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Human Resources Division

B-246421



146012

March 3, 1992

Mr. Frank Clemente
Senior Policy Advisor
Committee on Government Operations
House of Representatives

Dear Mr. Clemente:

As agreed during your January 29 meeting with members of my staff, this letter summarizes GAO's findings, recommendations, and other information from four recent reviews on Medicaid third-party liability. As you know, the first three reviews resulted in two reports to Mr. Conyers and a report to Mr. Waxman.¹ A fourth review, on the Office of Child Support Enforcement's (OCSE) medical support responsibilities, is in progress. We expect to issue a report on this work this spring. The information we discuss from this review is preliminary.

BACKGROUND

The Congress intended that Medicaid, as a public assistance program, pay for health care only after a recipient's other health care resources have been exhausted. Bureau of the Census 1990 Current Population Survey data showed that 13.2 percent of Medicaid recipients had private or employer-provided health insurance. In addition, recipients' health care expenses may be paid through other third parties, such as liability insurers and workers' compensation plans.

¹Medicaid: Millions of Dollars Not Recovered From Michigan Blue Cross/Blue Shield (GAO/HRD-91-12, Nov. 30, 1990); Medicaid: HCFA Needs Authority to Enforce Third-Party Requirements on States (GAO/HRD-91-60, Apr. 11, 1991); and Medicaid: Legislation Needed to Improve Collections From Private Insurers (GAO/HRD-91-25, Nov. 30, 1990).

GAO/HRD-92-21R, Medicaid Third-Party Liability

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Federal regulations require state Medicaid agencies to take certain measures to identify and recover payments from liable third parties. In addition, regulations generally require state child support enforcement agencies to assure that noncustodial parents of Medicaid children provide health insurance (medical support) when it is available through employment. They do this by petitioning the court or administrative authority for such coverage in court orders and taking steps to enforce the orders.

The Department of Health and Human Services' Health Care Financing Administration (HCFA) oversees state Medicaid agency recovery efforts, while its Office of Child Support Enforcement oversees state medical support efforts.

SUMMARY

Medicaid could save millions of dollars if states ensured that liable third parties paid Medicaid recipients' medical bills. To realize these savings, states need to

- improve compliance with federal requirements to identify and recover from liable health insurers, for example, by collecting health insurance information at the time of Medicaid eligibility determination and seeking payment recovery within 60 days and
- improve child support enforcement techniques to assure that noncustodial parents of Medicaid children provide health insurance when it is available through employment.

To give states incentives to improve their third-party identification and recovery efforts, we have recommended that the Congress amend federal law to allow HCFA to withhold Medicaid matching payments when states fail to comply with federal third-party requirements. Moreover, federal guidance is needed to provide clearer standards for state medical support enforcement activities.

States, however, cannot optimize collections on their own. They have limited authority over out-of-state insurers and self-insured plans governed by the Employee Retirement Income Security Act of 1974 (ERISA). Consequently, states cannot effectively prohibit problem practices (such as not recognizing a Medicaid recipient's assignment of rights to health care payments to the state Medicaid agency) that these insurers and health plans use to avoid making payments. States' limited authority over ERISA plans may also jeopardize future medical support efforts. Some of these plans are excluding coverage for dependents that, for example, live outside the home of the policyholder. To minimize future losses, we have recommended that the Congress amend federal legislation to clarify Medicaid's role as payer of last resort and enhance the states' abilities to ensure that out-of-state insurers and ERISA plans cannot avoid paying Medicaid. The problems that we identified, and our recommendations to resolve them, are discussed in the enclosure.

APWA'S RESPONSE

The American Public Welfare Association (APWA), representing state Medicaid directors, has responded to our recommendations. APWA supports legislation to clarify Medicaid's last-payer role and increase states' ability to assure that ERISA plans pay before Medicaid and cover Medicaid children. APWA has indicated, however, that states do not believe HCFA should be allowed to withhold federal matching to enforce compliance. APWA maintains that states are taking corrective actions to resolve problems on their own and that states prefer a system that rewards them for doing a superior job rather than penalizing them for doing poorly.

As you requested, our Office of the General Counsel's staff is preparing a comprehensive legislative proposal integrating the various legislative recommendations from our Medicaid third-party liability reports. We will forward this to you upon its completion.

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Should you have any questions concerning these reports,
please contact me on (202) 512-7119.

Sincerely yours,

Janet L. Shikles

Janet L. Shikles
Director, Health Financing
and Policy Issues

Enclosure

PROBLEMS IDENTIFIED AND RECOMMENDATIONS MADE

The problems we have identified in our past and ongoing work concerning third-party liability, and our recommendations to resolve them, are as follows.

