited review, we identified no deficiencies in the Unit’s fiscal control of its resources.

From the Unit’s responses to a detailed fiscal controls questionnaire and from follow-up with fiscal staff and Unit officials, we identified no significant issues related to the Unit’s budget process, accounting system, cash management, procurement, electronic data security, property, or personnel.

Performance Standard 12: Training

A Unit conducts training that aids in the mission of the Unit.

Observation: The U.S. Attorney’s Office trained the MFCU attorneys as SAUSAs, allowing the Unit to prosecute cases in the Superior Court Division of the U.S. Attorney’s Office.

Starting in 2020, the District of Columbia MFCU collaborated with the U.S. Attorney’s Office to train and appoint two of the Unit’s attorneys as SAUSAs. The purpose of the SAUSA program, as explained by Unit management, was to allow the Unit to prosecute cases that may otherwise be declined for

prosecution by the U.S. Attorney's Office due to resource limitations.⁴⁶ The training program to become a SAUSA includes a 3-week course which combines academic classes, trial skills, and hands-on experience. The MFCU attorneys also completed a 3-month misdemeanor rotation to gain additional experience. SAUSAs handle their own cases and have the same responsibilities as does a regular Assistant U.S. Attorney. The Unit currently has two SAUSAs—one who primarily prosecutes cases of Medicaid fraud, and one who prosecutes cases of patient abuse or neglect and misappropriation of funds.

In interviews, the Unit and the U.S. Attorney's Office both cited the success of the SAUSA program. An official in the U.S. Attorney's Office Superior Court Division reported that this arrangement with the MFCU has been successful for both agencies and has provided invaluable experience for Unit prosecutors. The Unit attorneys also described the program as a positive experience that has given them access to additional resources, such as trainings. The Unit director reported that the Unit plans to add one more SAUSA in 2023.

Observation: The Unit maintained a training plan and provided staff with weekly trainings on topics relevant to the Unit's mission.

The Unit had a training plan for its investigators, attorneys, and auditors pursuant to Performance Standard 12(a), which states that a Unit maintains a training plan that includes an annual minimum number of training hours and is at least as stringent as required for professional certification. During our review period, the Unit's annual training plan required 40 hours of training every year for each professional discipline. We observed that Unit staff in the professional disciplines generally met or exceeded the minimum number of training hours required by the Unit's training plan. In addition to the required annual training, the Unit held weekly in-service training sessions for staff on topics related to the mission and function of the Unit. The short training sessions, organized by the Unit's Special Agent in Charge, included topics such as the subpoena process, writing skills, and presenting cases for prosecution.

⁴⁶ The Unit has limited prosecutorial authority, as described on page 4 in the Background. As such, the Unit must refer cases of Medicaid fraud and patient abuse or neglect to other agencies, such as the U.S. Attorney's Office, for prosecution.

APPENDICES

Appendix A: Unit Referrals by Source for FYs 2019–2021

Referral Source	FY 2019		FY 2020		FY 2021		3-Year Total		
	Fraud	Abuse or	Total						
Adult Protective Services	0	1	0	0	0	7	0	8	8
Anonymous	1	0	0	1	0	0	1	1	2
HHS OIG	1	0	0	0	1	1	2	1	3
Law Enforcement	15	0	11	0	10	5	36	5	41
Licensing Board	0	0	0	0	0	0	0	0	0
Local Prosecutor	0	0	4	0	2	76	6	76	82
Long-Term Care Ombudsman	0	0	0	0	0	6	0	6	6
Managed Care	0	0	0	0	0	0	0	0	0
Medicaid Agency Program Integrity Unit—DHCF	11	0	34	0	16	2	61	2	63
Medicaid Agency	0	0	0	0	0	1	0	1	1
Private Citizens	2	3	1	1	1	2	4	6	10
Private Health	0	1	0	0	0	0	0	1	1
Provider	0	254	0	1,002	0	6	0	1,262	1,262
Provider	0	2	0	1	0	0	0	3	3
State Agency—Other**	17	1,325	11	1,363	25	1,306	53	3,994	4,047
State Survey and	0	1	0	2	1	0	1	3	4
Other	13	3	20	6	11	157	44	166	210
Sub-Total	60	1,590	81	2,376	67	1,569	208	5,535	5,743
Total	1,650		2,457		1,636		5,743		

Source: OIG analysis of Unit Annual Statistical Reports, FYs 2019–2021.

*The Unit's three managed care referrals as referenced in the finding on page 11 are included in the DHCF referral numbers because the Unit receives all managed care referrals through DHCF. The number of managed care referrals was specified in the Unit's recertification materials.

