INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION (FSSA)

TITLE: BUDGET MODFICATION REQUESTS (BMRs)

CASE ID: 2016-04-0068

DATE: July 3, 2017

The Inspector General's Chief Legal Counsel, Tiffany Mulligan, after an investigation by Special Agent Alan McElroy, reports as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse, and wrongdoing in agencies. IC 4-2-7-2(b). The OIG investigates criminal activity and ethics violations by state employees. IC 4-2-7-3(3). The OIG may recommend policies and carry out other activities designed to deter, detect, and eradicate fraud, waste, abuse, mismanagement, and misconduct in state government. IC 4-2-7-3(2). The OIG also may advise an agency on implementing policies and procedures to prevent and reduce the risk of wrongful acts within the agency. IC 4-2-7-3(2).

Background and Investigation

The Complaint and FSSA Audit

On April 13, 2016, the OIG received a complaint regarding the improper use of Medicaid funds at the Indiana Family and Social Services Administration (FSSA). More specifically, the complaint alleged that FSSA's Division of Disability and Rehabilitative Services (DDRS) and Bureau of Developmental Disabilities (BDDS) allowed improper use of the Budget Modification Request (BMR) process to pay for provider services in excess of the annual budgets set for consumers through the Medicaid Community Integration and Habilitation (CIH) waiver program. The complaint focused on BMRs from a specific Medicaid provider (the Provider), who has a contract with FSSA to provide services to consumers.

FSSA's Audit Services Division conducted an audit of several BMRs submitted to FSSA by the Provider during the period of January 1, 2014, to July 31, 2016. The audit focused on twenty-five consumers served by the Provider. The audit found several anomalies, including some BMRs that FSSA originally denied and the Provider resubmitted with a new justification, some BMRs that FSSA processed for services the Provider rendered more than a year ago, and some claims that FSSA processed using force codes. Under these BMRs, FSSA approved payment to the Provider for approximately $397,000 worth of services that the Provider had provided to FSSA consumers. Special Agent Alan McElroy conducted an investigation, and FSSA's Audit Services Division assisted with the investigation. The evidence collected during Special Agent McElroy's investigation suggests that the Provider provided the services and that the services were needed by the FSSA consumers.

The Budget Modification Request (BMR) Process

BDDS, which is a unit within FSSA's DDRS, administers the CIH Waiver. This waiver provides Medicaid Home and Community-Based Services to individuals with developmental disabilities, intellectual disabilities, or related conditions in various community settings. Through the waiver program, participants may choose to live in their own home, family home, or community setting appropriate to their needs. According to FSSA's website, the goals of the CIH waiver program include: providing "access to meaningful and necessary home and community-based services and supports" and facilitating a participant's independent living.

FSSA's DDRS sets annual budgets for consumers who qualify for the CIH waiver program based on the consumer's needs. The annual budget for consumers is also known as the Cost Comparison Budget or CCB. The process for setting this budget is outlined in administrative rules. The consumer uses his or her annual budget to receive services through private service providers that contract with FSSA. Each consumer has an Individual Support Team, who manages the care and needs of the consumer. A consumer's Individual Support Team may include the consumer, the consumer's representative, the consumer's providers, the consumer's case manager, a BDDS representative, and others.

FSSA BDDS has a process, known as the Budget Modification Request (BMR) process, for adjusting a consumer's annual budget for short-term and unanticipated needs. The BMR process allows a provider to be paid for services rendered when these unanticipated needs arise. Under the process, FSSA must first approve a BMR, and then a provider can submit a claim to receive payments for services rendered due to the short-term and unanticipated need.

On April 1, 2015, BDDS adopted a written policy that provides specific reasons for when a BMR is appropriate, such as when a consumer's housemate dies or when a consumer loses his or her job. The written policy also outlines specific steps for getting a BMR approved. The policy first requires the consumer's Individual Support Team to identify the unanticipated event and contact the consumer's case manager to request a BMR. The case manager then completes a BMR and attaches all required documentation in the BDDS' case management system. The Personal Allocation Review Unit (PARS) within FSSA's BDDS then reviews the BMR and required documentation and either approves the BMR and determines the amount of the budget increase, denies the BMR, or requests the case manager submit additional information or documentation. The policy also allows a consumer to appeal the PARS Unit's determination if they are dissatisfied with the determination. FSSA's DDRS Director provided additional explanation on the BMR process by writing, "If the PARS team approves the BMR, claims for Medicaid reimbursement are submitted to Indiana Medicaid for processing and payment."

FSSA's Approval of BMRs from the Provider

According to Special Agent McElroy's investigation and the audit conducted by FSSA's Audit Services Division, the Provider submitted over twenty BMRs to FSSA outside FSSA's regular BMR process. Under these BMRs, FSSA approved payment to the Provider of approximately $397,000 in unpaid service units that the Provider had delivered to FSSA consumers. The Provider directly contacted FSSA's DDRS central office regarding these unpaid units circumventing the Individual Support Team, the case manager and the PARS Unit.

