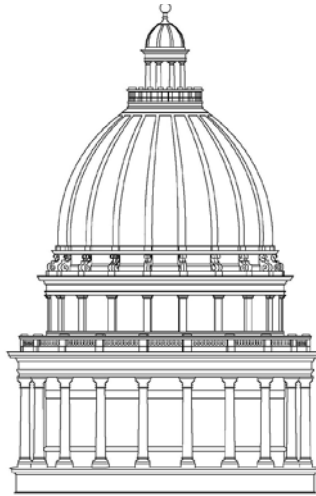


REPORT TO THE  
**UTAH LEGISLATURE**  
Number 2012-13



**A Performance Audit of  
The Medicaid Fraud Control Unit**

August 2012

Office of the  
LEGISLATIVE AUDITOR GENERAL  
State of Utah





STATE OF UTAH

# Office of the Legislative Auditor General

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**Audit Subcommittee of the Legislative Management Committee**  
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JOHN M. SCHAFF, CIA  
AUDITOR GENERAL

August 1, 2012

TO: THE UTAH STATE LEGISLATURE

Transmitted herewith is our report, **A Performance Audit of the Medicaid Fraud Control Unit** (Report #2012-13). A digest is found on the blue pages located at the front of the report. The objectives and scope of the audit are explained in the Introduction.

We will be happy to meet with appropriate legislative committees, individual legislators, and other state officials to discuss any item contained in the report in order to facilitate the implementation of the recommendations.

Sincerely,

John M. Schaff, CIA  
Auditor General

JMS/lm



# Digest of A Performance Audit of the Medicaid Fraud Control Unit

The Utah Medicaid Fraud Control Unit's (MFCU's) overall recoveries of inappropriately paid out Medicaid funds are comparatively strong. These fraud recoveries are primarily due to successful litigation involving drug manufacturers. However, outcomes of criminal fraud cases involving local providers—which include restitution, incarceration, fines, and exclusion from Medicaid—appear comparatively less substantial. These less substantial outcomes may be indicative of historically insubstantial Utah Medicaid case referrals that likely reduced the MFCU's effect on provider fraud. Related to the need for improved and increased referrals is a need to strengthen MFCU's case management system. Case files show significant gaps of time between basic case activities and that some cases that were not completed within the statute of limitations timeframe.

**Utah MFCU Recoveries Are Higher than Recoveries by Its Peers.** Between federal fiscal years 2007 and 2011, the Utah MFCU's recoveries were significantly higher than those of six peer MFCUs. On average, the Utah MFCU recovered \$11 million annually while the six peer MFCUs each recovered \$3 million annually. Even when an extraordinarily large recovery by the Utah MFCU is removed, the Utah MFCU's recoveries remain comparatively high. Utah MFCU's recoveries are due, in part, to its aggressive litigation of drug manufacturers.

**Outcomes of MFCU's Past Criminal Fraud Cases Appear Comparatively Minor.** Success of Utah MFCU's local provider fraud prosecutions, an important part of fraud prevention and recovery, is primarily dependent on the number and strength of cases referred by outside agencies. If fraud referrals lack substance, than Utah MFCU's potential effect on local provider fraud is less impactful. The outcomes of Utah MFCU criminal cases appear less significant in comparison to the outcomes of similar cases pursued by a state that aggressively prosecutes fraud. We expect that the newly created Office of the Inspector General (OIG) will significantly increase the strength of

## Chapter I: Introduction

## Chapter II: Utah MFCU Recoveries Are Comparatively Strong

## Chapter III: Past Fraud Referrals May Have Resulted in Less-Impactful Outcomes

**Chapter IV:  
Case Management  
Needs Improvement**

future fraud cases referred to the Utah MFCU. However, if referred cases do not become more substantial, then the Utah MFCU should apply to the federal government for permission to generate cases within MFCU.

**Investigative Activity Raises Concerns.** We found concerns with investigative activity in some of the fraud cases reviewed. First, cases that might have been prosecuted were closed because the statute of limitations passed before the investigation was completed. Second, some cases show large gaps of time between investigative activities. The more time passes, the more evidence deteriorates, the more witnesses are lost, and the greater the likelihood that the statute of limitations will pass before the investigation is completed. The closure of cases because the statute of limitations passed and the months and years that sometimes passed between case activities suggest room for improved efficiency in MFCU's investigations and prosecutions. MFCU's director and chief investigator have acknowledged the need for case management improvement.

# REPORT TO THE UTAH LEGISLATURE

Report No. 2012-13

## **A Performance Audit of The Medicaid Fraud Control Unit**

August 2012

Audit Performed By:

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# Chapter I

## Introduction

The Utah Medicaid Fraud Control Unit's (MFCU's) overall recoveries of inappropriately paid out Medicaid funds are comparatively strong. These strong recoveries are primarily due to MFCU's successful litigation of drug manufacturers. However, the outcomes of criminal fraud cases involving local providers—which include restitution, incarceration, fines, and exclusion from Medicaid—appear comparatively weak. These weak outcomes may be indicative of historically insubstantial Utah Medicaid case referrals that have likely reduced the MFCU's effect on provider fraud.

MFCU's case management system should also be strengthened. Case files show significant gaps of time between basic case activities and some cases that were not completed within the statute of limitations timeframe.

Since 1995, federal law has required that each state have a MFCU unless the state can demonstrate to the satisfaction of the Department of Health and Human Services Secretary that it has a minimum level of Medicaid fraud and that Medicaid beneficiaries will be protected from abuse and neglect. (North Dakota is the only state not required to have a MFCU.) MFCUs are charged to investigate and prosecute Medicaid fraud as well as patient abuse and neglect. The jurisdiction of MFCUs is limited to Medicaid provider fraud; MFCUs do not investigate recipient fraud.

All MFCUs receive an annual federal grant from the Department of Health and Human Services. Once a MFCU is established, this federal grant provides 75 percent of the MFCU's funding while the state provides the remaining 25 percent. Because of the federal government's financial involvement, MFCUs are subject to certain requirements. For example, MFCUs must employ a mix of attorneys, investigators, and auditors who all work full-time on Medicaid fraud and abuse cases. Currently, Utah's MFCU is a 13-member unit made up of 3 attorneys, 2 auditors, 6 investigators, and 2 support staff.