**The Unit received these referrals primarily from the Department of Disability Services and the Department of Health.

Appendix B: Detailed Methodology

We collected and analyzed data from seven sources as described below to identify any opportunities for improvement and instances in which the Unit did not adhere to the MFCU performance standards or was not operating in accordance with laws, regulations, or policy transmittals. We also used the data sources to make observations about the Unit's case outcomes as well as the Unit's operations and practices concerning the performance standards.

Data Collection and Analysis

Review of Unit Documentation

Prior to the onsite inspection, we reviewed the recertification analysis for FYs 2019–2021, which involved examining the Unit's recertification materials, including (1) the Unit's annual reports, (2) the Unit director's recertification questionnaires, (3) the Unit's MOU with DHCF, (4) the DHCF program integrity director's questionnaires, and (5) the OI Special Agent in Charge questionnaires. We also reviewed the Unit's policies and procedures manual and the Unit's self-reported case outcomes and referrals included in its annual statistical reports for FYs 2019–2021. Additionally, we examined the recommendations from the 2015 OIG onsite review report and the Unit's implementation of the recommendations.

Review of Unit Financial Documentation

We conducted a limited review of the Unit's control over its fiscal resources. Prior to the onsite inspection, we analyzed the Unit's responses to a questionnaire about internal controls and conducted a review of the Unit's quarterly financial reports. We followed up with District of Columbia OIG officials and the Unit to clarify any issues identified in the questionnaire about internal controls.

Interviews with Key Stakeholders

In September 2022, we conducted telephone interviews with key stakeholders, including officials in DHCF; an MCO; OI; and the U.S. Attorney's Office, including the District of Columbia Superior Court Division. We focused these interviews on the Unit's relationship and interaction with the stakeholders as well as opportunities for improvement. We used the information collected from these interviews to develop subsequent interview questions for Unit management and staff.

Interviews with Unit Management and Selected Staff

We conducted structured interviews with the Unit's management and selected staff in September 2022. We interviewed the director; the deputy director; two attorneys; the supervisor of the analysts and auditors; and six investigators, including the Special Agent in Charge and the Assistant Special Agent in Charge. In addition, we interviewed the supervisor of the Unit—the Principal Deputy Inspector General. These

interviews focused on our two targeted areas (the Unit's law enforcement authority and fraud referrals from the MCOs); Unit operations; and the Unit's training and technical assistance needs. We also followed up on any issues identified from the key stakeholder interviews and our analysis of Unit documentation.

Onsite Review of Case Files

We asked the Unit to provide us with a list of cases that were open at any point during FYs 2019–2021 and to include the status of each case; whether the case was criminal, nonglobal civil, or global civil; and the dates on which the case was opened and closed, if applicable. The total number of cases that met these parameters was 263. We excluded all global civil cases from our review of the Unit's case files because global civil cases are civil false claims actions that typically involve multiple agencies, such as the U.S. Department of Justice and a group of State MFCUs. Thus, we excluded 22 global civil cases, leaving 241 case files. We then selected a simple random sample of 78 cases from the population of 241 cases. This sample allowed us to make estimates of the overall percentage of case files with various characteristics with an absolute precision of no more than +/- 10 percent at the 95-percent confidence level. We reviewed the 78 case files for adherence to the relevant performance standards and compliance with statutes, regulations, and policy transmittals. During the onsite review of the sampled case files, we consulted MFCU staff to address any apparent issues with individual case files, such as missing documentation.

Review of Unit Submissions to OIG and the NPDB

We also reviewed all 15 of the Unit's convictions that were submitted to OIG for program exclusion during our review period, and all 15 of the Unit's adverse actions that were submitted to the NPDB during our review period. We reviewed whether the Unit submitted information on all sentenced individuals and entities to OIG for program exclusion and all adverse actions to the NPDB for FYs 2019–2021. We also assessed the timeliness of the submissions to OIG and the NPDB.

Onsite Review of Unit Operations

The Unit is in the process of moving to a new office space and was operating on full telework at the time of our review. As such, we were not able to perform a full onsite review of Unit operations, including an inventory review. The District of Columbia OIG retained a suite of office space at its previous location, and we conducted our data collection in that location.

