

# A Performance Audit of Survey and Certification's Corrective Action Plans



Audit # 2017-02

June 22, 2017



Utah Office of  
Inspector General

**Gene Cottrell**  
Inspector General

June 22, 2017

To: Utah Department of Health

Please see the attached report, **A Performance Audit of Survey and Certification's Corrective Action Plans**, (Report 2017-02). An Executive Summary is included at the inception of this report. The objectives and scope of the audit are explained on page 3 of this report.

Sincerely,

Gene Cottrell  
Inspector General  
Utah Office of Inspector General

cc: Joseph Miner, Nathan Checketts, Shari Watkins, Emma Chacon, Janica Gines, Tonya Hales, Aaron Eliason, Melanie Henderson, Joel Hoffman, Paul Patrick.

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## EXECUTIVE SUMMARY

The federal Center for Medicare and Medicaid Services (CMS) requires that each state identify a State Medicaid Agency (SMA). This SMA oversees the entire Medicaid Program for the State. The SMA must use a Survey Agency (SA) to determine eligibility and certification for Medicaid providers and facilities. Each SMA must enter into an interagency agreement with the certifying SA to establish the adjudicative function of the certifying SA and provide for the application of Federal certification standards and procedures. This survey and certification service is for both Medicare and Medicaid. For the State of Utah, the Survey Agency is the Utah Department of Health Bureau of Health Facility Licensing and Certification (BHFLC). One Major Duty of the BHFLC is to "Assure facility correction through requiring Plans of Correction (POC), follow up inspections, use of sanctions, and on site monitoring."

The Bureau uses four documents to accomplish this duty. First is the CMS State Operations Manual, the most recent version revised October 2014. Second, Quality Assurance for the Medicare & Medicaid Programs Mission & Priority Document, (MPD), and the most recent version is the FY 2016 document. Third is the Utah State Statute, Utah Title 26 Chapter 21, and lastly Utah Administrative Rule R432. The CMS State Operations Manual and the Quality Assurance for the Medicare & Medicaid Programs set the standards of frequency of surveys within the facility groups and the standards that the facility must meet to pass a survey or certification. CMS Form 2567 lists all deficiencies observed at survey. The Form also lists the POC provided by the Provider if required. BHFLC sends the Form 2567, with the listed deficiencies, to the provider or facility. Depending on the severity of the deficiency, the provider or facility may or may not need to submit a POC. The BHFLC approves the POC and reports to the provider or facility after this approval. CMS approves all completed Form 2567.

### Audit Objectives:

- Determined the POC process protects Medicaid funds by not paying facilities while under citations and corrective action.
- Determined if the survey and certification result in a POC so follow-up on the findings require a second review.
- Determined if the Follow-up on POCs is adequate.
- Determined if the BHFLC met the frequency of Surveys and Certifications listed in the Federal MPD schedules.
- Determined that BHFLC reported and managed the POC process correctly.

### Audit Findings:

Finding Number 1: Required Interagency Agreement Does Not Exist – SMA and SA

Observation Number 1: Use of Legal Disclaimer in Plans of Correction.

Observation Number 2: Plan of Correction Process Appears to Function Correctly.

# INTRODUCTION

## BACKGROUND

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The federal Center for Medicare and Medicaid Services requires that each state identify a State Medicaid Agency (SMA). This SMA oversees the entire Medicaid Program for the State. The SMA must use a Survey Agency (SA) to determine eligibility and certification for Medicaid providers and facilities. Each SMA must enter into an interagency agreement with the certifying SA to establish the adjudicative function of the certifying SA and provide for the application of Federal certification standards and procedures. This survey and certification service is for both Medicare and Medicaid. The CMS State Operations Manual suggests that this same SA have an agreement with the Utah Medicaid Fraud Control Unit (MFCU) to provide information on suspected fraud activities in the skilled nursing facilities and the nursing facilities. For the State of Utah, the SA is the Utah Department of Health Bureau of Health Facility Licensing and Certification. One Major Duty is to "Assure facility correction through requiring Plans of Correction, follow up inspections, use of sanctions, and on site monitoring."

## OBJECTIVES AND SCOPE

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- Determined that BHFLC reported and managed the POC process correctly.

Audit Scope:

The scope of this audit covers Federal Fiscal Year 2015-2016.

## METHODOLOGY

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Determined the POC process protects Medicaid funds by not paying facilities while under citation and corrective action the Utah Office of Inspector General (UOIG):

- Looked on the Utah Department of Health Medicaid Health Financing (Medicaid) website looking for the Bureau of Facility Licensing, Certification and Resident Assessment (BHFLC) to learn what areas the BHFLC was responsible.
- Developed a series of question to ask the BHFLC Director to understand what the processes are and who performs which responsibilities.

- Met with BHFLC Bureau Director and asked the developed questions.
- The BHFLC Director provided resource materials and references that explained the program and gave direction to the UOIG in understanding the process.
- Proceeded to review the resource material and look up the references given by the BHFLC Director.

Determined if the survey and certification result in a POC so follow-up on the findings require a second review the UOIG:

- Developed a series of questions from the resource materials to ask to the three subject matter experts (SME) of the BHFLC.
- Set up a meeting with the three SMEs to ask the questions and get feedback about the program.
- Requested a list of all of the surveys and certifications for the scope period.
- Combined the individual programs facility lists into a combined master list.
- Selected a sample of 30 facilities from the master facility list.
- Requested the Form CMS 2567 for the 30 facilities on the list.
- Requested explanation for the three facilities missing from the sample list.

Determined if the follow-up on POCs is adequate the UOIG:

- Reviewed each Form CMS 2567 to identify deficiencies.
- Reviewed the Form CMS 2567 to identify how the provider would resolve the deficiencies listed.
- Evaluate if the resolutions were reasonable and if the BHFLC recorded the Plan of Corrections showed adequate completion.

