

Wyoming Loses Millions to Avoidable Medicaid Waste and Abuse

Executive Summary

- **Medicaid Program Integrity is intended to ensure state and federal tax dollars are spent appropriately delivering necessary and quality healthcare and preventing waste, abuse, and fraud.**
- The current structure of Wyoming Medicaid Program Integrity has resulted in significant avoidable waste, abuse, fraud, and substandard healthcare to vulnerable Wyomingites.
- This structure, if left uncorrected, will result in ongoing risks of avoidable waste, abuse, fraud, and substandard care.
- The Wyoming Medicaid Office of Program Integrity lacks independence – a critical component of industry best practices for oversight entities.
- A simple legislative fix, ensuring Wyoming Medicaid Program Integrity performs its mission without interference will result in **immediate positive returns on investment (ROI)**.
- Several examples of obstruction and interference serve as case examples justifying consideration.
- A proven legislative fix is suggested.

Background & Standards

- **Wyoming Medicaid Program Integrity ensures state and federal taxpayer dollars are spent appropriately delivering quality, necessary care and preventing fraud, waste, and abuse from taking place.¹**
- Wyoming Medicaid Program Integrity serves an oversight function, as such, industry best practices for review, audit, investigation, and reporting serve as the standard.
- Several standards for industry best practices apply; **all stress the importance of independence.²**
- **The current structure of Wyoming Medicaid Program Integrity (PI) requires the PI Director answer upward in the chain of command – effectively providing oversight of his/her boss and boss's boss.**
- This organizational structure represents a risk to independence and is incompatible with industry best practices.
- **Recent examples stand as case studies on how this organizational structure represents a threat to independence – already costing taxpayer millions of dollars and resulting in Wyomingites receiving grossly substandard healthcare.**

¹ MACPAC - <https://www.macpac.gov/subtopic/program-integrity/>

² See Generally Accepted Government Auditing Standards (GAGAS), also known as the Yellow Book; provides a framework for conducting high-quality audits with competence, integrity, objectivity, and independence.

What happens when independence in audit and investigation are not observed?

- **Gibson Condie & Northwest Wyoming Treatment Center Fraud and Investigations** – Millions of dollars in lost tax payer dollars; substandard healthcare to vulnerable Wyomingites.
- **State Subsidized Adoption Audit** – *Wyoming's lost children*³
- **Program Performance Bar** – the organizational structure encourages maintaining the status quo and job retention not innovation and performance

Gibson Condie Fraud

- First identified in 2009-2013 – strong evidence the original case/investigation was obstructed and dropped by both the Wyoming Attorney Generals Office and Medicaid Program Integrity.⁴
- This obstruction resulted in an escalation of the fraud, further loss of millions of taxpayer dollars and a continuation of substandard care being provided to vulnerable Wyomingites⁵
- Demonstrative evidence indicates the case/investigation was again obstructed in 2015-2016⁶
- Gibson Condie was not prosecuted until the case was turned over to Federal Authorities by the Manager of Program Integrity⁷
- Condie was eventually prosecuted in part based upon the records and data originally identified and investigated in the obstructed 2009-2015 investigations
- **Program Integrity could have stopped the hemorrhaging of taxpayer dollars from the fraud if Program Integrity independence existed during the obstructed 2009 investigation**

State Subsidized Adoption – *Wyoming's lost children*

- Referral to Program Integrity reported Wyoming children may be institutionalized in behavioral health facilities **contrary to medical advice**
- A Program Integrity audit was opened after a preliminary examination of data and records indicated a high risk to the State and Medicaid beneficiaries⁸
- The Program Integrity audit was obstructed by the Medicaid Director – the audit represented an uncomfortable subject.
- **Audit independence was not supported**
- Unverified state risk may be in the hundreds of thousands of dollars – **the audit was not conducted to its logical conclusion**
- Unverified human risks, impact on the potential victims, could be significant – **audit was not conducted to its logical conclusion**

³ See Appendix C – Subsidized Adoption Audit Announcement Letter

⁴ See Appendix A - Document titled: *Status Update and Statement of Concern*

⁵ See Star Tribune article titled: *Two Medicaid fraud cases swirl around Powell treatment center* - describing the investigations and fraud - https://trib.com/news/state-and-regional/two-medicaid-fraud-cases-swirl-around-powell-treatment-center/article_913990e1-da94-58a6-992b-783e5918cb10.html