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**Each state has a MFCU to investigate and prosecute Medicaid fraud, patient abuse, and patient neglect.**

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**Affected states' MFCUs work together in global cases to settle suits with national providers.**

The federal government does not allow MFCUs to generate their own cases unless the federal government has granted a waiver. Instead, cases are referred to MFCUs. The primary state agencies that refer cases to the Utah MFCU are:

- The Office of the Inspector General (OIG)
- The Department of Health (DOH)
- The Division of Services for People with Disabilities (DSPD)
- Adult Protective Services (APS)

The OIG was added as a referral agency in 2011. Cases referred from these agencies involve local Medicaid providers; the Utah MFCU investigates and prosecutes these cases itself.

The Utah MFCU also participates in global cases referred by the National Association of Medicaid Fraud Control Units (NAMFCU). These cases involve a number of affected states working together to settle a case with a national service provider. In these cases, the MFCU's work is to review data to determine if Utah was impacted by illegal activity and the extent to which Utah's Medicaid program was impacted by the fraud. Utah shares its information with other states which form negotiation teams that work out settlements with the Department of Justice and the drug manufacturer involved in the suit.

In some cases, the Utah MFCU pursues its own settlement. Under this scenario, outside counsel is retained and the Utah MFCU primarily manages the outside counsel's work. The outside counsel is then paid from the settlement proceeds.

## **Audit Scope and Objectives**

This audit focuses primarily on Medicaid provider fraud recovery. The scope and objectives of the audit include the following:

- Assess MFCU's recovery efforts
- Assess MFCU's case management system

## Chapter II

# Utah MFCU Recoveries Are Comparatively Strong

The Utah MFCU's recoveries of inappropriately paid out Medicaid funds are significantly higher than its peers' recoveries. This can be ascribed, in part, to Utah MFCU's aggressive litigation of drug manufacturers. In addition, the Utah MFCU's rate of return (dollars recovered per budget dollar spent) was higher than all but one of the peers.

### Utah MFCU's Recoveries Are Higher than Its Peers' Recoveries

The Utah MFCU's recoveries compare favorably with those of similarly sized entities. To make this comparison, we selected the five states and Washington, D.C. whose total Medicaid budgets are closest in amount of funding to Utah's. Their annual Medicaid budgets are shown in Figure 2.1.

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**Peers included five states and Washington D.C. whose total Medicaid budgets are closest in size to Utah's.**

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**Figure 2.1 Entities Whose 2011 Medicaid Budgets Compare with Utah's.** For purposes of evaluating the Utah MFCU's recoveries in this chapter, these peers' MFCU recoveries are compared with Utah's. Utah's Medicaid budget falls in the middle of the range.

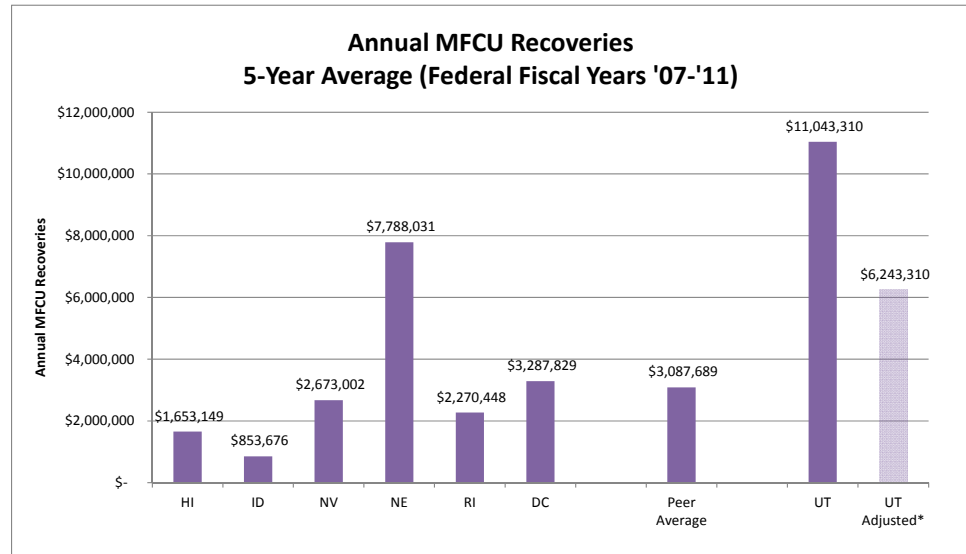
<b>Federal Fiscal Year 2011 Medicaid Budgets</b>	
D.C.	\$2,236,218,224
Rhode Island	2,178,476,836
<b>Utah</b>	<b>1,854,111,517</b>
Nebraska	1,746,152,863
Nevada	1,657,775,468
Idaho	1,597,069,640
Hawaii	1,595,017,451
Average	\$1,837,831,714

*Source: National Association of Medicaid Fraud Control Units*

Figure 2.2 shows that, looking at the five-year period from fiscal year 2007 through fiscal year 2011, Utah's MFCU's recoveries of Medicaid funds are significantly higher than those of the six peer

MFCUs. On average, Utah’s MFCU recovered over 3.5 times more than its peers recovered over the same period.

**Figure 2.2 The Utah MFCU’s Annual Recoveries Are Significantly Higher than the Peer Average.** For the five fiscal-year period between October 2006 and September 2011, the Utah MFCU’s average annual recoveries were \$11 million,



Source: National Association of Medicaid Fraud Control Units

Between federal fiscal years 2007 and 2011, the Utah MFCU recovered, on average, \$11 million annually. The six peer MFCUs recovered, on average, \$3 million annually. The only MFCU with recoveries close to Utah’s was Nebraska’s, which averaged \$7.8 million in annual recoveries.

The Utah MFCU had an extraordinarily large recovery of \$24 million in 2010. The faded, final bar in Figure 2.2 is the average of the Utah MFCU’s recoveries for the five-year period with the \$24 million recovery omitted. Even leaving out that amount, the Utah MFCU’s recoveries remain comparatively high.

**Care should be taken when comparing recoveries among MFCUs in different states.**

As we gathered MFCU recovery data from around the country, MFCU employees in other states repeatedly emphasized that MFCUs from different states are not comparable. We recognize that case types and demographics vary among states, and we are aware that case turnover and timing of recoveries do not happen on annual, comparable cycles. We believe that looking at recoveries over a five-year period, as we have done, offers a reasonable comparison period.

We are also confident that our description of Utah’s position relative to the peer states is reasonable and supported by the recovery data provided to us by the national MFCU.

