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Robert G. (Bob) Bethell Joint Committee on Home and Community Based Services  
and KanCare Oversight

**Medicaid Inspector General Update**  
September 28, 2020

Good morning Madame Chair and members of the Committee. Thank you for the opportunity to discuss the Office of the Medicaid Inspector General (OMIG) with you this morning. My name is Jay Scott Emler. I am the Deputy Attorney General/Chief Information Security Officer for the Office of Attorney General Derek Schmidt (OAG). I also currently serve as the administrator for OMIG.

OMIG Staffing Changes

OAG is currently in the process of recruiting an Inspector General due to the resignation of Sarah Fertig. Ms. Fertig is now employed by the Kansas Department of Health and Environment (KDHE) as the state's Medicaid Director replacing Adam Proffitt. Ms. Fertig assumed that position on July 13, 2020.

Division Update

OMIG continues to oversee complaints of fraud, waste, abuse, and illegal acts concerning Medicaid, CHIP, and MediKan. Since the last meeting of this committee (June 2020), OMIG has received 242 complaints. The majority of these complaints allege beneficiary eligibility fraud. OMIG screens each complaint for substance and jurisdiction. If the OMIG determines there is a need for clarification, the complaint is forwarded to the Medicaid clearinghouse for review and possible follow-up.

OMIG continues to communicate on a monthly basis with each Managed Care Organization (MCO), KDHE's Program Integrity unit, the Kansas Department for Aging and Disability Services (KDADS), and the Medicaid Fraud and Abuse division in the Office of Attorney General Derek Schmidt. In addition, OMIG continues to participate in monthly meetings with other state agencies with the goal of improving communications on issues involving fraud, waste, abuse, or illegal acts concerning state medical assistance programs.

## Personal Care Services (PCS) Billed During Hospital Stays

The United States Department of Health and Human Services Office of Inspector General (HHS OIG) has identified PCS as a high-risk area for fraud, waste, abuse, and illegal acts involving the Medicaid program. This is because the services are often provided in a person's home without direct supervision; there are no uniform standards for personal care attendant (PCA) qualifications, and the Centers for Medicare and Medicaid Services (CMS) does not require states to enroll PCAs as providers.<sup>1</sup>

In order to improve the overall process of protecting the integrity of the Kansas Medicaid program, the OMIG recently ran claims data from 01/01/19 through 06/30/20 to see if it could identify any PCS services billed on the same day as an inpatient hospital stay. OMIG then conducted research using the AuthentiCare system to determine if there were any instances of suspected fraud, waste, or abuse.

OMIG identified \$49,294.67 in possible improper payments that were claimed by thirty (30) different PCAs while the beneficiary was hospitalized. In one instance, the PCA claimed over \$8,000 while the beneficiary was in the hospital. Listed below is a breakdown of possible improper payments that were made by each MCO. It is unknown if each MCO has already identified these potential improper payments.

<b>Managed Care Organization (MCO)</b>			
<b>Aetna</b>	<b>Sunflower</b>	<b>United Health Care</b>	<b>Total</b>
\$14,861.37	\$27,508.79	\$6,924.51	\$49,294.67

OMIG referred all thirty (30) PCAs investigation files to the Medicaid Fraud and Abuse division of the OAG for review. OMIG believes the results of the research demonstrate the possible vulnerabilities in PCS that contribute to high improper payments, significant fraud, and place vulnerable beneficiaries at risk for abuse and neglect.

### Follow-Up Review of Appriss Notifications

On November 13, 2019, the OMIG issued Report No. 20-01.<sup>2</sup> This report contained findings from its performance audit of KDHE's processes for discontinuing Medicaid eligibility when a beneficiary enters a state prison. Both state and federal law prohibit using Medicaid funds to pay for services provided to state prison inmates, except in narrow circumstances.

OMIG initiated this follow-up review because it identified possible deficiencies in KDHE's process for discontinuing eligibility for incarcerated beneficiaries. The failure to discontinue eligibility resulted in the issuance of capitation payments to MCO's for \$184,997.43 for ineligible persons.

