Office of the Washington State Auditor

Pat McCarthy

Whistleblower Investigation Report

Health Care Authority

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Lou McDermott, Acting Director
Health Care Authority

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-005 at the Health Care Authority.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy

State Auditor

Olympia, WA

cc: Governor Jay Inslee
Kathy Smith, Audit and Accountability Manager
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

Our Office received a whistleblower complaint asserting an Assistant Director at the Health Care Authority (HCA) failed to ensure payments to a tribal chemical dependency treatment program at the Stillaguamish Tribe were made in accordance with law.

We found no reasonable cause to believe the subject committed an improper governmental action. However, we found HCA improperly reimbursed the Tribe over $6 million for chemical dependency treatments.

Background

Tribal health care facilities that deliver health care services to Medicaid-eligible clients can bill HCA, Washington's Medicaid agency, for delivering those services. HCA submits an annual plan describing coverage benefits, prior authorization requirements, and reimbursement requirements and limitations, to the Centers for Medicare and Medicaid Services (CMS) for approval.

Chemical dependency treatment is a service covered by Medicaid. State billing policies require providers to retain supporting documentation as evidence of what, when and by whom services were provided.

As part of the state plan, tribal health care facilities are authorized to bill for encounter payments. An encounter is a face-to-face contact between a health care professional and a Medicaid client for the provision of all services that are provided to that client within a 24-hour period, as documented in the client's records. To be eligible to bill at the encounter rate, the services must be provided by specific credentialed health care professionals.

In calendar year 2016, the Medicaid encounter reimbursement rates were $368 for tribal clients and $184 for non-tribal clients.

About the Investigation

The Stillaguamish Tribe (Tribe) operates a chemical dependency facility that provides services to tribal and non-tribal clients.

From January 2016 through December 2016, the Tribe was paid about $32 million for chemical dependency treatments billed at the encounter rate. To verify the Tribe was receiving proper payments, we examined 3 percent of the encounter claims, which included 134 individual clients and about 25,000 claims. The Tribe received almost $7 million for these claims. We requested HCA contact the Tribe and obtain the supporting documentation for these clients.

Our review of 25,033 claims billed at the encounter rate found more than $6 million in improper payments issued to the Tribe. The provider was ineligible to claim at the encounter rate for 20,554 of the claims reviewed, because he or she was not a specifically credentialed health care provider as named on the state plan.

We also performed a trend analysis of encounter payments made to all Washington tribes from fiscal years 2013 to 2017. We found the Stillaguamish Tribe was paid almost $94 million for encounter claims; the tribe with the second most encounter claims was paid about $12 million. As seen in the table below, the annual payments to the Tribe have increased every year.

Fiscal year	Cost of encounter claims paid to Stillaguamish Tribe	Percent change from prior year
2013	$7,148,120	--
2014	$8,494,857	19%
2015	$18,721,692	120%
2016	$25,348,828	35%
2017	$34,202,315	35%

The Office of Program Integrity (Program) within HCA is responsible for detecting and preventing fraud and identifying any associated improper payments.

During a meeting with HCA management, the subject said he was put in charge of the Program in October 2015, after a reorganization of HCA units. He said that in January 2016, Program staff notified their manager that they discovered possible improper encounter payments to the Tribe – billing encounter rates for dispensing methadone.

The Program manager said the subject told her to enter the issue into the database and contact HCA's tribal liaison, in accordance with HCA protocol. The subject said the issue initially was not addressed due to staffing shortages. The subject said he relied on an existing process that prioritized reviews and audits based on the submission dates.

According to the subject and the Program manager, the tribal liaison told them he wanted to research the issue and ask CMS for its interpretation of who can bill the encounter rate. The subject said the tribal liaison told them other states were paying encounter rates for the dispensing of methadone and he wanted to look into whether Washington should also.

The subject and the Program manager said they reached out to the tribal liaison on several occasions, asking about CMS' response, but never received an answer from him. We asked the subject and Program manager if either had gone to the tribal liaison's supervisor for assistance, and both said they had not. However, the subject said he had apprised his supervisor of the situation. He said he does not know what she did with the information.

We spoke with the tribal liaison, who said he did contact CMS but did not receive an answer to his question. He said there was no reason for the Program to wait on him before addressing the issue. He said neither the subject nor the Program manager indicated this was a priority. He said he is understaffed and everyone at HCA knows that, so if someone needs something from him they have to bug him.

When we followed up with the Program manager, she said she had been told "nothing happens with the tribes" without the tribal liaison's involvement, which is why she waited for him before moving on the issue.