## **Utah MFCU’s High Recoveries Stem from Its Aggressive Litigation of Drug Manufacturers**

The Utah MFCU’s higher recoveries can be ascribed partially to successful drug manufacturer litigation. Litigation typically relates to two types of offenses: 1) drug manufacturers overcharging Medicaid for prescription drugs (called average wholesale pricing, or AWP, cases), or 2) drug manufacturers marketing the use of a drug for purposes other than those for which it was initially intended (called off-label marketing cases). Average wholesale pricing of prescription drugs for Medicaid patients is being phased out nationwide. Consequently, AWP recoveries will cease in the future. Off-label marketing cases should continue.

While litigation of pharmaceutical companies on AWP or off-label marketing grounds is open to all states, the Utah MFCU has been more aggressive than the peer states. The Utah MFCU hires experienced, outside counsel to litigate certain of these cases where indications exist that Utah can recover a significantly greater amount if it litigates independently of the global suit that typically occurs concurrently. None of the peer states reported that they hire outside counsel for this purpose. The other states simply accept their share of the global settlements; they are not as proactive as Utah.

In federal fiscal year 2010, the Utah MFCU recovered a \$24,000,000 on a single off-label marketing case that it separated from the global settlement and hired outside counsel to litigate. This amount represented the culmination of several years of work on the case. In the three years prior to fiscal year 2010, recoveries for global and independently litigated cases averaged under \$2 million annually; in 2011, recoveries in this category were \$13 million. Even setting aside the extraordinary recovery in 2010, however, the Utah MFCU’s annual recoveries and return on investment are still significantly higher than the peer average.

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**Ability to recover from AWP cases will cease in coming years.**

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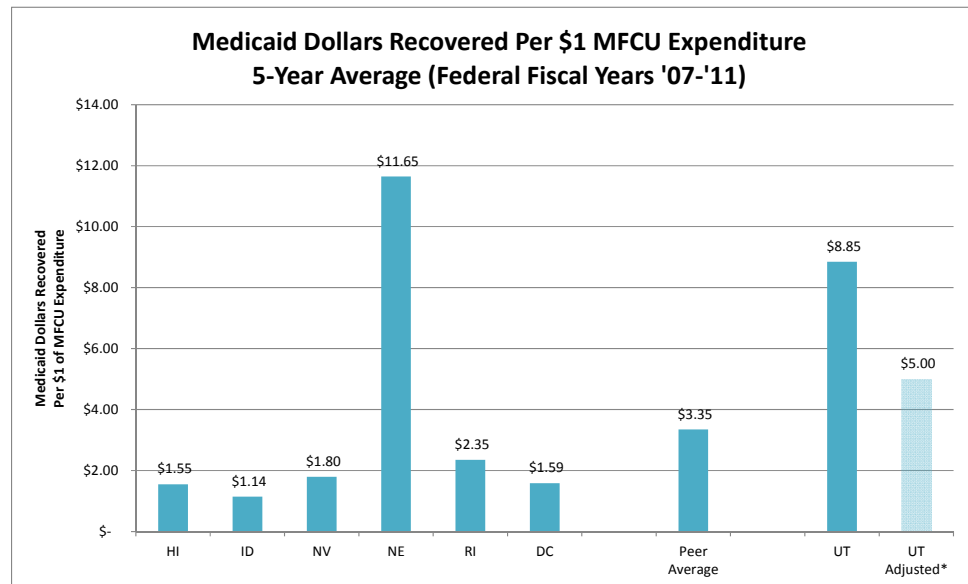
**Utah MFCU recovers more because it is the only MFCU in its peer group which litigates independently of global suits.**

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## Utah MFCU's Return on Investment Is Higher than Returns in All but One Peer State

Utah has the second-highest return per dollar spent on state MFCUs. Return, in this case, is measured as each MFCU's average annual recoveries divided by each unit's average annual expenditures. (We used the five-year, federal fiscal year 2007-2011 period for this comparison as well.)

**Figure 2.3 Utah MFCU Recovers Significantly More for Every Dollar Invested in the State MFCU.** Utah's average recovery of \$8.85 for every dollar spent on MFCU is much higher than the peer average of \$3.35.



Source: National Association of Medicaid Fraud Control Units

**The Utah MFCU's above-average return is not dependent on the extraordinary recovery in 2010.**

Nebraska MFCU's coupling of higher-than-average recoveries (as depicted in Figure 2.2) with its smaller staff size is the reason the Nebraska MFCU has a greater return per dollar invested than the Utah MFCU. That relationship is depicted in Figure 2.3 above. As explained previously, the faded, final bar of Figure 2.3 omits the extraordinary recovery in 2010 and shows that the Utah MFCU's above-average return is not dependent on that amount.

We commend the Utah MFCU for the steps it has taken to increase recoveries, and encourage a continued search for other opportunities across the case-type spectrum that might yield an additional recovery of Medicaid funds.



## Chapter III

# Past Fraud Referrals May Have Resulted in Less-Impactful Outcomes

Success of Utah MFCU's local provider fraud prosecution, an important part of fraud prevention and recovery, is primarily dependent on the number and strength of cases referred by outside agencies. If fraud referrals are not substantial, then the Utah MFCU's potential effect on local provider fraud is less impactful. When compared to a state that aggressively prosecutes fraud, Utah's efforts have not resulted in substantial outcomes. We expect that the newly created Office of the Inspector General (OIG) will significantly increase the strength of future fraud cases referred to the Utah MFCU. However, if referred cases do not become more substantial, then the Utah MFCU should apply to the federal government for permission to generate its own cases.

As outlined in the introduction, the primary types of cases that the Utah MFCU investigates and prosecutes are:

- Fraudulent Medicaid providers
- Patient abuse and neglect of vulnerable adults in Medicaid facilities
- Financial exploitation of vulnerable adults in Medicaid facilities

The Utah MFCU prosecutes cases either civilly or criminally. In a civil case, both parties come into court on equal footing and the party presenting the strongest case prevails. Monetary loss is the primary outcome of a civil trial. In a criminal case, the burden of proof is on the prosecutor, who must present evidence beyond a reasonable doubt. Not only is monetary loss a possible outcome of a criminal trial, but incarceration is a possibility, as well.

