CHAPTER 73
MEDICAID FRAUD CONTROL UNIT

[Prior to 10/7/87, 481—Chapter 6, "Medicaid Provider Audits"]

481—73.1(10A) Definitions.

"Abuse" or *"neglect"* means any act that constitutes abuse or neglect of a patient or resident under applicable state law and includes, but is not limited to, incidents involving physical harm inflicted as a result of an intentional act or negligence, consensual or nonconsensual sexual contact, misappropriation of money or property, theft of medications, or degradation of personal dignity. The victim is a patient or resident receiving health care services in a health care facility that receives Medicaid funds or in a board and care facility at the time of the abuse or neglect.

"Board and care facility" means a residential setting where two or more unrelated adults reside and receive one or both of the following:

1. Nursing care services provided by, or under the supervision of, a registered nurse, licensed practical nurse, or licensed nursing assistant.

2. A substantial amount of personal care services that assist residents with activities of daily living, including personal hygiene, dressing, bathing, eating, personal sanitation, ambulation, transfer, positioning, self-medication, body care, travel to medical services, essential shopping, meal preparation, laundry, and housework.

"Department" means the department of inspections and appeals.

"Director" means the director of the department of inspections and appeals.

"Fraud" means an intentional deception or misrepresentation made by an individual or entity with the knowledge that the deception or misrepresentation could result in an unauthorized benefit to the individual or entity, or another individual or entity, and includes any act that constitutes fraud under applicable federal or state law, including but not limited to Iowa Code chapters 249A and 685.

"Medicaid provider" means:

1. Any individual, agency, institution, or organization enrolled with the department of human services, Iowa Medicaid enterprise, or contracted managed care organizations (MCOs), and approved to provide goods or services to Iowa Medicaid beneficiaries and be paid by Iowa Medicaid enterprise, or contracted MCOs, for the provided goods or services; or

2. Any third party acting on behalf of or under the authority or direction of a Medicaid provider as defined in "1" to prepare or submit necessary documentation to Iowa Medicaid enterprise, or contracted MCOs, in order for the Medicaid provider to receive payment for goods or services.

"MFCU director" means the director of the Iowa MFCU.

"Overpayment" means any payment greater than that to which a Medicaid provider is entitled.

"Prosecutorial agency" includes, but is not limited to, county attorney offices, United States Attorney offices or the Iowa attorney general's office.

"Referral" means any information submitted to the Iowa Medicaid fraud control unit in written or verbal form indicating potential criminal or fraudulent activity which the Iowa MFCU maintains jurisdiction to investigate.

"Regulatory agency" includes, but is not limited to, state licensing boards, other divisions or bureaus of the department of inspections and appeals, or other divisions or bureaus of the U.S. Department of Health and Human Services.

"Respondent" means the recipient of a subpoena and may be an individual or an organization.

"State medical assistance program" or *"Medicaid"* means medical assistance programs per the Code of Federal Regulations, Title 42, Chapter IV, Subchapter C, Parts 430 through 489. Iowa Code chapter 249A authorizes Iowa's participation in the program. The policies specific to the Medicaid program are in 441—Chapters 73 to 88.

"Unit" or *"Iowa MFCU"* or *"MFCU"* means the Iowa Medicaid fraud control unit.

"Unit personnel" includes investigators, auditors, and attorneys assigned to the Iowa Medicaid fraud control unit, along with the MFCU director.

[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.2(10A) Investigative authority.

73.2(1) Pursuant to Iowa Code section 10A.402(5), the unit is responsible for conducting investigations involving the state medical assistance program. These investigations include, but are not limited to, allegations involving:

a. Fraud within the administration of the Iowa Medicaid program.

b. Fraud in the provision of medical assistance or activities of Medicaid providers.

c. Incidents of abuse or neglect.

d. Any aspect of the provision of health care services and activities of Medicaid providers upon the approval of the U.S. Department of Health and Human Services, Office of the Inspector General.

73.2(2) Pursuant to Iowa Code section 10A.403, investigators assigned to the unit shall have the powers and authority of peace officers when acting within the scope of their responsibilities to conduct investigations as specified in Iowa Code section 10A.402(5).

[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.3(10A) Referrals.

73.3(1) The MFCU director reviews referrals in order to confirm that the unit has jurisdiction to investigate the allegation(s).