The subject and Program manager said that in June 2017, they decided they had waited long enough and hired an auditor specifically to conduct tribal-related audits. The subject said the Program had identified potential improper payments as far back as 2013. They hired the auditor to ensure they had enough time to verify and collect on the payments if they were found to be improper.

Conclusion

In October 2015, the subject was promoted and assumed responsibility for HCA's Division of Medicaid Program Operations & Integrity. The Program is one of seven units within the division. At the time this issue was brought to his attention, a clear business plan for the division had not yet been established.

The subject provided us with an overall business plan covering state fiscal year 2017 for the division, as well as a detailed plan for the Program. The plans became effective in September 2016.

Although our investigation identified significant improper payments, we found the improper payments cannot be attributed to the actions of the subject. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

Recommendations

The overpayments identified in this investigation were primarily federally funded by CMS. We recommend HCA consult with CMS to determine if it is required to repay any of the improperly charged costs.

We also recommend HCA:

- Proceed with its plan to reconcile the Tribe's billing records, dating back to 2013, with supporting documentation to determine if additional improper payments, other than those identified by this investigation, were made.

- If appropriate, consider referring this matter to the Medicaid Fraud Control Unit, administered by the Washington Attorney General's Office.

Agency's Response

The Health Care Authority's Program Integrity staff conducted an onsite visit of the Stillaguamish Tribe's Behavioral Health Substance Use program and Methadone Clinic on July 12 and 13, 2017. The team is currently reviewing documentation and compiling preliminary audit findings. The team will issue the preliminary audit findings within the next three to four weeks, as well as make appropriate referrals as necessary.

State Auditor's Office Concluding Remarks

Our Office is responsible for conducting Washington's Single Audit, which opines on whether the state is in material compliance with terms of federal grants. Federal regulations require the auditor to issue audit findings when known questioned costs are identified that exceed $25,000. The scope of our next single audit covers from July 1, 2016, to June 30, 2017. Because we identified improper payments exceeding the $25,000 threshold that occurred during the audit period, we will report an audit finding and will reference this investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

42 U.S.C. 1396a - State plans for medical assistance; states in part:

A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

Washington State Plan under TITLE XIX of the Social Security Act

Reimbursement for Indian Health Service and Tribal Health Facilities

Payment for Services

Services provided by facilities of the Indian Health Service (IHS) which includes, at the option of the tribe, facilities operated by a tribe or tribal organization, and funded by Title I or III of the Indian Self Determination and Education Assistance Act (Public Law 93-638), are paid at the rates negotiated between the Health Care Financing Administration (HCFA) and the IHS and which are published in the Federal Register or Federal Register Notices.

The outpatient per visit rate is also known as the, IHS encounter rate. The definition of an encounter is, "A face-to-face contact between a health care professional and a Medicaid beneficiary, for the provision of Title XIX defined services through an IHS or Tribal 638 facility within a 24-hour period ending at midnight, as documented in the patient's record."

The services of the following providers are included in the encounter rate:

- Physicians
- Physician Assistants
- Nurse Midwives
- Advanced Nurse Practitioners
- Speech-Language Pathologists
- Audiologists
- Physical Therapists
- Occupational Therapists
- Podiatrists
- Optometrists

- Dentists
- Chemical Dependency Counselors
- Psychiatrists
- Psychologists
- Mental Health Professionals

Included in the outpatient per visit rate are laboratory and x-ray services provided on-site and medical supplies incidental to the services provided to the patient. Pharmaceuticals/drugs are outside the encounter rate and are reimbursed under the fee-for-service system at the applicable fee-for-service rate.

RCW 42.40.020 - Definitions

(6)(a) "Improper governmental action" means any action by an employee undertaken in the performance of the employee's official duties:

(i) Which is a gross waste of public funds or resources as defined in this section;

(iv) Which is gross mismanagement;

2 C.F.R. 200.516 – Audit findings, states in part:

Audit findings reported. The auditor must report the following as audit findings in a schedule of findings and questioned costs:

(3) Known questioned costs that are greater than $25,000 for a type of compliance requirement for a major program. Known questioned costs are those specifically identified by the auditor. In evaluating the effect of questioned costs on the opinion on compliance, the auditor considers the best estimate of total costs questioned (likely questioned costs), not just the questioned costs specifically identified (known questioned costs). The auditor must also report known questioned costs when likely questioned costs are greater than $25,000 for a type of compliance requirement for a major program. In reporting questioned costs, the auditor must include information to provide proper perspective for judging the prevalence and consequences of the questioned costs.