⁶ Document titled: *Status Update and Statement of Concern*

⁷ See Appendix B – Law Enforcement Referral Letter

⁸ See Appendix C – Subsidized Adoption Audit Announcement Letter

Program Performance Bar

- The Medicaid Program Integrity Director was fired after refusing to obstruct the Gibson Condie investigation - "make it go away, like before."
- The Medicaid Program Integrity Director was fired immediately after turning records over to Federal investigators.
- Innovation and best practices are stifled in this environment. The Program Integrity Director's focus tends to migrate to job/career retention vs. supporting industry best practices when audit and investigation independence are not guaranteed.
- Performance drift is evident in the number of quality audits opened, findings reported, findings accepted, corrective action plans completed, educational interventions performed.
- The current Program Integrity structure promotes "sugar coated cotton candy" – Program Integrity activities may be sweet, but lack substance and efficacy.

Solution

- **Ensure audit, investigation and oversight independence**
- **Remove Program Integrity from the Medicaid Office of Healthcare Finance**
- Place Program Integrity in a more independent setting with controls that promote oversight independence
 - Wyoming State Auditor's Office can contain the *Wyoming Office of Medicaid Inspector General*
 - This is in alignment with the State Auditor's mission:

"The Auditor protects public money by ensuring that it is properly accounted for in the most efficient and cost-effective means at all times. Promoting transparency and financial accountability are the Auditor's top priorities."
- Potential ROI
 - Utah⁹
 - **Year one - 906 %**
 - **Year two - 468%**
- Example of other states with Inspector General's Office providing independent oversight of Medicaid:
 - Utah
 - Arizona
 - Arkansas
 - New York
 - Wisconsin
 - Illinois
 - Georgia
 - Texas
 - many others.....

⁹ See Appendix D & E: Utah Office of Medicaid Inspector General year one and year two Annual Reports.

**Wyoming Department of Health, Division of Healthcare Financing,
Program Integrity - Status Update and Statement of Concern**

- Northwest Wyoming Treatment Center
 - Big Horn Basin Mental Health Group
-

April 19, 2016

Executive Summary

The Wyoming Medicaid Fiscal Agent (Xerox) referred four anomalous claims to the Wyoming Department of Health, Division of Healthcare Financing, Program Integrity on or about 10/8/15. Program Integrity performed a preliminary examination of these claims and expanded the review to include the provider's complete claim profile. Several suspicious activities were identified within the claims profile. An investigation was opened and a second closely affiliated provider was identified as having claims with a similar profile. Medical records were requested from both providers.

Review of the medical records identified significant overpayments and suspected fraudulent activities. Referrals were made to the Wyoming Medicaid Fraud Control Unit (MFCU) and notices of recovery issued for the identified overpayments.

The Program Integrity investigation identified collateral problems among many mental health providers in the communities surrounding the two providers under investigation; these collateral problems were directly connected to the activities of the two providers. To date, an investigation has been opened on a third provider and several others have been denied enrollment as Wyoming Medicaid providers. Additional investigations and referrals to the Wyoming State Board of Psychology, the Mental Health Licensing Board, the Internal Revenue Service, the Federal Bureau of Investigation and the United States Attorney's Office may be forthcoming.

The Program Integrity investigation identified non-Medicaid enrolled providers receiving Medicaid funds for services rendered to Medicaid beneficiaries;¹ medical records and clinical care that failed to meet standards required by Wyoming Medicaid and federal policy and procedure; non-allowed services being submitted and paid under clinical codes; false claims; and claims/medical records believed to be fraudulent.

The activities identified in these investigations represent a significant financial risk to Wyoming and a quality of care risk to Medicaid beneficiaries.²

¹ To date, approximately sixty (60) non-enrolled providers have been identified as having provided services to Medicaid beneficiaries through the Big Horn Basin Mental Health group.

² Thirty-two (32) medical records have been reviewed by Program Integrity from Big Horn Basin Mental Health Group – a relatively small percentage of the total population. One hundred percent of these records failed the review for multiple violations. All medical records submitted by Big Horn Basin Mental Health Group, one hundred percent, reviewed to date by internal reviewers, Sandra Jensen, Ph.D. and James Bush, MD also failed multiple tests for quality of care. Eight records were outsourced for independent review (CQS); all records (100%) externally reviewed failed multiple tests. The state FMAP vulnerabilities/liabilities potentially apply to the entire (all claims), not merely the sampled and reviewed Medical records represented in the recovery letters.

The providers currently under investigation were previously investigated by MFCU and Program Integrity (2009-2012). MFCU referred the case back to Program Integrity (April 2014) where it was not fully investigated. The current investigation has identified evidence that the previous MFCU investigation may have been unduly influenced resulting in no or inadequate actions.