73.3(2) Upon confirming MFCU jurisdiction and taking into consideration numerous factors and referral-specific information, the MFCU director shall determine the disposition of the referral, which may include, but is not limited to, the following:

a. Opening a case and assigning the case to unit personnel.

b. Referring the allegations to appropriate outside agencies for further review.

c. Declining the referral and taking no further action in the matter.

[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.4(10A) Investigations. Unit personnel investigate referrals opened and assigned as MFCU cases by utilizing all legally authorized means to identify any of the following:

1. Criminal activity resulting in violations of state or federal criminal code.
2. Fraudulent activity resulting in violations of state or federal civil statutes.
3. Financial damages sustained by the Iowa Medicaid program.
4. Victims involved in incidents of abuse or neglect.
5. Perpetrators involved in Medicaid provider fraud schemes or incidents of abuse or neglect.
6. Overpayments received by Medicaid providers as a result of fraudulent or criminal activity.

[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.5(10A) Access to records. In addition to the authority maintained by investigators with the unit pursuant to Iowa Code section 10A.403, the unit is established as a health oversight agency, as defined by 45 CFR 164.501, exempt from the privacy regulations of the federal Health Insurance Portability and Accountability Act (HIPAA) and authorized to engage in health oversight activities in accordance with 45 CFR 164.512.

73.5(1) Unit personnel shall have the authority to request, review, and retain any medical, clinical, financial, or personnel records maintained by a Medicaid provider in order for unit personnel to investigate allegations of incidents that fall within MFCU's investigative authority as established in rule 481—73.2(10A).

73.5(2) For Medicaid provider fraud investigations, unit personnel shall have access to any records pertaining to Medicaid and non-Medicaid recipients of health care goods and services to verify that:

a. Medicaid claims for goods and services have been accurately paid.

b. Medicaid recipients actually received the goods and services claimed by the Medicaid provider.

c. Medicaid providers have retained supporting documentation to substantiate claims.

73.5(3) For abuse or neglect investigations, unit personnel shall have access to any records pertaining to any Medicaid patients or residents identified during the course of an investigation who are receiving health care services in a health care facility that receives Medicaid funds or in a board and care facility.

Unit personnel may obtain access via subpoena or other legal methods to any records pertaining to any non-Medicaid patients or residents identified during the course of an investigation.
[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.6(10A) Subpoenas. The director or the director's designee may issue subpoenas in connection with MFCU investigations. In addition to the provisions of 481—subrules 1.1(6) to 1.1(9), the following apply.

73.6(1) Unit personnel may serve subpoenas during the course of an open MFCU case investigation. The subpoena must be approved and signed by the director or the director's designee.

73.6(2) Subpoenas may be personally served by unit personnel upon the respondent of the subpoena or the respondent's registered agent, mailed directly to the respondent or the respondent's registered agent via USPS mail, or electronically transmitted directly to the respondent or the respondent's registered agent via facsimile or email.

73.6(3) Unit personnel shall have the authority to determine the appropriate method by which the respondent is requested to deliver information in response to a subpoena duces tecum.
[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.7(10A) Investigation results.

73.7(1) Investigations resulting in sufficient evidence to support criminal or civil prosecution will be referred to the appropriate prosecutorial agency to be reviewed for a charging decision by the prosecutorial agency.

73.7(2) For investigations that result in identification of potential overpayment made to a Medicaid provider, unit personnel will either attempt to collect such overpayment or refer the matter to an appropriate state agency for collection.

73.7(3) Investigations that result in the identification of potential regulatory violations committed by a Medicaid provider may be referred to the appropriate regulatory agency for administrative review.
[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

481—73.8(10A) Confidentiality. The unit shall maintain confidentiality of all investigative case information in accordance with Iowa Code sections 22.7(5) and 685.6, 42 CFR 1007.11(f), and any other applicable state or federal law.
[**ARC 3793C**, IAB 5/9/18, effective 6/13/18]

These rules are intended to implement Iowa Code sections 10A.104(6), 10A.105, 10A.402(5), and 10A.403.

[Filed emergency 7/1/86—published 7/16/86, effective 7/1/86]
[Filed 2/6/87, Notice 10/8/86—published 2/25/87, effective 4/1/87]
[Filed 9/18/87, Notice 7/29/87—published 10/7/87, effective 11/11/87]
[Filed ARC 3793C (Notice ARC 3668C, IAB 3/14/18), IAB 5/9/18, effective 6/13/18]