Medicaid: Millions of Dollars Not Recovered From Michigan Blue Cross/Blue Shield (GAO/HRD-91-12, Nov. 30, 1990)

This report identified problems with the Michigan Medicaid agency's third-party recovery program. Over 18 years, the Michigan agency encountered serious problems in recovering payments made for Medicaid recipients insured by Blue Cross/Blue Shield. Michigan did not fully use its authority or take all actions that it could to enforce Blue Cross/Blue Shield compliance with Medicaid's third-party recovery provisions. Also, federal and state monitoring and oversight of the Michigan Medicaid third-party recovery program were ineffective. Because Michigan and Blue Cross/Blue Shield did not implement a system for Blue Cross/Blue Shield to pay claims, Blue Cross/Blue Shield avoided or forestalled payments to the state's Medicaid program and, in effect, shifted considerable costs to the federal and state governments.

We concluded that ineffective state management, coupled with lack of HCFA leadership, allowed millions in Medicaid payments to go unrecovered from Blue Cross/Blue Shield. We made no recommendations in this first report, as a concurrent review was addressing problems HCFA had found at the national level. (See GAO/HRD-91-60 below.)

Medicaid: Legislation Needed to Improve Collections From Private Insurers (GAO/HRD-91-25, Nov. 30, 1990)

This report identified two major obstacles that states face in making third-party recoveries from certain types of insurers. First, because states lack jurisdiction over certain insurers, they cannot prohibit some out-of-state insurers from practices they use to avoid reimbursing state Medicaid agencies. For example, some out-of-state insurers write clauses in contracts that exclude, or have the effect of excluding, payment for out-of-state Medicaid recipients. Second, states' limited authority over certain employee welfare benefit plans does not allow them to prohibit practices these plans use to avoid paying for recipients' covered costs, such as not recognizing the recipient's assignment of rights to health care payments to the state Medicaid agency. Further, many states have not exercised their authority to legislate that no such plan include any

contract provision having the effect of limiting or excluding payments for Medicaid recipients' health care costs.

We recommended that the Congress clarify Medicaid policy and authorize states to recover directly from all appropriate third parties. Specifically, we recommended that legislation:

- State explicitly that Medicaid is payer of last resort.
- Clarify that appropriate third parties have a duty to pay or reimburse Medicaid regardless of any contract provision.
- Provide an efficient, comprehensive enforcement scheme that would include amending ERISA to broaden states' existing authority to allow them to fulfill their third-party obligations under Medicaid law. Additionally, the enforcement scheme would provide for double damages, as is in place in Medicare law for similar circumstances, against any liable third party that fails to fulfill its payment obligations under the provisions.

Medicaid: HCFA Needs Authority to Enforce Third-Party Requirements on States (GAO/HRD-91-60, Apr. 11, 1991)

This report examined HCFA's oversight efforts of state third-party programs and its authority to enforce compliance. In 1988 and 1989 program reviews, HCFA identified significant state noncompliance with federal third-party requirements. Our work in Michigan and California pointed to continuing problems in 1990 with federal requirements not being met. HCFA lacks effective enforcement authority, we concluded, because the current authorized mechanism for imposing financial penalties on states that did not comply with federal third-party requirements is ineffective. States could do poorly in third-party recoveries and face little or no financial penalty. Without the ability to withhold federal matching funds, the federal government cannot adequately protect its financial interests when states fail to comply with third-party requirements.

We recommended that the Congress amend the law to authorize HCFA to withhold federal matching funds when states do not comply with federal third-party requirements.

Review of the Office of Child Support Enforcement's Medical Support Responsibilities (In progress)

This review is addressing state child support enforcement efforts to pursue health insurance from noncustodial parents for their Medicaid children, and federal oversight of those efforts. Preliminary findings indicate that states are not ensuring that

noncustodial parents provide health insurance for their children, even when such insurance is available through their employers.

Our tentative conclusions are that two main problems limit the effectiveness of state enforcement efforts. First, federal regulations permit wide variability among states in adopting practices to enforce medical support. Consequently, the effectiveness of states' programs varies widely. Second, certain employee welfare benefit plans are thwarting state efforts by excluding noncustodial parents' children from coverage, for example, by requiring that dependents live with the policyholder in order to be covered. As noted in our previous report, (GAO/HRD-91-25 above), states have little ability to force these plans to comply with state requirements.