During the course of his investigation, Special Agent McElroy interviewed several witnesses, including several employees of both FSSA, the Provider, and FSSA's contractor for case management services. He also reviewed several documents, including the FSSA Audit Services Division's audit, FSSA employee emails, and FSSA policies.

According to witness interviews, the Provider approached an executive within FSSA's DDRS (the Executive) in October 2015 seeking to have a BMR submitted so the Provider could be paid for services provided to a specific consumer. Many of these unpaid units went back to 2014 and were over a year old. The Provider claimed that the case managers were sloppy in their performance and did not follow through with submitting BMRs for services that the Provider had delivered. The Executive stated that she denied the BMR to the Provider because the Provider did not submit the units in a timely manner.

In December 2015, the Provider contacted the BDDS Director via email and asked that BMRs be submitted on their behalf for unpaid units that the Provider had not received payment for involving the same consumer. Again, the Provider blamed the case managers for failing to follow through on BMR requests. The BDDS Director instructed the Provider to forward the consumer information to the BDDS Director directly without going through the normal process. The Provider sent information on the unpaid units on the consumer, and the BDDS Director realized that some of the unpaid units were more than twelve months old and totaled more than $100,000. The BDDS Director agreed to approve the late submission of these unpaid units by the Provider.

The Provider then informed the BDDS Director that they had a few other similar unpaid units on other consumers. Again, the BDDS Director instructed the Provider to submit the information to her directly, and she would review it. The Provider then submitted to the BDDS Director a spreadsheet containing twenty-four additional consumers with unpaid units totaling $397,000 (including the original consumer's $100,000 worth of unpaid units). During her interview with Special Agent McElroy, the BDDS Director stated that she made the decision to approve submission of the BMRs; however, she wanted the unpaid units to be processed through the normal process. She contacted all of the case managers for the twenty-five consumers and instructed them to submit BMRs for the Provider's unpaid units. The BDDS Director also instructed the PARS Unit staff to process the BMRs in a routine manner.

After not receiving approval of the BMRs or payment for their unpaid units, the Provider began to complain to the BDDS Director and to the PARS staff that it was taking too long to get the BMRs approved. The Provider told the BDDS Director that they had a similar situation in 2012 and 2014 where FSSA was able to pay their claims for unpaid units in a couple of days. According to the BDDS Director's interview with Special Agent McElroy, she investigated the 2012 incident and found that a BDDS employee changed a consumer's annual budget in FSSA's software program. This allowed the Provider to submit their late unpaid units without submitting any BMR to justify the additional unpaid units. Special Agent McElroy interviewed the BDDS employee, and he admitted to the changing the budget amount in 2012. He also admitted that he still has the ability to enter FSSA's computer system and change the data without leaving any record or trace that he was in the program.

In March 2016, representatives of the Provider and their lobbyist met with the FSSA Chief of Staff and complained about how long it was taking DDRS to process their BMRs. According to the BDDS Director, the FSSA Chief of Staff only instructed her to follow routine procedure to complete review of the Provider's unpaid units; however, a BDDS staff member admitted that he was intimidated by the fact that the Provider was complaining to FSSA's Chief of Staff. Sometime after this meeting, FSSA approved the BMRs that the Provider submitted to the BDDS director for the twenty-five consumers.

According to the BDDS Director, she approved having the case managers submit the BMRs for the unpaid units despite the fact that some of the unpaid units were for services over a year old because she believed the BMR policy did not provide the appropriate time frames limiting the requests or submissions of BMRs. The BMR policy in place at the time did not provide a specific time frame for an Individualized Support Team to request a BMR or a case manager to submit a BMR; however, the policy did specify that the purpose of the policy was to explain how to obtain funds for short-term and unanticipated needs. The policy also limited the time frame for BDDS to review the waiver to seven days, indicating that the BMR process was intended to be a short-term review. In an interview with Special Agent McElroy, a representative of the Provider admitted that the Provider was improperly using the BMR process to offset the shortfall in consumer budgets as opposed to using it for short-term and unanticipated needs.

During their interview with Special Agent McElroy, representatives from the case management company agreed that there were instances where providers had gone around the case manager and requested BMRs from FSSA staff directly. They also stated that if the case manager disagrees with the BMR, the case manager can note that the BMR is being submitted on behalf of someone else. Special Agent McElroy obtained copies of BMRs where the case managers noted that they were submitting BMRs on behalf of the BDDS Director. When asked why some of the BMRs were not submitted in a timely manner, representatives from the case management company stated the case manager may have overlooked some of the BMRs. She also indicated that in several cases, the case manager previously had denied some of the BMRs.

In short, the investigation verified that both FSSA and the Provider circumvented the BMR process so that the Provider could be paid for additional services. The OIG's investigation found no evidence of a violation of a criminal statute or the Code of Ethics; however, it did reveal misuse of the BMR process. FSSA and the Provider were using the BMR process to supplement the annual consumer budgets, instead of using it for the short-term, emergency purpose it was designed for. Furthermore, the Provider failed to submit the BMRs up through the Individualized Support Team and the consumer's case manager and in so doing bypassed the fundamental gatekeeper of the consumer's care and put Medicaid funds at risk.

