

Ending Fraud by the State of Minnesota Against the Federal Government

By John Krhin and Senior Staff

This is not the Medicaid fraud that has dominated recent headlines. The issue described here is separate, potentially far larger in scale, and has received little public attention.

Elected DFL officials have put the State of Minnesota in the position of committing billions of dollars of fraud against the federal government. The first concerns about this fraud were raised in 2005, if not earlier.

DFL Governor Tim Walz and Attorney General Keith Ellison have done nothing to stop this, and in fact, hide behind the actions taken to stop the rampant fraud in several Medicaid programs. Those programs were all the result of federal waivers signed with the state, which opened the door to tens of billions of dollars that were supposed to go to a wide variety of individuals. Those are the funds that are paid for daycare, autism, adult home care, and more for people who do not exist or never qualified.

The Scheme Behind the Major Fraud

For at least 25 years, a long string of evidence shows that the *State of Minnesota* has knowingly committed and participated in fraud against the United States in the administration of the Minnesota Medical Assistance (Medicaid) program. Specifically, the fraud is associated with the Prepaid Medical Assistance Program (PMAP).

This practice, if confirmed, is distinct from the recent fraud cases involving Housing Stabilization Services, EIDBI, and other waiver programs. Those cases largely involve providers billing for services that were not delivered.

The PMAP issue, by contrast, centers on the handling of cash in the HMO/MCO reserves as required by law. This PMAP fraud is separate from, and in dollars far greater than, the fraud

against 14 Medicaid programs currently under scrutiny by the public, media, and state and federal government agencies.¹

The fraud disclosed here occurs when the various entities that manage the PMAP (Managed Care Organizations - MCOs - and Health Maintenance Organizations - HMOs) share a portion of their cash reserves with the State of Minnesota, with the knowledge and acceptance of actors on behalf of the state. It may involve fraudulent reporting by the HMOs/MCOs and the State of Minnesota.

The MCO/HMO continues to fully claim these funds as cash reserves required by law. The legal and proper action of the plans, working with the State, ought to be to return those excess funds to the federal government. Neither the State nor the MCO/HMO has complied. Instead, the state uses those funds for other programs unrelated to Medicaid.

The funds at risk may be as much as or more than \$1.5-\$2 billion a year! Given that the original revelations of this fraud date back to at least 2005, the total fraudulent funds in question may exceed \$40 billion, plus interest and penalties.

To prove or disprove this allegation, an independent audit by the appropriate **federal** agency or agencies is required. The state's required "Quarterly Medicaid Statement of Expenditures for the Medical Assistance Program" (CMS64) reports must be audited deeply and over a long period of time.

Remarkably, the federal government has *never before audited* these forms. That audit, however,

¹ About these 14 programs, we are asking the Federal Government to immediately withdraw the waivers which

it has continuously approved that authorizes these programs to continue.

has finally started under the Trump Administration. It needs to go deep and wide.

To ensure a factual investigation, neither the State legislature, the Governor, nor the Attorney General should be directing the audit; they must all comply with it. The recently created Office of Independent Auditor will not be operational as these audits roll out, and in any event, should not be involved in these audits at all.

Risks to Minnesota

If the fraud is as extensive as it appears, it could threaten the State of Minnesota's financial stability. Given this risk, at this time the elected and appointed officials of the State, and some members of Congress who are aware of it, have ignored it, diverted attention from it, or, out of true concern for the State's fiscal stability, been afraid to confront it.

Imagine trying to budget \$40 billion into a biennial budget or spreading out billions each budget cycle to pay the State's debt to the federal government. This would result in massive program cutbacks or increases in taxes, or both.

There is a need for a comprehensive, logical plan.

A Path Forward

The fraud must stop immediately.

To deal with the potential financial obligations resulting from this scale of fraud, Minnesota must enter into an agreement with the Federal Government to:

- 1) Authorize the federal government to complete an audit reaching back to at least 2005 that includes state agencies and the MCOs and HMOs, or any entity that participated in managing services under the PMAP.

- 2) Centers for Medicare and Medicaid Services (CMS) audits of Minnesota's CMS-64 forms must be aggressively pursued and expanded, going deeper and wider than any audits that have gone before.
- 3) Order all elected officials and units of government to fully and openly respond to and comply with the federal auditors.
- 4) Elected officials and State employees must pledge to comply with the findings as long as they conform to state and federal law and regulations.
- 5) In return for the State's full cooperation and pledge to end the fraud immediately, the State of Minnesota will ask for consideration from the federal government to waive any and all monies that otherwise may be required to be refunded to the federal government, including fines, penalties, and the money itself.

The Governor and Attorney General must certify in writing that the State of Minnesota has ceased to participate in any program of such nature that may be ongoing.

Meanwhile, in everything we must do to stop fraud, we must protect our most vulnerable people. This means funding necessary government programs and going to the private sector to contribute to their care.

Our elected officials must be fiduciaries of the public trust and treasure.

We must hold elected officials accountable, and finally, end the employment of anyone who has knowingly participated in this fraud.

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