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<sup>1</sup> HHS OIG, Investigative Advisory on Medicaid Fraud and Patient Harm Involving Personal Care Services, October 3, 2016, available at: <https://oig.hhs.gov/reports-and-publications/portfolio/ia-mpcs2016.pdf>

<sup>2</sup> <https://ag.ks.gov/fraud-abuse/medicaid-inspector-general>

The objective of the follow-up review was to determine if the Appriss notification system was working as intended, and if the clearinghouse staff is taking appropriate action based on Appriss notifications. OMIG performed the following tasks:

1. Requested and received an excel file from the Wyandotte County Adult Detention Center (WYCO) showing a complete roster of all individuals who were booked into jail during the month of April 2020. According to the data provided, there were 446 individual bookings in the jail during the month of April of 2020;
2. Using KDHE’s reporting and analytics tools in the Kansas Modular Medicaid System (KMMS), OMIG compared the data file received from WYCO to the Medicaid Management Information System (MMIS) eligibility file. OMIG identified 24 beneficiaries who were Medicaid eligible during April of 2020;
3. Created a sampling frame of 100% of the 24 beneficiaries identified in the data file received from WYCO;
4. Viewed the Kansas Eligibility Enforcement System (KEES) journal to determine if an Appriss notification was generated for each inmate and recorded the date;
5. Calculated the number of days between the inmates booking date supplied by WYCO, and the Appriss file date to determine a response time for Appriss;
6. Identified the date a clearinghouse employee worked the Appriss report in the KEES journal and recorded the information;
7. Calculated the number of days between the Appriss notification date and date a clearinghouse employee worked the report;
8. Determined if a clearinghouse employee updated the eligibility system appropriately according to protocol;
9. Accessed KDHE systems or other alternative online information sources to independently confirm or perform additional analysis as needed, including MMIS, ImageNow, KEES, Kansas Adult Supervised Population Electronic Repository, and the WYCO Detention Center website; and
10. Using KDHE’s reporting and analytics tools in KMMS, pulled capitation payments made for inmates included in the sample to determine if a payment was made for any ineligible months, and if any such payment was later recouped.

Pass	Fail	N/A	Total
18	1	5	24
75%	4%	21%	100%

The testing revealed KDHE received timely notices of each inmate's incarceration and the clearinghouse staff took prompt action to either sustain or discontinue Medicaid coverage as appropriate based on individual circumstances.

- Out of the twenty-four (24) inmates tested, eighteen (75%) were handled timely and appropriately. Appropriately means that coverage ended or coverage was extended due to the Medicaid eligibility provisions of the Families First Coronavirus Response Act.<sup>3</sup>
- One (4%) inmate's Appriss notification came in twenty-six days after his book date. The reason is unknown.
- Five inmates (21%) were classified as N/A due to individual circumstances.
- The average number of days between inmate book date and Appriss notification date was one (1) day.
- The average number of days it took a clearinghouse employee to work the Appriss report and update KEES was two (2) business days.

The OMIG was not able to evaluate capitation payments made for ineligible inmates due to the Families First Coronavirus Response Act. It was able to determine that KDHE has complied with the Medicaid eligibility provisions of the Families First Coronavirus Response Act. The Act conditions a temporary Federal Medical Assistance Percentages increase of 6.2% on the state not terminating Medicaid eligibility for any reason other than (1) the beneficiary requests a voluntary termination, or (2) the beneficiary ceases to be a resident of the state.”<sup>4</sup>

The results of OMIG's review indicate that KDHE's new data exchange with Appriss appears to be an effective tool for the state of Kansas. The Appriss data exchange provides real-time information on the incarceration status of beneficiaries. The clearinghouse can make timely and informed decisions regarding the Medicaid eligibility of individuals who are in the custody of law enforcement agencies. This reduces the amount of capitation payments that are being made to MCO's. In addition, KDHE is able to reinstate the benefits of eligible members after release or approve MediKan reintegration and send a new benefits application. This allows inmates the ability to receive quick access to mental health care in the community following discharge from jail or prison.

#### TA Waiver Participants

OMIG anticipated updating the Committee on the TA waiver issue reported in June. Unfortunately, due to quarantine/distance working issues, the update has not been completed. Hopefully, a report will be ready for the December meeting.

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<sup>3</sup> <https://www.congress.gov/116/plaws/publ127/PLAW-116publ127.pdf>

<sup>4</sup> <https://www.congress.gov/116/plaws/publ127/PLAW-116publ127.pdf>

### COVID-19 Monitoring

OMIG anticipated updating the Committee on the Covid-19 issue reported in June. Unfortunately, due to quarantine/distance working issues, the update has not been completed. Hopefully, a report will be ready for the December meeting.

Thank you for your time this morning.