The current investigations have identified suspected fraudulent activities as well as egregious and gross violations of Wyoming and federal policy and procedure as well as deficiencies in quality of care. These violations and conditions were present at the time of the previous investigations. Failures within the 2009-2012 investigations have resulted in significant financial risk and damage to Wyoming and permitted a perpetuation of problems now contributing to compromised care to vulnerable Medicaid beneficiaries.

Program Integrity identified potential conflicts of interest and ethical violations that are believed to have contributed to failure of the 2009-2012 investigations. Specifically, Program Integrity has identified evidence of the following:

- Gibson Condie PhD, the subject of the 2009-2012 investigation, was present at the Greg Phillips swearing in ceremony as Wyoming Attorney General. Mr. Phillips personally named Dr. Condie during the ceremony – *“all the way back to the age of three, the kid across the ally, Gibson Condie, my friend, and continues to be my friend, college roommate.”*³
- MFCU representatives present at Mr. Phillips swearing in ceremony identified this potential conflict of interest.
- The MFCU director, Christine Stickley, consulted with Elizabeth Gagen, Deputy Attorney General, and Mr. Phillips was Chinese walled off from the investigation.
- Mr. Phillips allegedly did not honor the Chinese wall and may have influenced and retaliated against MFCU and /or the MFCU director.
- Ms. Gagen was replaced by Peter Michael as Deputy Attorney General. Both Mr. Michael and Mr. Phillips allegedly did not honor the Chinese wall established by Ms. Stickley and Ms. Gagen.

Program Integrity is now encountering resistance to, and receiving unusual inquiries about, the current investigations.

- Wyoming Attorney General’s Office is resistant to provide supportive counsel to Program Integrity in regard to these investigations – supportive counsel is conditional upon conveying detailed information regarding Program Integrity investigation.⁴
- Wyoming Attorney General’s Office is inappropriately probing for Program Integrity investigation details.⁵
- The Wyoming Medicaid Fraud Control Unit (MFCU) within the Wyoming Attorney General’s Office is withholding or delaying investigative services.⁶

³ Recording of Greg Phillips swearing in ceremony – minute number 3, recording no. 9.

⁴ Email dated Fri, Mar 25, 2016 at 2:35 PM, Donna Murray

⁵ See emails from Donna Murray; transcript of 3/30/16 phone call with Misha Westby

⁶ Program Integrity team notes from Fri, Mar 25, 2016 meeting with MFCU

- A MFCU staff member, instrumental in the 2009-2012 investigation, is again a key component to the current investigation. This investigator/analyst has communicated incorrect procedural and policy interpretations on critical issues relating to the current investigation.
- Program Integrity is encountering pressure to refrain making statutorily required referrals to outside law enforcement and regulatory agencies.

In order to advance the current investigations, avoid potential conflicts of interest, and to avoid a disposition similar to the 2009-2012 investigations the following recommendations are suggested:

1. The Attorney General and the Attorney General's office should be walled off from the investigations described in this report and other related inquiries/investigations that may emerge.
2. Independent and third party counsel should be hired to represent Program Integrity for the course and duration of these investigations.
3. Outside referrals should be made to appropriate federal authorities
4. The conflict of interest within MFCU should be addressed; persons associated with the 2009-2012 investigations should be removed from the current investigations.
5. Potential conflicts of interest within Program Integrity should be addressed; persons associated with the 2009-2012 investigations should be removed from the current investigations.
6. Additional/temporary investigative support should be retained to assist Program Integrity complete the current investigations.
7. Independent, outside, third party counsel should provide review and oversight of the current MFCU investigation.

Current Status and Timeline

Northwest Wyoming Treatment Center

1. Referral received from State Fiscal Agent (~10/8/15)
2. Program Integrity Investigation opened (10/14/15)
3. Records requested (11/10/15)
4. Case referred to MFCU (12/4/2015)
5. Provider placed on pre-payment review (1/22/16)
6. Recovery letter issued - \$1,349,403.50 (1/28/16)
7. Request for reconsideration received (2/18/16)
8. Additional records requested (3/11/16)⁷
9. Additional records not received in required manner. Request for reconsideration to be denied with prejudice.⁸

⁷ Wyoming Medicaid Rules, Chapter 16, § 20 (c)

⁸ Wyoming Medicaid Rules, Chapter 3, § 14 (c)

