

**Health Reform: Fraud and Abuse Workgroup**  
**Monday, November 29, 2010**  
**North Carolina Institute of Medicine, Morrisville**  
**9:00am-12:00pm**  
**Meeting Summary**

**Attendees:**

*Workgroup Members:* Albert Koehler (co-chair), Tara Larson (co-chair), Robert Blum, Conor Brockett, Tracy Hayes, Jeff Horton, Cheryl Ann Mulloy-Villemagne, Roselyn Pettyford, Sandee Resnick, Tim Rogers, Craig Umstead

*Steering Committee Members:* Clarence Ervin

*NCIOM Staff:* Sharon Schiro, Rachel Williams

*Other Interested Persons:* Mary Edwards

**Welcome and Introductions**

*Albert Koehler, Deputy Commissioner/Director, Criminal Investigations Division, NC Department of Insurance, Co-Chair*

*Tara Larson, MAEd, Chief Clinical Operations Officer, Division of Medical Assistance, Co-Chair*

Mr. Koehler welcomed everyone to the meeting.

**Workgroup Discussion**

The workgroup discussed risk categories for compliance programs, criminal background statutes, and payment suspensions as ways to avert fraud and abuse. Factors the workgroup mentioned that the state should consider when identifying high-risk providers include criminal histories, federal high-risk categories, history of fraud, overutilization, and length of time a provider has been in North Carolina. The workgroup felt it would be necessary to set definitions and benchmarks on the factors chosen to analyze risk; however, the workgroup also cautioned on being too specific since it will be important to have flexibility as health care evolves. Compliance programs for high-risk providers should be based on a model that is proactive in corrective action. Ideas for making compliance a more proactive process included payers educating and training providers, requiring technical assistance, and sharing data on providers between payers.

Florida statutes forbid individuals with certain criminal histories to provide direct health care (see a summary of the statutes here: [Florida House Bill 7069](#)). Last meeting, the workgroup

discussed which crimes could be considered an “absolute no” to hiring in North Carolina. After reviewing the Florida statutes, the workgroup discussed which parts of the legislation our state might want to adapt including a process of appeals for exemption and a peer review of background screenings. The workgroup will discuss this issue further at the next meeting. Current North Carolina statutes pertaining to criminal background checks of adult care home and contracted agencies of adult care home employees can be found here: [NC GS 131D-40](#).

The current Medicaid payment suspension rules went into effect with Session Law 2009-451. The state will not make payments to a provider that owes outstanding accounts receivable to the Department of Health and Human Services. The workgroup discussed how small providers are being put out of business by the new policy due to the extrapolation method used. When small providers that owe money go out of business then the state does not get their money returned. The DMA has since changed its notices so that the first notice is tentative and a provider can go through a review process to refute the claim in person, on paper, or by phone.

### **Recommendations:**

1. Identification of providers as high risk, and thus in need of increased monitoring can be broken in to two types: (1) based on provider type and (2) based on activity.
  - a. Provider types identified for increased monitoring should include those identified by the Federal government (DME, Home Health), as well as Mental Health (independent practitioners, enhanced services, and residential providers), EMS – non-emergent providers, and providers of personal care services. Options for monitoring these groups should include more frequent monitoring, use of the Frequency in Monitoring (FIM) Tool, fingerprinting (already mandatory), and criminal background checks (already mandatory).
  - b. The activities used to identify providers should include: billing for services not rendered, falsifying documentation, risky referral relationships, over-utilization of goods or services, bogus storefronts, billing to threshold, length of time in NC, questionable background (e.g., felony conviction 15 years ago), high per capita spending on diagnostic testing, personal revenue/IRS issues.
2. Compliance programs:
  - a. Need “teeth” to enforce rules: freezing of enrollment, suspending total or partial payment, pre-payment review.
  - b. Need to put in legislation: definition of a “substantial issue” that would result in suspension vs continuing with plan of correction.
  - c. Need rules to allow implementation of payment suspensions.
    - i. Tentative notices
    - ii. Expedited appeal: Final agency decision should be rendered within defined time frame, so all groups held to same standards
    - iii. Changes to payment plan: lengthen, make interest waivable for good cause (need to define), and make penalty (10%) not waivable.

3. DMA to provide mentoring or education on how to be a Medicaid provider. Require training pre-enrollment and as enforcement remedy.
4. Develop a technical assistance program to assist solo practices in rural counties.
5. Open lines of communication with provider boards and provider associations. May require legislation. Develop system of automatic communication, including triggers and referrals, as well as quarterly internal state meetings of representatives from DHHS, Dept of Insurance, Dept of Revenue, Dept of Justice (with allowances for information that can't be shared).
6. Criminal Background Checks:
  - a. Define what is to be done with information gathered from criminal background checks. Develop clear rules, similar to Florida's rules, to define how results of background check will affect employment.
  - b. Need to define process for Level 2 screening.
  - c. Increase capacity of local offices to do fingerprint and criminal background checks.
  - d. Evaluate costs, access, and outcome of using fingerprints for background checks. Craig Umstead will look at Florida's program and evaluate implementation in NC.
  - e. Apply requirement to Companion/Sitter agencies.
  - f. Define who will pay costs of criminal background and fingerprint checks, and define how fee will be set.
  - g. What types of crimes should automatically prohibit the hiring of a person in to the health care field with no exceptions: sex offenses.
7. Universal recommendations:
  - a. Funding needed for expansion of personnel for monitoring.

### **Current Status of Gap Analysis Document**

*Tracy Hayes, JD, Assistant Attorney General, NC Department of Justice*

Ms. Hayes updated the workgroup on the status of the gap analysis. The chart should be available to the group for comment before the next meeting on December 13, 2010.

### **Tasks:**

Legislation development subcommittee: Tracy Hayes, Clarence Ervin, Tara Larson, Craig Umstead, Jeff Horton. This committee will meet to work on development of legislation and rules based on recommendations above.

### **Public Comments**

No further public comments were given.