NAVIGANT

ISSUE *BRIEF*

PERSPECTIVES FOR
THE HEALTHCARE INDUSTRY

AUTHOR

CATHERINE SRECKOVICH
Managing Director
312.583.5747
csreckovich@navigant.com

navigant.com

About Navigant

Navigant Consulting, Inc. (NYSE: NCI) is a specialized, global professional services firm that helps clients take control of their future. Navigant's professionals apply deep industry knowledge, substantive technical expertise, and an enterprising approach to help clients build, manage and/or protect their business interests. With a focus on markets and clients facing transformational change and significant regulatory or legal pressures, the Firm primarily serves clients in the healthcare, energy and financial services industries. Across a range of advisory, consulting, outsourcing, and technology/analytics services, Navigant's practitioners bring sharp insight that pinpoints opportunities and delivers powerful results. More information about Navigant can be found at navigant.com.

MFCU OVERSIGHT TO BE EXTENDED TO HOME- AND COMMUNITY-BASED SERVICES

As part of an ongoing effort to decrease federal expenditures over a 10-year period (2014 - 2024), President Obama's FY 2017 Budget Request includes several program integrity-related proposals designed to reduce fraud, waste and abuse (FWA). Among other proposals, the budget calls for the expansion of state Medicaid Fraud Control Unit (MFCU) investigation authority to home- and community-based services (HCBS). In the long-term care arena, MFCU's authority extends to Medicaid-funded healthcare facilities, such as nursing homes, and to "board and care" facilities, such as assisted living facilities, which may or may not be funded by Medicaid. This budget request would extend federal matching funds for state MFCUs to investigate and prosecute abuse and neglect in non-institutional settings, such as HCBS.

This budget request comes at a time when state governments have been challenged with rising costs of long-term supports and services (LTSS). To address such challenges, states are placing greater emphasis on the development and implementation of quality measures to improve LTSS delivery and quality, while monitoring access to care and outcomes. Most individuals in need of LTSS want to live in their own homes and communities, and states are working to accommodate these preferences by increasing access to HCBS for low-income populations. In addition, this budget proposal to decrease Medicaid expenditures is accompanied by proposals that would increase spending for certain HCBS services through, for example, expansion of eligibility for HCBS services for certain categories of individuals.

Home- and Community-Based Services

States offer a variety of standard medical and non-medical services through HCBS programs, as illustrated below, for targeted population groups, such as individuals who have mental illnesses, intellectual or developmental disabilities and/or physical disabilities. States provide HCBS through two federal authorities:

- **1915(c) HCBS waiver programs**: More than 300 programs operate nationwide. States typically operate multiple HCBS waivers as they must be developed to target the needs of specific populations.
- **1915(i) State Plan Home and Community-based Services**: The Deficit Reduction Act of 2005 allows states the option to provide HCBS through their Medicaid State Plans.

Additionally, 1915(j) allows states to cover self-directed personal assistance services under HCBS waiver programs or through a state plan option and 1915(k), the "Community First Choice Options," allows states to cover home- and community-based attendant services and supports as a state plan option.

MEDICAL SERVICES	NON-MEDICAL SERVICES
• Physicians • Durable medical equipment • Pharmacy • Inpatient and outpatient hospital • Home health • Physical therapy • Occupational therapy • Speech therapy • Other specialized medical equipment and supplies	• Home/vehicle modifications • Assistance with activities of daily living, such as bathing, grooming, dressing, toileting • Assistance with instrumental activities of daily living, such as shopping, meal preparation, managing medications, housework, managing finances, using the telephone, navigating public transportation • Employment services • Community integration activities • Assistive technology/emergency response systems

With the movement to HCBS, combined with states' efforts to comply with Olmstead requirements to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs, the potential for exploitation of these vulnerable populations has increased. FWA may occur in providers rendering both medical and non-medical services, affecting individuals who are most at risk of being actively abused, neglected and exploited by caregivers.