Recommendations

Based on the OIG's review, the OIG makes the following recommendations in an effort to reduce the risks associated with the improper use of BMRs:

Recommendation 1

FSSA should maintain the checks and balances set out in the BMR process that require multiple levels of review of all BMR requests. FSSA should require all employees to follow any

BMR policy and procedures they adopt so that all providers submitting BMRs are treated the same and so that all BMR requests are carefully reviewed by individuals who are familiar with a particular consumer's case and needs.

Although the OIG recognizes that FSSA has an important mission is to provide much-needed services to consumers under a variety of programs, including the CIH waiver program, FSSA also should serve as the ultimate gate keeper for the taxpayers' money. Without the proper checks and balances on the BMR program, FSSA opens the door to fraudulent activity. By allowing the Provider to go around the Individualized Support Team and the case managers and submit the BMRs directly to FSSA's central office, FSSA created an environment conducive to fraud. Without these checks and balances, an unscrupulous provider could submit false claims for services they never performed.

Recommendation 2

FSSA should maintain and strengthen the requirement that BMRs only be approved for short term or unanticipated needs. FSSA should require all employees to follow any BMR policy and procedures they adopt so that all providers submitting BMRs are treated the same and so that all BMR requests are submitted and reviewed in a timely manner.

As a result of this investigation, BDDS adopted a "Budget Modification Request Timeline" policy that provides suggested timelines for a Provider to notify a consumer's case manager of a status change, for the case manager and the Individualized Support Team to document the proposed modification, for the BDDS district office to provide an initial response to the BMR, and for the BDDS central office to provide initial response to the district office's request. This policy became effective on April 3, 2017. BDDS also adopted a "Retroactive Budget Modification Requests" policy. This policy provides that "retroactive BMRs to address services rendered fortyfive (45) days prior to the submission of the BMR request by the case manager without prior approval of the State will not be supported." This policy becomes effective July 1, 2017.

Also, as a result of this investigation, BDDS has denied several requests from the Provider to approve BMRs that were not intended for short term use. In December 2016, the BDDS Director sent a letter to the Provider denying several BMRs and noting that "The five subsequent BMRs submitted by [the Provider] for services from March 2016 – September 2016 for 2,891 units constitutes a misuse and abuse of the BMR process for the individual. BMRs are intended for short term issues."

Recommendation 3

Both the Provider and DDRS leadership pointed to the lack of follow through by the case management company as the reason that FSSA approved the BMRs even though the Provider went outside the normal process to get the BMRs submitted. They also pointed to the case management company as the reason several BMRs were submitted to FSSA a significant amount of time after the Provider provided the services. The OIG's investigation revealed that although the case manager company's actions may have contributed to the delay in some cases, other factors played a much greater role in these BMRs being submitted outside the normal process. For example, the Provider was persistent in using the BMR process to be paid for services to supplement a consumer's budget, rather than to meet short-term unanticipated needs as the BMR process is intended, and the case manager and FSSA staff felt pressured to submit and approve the BMRs.

To the extent that the case management company's lack of follow through contributed to BMRs being submitted outside the normal BMR process, FSSA should establish procedures to provide better oversight of the case management contractors in the future. FSSA will be in a better position to prevent possible fraud by providers and contractors if FSSA is able to identify delay or other problems due to the case management contractor's performance earlier in the process. The OIG also recommends that FSSA hold the case managers accountable for providing timely and thorough service to FSSA.

Recommendation 4

FSSA should develop a process for identifying and reporting who makes changes to a consumer's budget, either through BMRs or other methods.

Special Agent McElroy's investigation revealed that certain FSSA employees have access to change a consumer's annual budget in FSSA's computer system without creating a record of what changes he or she made to the system. At best, this invites potential user error that is untraceable and may be difficult to correct without knowing who entered in the erroneous information. At worst, this invites potential fraud that cannot be traced and therefore has little risk for the employee engaging in the activity. Creating a log or system that tracks when an employee makes changes to the system will make it easier to correct user error or reduce the risk of potential fraud.

As a result of this investigation, FSSA has indicated that they will implement a requirement for BDDS staff to document, via a case note entry in their system, any case activity for consumers

Recommendation 5

FSSA should ensure that lower level staff and contractors are able to report wrongdoing without fear of reprisal. This could be accomplished by establishing a process for FSSA staff to report problems to agency leadership and by reminding agency staff that they can report issues to the OIG without fear of retaliation. More specifically, FSSA leadership should inform staff that Ind. Code § 4-2-6-13 prohibits a current or former state officer, employee or special state appointee from retaliating or threatening to retaliate against a current or former state employee or special state appointee for filing a complaint with the OIG or providing information to the OIG.

The OIG reminds FSSA that the whistleblower protection provisions in Ind. Code § 4-2-6-13 apply to all OIG investigations.

Respectfully submitted this 3rd day of July 2017.

Lori Torres

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Lori Torres, Inspector General