The focus of this chapter is criminal fraud. We reasoned that these cases would be the strongest, most egregious cases and thus would provide a reasonable measure of how substantial cases referred to the Utah MFCU are. Further, since these cases are being prosecuted by the Utah MFCU, local providers are involved, enabling us to get a sense of the Utah MFCU's potential effect on local provider fraud.

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**Not only is monetary loss a possible outcome of a criminal trial, but incarceration is a possibility, as well.**

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## Outcomes of MFCU's Past Criminal Fraud Cases Appear Comparatively Minor

The outcomes of the Utah MFCU's criminal cases appear less significant in comparison to the outcomes of similar cases pursued by Virginia's MFCU. This comparison opens up the possibility that past cases referred to and accepted by Utah's MFCU were relatively unsubstantial and that the potential effect of the Utah MFCU on local provider fraud was reduced.

We chose Virginia as a comparison state for the following reasons:

- Virginia has a reputation as an aggressive pursuer of Medicaid fraud
- Virginia publicly provided case detail that enabled us to make a reasonable comparison, a significant challenge of this audit

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Virginia's criminal cases resolved in 2011 were compared to Utah's criminal cases resolved between 2007 and 2011.

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However, we note that Virginia is different from Utah in terms of its Medicaid budget and its MFCU staff size, both of which are much larger than Utah's.

In its 2011 annual report, Virginia's MFCU highlighted six significant criminal cases resolved in 2011 involving fraudulent local Medicaid providers. We compared the outcomes Virginia achieved in those six cases with the outcomes Utah achieved in all similar cases for the five-year period of 2007 and 2011. We allowed Utah more comparative years in an effort to close the gap between annual Medicaid budgets. (Utah's annual Medicaid budget is smaller than Virginia's.) Figure 3.1 displays the outcomes (restitution amounts, fine amounts, incarceration numbers, and provider Medicaid exclusions) for Virginia's and Utah's criminal fraud cases.

**Figure 3.1 A Comparison of Virginia’s and Utah’s Case Outcomes.**

Virginia’s criminal cases averaged \$288,100 in restitution, of which \$252,600 were Medicaid funds while Utah’s case restitutions averaged \$38,400, of which \$14,600 was Medicaid.

	<b>Number Criminally Convicted</b>	<b>Restitution</b>	<b>Restitution Medicaid Portion</b>	<b>Fines Paid</b>	<b>Number Incarcerated</b>	<b>Number Excluded*</b>
Virginia	6	\$1,728,480	\$1,515,610	\$25,500	4	1
Utah**	20	768,090	291,990	2,270	10	5

\* Provider is excluded from participating in Medicaid for a period of time. The federal government determines exclusions and exclusion time periods.

\*\* One provider accounts for \$621,700 of all restitution and \$246,830 of all Medicaid.

Source: Office of the Legislative Auditor General

Virginia’s six cases appear more substantial in terms of outcomes than Utah’s 20 cases. Virginia’s cases brought in close to \$1 million more in restitution and \$1.2 million more in Medicaid-specific restitution than Utah’s 20 cases. Further, 67 percent of Virginia’s cases resulted in incarceration periods between two and five years. In Utah, 50 percent of the cases resulted in incarceration, but only 15 percent (three cases) involved incarcerations exceeding two years (one 3.5-year, one 8-year and one 20-year incarceration period), although, as can be seen, two Utah cases had incarcerations exceeding five years.

The Utah MFCU’s director points out that Virginia’s MFCU has a much larger staff than Utah and this difference could be accounting for some of the comparative difference seen in Figure 3.1. He further notes that were the data analyzed in terms of staffing, Utah’s comparison may look more favorable. We acknowledge this possibility.

However, this comparative evidence, though limited, also points to the possibility that the cases referred to Utah’s MFCU were somewhat less substantial. In fact, the Utah MFCU’s director acknowledges that, in the past, fraud referrals were sparse and lacking substance. One attorney, formerly employed with the Utah MFCU, agrees with the director. In his opinion, the Utah MFCU’s biggest problem has been the cases forwarded them by outside agencies; the referred cases did not tend to be substantive. He believes part of the problem was the referring agencies were service oriented rather than enforcement or fraud oriented. While this may be true, we also know that the Department of Health, which should have been a primary source of strong Medicaid fraud referrals, was not doing an adequate job of

**In the past, the Department of Health, which should have been a primary source of strong Medicaid referrals to MFCU, did not do an adequate job of potential fraud identification.**

potential fraud identification, as noted in our 2009 report on fraud, waste, and abuse controls in Utah's Medicaid system (Audit Report 2009-12).

While past cases forwarded to the Utah MFCU may not have been substantial, we expect the recently created OIG to provide Utah's MFCU with more substantive cases in the future. The OIG is in the process of developing algorithms that will help identify unusual provider usage patterns, key indicators of potential fraud. One study the OIG begins soon concerns billing capacity discrepancies. Billing capacity asks whether a provider's total time billed exceeds the provider's total available time. Further, the OIG already appears to be providing the MFCU with strong cases. Between August 1, 2011 and March 5, 2012, the Utah MFCU has opened 26 of the 28 cases (93 percent) referred it by the OIG. In contrast, of the 11 referrals the DOH submitted, 6 (55 percent) were declined and 5 are still pending a decision.

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**We expect that the Office of the Inspector General (OIG) will increase the strength of future fraud cases referred to the Utah MFCU.**

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**If the OIG does not provide enough substantive cases, the Utah MFCU's director should seek authority to analyze Medicaid databases for potentially fraudulent provider activity as Florida did.**

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Although we expect the OIG to supply the Utah MFCU adequate numbers of substantive cases, if this does not occur, then we believe the Utah MFCU's director should take action to allow the Utah MFCU to identify its own cases. Specifically, the Utah MFCU's director should seek the authority to analyze Medicaid databases for potentially fraudulent provider usage patterns (called data-mining). This authority would be obtained by requesting a data-mining waiver from the federal government. (The federal government usually prohibits state MFCUs from engaging in data-mining activities since these are part of the monitoring function of the Medicaid agency. If this function is judged inadequate, then a waiver may be given.)

Florida's MFCU was recently granted a three-year data-mining waiver. The data-mining waiver contains some constraints to which Florida's MFCU must adhere (for example, all data-mining projects must be pre-approved by Florida's Medicaid agency to avoid duplication of effort). Fifty data-mining projects have been approved, but at this time, no investigation has matured to the point of an arrest or financial recovery.

