

EXHIBIT E-4

Fact Sheet regarding DHS role in implementation of Act 1453 of 2013

At the request of the Public Health Committee, I have attached the following information:

- DHS Medicaid Program Integrity was administered under the Division of Medical Services prior to implementation of Act 1453. DHS transferred 30 positions to the Office of Medicaid Inspector General.
- DHS has been operating under a draft Memorandum of Understanding with the Office of Medicaid Inspector General regarding transfer of duties and functions. A copy of the most recent draft under consideration by OMIG is attached.

STATE OF ARKANSAS
INTERAGENCY AGREEMENT
BETWEEN THE
ARKANSAS DEPARTMENT OF HUMAN SERVICES
AND THE
OFFICE OF MEDICAID INSPECTOR GENERAL

This agreement is entered into between the Arkansas Office of Medicaid Inspector General and the Arkansas Department of Human Services to implement the requirements of Acts 1496 and 1499 of 2013 with respect to referrals and operation of Arkansas Medicaid Program Integrity functions.

I. ABBREVIATIONS:

- A. "Abuse" has the same meaning as stated in Ark. Code Ann. § 20-77-2502(1).
- B. "CMS" means the United States Department of Health and Human Services Centers for Medicare and Medicaid Services.
- C. "DHS" means the Arkansas Department of Human Services. DHS is the single state agency for administration of the Medical Assistance Programs established under Titles XIX and XXI of the Social Security Act.
- D. "DHHS" means the United States Department of Health and Human Services.
- E. "DMS" means the DHS Division of Medical Services.
- F. "Fraud" has the same meaning as stated in Ark. Code Ann. §§ 5-37-217(a) and 20-77-2502(2).
- G. "Inquiry Access" means read-only access, which may be restricted as required by federal laws

and regulations, for example, laws and regulations restricting access to federal income tax information.

H. “Medi-Medi” means the Medicare – Medicaid Data Match Program.

I. “MFCU” means the Medicaid Fraud Control Unit of the Office of the Attorney General.

J. “MMIS” means the Medicaid Management Information System.

K. “NCCI” means the National Correct Coding Initiative.

L. “NCCI Edits” means edits applied to claims for services performed by the same provider, for the same beneficiary, on the same date of service. Providers report procedures / services performed on beneficiaries utilizing Healthcare Common Procedure Coding System (“HCPS”) and Current Procedural Terminology (“CPT”) codes. These codes are submitted on claim forms to Fiscal Agents for payment.

M. “OMIG” means the Arkansas Office of Medicaid Inspector General created by Act 1499 of 2013.

N. “OIS” means the DHS Office of Information Systems.

O. “SURS” means the Surveillance Utilization Review System within the MMIS.

P. “T-MSIS” means the Transformed Medicaid Statistical Information Statistics System.

Q. “Waste” has the same meaning as stated in Ark. Code Ann. § 20-77-2502(8).

II. PURPOSE:

A. DHS, MFCU, and the OMIG have concurrent interests in the prevention, detection, investigation, and prosecution of fraud, waste, and abuse in medical assistance programs.

B. This Agreement is governed in accordance with the following principles:

(1) OMIG and DHS are separate and distinct entities of state government with joint and

complementary responsibility for the effective and efficient functioning of the Medicaid program. Both entities are committed to ensuring the prevention, detection, and investigation of fraud, waste, and abuse in any program or entity that manages, expends, or oversees state or federal Medicaid funds.

(2) OMIG will assume a primary role in investigating and identifying potential or actual fraud, waste, and abuse and pursue all methods of administrative recovery available.

(3) OMIG, within the Governor's Office, is the state agency designated to provide a completely independent review of uses and expenditures of Medicaid funds to prevent, reduce, and recoup improperly paid Medicaid funds. Nothing in this Agreement is meant to affect OMIG's control in determining the inquiries undertaken and how they should be managed.

(4) DHS is the single state agency designated to administer and implement the Medicaid program in Arkansas. Nothing in this Agreement is meant to affect DHS' authority with respect to the administration or implementation of the Medicaid program.