Appendix C: Point Estimates and 95-Percent Confidence Intervals of Case File Reviews

Estimate Description	Sample Size	Point Estimate	95-Percent Confidence Interval	
			Lower	Upper
Percentage of All Cases That Had Supervisory Approval To Open	78	96.15%	90.04%	98.76%
Percentage of All Cases Closed at the Time of Our Review	78	85.90%	77.59%	91.70%
Percentage of All Closed Cases That Had Supervisory Approval To Close	67	97.01%	90.46%	99.17%
Percentage of Eligible Cases That Contained Documentation of Supervisory Reviews Consistent with Unit Policy	66	59.09%	47.72%	69.71%
Percentage of Eligible Cases That Contained Documentation of Supervisory Reviews but Not Consistent with Unit Policy	66	36.36%	26.14%	47.72%
Percentage of Eligible Cases That Contained No Documentation of Supervisory Review	66	4.55%	1.24%	11.62%

Appendix D: Unit Comments

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Inspector General

Inspector General



Via Electronic Mail

September 21, 2023

Ann Maxwell
Deputy Inspector General for Evaluation and Inspections
Office of the Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, S.W., Room 5660
Washington, D.C. 20201

Re: Comments on the *District of Columbia Medicaid Fraud Control Unit: 2022 Onsite Review*,
Draft Report (OEI-06-22-00420)

Dear Ms. Maxwell:

The District of Columbia Office of the Inspector General (DC OIG) has reviewed the U.S. Department of Health and Human Services Office of Inspector General (HHS-OIG) Onsite Review Team's draft report (OEI-06-22-00420) dated August 22, 2023. In addition to the "informal" comments the DC OIG Medicaid Fraud Control Unit (MFCU) provided to the HHS-OIG Onsite Review Team on August 10, 2023, the following sections present the DC OIG's response to the draft Onsite Report's findings and recommendations.

HHS-OIG Draft Onsite Report Finding 1: "The Unit's limited law enforcement authority and lack of adequate policies and procedures posed challenges during our review period; the Unit successfully pursued a legislative amendment to expand its authorities."

DC OIG Comment 1: Page 8 of the draft report states "the [DC OIG MFCU's] statutory authority limited its law enforcement powers [...]." This statement is inaccurate, as the DC Code does not specifically authorize law enforcement authorities to the DC OIG MFCU. Rather, law enforcement authorities are statutorily authorized to the DC OIG, and granted by the Inspector General to those employees, who as part of their official duties, conduct investigations of alleged felony violations.¹

The DC OIG operates with two Units whose mission is to conduct investigations of alleged felony violations: (1) the Investigations Unit, which investigates alleged fraud and corruption in District programs and operations; and (2) the MFCU, which investigates alleged District Medicaid provider fraud and Medicaid beneficiary abuse, neglect, and financial exploitation. Because the DC OIG's law enforcement authorities

¹ D.C. CODE § 1-301.115a(f-1) (2023).

are unitary in authorization, both Units must operate under the same DC code provisions, and corresponding internal DC OIG policies and procedures.

DC OIG Comment 2: The draft Onsite Report’s Objective 1, “[t]o examine two areas of concern identified during our ongoing administration and oversight activities of the District of Columbia Medicaid Fraud Control Unit (MFCU or Unit): **limitations on the MFCU’s law enforcement authority** and the adequacy of managed care fraud referrals,” (emphasis added) incorrectly surmises that state MFCU law enforcement authorities are a necessary requirement imposed by HHS-OIG to operate. There are neither federal statutory requirements in the Social Security Act² nor the Code of Federal Regulations³ or Federal Register,⁴ which require *any* state MFCU to operate with law enforcement authorities.

In some instances, state MFCUs possess no law enforcement authority *at all*.

DC OIG Comment 3: Pages 8–9 of the draft Onsite Report incorrectly claim that: “the Unit lacked similar authority to conduct operations in Maryland, Virginia, or other jurisdictions where District of Columbia Unit investigators may have needed to operate.” As stated previously, the DC OIG’s law enforcement authorities are governed by DC Code, which the Council of the District of Columbia enacts.⁵ The DC Council cannot enact laws that extend beyond the geographical boundaries of the District of Columbia.

Instances where a DC OIG MFCU investigation extends beyond the District of Columbia’s geographical and jurisdictional boundaries involve federal criminal violations. In these situations, federal law and regulation are unambiguous on the types of agencies that can seek and execute search and seizure warrants,⁶ as well as seek and execute arrest warrants or summons.⁷ As correctly described in the draft Onsite Report, when the DC OIG’s authorities present operational limitations, the MFCU must utilize other law “enforcement partners, such as the Federal Bureau of Investigation or the Metropolitan Police Department, to collect evidence and to complete investigations.”

