

## § 1007.11

(b) No official of the Medicaid agency will have authority to review the activities of the unit or to review or overrule the referral of a suspected criminal violation to an appropriate prosecuting authority.

(c) The unit will not receive funds paid under this part either from or through the Medicaid agency.

(d) The unit will enter into an agreement with the Medicaid agency under which the Medicaid agency will agree to comply with all requirements of § 455.21(a)(2) of this title.

### § 1007.11 Duties and responsibilities of the unit.

(a) The unit will conduct a Statewide program for investigating and prosecuting (or referring for prosecution) violations of all applicable State laws pertaining to fraud in the administration of the Medicaid program, the provision of medical assistance, or the activities of providers of medical assistance under the State Medicaid plan.

(b) (1) The unit will also review complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid plan and may review complaints of the misappropriation of patient's private funds in such facilities.

(2) If the initial review indicates substantial potential for criminal prosecution, the unit will investigate the complaint or refer it to an appropriate criminal investigative or prosecutive authority.

(3) If the initial review does not indicate a substantial potential for criminal prosecution, the unit will refer the complaint to an appropriate State agency.

(c) If the unit, in carrying out its duties and responsibilities under paragraphs (a) and (b) of this section, discovers that overpayments have been made to a health care facility or other provider of medical assistance under the State Medicaid plan, the unit will either attempt to collect such overpayment or refer the matter to an appropriate State agency for collection.

(d) Where a prosecuting authority other than the unit is to assume responsibility for the prosecution of a case investigated by the unit, the unit will insure that those responsible for

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the prosecutive decision and the preparation of the case for trial have the fullest possible opportunity to participate in the investigation from its inception and will provide all necessary assistance to the prosecuting authority throughout all resulting prosecutions.

(e) The unit will make available to Federal investigators or prosecutors all information in its possession concerning fraud in the provision or administration of medical assistance under the State plan and will cooperate with such officials in coordinating any Federal and State investigations or prosecutions involving the same suspects or allegations.

(f) The unit will safeguard the privacy rights of all individuals and will provide safeguards to prevent the misuse of information under the unit's control.

### § 1007.13 Staffing requirements.

(a) The unit will employ sufficient professional, administrative, and support staff to carry out its duties and responsibilities in an effective and efficient manner. The staff must include:

(1) One or more attorneys experienced in the investigation or prosecution of 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;

(2) One or more experienced auditors capable of supervising the review of financial records and advising or assisting in the investigation of alleged fraud; and

(3) A senior investigator with substantial experience in commercial or financial investigations who is capable of supervising and directing the investigative activities of the unit.

(b) The unit will employ, or have available to it, professional staff who are knowledgeable about the provision of medical assistance under title XIX and about the operation of health care providers.

### § 1007.15 Applications, certification and recertification.

(a) *Initial application.* In order to receive FFP under this part, the unit must submit to the Secretary, an application approved by the Governor,

containing the following information and documentation—

(1) A description of the applicant's organization, structure, and location within State government, and an indication of whether it seeks certification under §1007.7 (a), (b), or (c);

(2) A statement from the State Attorney General that the applicant has authority to carry out the functions and responsibilities set forth in this part. If the applicant seeks certification under §1007.7(b), the statement must also specify either that—

(i) There is no State agency with the authority to exercise Statewide prosecuting authority for the violations with which the unit is concerned, or

(ii) Although the State Attorney General may have common law authority for Statewide criminal prosecutions, he or she has not exercised that authority;

(3) A copy of whatever memorandum of agreement, regulation, or other document sets forth the formal procedures required under §1007.7(b), or the formal working relationship and procedures required under §1007.7(c);

(4) A copy of the agreement with the Medicaid agency required under §1007.9;

(5) A statement of the procedures to be followed in carrying out the functions and responsibilities of this part;

(6) A projection of the caseload and a proposed budget for the 12-month period for which certification is sought; and

(7) Current and projected staffing, including the names, education, and experience of all senior professional staff already employed and job descriptions, with minimum qualifications, for all professional positions.

(b) *Conditions for, and notification of certification.* (1) The Secretary will approve an application only if he or she has specifically approved the applicant's formal procedures under §1007.7 (b) or (c), if either of those provisions is applicable, and has specifically certified that the applicant meets the requirements of §1007.7;

(2) The Secretary will promptly notify the applicant whether the application meets the requirements of this part and is approved. If the application is not approved, the applicant may submit an amended application at any

time. Approval and certification will be for a period of 1 year.

(c) *Conditions for recertification.* In order to continue receiving payments under this part, a unit must submit a reapplication to the Secretary at least 60 days prior to the expiration of the 12-month certification period. A reapplication must—

(1) Advise the Secretary of any changes in the information or documentation required under paragraphs (a) (1) through (5) of this section;

(2) Provide projected caseload and proposed budget for the recertification period; and

(3) Include or reference the annual report required under §1007.17.

(d) *Basis for recertification.* (1) The Secretary will consider the unit's reapplication, the reports required under §1007.17, and any other reviews or information he or she deems necessary or warranted, and will promptly notify the unit whether he or she has approved the reapplication and recertified the unit.

(2) In reviewing the reapplication, the Secretary will give special attention to whether the unit has used its resources effectively in investigating cases of possible fraud, in preparing cases for prosecution, and in prosecuting cases or cooperating with the prosecuting authorities.

(Approved by the Office of Management and Budget under control number 0990-0162)

#### § 1007.17 Annual report.

At least 60 days prior to the expiration of the certification period, the unit will submit to the Secretary a report covering the last 12 months (the first 9 months of the certification period for the first annual report), and containing the following information—

(a) The number of investigations initiated and the number completed or closed, categorized by type of provider;

(b) The number of cases prosecuted or referred for prosecution; the number of cases finally resolved and their outcomes; and the number of cases investigated but not prosecuted or referred for prosecution because of insufficient evidence;

(c) The number of complaints received regarding abuse and neglect of patients in health care facilities; the