[Federal Register: September 26, 1994]

DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office of Inspector General

Performance Standards for State Medicaid Fraud Control Units

AGENCY: Office of Inspector General, HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1902(a)(61) of the Social Security Act and the authority delegated to the Inspector General, this notice sets forth standards for assessing the performance of the State Medicaid Fraud Control Units. These standards will be used in the certification and recertification of each Unit and to determine if a Unit is effectively and efficiently carrying out its duties and responsibilities.

EFFECTIVE DATE: These performance standards are effective on September 26, 1994.

SUPPLEMENTARY INFORMATION:

I. Background

Since the enactment of the Medicare and Medicaid Anti-Fraud and Abuse Amendments of 1977, authorizing the establishment and funding for Medicaid Fraud Control Units (MFCUs), 42 States have created such fraud control units to investigate and prosecute Medicaid provider fraud and patient abuse and neglect in Medicaid funded facilities.

A MFCU must be a single, identifiable entity of the State government composed of (i) one or more attorneys experienced in investigating or prosecuting civil fraud or criminal cases who are capable of giving informed advice on applicable law and procedures and providing effective prosecution or liaison with other prosecutors; (ii) one or more experienced auditors capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud; and (iii) a senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the unit. While the preference of the enabling legislation has been for the unit to investigate and prosecute its own cases on a Statewide basis, the legislative history recognizes that not all States are lawfully able to establish the MFCU to do so.

The State Medicaid agency is required to enter into an agreement with the MFCU to refer all suspected cases of provider fraud to the unit, and to comply with the unit's requests for provider records or computerized data that is kept by the Medicaid agency. To ensure that Medicaid overpayments identified by a MFCU in the course of its investigations are recovered, each MFCU is required either to undertake civil recovery actions or have procedures to refer overpayments for collection to other appropriate State agencies.

The HHS Office of Inspector General (OIG) is delegated the authority to certify and recertify the MFCUs to ensure that the units fully comply with the governing statute and with Federal regulations set forth in 42 CFR part 1007. As part of its recertification process,

the OIG reviews the State fraud units' applications for recertification and may conduct on-site visits to the units to observe their operations. The OIG also collects and analyzes statistical data on the number and type of cases under investigation, the number of convictions obtained, and the amount of recoveries.

II. Use Of Performance Standards

Section 13625 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66, amended section 1902 of the Social Security Act by adding a new paragraph (a)(61) that establishes a Medicaid State plan requirement that, effective January 1, 1995, a State must operate a MFCU in accordance with standards to be established by the Secretary.

The OIG intends to use these performance standards in the certification and recertification of a Unit, as well as for assessing the effectiveness of a Unit during on-site reviews.

III. Standards For Assessing The MFCUS

In cooperation with the Units themselves, represented by a working group from the National Association of Medicaid Fraud Control Units, the OIG has developed twelve performance standards to be used in evaluating a Unit's performance. Each of the current Unit directors has concurred with the standards and accompanying requirements or indicators set forth below.

Performance Standards

1. A Unit will be in conformance with all applicable statutes, regulations and policy directives.

In meeting this standard, the Unit must meet, but is not limited to, the following requirements--

A. The Unit professional staff must consist of permanent employees working full-time on Medicaid fraud and patient abuse matters.

B. The Unit must be separate and distinct from the single State Medicaid agency.

C. The Unit must have prosecutorial authority or an approved formal procedure for referring cases to a prosecutor.

D. The Unit must submit annual reports, with appropriate certifications, on a timely basis.

E. The Unit must submit quarterly reports on a timely basis.

F. The Unit must comply with the Americans with Disabilities Act, the Equal Employment Opportunity requirements, the Drug Free Workplace requirements, Federal lobbying restrictions, and other such rules that are made conditions of the grant.

2. A Unit should maintain staff levels in accordance with staffing allocations approved in its budget.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit employ the number of staff that were included in the Unit's budget as approved by the OIG?

B. Does the Unit employ the number of attorneys, auditors, and investigators that were approved in the Unit's budget?

C. Does the Unit employ a reasonable size of professional staff in relation to the State's total Medicaid program expenditures?

D. Are the Unit office locations established on a rational basis and are such locations appropriately staffed?

3. A Unit should establish policies and procedures for its operations, and maintain appropriate systems for case management and case tracking.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit have policy and procedure manuals?