In summary, the outcomes of the Utah MFCU's criminal fraud cases appear comparatively less substantial. Since the Utah MFCU's effect on local provider Medicaid fraud rests, in large part, on the strength of the cases referred, it appears likely that the Utah MFCU's

effect on local Medicaid provider fraud was weakened. The newly created OIG is expected to provide the Utah MFCU with significantly stronger cases. However, if such referrals do not occur, then we believe that the Utah MFCU's director should apply to the federal government for a data-mining waiver.

## **Recommendation**

1. We recommend that the Utah MFCU compare the outcomes of criminal fraud cases provided by the OIG with the outcomes of past criminal fraud cases presented in this report. If the outcomes of OIG criminal fraud cases are not comparatively stronger, then the Utah MFCU's director should seek a data-mining waiver from the federal government.

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## Chapter IV

# Case Management Needs Improvement

Based on our review of MFCU fraud cases, limited case management controls have allowed inadequate investigative activity. Inadequate investigations can be concerning for multiple reasons, including:

- Risk of perpetuating or escalating the alleged crime
- Risk of missing an opportunity to recover or prosecute
- Risk of sending the message the MFCU does not aggressively pursue Medicaid fraud

Case management in other insurance entities indicates that MFCU's current case controls and reporting procedures can be tightened. MFCU's director and chief investigator have acknowledged the need to improve MFCU's existing case management system.

Our assessment is based on a sample of 22 MFCU fraud cases. We reviewed the physical file maintained at the MFCU office and the electronic Versadex file. Versadex is the primary case management tool used by MFCU investigators and is also the database software used by police departments throughout the state.

### Level of Investigative Activity Raises Concerns

Inadequate investigative activity in some of the reviewed fraud cases raises concerns. First, cases that might have been prosecuted were closed because the statute of limitations passed before the investigation was completed. Second, some cases show large gaps of time between investigative activities. The more time passes, the more evidence deteriorates, the more witnesses are lost, and the greater the likelihood that the statute of limitations will pass before the investigation is completed. The closure of cases because the statute of limitations passed and the months and years that sometimes pass between case activities suggest room for improved efficiency in MFCU's investigations and prosecutions.

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**The statute of limitations can expire and general inefficiencies can arise when cases are not pursued attentively.**

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## **Statute of Limitations Expired on Some MFCU Cases**

Of the 15 closed cases in our sample, 2 were closed because the statute of limitations expired during a period that the case was not being actively worked. (This was indicated in the file's notes.) Each of these cases was investigated for more than two years. Of the 7 sampled cases that are still open, it is unknown if the statute of limitations has yet expired because that is not a piece of data currently tracked by MFCU. When an investigator returns to the case, he may find that the statute of limitations has expired on the alleged crimes. At the time of our review, one of the cases had been open over three years with no apparent case activity during the previous 11 months. The statute of limitations on fraud cases is four years from the date of the incident.

We believe that both cases that were closed due to statute of limitations issues had the potential to result in sizeable recoveries. One case investigated allegations of inappropriate double billings on \$750,000 worth of charges. MFCU management acknowledges that mistakes were made during both of these investigations.

## **Large Gaps of Time between Investigative Activities Found in Some MFCU Cases**

About 75 percent of the sampled cases contained questionable delays ranging from 2 to more than 36 months. Justification for delaying investigative activities for a period (or for ending an investigation altogether) were rarely documented. For example:

- About a fifth of the sampled MFCU cases had more than one lengthy break between case activities. In most of those cases, at least one of the delays was 12 to 24 months in length.
- About a third of the sampled cases were still open at the time of our review. In more than half of those cases, at least 12 months had already passed since the last previous recorded case activity.

In no case did it appear that the delays between case activities were justified by required waiting periods.

One representative from another entity explained that maintaining activity on a case is important because, as time passes, leads can

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**The time that passed  
between case activities  
did not appear justified  
in any instances  
reviewed.**

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become stale, initial documentation may be vague or insufficient, and work done far in the past may need to be redone, resulting in inefficient case management. In addition, we believe that momentum and ability to seek recovery or prosecution are greatly diminished when the investigators return to a case after months of absence.

## **Case Controls and Reporting Procedures Can Be Tightened**

Other entities, such as the Workers' Compensation Fund (WCF), monitor weekly activity on all cases and continually monitor the statute of limitations related to their cases. The MFCU could benefit from adopting similar practices.

We spoke with a representative of the WCF, who explained that dates related to the statute of limitations are tracked and monitored via an electronic file that also tracks other case activities, including investigator notes and actions. Managers at WCF receive and review weekly reports on each case's progress; they are aware of the expiration date of the statute of limitations and alerted as it nears. Also, the WCF representative reported that all federal prosecutors use standardized case management software which, similar to WCF's, tracks case progress and monitors statutory deadlines.

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**Other entities actively monitor dates related to the statute of limitations.**

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The MFCU director and chief investigator have acknowledged that some of the case sample findings represent unacceptable performance. The MFCU director reported that controls to improve investigation timeliness and general efficiency will soon be implemented. In our opinion, it is important that these controls include monitoring the statute of limitations for each case as well as weekly monitoring of case activity.

## **Recommendations**

1. We recommend that the MFCU director and chief investigator implement improved case management controls that include monitoring the statute of limitations as well as weekly investigative activity for each case.
2. We recommend that the MFCU director and the chief investigator develop a weekly report that includes each assigned case, each case's approaching statute of limitations date, and each case's investigative activity for the week.

## **Agency Response**

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**OFFICE OF THE UTAH ATTORNEY GENERAL  
MEDICAID FRAUD CONTROL UNIT**

To: Distinguished Members of the Legislative Audit Committee

From: Robert E. Steed  
Director, Medicaid Fraud Control Unit  
Utah Attorney General's Office

Date: July 26, 2012

Subject: **Response to the Report of the Utah Legislative Audit General**

**Introduction**

The Medicaid Fraud Control Unit (MFCU) appreciates the opportunity to respond to the report of the Legislative Audit General's Office. In the recent years we have had many opportunities to meet with legislative auditors to address their questions about Medicaid. As Director, I have appreciated their professionalism and interest in our work. I trust that this review process will be put to good use as we continue to fine tune and improve our operation.