(5) The parties to this Agreement recognize the importance of effective oversight of the Medicaid program to prevent, reduce, and recover improperly-paid Medicaid funds. The parties agree to coordinate their activities to avoid duplicating efforts or impairing the effectiveness of the prevention, detection, and recoupment functions identified in this Agreement.

(6) The parties recognize the importance of an effectively administered Medicaid program and that it is a prerequisite to maintaining the fiscal integrity of the program. The parties will coordinate their activities whenever necessary to ensure that all Medicaid payments are proper and that improper payments, for whatever reason, are recovered.

C. Nothing in this Interagency Agreement shall be construed to affect, in any way, the authority

of:

- (1) DHS/DMS to carry out the functions of the single state agency administering the medical assistance programs; or
- (2) MFCU to undertake and manage its independent inquiries and investigations.

D. DHS shall retain all of its functions existing on June 30, 2013 except such functions that are transferred to the OMIG under the Act as implemented by this Interagency Agreement.

E. OMIG and DMS shall comply with the obligations and responsibilities set forth at Ark. Code Ann. § 20-77-2501 *et seq.* and 42 CFR Part 455.

F. Procedures for coordination and communication:

(1) DMS and OMIG will coordinate all Program Integrity Functions for each of their respective agencies to the extent of such duties prescribed by federal or state law as set out in this Agreement.

(2) DMS and OMIG will coordinate policies and procedures issues that may impact the fiscal integrity of the Arkansas Medicaid program to the extent possible and with the understanding that DHS is the sole Agency responsible for the administration of the Arkansas Medicaid program. OMIG's responsibility is limited to providing recommendations regarding DMS proposed rules, policies, and procedures, or recommended changes to those rules, policies, or procedures.

(3) DMS and OMIG will coordinate Program Integrity issues that may impact the quality of care of the beneficiaries receiving services under the Arkansas Medicaid program to the extent possible and with the understanding that DHS is the sole Agency responsible for the administration of the Arkansas Medicaid program.

(4) DMS and OMIG will maintain open communications regarding policies and procedures that will likely impact the quality of care or scope of services the Medicaid beneficiaries receive. DMS will provide OMIG with notice of new policy proposals set forth in administrative rule, State Plan amendments, waiver amendments, provider manuals, or eligibility policy manuals and allow for OMIG to comment and make recommendations prior to DMS finalizing policy.

(5) DMS will make employees and reports accessible to assist in any way with investigations or audits undertaken by OMIG.

(6) OMIG, in consultation with DMS, will be the main contact with CMS related specifically to the Medicaid Program Integrity functions listed herein. DMS will provide personnel to meet with CMS when requested by OMIG and in consultation with the duties described herein.

(7) Whenever a conflict in operations arises between the employees of OMIG and DMS that resists resolution, the matter will be elevated to the director level of each party for resolution.

(8) The parties recognize that in the event of a conflict in interpretation, a court will ordinarily defer to DMS' interpretations of medical assistance state laws and rules and federal laws and regulations unless DMS' interpretations are contrary to the plain and ordinary meaning of the law, rule, or regulation.

(9) OMIG will notify DMS when there is a credible allegation of fraud and will inform DMS of information/evidence of medical assistance program fraud, waste, and abuse.

(10) OMIG and DMS will work with MFCU in making joint determinations regarding the existence of good cause not to suspend Medicaid payment, or to end suspension of Medicaid payment, in cases where there is a credible allegation of fraud.

(11) Access to information systems operated by DHS or DHS contractors shall:

(A) Be read-only;

(B) Extend to the information systems and electronic records to which each DMS program integrity staff member had access on June 30, 2013; and

(C) Continue unchanged with respect to OMIG staff that are successors to DMS program integrity staff transferred to OMIG.