What This Proposal Means for States

Hundreds of millions of dollars are at risk in each state for HCBS, and even one to two percent of expenditures attributable to FWA can potentially undermine the existing system and cause distrust in service delivery, jeopardizing state funding and putting vulnerable populations at risk.[1] Any reduction in services through FWA not only increases the beneficiaries' risk of institutionalization, but also increases the risk of abuse, neglect and exploitation (ANE) when services are intentionally reduced or withheld, depriving individuals of the care to which they are entitled. Health facility regulators, administrators of waiver programs and protective service agencies are involved in identifying FWA in HCBS either directly or indirectly; in many states, these agencies act independently of each other and the MFCU. MFCU enforcement and prosecution of FWA sends a clear and consistent message to all providers that such actions will not be tolerated and that states will investigate FWA whenever possible.

States should consider a number of actions as MFCUs assume HCBS responsibility:

- Educate staff about the various HCBS programs operated in the state, the services provided and how those services are delivered. New protocols are needed to address each program's potential areas of vulnerability and how those could lead to FWA.
- Update HCBS waiver documentation and provider manuals to be explicit about requirements for documenting services, as well as the definition of FWA, and how to detect and report it.
- Update program integrity units' policies and procedures related to HCBS program services, including the process for referral to MFCUs.
- Form strategic relationships and maintain ongoing dialogue with agencies responsible for administering HCBS programs. While the State Office of Attorney General has historically been the primary contact for MFCUs, HCBS programs are often administered by other departments such as Aging, Human Services and Behavioral Health. Program Integrity divisions in the state are administered differently. Some reside within each department; some are independent departments that handle all incoming suspected activity requests; states should ensure these various departments are not duplicating efforts. These departments develop policies and procedures for program operations and determine how providers must operate to be in compliance.

1. FY 2013 is the first year HCBS expenditures exceeded 50 percent of total LTSS spending, See https://www.medicaid.gov/medicaid-chip-program-information/by-topics/long-term-services-and-supports/downloads/ltss-expenditures-fy2013.pdf

navigant.com

About Navigant

Navigant Consulting, Inc. (NYSE: NCI) is a specialized, global professional services firm that helps clients take control of their future. Navigant's professionals apply deep industry knowledge, substantive technical expertise, and an enterprising approach to help clients build, manage and/or protect their business interests. With a focus on markets and clients facing transformational change and significant regulatory or legal pressures, the Firm primarily serves clients in the healthcare, energy and financial services industries. Across a range of advisory, consulting, outsourcing, and technology/analytics services, Navigant's practitioners bring sharp insight that pinpoints opportunities and delivers powerful results. More information about Navigant can be found at navigant.com.

- Develop an understanding of personal care services (PCS), which account for a significant portion of waiver expenditures, and are particularly susceptible to FWA because service provision can involve collusion among multiple parties and, therefore, be difficult to detect. It is critical that MFCU staff understand the nuances of the service provision and the rules that govern payment for those services under each HCBS program.[2]
- Work with Adult Protective Services (APS) and other involved social service agencies to establish multi-departmental task forces responsible for addressing ANE among vulnerable populations. Share information about issues that are identified through investigations and the types of fraud that commonly occur; solicit input from MFCU experts on tactics that they can bring to bear on conducting investigations.
- Coordinate criminal prosecutions with APS and other law enforcement agencies. The intersection of HCBS, APS and law enforcement agencies is an area ripe for collaboration through improved coordination of social, health and criminal justice intervention.
- Leverage MFCU staff experience with investigative strategies. Conduct activities such as researching Medicaid policy; identifying, collecting and analyzing documents; and analyzing Medicaid claims data and financial records. These are skills lacking in traditional HCBS investigations and lend value to community-based ANE investigations.
- Educate the public and provider community about how to prevent and report suspected FWA and ANE activities. FWA is difficult to detect through documentation and claims analysis alone. Individuals, families and service providers see the suspected FWA activity firsthand and can become valuable front-line tipsters.

2. Medicaid costs for PCS increased 35 percent from 2005-2011, totaling $12.7 billion per OIG's Spotlight on Personal Care Services website. See http://oig.hhs.gov/newsroom/spotlight/2012/portfolio01.asp