Each state MFCU shares the two part mission of combating fraud in the Medicaid program by providers of Medicaid services and investigating and prosecuting abuse, neglect and exploitation of vulnerable adults and juveniles residing in board and care facilities committed by providers of services. In addition, MFCUs play a central role in policing the pharmaceutical industry from a state perspective. MFCUs pursue actions against large national and international companies which harm the Medicaid program by illegally marketing drugs, violating federal laws on drug pricing and engaging in other illegal activity.

Medicaid fraud, waste and abuse are serious problems with no easy solutions. Oversight and especially enforcement of the complex array of policies, business organization types, program, billing systems and manuals, etc., makes Medicaid fraud enforcement perhaps the most complex area of law enforcement. Criminal enforcement in the Medicaid system is a solution of last resort. Conviction for Medicaid fraud typically results in exclusion from all federal health care programs for five or more years. In some cases a person convicted of abuse or neglect is banned for life from certain types of employment. Appropriately, there are many lesser legal tools available to recover overpayments, address policy violations and deter improper practices that do not rise to criminal violations.

The MFCU takes its authority very seriously. Access to quality health care for the poor and disabled must be achieved while exercising proper stewardship over finite financial resources. Health care oversight needs to be handled in a fair and balanced manner. We respect and work with our provider community while recognizing that without proper oversight, fraud will mean less money available to provide services desperately needed by those served by the program.

The Utah MFCU would like to highlight the following areas of the legislative audit report and provide additional information that would be helpful to the Legislature:

**1. The Utah MFCU is very proactive and highly successful in recovering money in actions taken against drug manufacturers who defraud Medicaid.**

Utah pursues **select cases** in court rather than await a global case resolution for two reasons: first, because many of our cases were filed **before** a nationwide settlement was in process or even contemplated; and second, because global case settlements sometimes do not involve settlement amounts that adequately cover the costs or damages suffered by Utah.

Utah believes in and supports global case resolutions through investigation and data compilation and analysis. However, in a few select cases we have retained law firms experienced in this unique area of the law to pursue Utah's interests directly. In such cases, the MFCU manages the discovery and litigation process and assists in case strategy and negotiation. Utah has recovered over \$64,000,000 since October 2005 to the present. Over \$42,000,000 was recovered **independent** of our global case settlements through direct litigation. We expect and hope this trend will continue, though it is not clear for how long this rate of return will last.

Civil recovery in pharmaceuticals has been a priority for the Unit because existing claims are subject to statutes of limitations and because the ability to recover Utah's losses is vital to Utah's interests. We believe that these lawsuits are having an impact on the way drug manufacturers market their products and the ultimate cost Utah will pay for drugs in the future. We hope that drug reimbursement methods will improve in order to save precious Medicaid resources.

**2. Utah's criminal fraud recoveries are similar to most states with similar sized units and is improving with increased management and training of MFCU staff.**

The legislative auditors have highlighted the successes of the Virginia MFCU as a comparison with Utah's results for the past five years (due to Virginia's greater Medicaid budget) in the area of criminal prosecution outcomes. I appreciate that the legislative auditors have placed their focus on the quality of the referrals the Utah MFCU receives versus making direct correlation between the two state MFCUs. Virginia currently has 81 full time staff, and last year had 70 full time staff, compared to Utah which has gone from 9 staff to 13 full time staff in the last five years.

Every year, MFCUs are required to submit quarterly statistical reports and annual reports to the United States Office of Inspector General. A copy of our annual report is also given to the Legislative Fiscal Analyst. A review of these reports reflect that Utah's MFCU has prosecuted several very serious fraud cases as well as neglect and abuse cases over the years. I have attached a 2011 spreadsheet published by the federal OIG with respect to recoveries and prosecutions by unit for the United States. The highlighted portions of this report refer to the state MFCUs identified in the legislative audit report on page 3. The states identified on page three are peer states which have annual Medicaid

budgets similar to Utah's annual budget. A review of this report shows the numbers of investigations, convictions and recoveries (both criminal and civil) for each state and provides the size of each states respective Medicaid budget and unit staff size.

As Director, I believe we can do more and will do more in the area of criminal enforcement. One of the challenges faced by the Utah MFCU in the past was maintaining a trained investigative team. Over the past six years the Utah MFCU has seen a 100 percent rate of attrition of its investigative staff. Some of our staff retired or left public service, while others were transferred into other units within the Investigations Division of the Attorney General's Office.

To address staff attrition, the MFCU became independent of the Investigations Division last year so that the MFCU could recruit, train and retain investigative staff for the long term. Medicaid enforcement requires a different skill set than many other types of law enforcement. Accordingly, we have placed an emphasis on hiring individuals who desire to work on Medicaid fraud cases and demonstrated an ability to work with the technical aspects of our investigations. We also hired an additional auditor, and an attorney who has many years of experience in health care administration.

With increased training and longevity, our staff will be better equipped to handle the complexity of crimes committed by providers in the Medicaid system. Four of our six investigators have been with the unit for less than a year, but have already demonstrated increased productivity in investigations.

### **3. Cost avoidance**

The Utah MFCU is working with other state agencies to provide training and increase referrals, including the Utah Office of Inspector General. However, the value of criminal cases should not be measured on the basis of financial recovery. The Utah MFCU does not decline investigations or prosecutions based on the dollar value of the case. Some of the most important work of the MFCU involves stopping the fraud even if recovery is limited. We have seen several cases where illegal operations have shut down after the MFCU and started its investigation.

Just one example in the past year: The MFCU concluded audits of providers who contract for services to the disabled with the Division of Services for Peoples with Disabilities. Through our audit, we determined that there does not exist a valid measurement for the services we pay for to provide daily care to the disabled clients in the program. The reimbursement policies in place at the time prevented us from bringing legal action. However, we saw the problem as a significant risk of fraud or abuse. Accordingly, we have begun working with good providers and the Division of Services for Peoples with Disabilities to change the reimbursement system so that a proper audit trail is established and greater accountability exists in the program.

#### **4. The MFCU concurs that case management needs to be improved.**

The legislative audit report identifies an area of concern relating to case management, including cases where the statute of limitations expired prior to case screening and periods of inactivity during the course of the investigation. We believe that the basis for this finding can be attributed to some degree by the lack of documentation contained in our case management system (Versadex). We concur that properly documenting case activity and investigative processes is a needed improvement and is an area of focus for the MFCU.