III. INFORMATION:

A. DMS and HP will provide OMIG with inquiry access to the following systems and data:

- (1) The MMIS including SURS reports;
- (2) The Medicaid client eligibility and enrollment system;
- (3)

OMIG may request HP to create and input MMIS inquiries and provide the results of such queries to OMIG.

B. Systems and data production costs that would not be incurred but for MMIS and SURS operations requested by OMIG shall be borne by OMIG.

C. If complying with an OMIG request may disrupt DMS operations, HP will notify OMIG and DMS and will take no action on the OMIG request pending DMS written approval of the OMIG request.

D. OMIG will be responsible for all data line installation and equipment placement in OMIG offices not located within DHS facilities.

E. OMIG may ask DMS and HP to modify or enhance the MMIS, SURS, or both, subject to DMS approval. DMS will pay the cost of approved modifications and enhancements.

F. DHS and OMIG agree to inform the other immediately of any problems relative to OMIG

information system usage, including, without limitation, processing or programming errors.

G. DHS will provide OMIG with information regarding collections received in connection with fraud, waste, and abuse in the medical assistance program.

IV. CONFIDENTIALITY: A. DHS and OMIG enter into this Agreement with the intention of complying with the Health Insurance Portability And Affordability Act (“HIPAA”) Privacy and Security Rule provisions and the Health Information Technology for Economic and Clinical Health (HITECH) Act.

B. This Agreement provides for uses and disclosures of Protected Health Information (“PHI”) from DHS to the OMIG. Such uses and disclosures of PHI are necessary to further the statutory mission of the OMIG and are required by law as provided by Ark. Code Ann. §20-77-2505. HIPAA, and its implementing regulations found at 45 C.F.R. § 164.512 and 45 C.F.R. § 164.504, permit such uses and disclosures.

C. DHS and OMIG agree that each will make information available to the other only for purposes directly connected with the administration of a medical assistance program. OMIG agrees not to use or disclose protected health information other than as permitted or required by the Agreement or as required by law.

D. DHS and OMIG will comply with state and federal laws, rules, and regulations regarding the use and disclosure of information, including federal regulations promulgated by the Department of Health and Human Services, Social Security Administration, and Internal Revenue Service.

E. OMIG shall seek and comply with guidance from the DHS Privacy Officer regarding the disclosure of information to third parties, including a subcontractor of OMIG. OMIG shall adopt policies and procedures to assure that information contained in its records is used solely for

purposes set out in Act 1499 of 2013. OMIG shall report to DHS any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. OMIG agrees to report to DHS any unauthorized acquisition, access, use, or disclosure of unsecured PHI the OMIG holds on behalf of DHS, including the identity of each individual who is the subject of the unsecured PHI of which it becomes aware, no case later than ten (10) calendar days after the discovery of the breach. Notification shall be made to the DHS Privacy Officer.

V. INFORMATION STORAGE

OMIG will use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement. OMIG will store information places that are physically secure from access by unauthorized persons and maintained in such a way that unauthorized persons cannot retrieve the information by means of computer, remote terminal, or by other means; that information reduced to hard copy form will be shredded after use and after record retention requirements have been met.

VI. REFERRAL AND OPERATION: THE OMIG SHALL CARRY OUT THE FOLLOWING SPECIFIC FUNCTIONS (These provisions add to or supplement the content of § II C):

A. NCCI: OMIG shall promptly provide DMS with NCCI data and information, including without limitation NCCI edits, provided or made available to it by CMS.

B. Medi-Medi: OMIG shall conduct activities related to the Medi-Medi project including, without limitation, receiving data provided by CMS and conducting investigations sufficient to

determine if an Arkansas Medicaid provider has engaged in Medicaid fraud, waste, or abuse.

C. Program Integrity Reviews, including Case Reviews: OMIG shall conduct program integrity reviews, communicate the results of those reviews to the providers, and administer all operations related to reconsideration and appeals as a result of those reviews. OMIG shall provide DMS with electronic copies of final reports, reconsideration determinations, appeal decisions, or settlements.