DC OIG Comment 4: Page 10 of the draft report states, “In 2021, Unit management and other District of Columbia OIG officials pursued a legislative amendment intended to address the law enforcement limitations.” As presented, the draft report infers the DC OIG’s efforts to bring parity between its criminal investigative mission—to include the DC OIG MFCU—and corresponding statutory law enforcement authorities was only initiated in 2021.

² 42 U.S.C. §§ 1396a(a)(61) and 1396b(b)(3), and (q).

³ 42 C.F.R. § 1007.

⁴ Medicaid; Revisions to State Medicaid Fraud Control Unit Rules, 84 Fed. Reg. 10700 (Mar. 22, 2019) (to be codified at 42 C.F.R. pts. 455, 1007).

⁵ DISTRICT OF COLUMBIA HOME RULE ACT, Pub. L. No. 93-198, 87 Stat. 774 (1973).

⁶ 18 U.S.C. § 3105 and 28 C.F.R. §§ 60.2-60.3.

⁷ FED. R. CRIM. P. 4(e)(1).

As correctly cited in the draft report, the DC OIG’s statutory law enforcement authorities were enacted by D.C. Law No. 12-190⁸ in 1999. Shortly after, the DC OIG sought to broaden its law enforcement authorities with B14-0314, the “Office of the Inspector General Independence and Law Enforcement Act of 2001,” introduced on July 12, 2001. B14-0314 was not moved during the Council period.

Council Bill [B21-0813](#), the “Comprehensive Inspector General Independence and Empowerment Amendment Act of 2016,” introduced on June 24, 2016, sought to reenergize the DC OIG’s efforts to both enhance its law enforcement authorities, as well as augment its independence from various District agencies. Again, the Council did not move on this bill, and it expired at the end of the Council period.

As DC OIG MFCU officials have explained to HHS-OIG officials, [B24-0129](#), the “Inspector General Enhancement Act of 2021,” introduced on March 1, 2021, required considerable advocacy on the part of the DC OIG. The DC OIG extended an offer to HHS-OIG to prepare a letter of support regarding the proposed legislation on February 18, 2022. HHS-OIG declined to provide its written support to the DC Council on the DC OIG’s proposed legislation.

It is also important to note that parts of [B24-0129](#) were subject to appropriation. The DC OIG did not receive the requisite incremental appropriation needed, and as such the requirements in the bill have been unfunded and are no longer a statutory requirement. This includes the requirement for the DC OIG to implement a body worn camera program.⁹ Including discussion in the draft Onsite Report about this requirement is incorrect, given that it is not statutorily required.

HHS-OIG Draft Onsite Report Finding 2: “The Unit received few fraud referrals from MCOs but has taken steps to increase these referrals.”

DC OIG Comment 5: Each of the District of Columbia’s three managed care organizations (MCOs) contracts, awarded and administered by the District of Columbia Department of Healthcare Finance (DHCF), contain specific provisions regarding the identification and reporting of fraud, waste, and abuse within the respective MCOs.

The contracts require immediate and monthly reporting of all credible allegations of fraud identified and investigated by the MCO contractor to be communicated to DHCF’s Division of Program Integrity (DPI). Through a robust and ongoing relationship, credible allegations are communicated to the DHCF DPI by the MCOs, which are then subsequently referred to the DC OIG MFCU for investigation. This partnership reflects the requirements found in [Performance Standard 4A](#), whereby the DC OIG MFCU has developed the necessary operational protocols to ensure that the State Medicaid agency and its managed care organizations are referring all suspected provider fraud cases.

⁸ Office of the Inspector General Law Enforcement Powers Amendment Act of 1998 (March 26, 1999).

⁹ D.C. Code § 1-301.115a(f-7).

HHS-OIG Draft Onsite Report Recommendation 1: “Develop policies and procedures to implement the District of Columbia OIG’s expanded law enforcement authority and ensure Unit investigators receive training on the new authorities.”

DC OIG Response to HHS-OIG’s Recommendation 1: Agree. However, it is essential to note that DC Code does not grant the DC OIG MFCU law enforcement authorities. Instead, DC Code authorizes law enforcement authorities to the DC OIG. As such, the DC OIG has and will continue to work on updating omnibus policies for both its Investigations Unit as well as its MFCU. Beginning in FY 2022, the DC OIG convened a multidisciplinary team to update internal policies and procedures to reflect updated law enforcement authorities.

In developing these policies and procedures, the OIG will consult with the DC Metropolitan Police Department¹⁰ and will be subject to evaluation during a triennial peer-review process using the Council of the Inspectors General on Integrity and Efficiency’s (CIGIE) *Quality Standards for Investigations*.¹¹ Germane to the Onsite Review’s period, on August 25, 2022, the DC OIG’s peer-review assessment team concluded that the DC OIG met all “current and relevant [...] CIGIE [Quality Standards for Investigation] Standards for the review period.”¹² The DC OIG will continue to use its statutory peer-review to assess its law enforcement activities, policies, and procedures against applicable CIGIE standards.