B. Is an adequate, computerized case management and tracking system in place?

4. A unit should take steps to ensure that it maintains an adequate workload through referrals from the single State agency and other sources.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit work with the single State agency to ensure adequate fraud referrals?

B. Does the Unit work with other agencies to encourage fraud referrals?

C. Does the Unit generate any of its own fraud cases?

D. Does the Unit ensure that adequate referrals of patient abuse complaints are received from all sources?

5. A Unit's case mix, when possible, should cover all significant provider types.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit seek to have a mix of cases among all types of providers in the State?

B. Does the Unit seek to have a mix of Medicaid fraud and Medicaid patient abuse cases?

C. Does the Unit seek to have a mix of cases that reflect the proportion of Medicaid expenditures for particular provider groups?

D. Are there any special Unit initiatives targeting specific provider types that affect case mix?

E. Does the Unit consider civil and administrative remedies when appropriate?

6. A Unit should have a continuous case flow, and cases should be completed in a reasonable time.

In meeting this standard, the following performance indicators will be considered--

A. Is each stage of an investigation and prosecution completed in an appropriate time frame?

B. Are supervisors approving the opening and closing of investigations?

C. Are supervisory reviews conducted periodically and noted in the case file?

7. A Unit should have a process for monitoring the outcome of cases.

In meeting this standard, the Unit's monitoring of the following case factors and outcomes will be considered--

A. The number, age, and type of cases in inventory.

B. The number of referrals to other agencies for prosecution.

C. The number of arrests and indictments.

D. The number of convictions.

E. The amount of overpayments identified.

F. The amount of fines and restitution ordered.

G. The amount of civil recoveries.

H. The numbers of administrative sanctions imposed.

8. A Unit will cooperate with the OIG and other Federal agencies, whenever appropriate and consistent with its mission, in the investigation and prosecution of health care fraud.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit communicate effectively with the OIG and other Federal agencies in investigating or prosecuting health care fraud in their State?

B. Does the Unit provide OIG regional management, and other Federal agencies, where appropriate, with timely information concerning significant actions in all cases being pursued by the Unit?

C. Does the Unit have an effective procedure for referring cases, when appropriate, to Federal agencies for investigation and other

action?

D. Does the Unit transmit to the OIG, for purposes of program exclusions under section 1128 of the Social Security Act, reports of convictions, and copies of Judgment and Sentence or other acceptable documentation within 30 days or other reasonable time period?

9. A Unit should make statutory or programmatic recommendations, when necessary, to the State government.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit recommend amendments to the enforcement provisions of the State's statutes when necessary and appropriate to do so?

B. Does the Unit provide program recommendations to single State agency when appropriate?

C. Does the Unit monitor actions taken by State legislature or State Medicaid agency in response to recommendations?

10. A Unit should periodically review its Memorandum of Understanding (MOU) with the single State Medicaid agency and seek amendments, as necessary, to ensure it reflects current law and practice.

In meeting this standard, the following performance indicators will be considered--

A. Is the MOU more than 5 years old?

B. Does the MOU meet Federal legal requirements?

C. Does the MOU address cross-training with the fraud detection staff of the State Medicaid agency?

D. Does the MOU address the Unit's responsibility to make program recommendations to the Medicaid agency and monitor actions taken by the Medicaid agency concerning those recommendations?

11. The Unit director should exercise proper fiscal control over the unit resources.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit director receive on a timely basis copies of all fiscal and administrative reports concerning Unit expenditures from the State parent agency?

B. Does the Unit maintain an equipment inventory?

C. Does the Unit apply generally accepted accounting principles in its control of Unit funding?

12. A Unit should maintain an annual training plan for all professional disciplines.

In meeting this standard, the following performance indicators will be considered--

A. Does the Unit have a training plan in place and funds available to fully implement the plan?

B. Does the Unit have a minimum number of hours training requirement for each professional discipline, and does the staff comply with the requirement?

C. Are continuing education standards met for professional staff?

D. Does training undertaken by staff aid in the mission of the Unit?

These standards may be periodically reviewed and discussed with the Units and other State representatives to ascertain their effectiveness and applicability. Additional or revised performance standards may be proposed when deemed appropriate.

Dated: September 16, 1994.

June Gibbs Brown,

Inspector General.

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