Aside from adequate documentation, however, we concur that investigative delays in some cases should be resolved with improved case management. Based on this need, the MFCU has adopted a team approach to investigations. The MFCU assigns an attorney, auditor and investigator to all financial fraud cases at the earliest stages of the investigation. The team concept creates more frequent case staffing, greater input on investigative planning, and regular meetings where assignments can be reviewed so the cases will progress with greater momentum and clarity.

Case management also requires that we manage our referral process and investigative planning. Cases involving a strong indication of fraud often become mired in the details when the investigative plan takes on a review of the provider's entire practice or business. In the past the referral received by the MFCU was very old with respect to the most promising allegations of fraud which then expired due to the statute of limitations before the investigation was completed on the review of the provider's billing practices. This is a problem that can be resolved through better investigative planning and the team approach.

#### **5. New Challenges Ahead**

The MFCU is facing new challenges ahead as we plan for a Medicaid system under the Accountable Care Model currently being developed by the Department of Health. The MFCU is seeking to offer input into contract language with providers that assures that the MFCU will continue to have the data, cooperation and quality referrals required to investigate suspicious activity in the program. The MFCU urges members of the legislature to continue its support of the OIG and MFCU in maintaining accountability in the Medicaid program through our efforts to combat fraud, waste and abuse.



**Federal OIG Report of  
National MFCU Statistical Data  
(Fiscal Year 2011)**

## MFCU STATISTICAL DATA FOR FISCAL YEAR 2011

States	Investigations <sup>1</sup>			Indicted/Charged			Convictions			Civil Settlements and Judgements
	Total	Fraud	Abuse/ Neglect	Total	Fraud	Abuse/ Neglect	Total	Fraud	Abuse/ Neglect	
ALABAMA	29	11	18	4	1	3	4	4	0	30
ALASKA	132	82	50	2	2	0	1	1	0	14
ARIZONA	177	148	29	68	50	18	62	55	7	7
ARKANSAS	122	70	52	8	2	6	5	1	4	0
CALIFORNIA	1,314	852	462	151	79	72	123	73	50	21
COLORADO	175	168	7	12	12	0	4	4	0	10
CONNECTICUT	59	49	10	10	10	0	9	9	0	4
D.C.	102	59	43	4	1	3	10	2	8	10
DELAWARE	416	355	61	2	0	2	17	2	15	14
FLORIDA	704	649	55	90	56	34	85	60	25	44
GEORGIA	399	391	8	7	7	0	8	8	0	21
HAWAII	209	89	120	4	0	4	4	1	3	6
IDAHO	97	92	5	6	6	0	8	8	0	11
ILLINOIS	326	208	118	48	30	18	30	20	10	18
INDIANA	899	600	299	5	3	2	13	8	5	37
IOWA	90	65	25	29	15	14	45	26	19	13
KANSAS	182	164	18	16	12	4	15	10	5	21
KENTUCKY	158	104	54	6	3	3	18	3	15	28
LOUISIANA	404	288	116	187	156	31	76	47	29	30
MAINE	45	37	8	1	1	0	5	4	1	13
MARYLAND	171	166	5	7	3	4	5	3	2	15
MASSACHUSETTS	550	363	187	6	6	0	6	3	3	23
MICHIGAN	460	401	59	11	5	6	21	11	10	19
MINNESOTA	90	78	12	25	18	7	17	14	3	21
MISSISSIPPI	900	47	853	54	3	51	51	1	50	13
MISSOURI	174	165	9	2	1	1	7	6	1	20
MONTANA	21	19	2	2	2	0	1	1	0	9
NEBRASKA	116	80	36	4	2	2	3	2	1	19
NEVADA	26	20	6	22	22	0	19	18	1	8
NEW HAMPSHIRE	24	21	3	3	2	1	5	0	5	19
NEW JERSEY	351	244	107	18	10	8	17	11	6	10
NEW MEXICO	113	93	20	5	3	2	5	4	1	26
NEW YORK	652	600	52	80	55	25	89	55	34	108
NORTH CAROLINA	296	280	16	14	12	2	22	18	4	20
OHIO	715	587	128	144	129	15	116	99	17	27
OKLAHOMA	127	81	46	11	8	3	13	7	6	19
OREGON	68	65	3	22	21	1	16	15	1	13
PENNSYLVANIA	272	262	10	49	49	0	38	38	0	13
RHODE ISLAND	58	39	19	4	2	2	2	0	2	5
SOUTH CAROLINA	219	107	112	24	10	14	23	8	15	19
SOUTH DAKOTA	29	27	2	2	1	1	2	1	1	17
TENNESSEE	176	132	44	19	11	8	40	27	13	13
TEXAS	1,339	1,195	144	170	157	13	118	107	11	15
UTAH	144	103	41	6	2	4	10	4	6	18
VERMONT	135	105	30	4	2	2	5	4	1	11
VIRGINIA	310	296	14	17	16	1	8	6	2	17
WASHINGTON	834	276	558	11	5	6	13	8	5	11
WEST VIRGINIA	68	37	31	5	2	3	9	4	5	8
WISCONSIN	299	276	23	5	4	1	5	2	3	9
WYOMING	43	39	4	2	2	0	2	1	1	9
<b>GRAND TOTAL</b>	<b>14,819</b>	<b>10,685</b>	<b>4,134</b>	<b>1,408</b>	<b>1,011</b>	<b>397</b>	<b>1,230</b>	<b>824</b>	<b>406</b>	<b>906</b>

<sup>1</sup>Investigations are defined as the total number of open investigations at the end of the fiscal year

<sup>2</sup>Recoveries are defined as the amount of money that defendants are required to pay as a result of a settlement, judgment, or pre-filing settlement in criminal and civil cases and may not reflect actual collections. Recoveries may involve cases that include participation by other Federal and State agencies.

Information in this chart was reported to OIG by the 50 State MFCUs, except MFCU Grant Expenditures and Total Medicaid Expenditures. MFCU Grant Expenditures and Total Medicaid Expenditures include both Federal and State shares. Abuse/Neglect cases are defined to include "patient funds" cases.