HHS-OIG Draft Onsite Report Recommendation 2: “Build upon its efforts with the District’s Medicaid agency to increase fraud referrals from the MCOs.”

DC OIG Response to HHS-OIG’s Recommendation 2: Agree. As stated previously, the District of Columbia’s MCO contracts are awarded and administered by the District’s Department of Healthcare Finance (DHCF). Through a robust partnership with DHCF’s DPI, the DC OIG MFCU will continue to intensify efforts to solicit referrals from the District’s MCOs. This effort will continue throughout the duration of the MCO contracts’ periods of performance.

HHS-OIG Draft Onsite Report Recommendation 3: “Ensure that supervisory reviews of case files are conducted and documented in accordance with Unit policy.”

DC OIG Response to HHS-OIG’s Recommendation 3: Agree. The DC OIG MFCU has implemented a bimonthly case review process between investigative teams and its Special Agent in Charge (SAC). In comparison to the DC OIG MFCU’s 2015 Onsite Review, the percentage of case files receiving periodic supervisory reviews has increased

¹⁰ D.C. CODE § 1-301.115a(f-1)(1)(E).

¹¹ D.C. CODE § 1-301.115a(f-4).

¹² Assn. of Inspectors General, Peer Review Opinion Letter on the District of Columbia Office of the Inspector General (Aug. 25, 2022), [https://oig.dc.gov/sites/default/files/2022-07/AIG%20Peer%20Review%20Opinion%20Letter%20FYs%2018-21%20\(August%2025%202022\).pdf](https://oig.dc.gov/sites/default/files/2022-07/AIG%20Peer%20Review%20Opinion%20Letter%20FYs%2018-21%20(August%2025%202022).pdf) (last visited Sep. 4, 2023).

by 27 percent during the review period.¹³ The DC OIG MFCU will continue its bimonthly supervisory review process to ensure each case receives the requisite supervisory review by the unit's SAC.

HHS-OIG Draft Onsite Report Recommendation 4: "Ensure that all convictions and adverse actions are reported to Federal partners within the appropriate timeframes."

DC OIG Response to HHS-OIG's Recommendation 4: Agree. In comparison to HHS-OIG's 2015 Onsite Review, where the MFCU did not report any convictions within the required timeframes,¹⁴ the unit largely met the reporting requirement during the review period. The two instances where the DC OIG MFCU did not meet its reporting requirement were due to administrative delay. These convictions were ultimately reported. The DC OIG MFCU will continue its processes to ensure reporting for all adverse actions are reported within the prescribed timeframes.

In conclusion, the DC OIG MFCU has made considerable improvements since HHS-OIG's last onsite review report. Further, the DC OIG MFCU's current leadership team has made considerable improvements in the Unit's ability to investigate *and prosecute* cases; dramatically improved its relationship with the District's Medicaid program; created numerous opportunities to synergize oversight through partnerships with federal and local entities; and greatly increased its criminal recoveries during the review period. The DC OIG and its MFCU look forward to building on these successes and continuing its important work to safeguard the District's Medicaid program from provider fraud and to protect District Medicaid beneficiaries from abuse, neglect, and exploitation.

Thank you for the opportunity to respond to the draft Onsite Report. Please feel free to contact me or Mr. LaVan Griffith, DC OIG MFCU Director, if you have any questions or need additional information.

Sincerely,



Daniel W. Lucas
Inspector General

DWL/mnw

¹³ HHS-OIG, DISTRICT OF COLUMBIA MEDICAID FRAUD CONTROL UNIT: 2015 ONSITE REVIEW, pg. 8 (OEI-07-14-00660), <https://oig.hhs.gov/oei/reports/oei-07-14-00660.pdf> (last visited Sept. 4, 2022). Note: In 2015, HHS-OIG found that 68 percent of case files had not received periodic supervisory review. HHS-OIG's 2022 draft Onsite Review Report found that 41 percent of case files had not received the requisite supervisory reviews.

¹⁴ *Id.* at 12.

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

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This report was prepared under the direction of Ruth Ann Dorrill, Regional Inspector General for Evaluation and Inspections in the Dallas regional office, and Petra Nealy and Amy Ashcraft, Deputy Regional Inspectors General, as well as in consultation with Richard Stern, Director of the Medicaid Fraud Policy and Oversight Division.

Contact

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