Big Horn Basin Mental Health Group

1. Investigation opened (11/10/2015)
2. Records requested (11/10/15)
3. Case referred to MFCU (12/4/2015)
4. Provider payments suspended – credible allegation of fraud (1/22/16)
5. Recovery letter issued - \$803,158.75 (2/11/16)
6. Request for reconsideration received (4/4/16)
7. Additional records requested (3/14/16)⁹
8. Additional records received and reviewed (4/11/16)
9. A second records request was issued (4/6/16) – anomalous assessment claims associated with NOWCAP
10. Denial of request for reconsideration drafted (4/15/16)

[REDACTED]

[REDACTED]

Providers Denied Enrolment (to date)

[REDACTED]

⁹ Wyoming Medicaid Rules, Chapter 16, § 20 (c)



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Thomas O. Forslund, Director

Governor Matthew H. Mead

April 10, 2016

John E. Lynch, Special Agent
Federal Bureau of Investigation
1109 Airport Parkway
Cheyenne, WY 82001-1503

RE: Medicaid Program Integrity Law Enforcement Referral

Mr. Lynch:

In accordance with 42 CFR §455.15 Medicaid Program Integrity recently referred two investigations to the Wyoming Medicaid Fraud Control Unit (Big Horn Basin Mental Health Group and Northwest Wyoming Treatment Center). Potential conflicts of interest identified in the Program Integrity investigations necessitate referral to additional ancillary law enforcement agencies. Please note, Program Integrity could find no statutory language prohibiting referrals to additional law enforcement. Please consider this document and the accompanying files and records said referral.

We have attempted to remove medical records associated with substance abuse treatment in accordance with 42 CFR Part 2 (Northwest Wyoming Treatment Center Medical Records and Big Horn Basin Mental Health Group record No's 8, 9, 10, 11). Some of these records are important to the Program Integrity investigation, allegation of fraud, and referral. These records will be provided to all law enforcement agencies after appropriate authority has been documented.

The Wyoming Medicaid Program Integrity team welcomes the opportunity to review and explain the records and documents accompanying this referral with the Federal Bureau of Investigation.

If you have questions, please feel free to contact me at Mark.Gaskill@wyo.gov or to my attention at the address on this letter.

Sincerely,

Mark J. Gaskill
Manager of Quality Assurance
and Program Integrity

MG
C. File



Wyoming
Department
of Health

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Thomas O. Forslund, Director

January 8, 2016

Ref: MG-2016-002

Teri Green, State Medicaid Agent
6101 Yellowstone Road, Suite 210
Cheyenne, WY 82002

RE: Audit Announcement

Dear Ms. Green:

The Medicaid Program Integrity (PI) staff will be performing an audit beginning 1/11/16 of Medicaid beneficiaries enrolled under program codes A86 and A52 - Subsidized Adoption Title 19, IV-E Adoption respectively.

The audit will examine costs, care, and policy associated with A86 and A52 children and adolescents who received extended residential care.

Tisha Kilpatrick and I will be conducting the audit. I do not believe an entrance meeting is necessary unless you wish to schedule one. We will begin our fieldwork next week and anticipate completing the audit in four to six weeks.

Sincerely,

Mark Gaskill
Manager of Quality Assurance and
Program Integrity
Wyoming Department of Health
Division of Healthcare Financing

MG
Attachment

Division of Healthcare Financing, Medicaid • 6101 Yellowstone Road, Suite 210
Cheyenne WY 82002 • WEB Page: <http://www.health.wyo.gov>
Toll Free: 1-866-571-0944 • FAX (307) 777-6964 • (307) 777-7531

Example 1: Contiguous Treatment Contacts at Residential Treatment Facilities (Differential Admitting Diagnoses)

Admitting Diagnoses	Beneficiary A	Grand Total
Residential Treatment Center 1	Residential Treatment Center 1	\$550,471.00
OPPOSITIONAL DEFIANT DISORDER	3/13/11 Admission Date	Days
	5/20/12 Discharge Date	1,724
Residential Treatment Center 2	Residential Treatment Center 2	
POSTTRAUMATIC STRESS DISORDER	5/21/12 Admission Date	Years
	10/9/14 Discharge Date	4.72
Residential Treatment Center 3	Residential Treatment Center 3	
POST-TRAUMATIC STRESS DISORDER UNSPECIFI	10/9/14 Admission Date	
POSTTRAUMATIC STRESS DISORDER	11/30/15 Discharge Date	