**MFCU STATISTICAL DATA FOR FISCAL YEAR 2011 (continued from previous page)**

States	Recoveries <sup>2</sup>			Expenditures		Staff On Board
	Total	Criminal	Civil	MFCU Grant Expenditures	Total Medicaid Expenditures	
ALABAMA	\$24,449,457	\$1,138,393	\$23,311,064	\$1,005,506	\$5,014,342,056	8
ALASKA	\$2,522,678	\$4,168	\$2,518,510	\$811,076	\$1,395,772,331	5
ARIZONA	\$3,305,387	\$3,227,099	\$78,288	\$1,716,283	\$9,144,221,763	17
ARKANSAS	\$5,087,285	\$357,177	\$4,730,108	\$2,161,111	\$4,152,998,259	22
CALIFORNIA	\$388,262,023	\$13,891,296	\$374,370,727	\$27,843,822	\$58,552,742,935	185
COLORADO	\$7,115,987	\$12,472	\$7,103,515	\$1,934,811	\$4,534,729,952	17
CONNECTICUT	\$46,256,032	\$258,177	\$45,997,855	\$1,175,451	\$5,999,527,969	8
D.C.	\$2,583,932	\$141,920	\$2,442,012	\$2,256,144	\$2,236,218,224	21
DELAWARE	\$1,193,709	\$331,326	\$862,383	\$1,661,581	\$1,469,063,089	15
FLORIDA	\$67,312,145	\$13,306,943	\$54,005,202	\$15,231,803	\$18,764,932,974	144
GEORGIA	\$54,330,962	\$1,756,717	\$52,574,246	\$3,747,770	\$8,465,026,887	37
HAWAII	\$2,062,717	\$52,468	\$2,010,249	\$1,326,368	\$1,595,017,451	14
IDAHO	\$1,367,031	\$176,152	\$1,190,879	\$699,273	\$1,597,069,640	9
ILLINOIS	\$47,805,622	\$3,341,296	\$44,464,326	\$9,668,506	\$13,514,599,822	70
INDIANA	\$29,629,058	\$3,004,110	\$26,624,948	\$4,451,767	\$6,924,185,013	52
IOWA	\$16,583,327	\$179,804	\$16,403,523	\$973,007	\$3,447,207,807	9
KANSAS	\$24,837,657	\$926,986	\$23,910,671	\$1,319,756	\$2,817,704,957	14
KENTUCKY	\$81,439,781	\$48,173	\$81,391,607	\$2,530,904	\$5,853,031,358	27
LOUISIANA	\$26,324,536	\$5,748,227	\$20,576,309	\$4,752,048	\$6,588,249,693	51
MAINE	\$14,861,247	\$4,002,635	\$10,858,612	\$694,152	\$2,467,347,535	8.5
MARYLAND	\$11,119,831	\$85,832	\$11,033,999	\$2,577,674	\$7,605,597,018	23
MASSACHUSETTS	\$43,315,247	\$273,155	\$43,042,092	\$5,079,896	\$13,563,205,340	44
MICHIGAN	\$35,889,849	\$443,359	\$35,446,490	\$4,065,936	\$12,578,277,874	28
MINNESOTA	\$18,027,411	\$347,641	\$17,679,770	\$1,281,364	\$8,679,959,941	12
MISSISSIPPI	\$15,187,574	\$136,535	\$15,051,039	\$2,386,432	\$4,551,045,386	28
MISSOURI	\$43,338,910	\$269,066	\$43,069,845	\$1,750,629	\$8,297,441,101	20
MONTANA	\$2,751,486	\$5,916	\$2,745,570	\$724,219	\$1,006,762,581	8
NEBRASKA	\$8,081,318	\$9,275	\$8,072,043	\$706,580	\$1,746,152,863	8
NEVADA	\$2,704,584	\$641,552	\$2,063,033	\$1,721,662	\$1,657,775,468	14
NEW HAMPSHIRE	\$3,708,472	\$21,104	\$3,687,368	\$552,310	\$1,420,342,452	5
NEW JERSEY	\$24,536,902	\$2,838,168	\$21,698,734	\$4,149,926	\$11,072,510,523	35
NEW MEXICO	\$3,387,517	\$155,315	\$3,232,201	\$1,238,254	\$3,429,136,175	14
NEW YORK	\$136,439,800	\$10,576,871	\$125,862,929	\$40,523,523	\$53,007,817,415	282
NORTH CAROLINA	\$49,284,698	\$9,751,702	\$39,532,996	\$4,216,788	\$10,951,823,844	54
OHIO	\$82,475,770	\$3,111,835	\$79,363,935	\$5,066,678	\$16,055,118,486	64
OKLAHOMA	\$21,322,619	\$1,344,714	\$19,977,904	\$1,712,229	\$4,281,740,154	19
OREGON	\$10,760,962	\$343,325	\$10,417,637	\$1,588,221	\$4,680,337,247	13
PENNSYLVANIA	\$24,714,122	\$1,960,369	\$22,753,753	\$4,342,961	\$21,355,375,088	33
RHODE ISLAND	\$2,164,582	\$62,440	\$2,102,142	\$1,156,390	\$2,178,476,836	10
SOUTH CAROLINA	\$19,622,857	\$1,146,571	\$18,476,286	\$1,313,574	\$5,086,419,319	16
SOUTH DAKOTA	\$3,723,053	\$122,477	\$3,600,577	\$363,039	\$786,193,589	5
TENNESSEE	\$55,497,185	\$4,866,525	\$50,630,659	\$3,693,559	\$8,383,620,528	35
TEXAS	\$190,868,770	\$125,986,255	\$64,882,516	\$16,029,214	\$29,095,249,571	178
UTAH	\$13,716,138	\$35,405	\$13,680,733	\$1,608,289	\$1,854,111,517	11
VERMONT	\$2,013,840	\$30,974	\$1,982,866	\$636,488	\$1,296,208,676	7
VIRGINIA	\$26,445,229	\$949,165	\$25,496,064	\$8,539,299	\$7,128,885,432	81
WASHINGTON	\$19,453,061	\$548,579	\$18,904,482	\$2,617,429	\$6,146,426,452	22
WEST VIRGINIA	\$14,782,532	\$33,367	\$14,749,165	\$1,104,043	\$2,864,116,278	14
WISCONSIN	\$14,810,006	\$86,064	\$14,723,942	\$1,444,581	\$7,219,658,809	13
WYOMING	\$1,690,079	\$53,459	\$1,636,619	\$444,789	\$564,888,226	4
<b>GRAND TOTAL</b>	<b>\$1,749,164,972</b>	<b>\$218,142,554</b>	<b>\$1,531,022,419</b>	<b>\$208,597,113</b>	<b>\$423,078,663,904</b>	<b>1834</b>