D. Recovery Audit Contractor: OMIG shall conduct activities as needed to comply with the RAC federal directive.

(1) Specifically, OMIG shall contract recovery services in order to meet state or federal regulations related to the Medicaid program and the recovery of any improper payments by providers. No contract by OMIG may bind DMS for payment without the express consent of DMS.

(2) OMIG will retain a contingency contracted amount, not to exceed 12.5% of the state portion of a claim for overpayment, for any Recovery Audit Contract agreement entered into on behalf of DHS and for services as described in this paragraph VI.D.

(3) For any cases that may involve fraud, the contract must state that all cases that may involve fraud must be returned to OMIG for appropriate referral to MFCU.

(4) OMIG shall obtain prior written approval from DMS prior to contracting for RAC services.

(5) DMS by this Agreement assigns to OMIG its rights and obligations under the existing RAC contract entered into by DMS on [insert date].

E. OMIG and DMS shall jointly coordinate interaction with the DHHS, CMS, and Arkansas

Legislative Audit in connection with program integrity matters.

F. T-MSIS: OMIG shall coordinate the implementation of T-MSIS in cooperation with DHS, DMS information technology and data analytics staff, and the MMIS contractor.

VII. INFORMATION EXCHANGE:

A. DMS agrees to furnish OMIG, and OMIG agrees to furnish DMS, copies of:

- (1) All federal audit reports and findings relating to medical assistance programs;
- (2) All documents received from CMS related to corrective actions or threatened or actual sanctions, deferrals, or disallowances in a medical assistance program.

B. OMIG agrees to furnish DHS draft copies of proposed findings related to DHS or any DHS Division or office, and allow a reasonable time, no less than 10 working days, for DHS to respond, provide additional information, or both, before finalizing the findings.

C. OMIG agrees to furnish DHS copies of final findings related to DHS or any DHS Division or office.

IX. MFCU MEMORANDUM OF UNDERSTANDING:

DMS and MFCU have entered into one or more Memoranda of Understanding. In their dealings with each other, DMS and OMIG agree that the Memoranda of Understanding bind DMS, and that in case of conflict with this Agreement, DMS shall comply with the Memoranda of Understanding.

X. FUNDING:

Pending additional appropriation and funding for OMIG by the General Assembly, DMS shall continue to provide Medicaid Program Integrity funding to OMIG as it has for the period from July 1, 2013, through the date of this Agreement, subject to any limitations or restrictions

imposed on DMS under state or federal law.

XI. SUBORDINATION:

The parties agree to be bound by any change in federal laws or regulations, or state laws or state plans pertaining to the operation of the various programs affected by this agreement and, in the event this agreement is irreconcilably inconsistent with such laws, regulations, or plans, this agreement shall be subordinate thereto.

XII. SEVERABILITY:

The provisions of this agreement are severable such that invalidity of one (1) provision shall not affect the validity of any other provision.

XIII. TERM:

Contingent upon approval by the Attorney General as provided in Ark. Code Ann. § 25-20-105(f), this agreement shall be considered effective immediately upon execution, and shall remain in full force and effect until modified or terminated by mutual consent of the parties or by operation of law. Upon termination, OMIG shall provide DMS with a complete file record for all open and closed case files, including documentation of OMIG action.

XIV. AMENDMENT:

No condition or requirement contained in or made a part of this Agreement shall be waived or modified without a written amendment. Amendments to this agreement may be made by mutual consent and written agreement of both parties.

XV. NO AGENCY:

Agents, employees, or representatives of each party shall not be deemed to be agents, employees, or representatives of the other. No contract by a party may bind the other party without that

party's express consent.

XV. CONSTRUCTION:

This agreement is intended to supplement, and not to modify or supplant, state and federal law governing the parties. This agreement shall be liberally construed to carry out the purposes set forth at Ark. Code Ann. § 20-77-2501 *et seq.* and 42 CFR Part 455.

John Selig, DHS Director:

Jay Shue, Inspector General

Date

Date

Reviewed and Approved:

Dustin McDaniel, Attorney General

By: _____

Date