Example 2: Contiguous Treatment Contacts at Residential Treatment Facilities

Admitting Diagnoses	Beneficiary B	A52	A86	Grand Total
Residential Treatment Center 1	Residential Treatment Center 1	\$360,280.00	\$141,771.00	\$502,051.00
BIPOLAR AFFECTIVE DISORDER, MIXED, SEVER	1/4/11 Admission Date			
	9/1/11 Discharge Date			
Residential Treatment Center 2	Residential Treatment Center 2			Days
BIPOLAR AFFECTIVE DISORDER, MIXED, SEVER	9/1/11 Admission Date			1,792
	7/31/12 Discharge Date			
Residential Treatment Center 3	Residential Treatment Center 3			Years
BIPOLAR AFFECTIVE DISORDER, MIXED, SEVER	7/31/12 Admission Date			4.91
	6/29/15 Discharge Date			
Residential Treatment Center 4	Residential Treatment Center 4			
BIPOLAR AFFECTIVE DISORDER, MIXED, UNSPE	6/29/15 Admission Date			
BIPOLAR D/O CURRENT EPISODE DEPRESSED MO	11/30/15 Discharge Date			

Example 3: Near Contiguous Treatment Contacts at Residential Facilities (Differential Admitting Diagnoses)

Admitting Diagnoses	Beneficiary C	Grand Total
Residential Treatment Center 1	Residential Treatment Center 1	\$443,670.85
MAJOR DEPRESSIVE DISORDER, RECURRENT EPI	6/10/11 Admission Date	Days
MAJOR DEPRESSIVE DISORDER, SINGLE EPISOD	9/2/11 Discharge Date	1,115
Residential Treatment Center 2	Residential Treatment Center 2	
MAJOR DEPRESSIVE DISORDER, SINGLE EPISOD	9/14/11 Admission Date	
	4/23/12 Discharge Date	Years
Residential Treatment Center 3	Residential Treatment Center 3	3.05
MAJOR DEPRESSIVE DISORDER, RECURRENT EPI	4/23/12 Admission Date	
	7/23/13 Discharge Date	
Residential Treatment Center 4	Residential Treatment Center 4	
MAJOR DEPRESSIVE DISORDER, RECURRENT EPI	8/12/13 Admission Date	
	10/28/13 Discharge Date	
Residential Treatment Center 5	Residential Treatment Center 5	
POSTTRAUMATIC STRESS DISORDER	10/28/13 Admission Date	
UNSPECIFIED AFFECTIVE PSYCHOSIS	6/28/14 Discharge Date	

Example 4: Near Contiguous Treatment Contacts at Residential Facilities (Differential Admitting Diagnoses)

Admitting Diagnoses	Beneficiary D	Grand Total
Residential Treatment Center 1	Residential Treatment Center 1	\$412,974.73
MAJOR DEPRESSIVE DISORDER, SINGLE EPISOD	4/8/11 Admission Date	Days
	11/1/11 Discharge Date	1433
Residential Treatment Center 2	Residential Treatment Center 2	
BIPOLAR AFFECTIVE DISORDER, MIXED, SEVER	11/1/11 Admission Date	Years
	4/27/12 Discharge Date	3.93
Residential Treatment Center 3	Residential Treatment Center 3	
BIPOLAR AFFECTIVE DISORDER, MIXED, SEVER	4/27/12 Admission Date	

	1/10/13 Discharge Date	
Inpatient Treatment Center 4	Inpatient Treatment Center 4	
(blank)	11/19/13 Admission Date	
	11/29/13 Discharge Date	
Residential Treatment Center 5	Residential Treatment Center 5	
POSTTRAUMATIC STRESS DISORDER	1/11/13 Admission Date	
	3/10/15 Discharge Date	

Example 5: Near Contiguous Treatment Contacts at Residential Facilities (Differential Admitting Diagnoses)

Admitting Diagnoses	Beneficiary E	\$325,371.57
Residential Treatment Center 1	Residential Treatment Center 1	
MAJOR DEPRESSIVE DISORDER, SINGLE EPISOD	4/25/13 Admission Date	Days
	8/14/13 Discharge Date	~ 946
Residential Treatment Center 2	Residential Treatment Center 2	
REACTIVE ATTACHMENT DISORDER OF INFANCY	8/17/13 Admission Date	Years
UNSPECIFIED AFFECTIVE PSYCHOSIS	4/14/14	2.60
Residential Treatment Center 3	Residential Treatment Center 3	
REACTIVE ATTACHMENT DISORDER OF INFANCY	4/14/14 Admission Date	
	5/28/15 Discharge Date	
Residential Treatment Center 4	Residential Treatment Center 4	
OTHER CHILDHOOD EMOTIONAL DISORDERS	6/1/15 Admission Date	
REACTIVE ATTACHMENT DISORDER OF INFANCY	11/30/15 Discharge Date	