Determined if the BHFLC met the frequency of Surveys and Certifications listed in the Federal MPD schedules the UOIG:

- Reviewed the Quality and Assurance for the Medicare & Medicaid Programs FY2016 Mission & Priority Document (MPD) for the frequency of each facility group.
- Discussed this frequency schedule process with the BHFLC Director and SMEs. Asked how they meet the frequency schedule.
- Reviewed the CMS State Operations Manual to identify the rules for surveys and certifications.
- Analyzed the facilities list provided from BHFLC to show which facilities surveyed.

Determined that BHFLC reported and managed the POC process correctly the UOIG:

- Requested a copy of the agreement between the State Medicaid Agency (SMA) and the Survey Agency (SA) as required. Reviewed agreement received.
- Requested who approves the POC when submitted by the Provider. Verify approval of POCs in Sample.
- Verified completed POCs for date listed.

**FINDING 1****Required Interagency Agreement Does Not Exist – SMA and SA.**

In the CMS State Operations Manual, Chapter # 1, Paragraph 1008B titled Medicaid Approval, we read; “With the exception of State-operated Medicaid-only NFs [Nursing Facilities], Medicaid law requires that the same SA that makes the certifications for Medicare provider and supplier eligibility also makes the determinations for Medicaid eligibility. The law also requires that there be a designated State Medicaid Agency (SMA) responsible for the overall management of the Medicaid program. See [42 CFR 431.610](#). For State-operated Medicaid-only NFs, [§1919](#) of the Act specifies that the Secretary will have enforcement authority. Each state’s SMA accepts ultimate responsibility to CMS for the Medicaid program administration. Each SMA must enter into an interagency agreement with the certifying SA to establish the adjudicative function of the certifying SA and provide for the application of Federal certification standards and procedures. The SMA must accept the SA’s certification decisions as final, but it exercises its own determination as to whether to enter into agreements with the approved providers.” As evidenced by this standard there should be a mutually agreed upon interagency agreement between the SMA, Utah State Medicaid Health Financing and the SA, the Department of Health Bureau of Facility Licensing and Certification.

An agreement between the SMA and SA does not exist. When asked the question about having an interagency agreement, the BHFLC director and two of the three SMEs, first did not know that an agreement was required and second were unaware whether one existed. UOIG sent a request to the Department of Health Medicaid Health Financing to receive a copy of the agreement. UOIG received an outdated Memorandum of Agreement (MOA). This MOA was unsigned by the BHFLC Director. When the BHFLC Director reviewed this MOA, he responded that this agreement was only for the Home and Community Based Services (HCBS) Waiver Programs.

Without the executed MOA between Medicaid and the BHFLC, the overall management of the Utah Medicaid program in the area of survey and certification falls to the Regional Office of CMS.

**Recommendations**

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- 1.1 Medicaid should create and execute the required interagency agreement between the SMA (Department of Health Medicaid Health Financing) and the SA (Department of Health Bureau of Health Facility Licensing and Certification).

**Observation  
# 1**

**Use of Legal Disclaimer in Plan of Correction.**

Several providers from the sample of POCs began their Plan of Correction using words like; “This plan of correction constitutes the facility’s allegation of compliance for the deficiencies cited in the CMS 2567. However, the submission of this plan is not an admission that a deficiency exists. The Plan of Correction is prepared solely because it is required by federal and state law. This response and Plan of Correction does not constitute an admission or agreement by the provider of the facts alleged or the conclusions set forth in the Statement of Deficiencies.” Yet, these same providers delineated how they would correct each deficiency noted in the Statement of Deficiencies.

Since the SA has adjudication authority and the SMA must accept the SA decisions as final, and since the SA has the authority to use sanctions, fines, bans on admission and closures, it is clear that the provider wants to preserve their legal rights. UOIG asked the Assistant Attorney General, assigned to the UOIG, if the use of this language really would preserve the facilities rights any more than not using this language. The legal opinion in response, no the language does not preserve the provider or facilities legal rights any more than not using the language. However if the issue goes to a hearing the use of this language changes the approach of both the petitioner and the respondent. Further, by using this language in an attempt to preserve legal rights, in fact does not improve the legal rights of the provider. According to the Assistant Attorney General, the provider maintains all of the hearing rights and recourse afforded them in the law, regardless of the language used.

**Observation  
# 2**

**POC Process Appears to Function Correctly.**

The UOIG received a list of facilities that were scheduled for survey and certification during the Federal Fiscal year 2016. This list totaled 198 facilities in 10 categories. The ten categories are; End Stage Renal Disease, Federally Qualified Health Centers (FQHC), Hospice & Home Health, Hospitals, Outpatient Physical Therapy, Portable X-ray, Psychiatric Residential Treatment Facility, Surgery Centers, Intermediate Care Facilities for the Intellectually Disabled, and Nursing Facilities. The UOIG selected a sample of 30 facilities. We requested the forms CMS 2567 on each of these sample facilities. There were three facilities on the sample list that we did not receive the form CMS 2567. These were for two FQHCs and one Home Health facility. The BHFLC explained that they do not survey the FQHCs and that the one Home Health facility is accredited and deemed by CMS's Joint Commission, therefore no survey done on that facility. The UOIG reviewed each of the remaining 27 form 2567 and found that the statement of deficiencies were reasonable and that the POCs seemed to correct the stated deficiencies. The CMS Form 2567 showed approved POCs and completion dates entered on the forms. By all appearances, the process is functioning as set up by CMS.

## GLOSSARY OF TERMS

<u>Term</u>	<u>Description</u>
BHFLC	Bureau of Health Facility Licensing and Certification
CMS	Centers for Medicare & Medicaid Services
FQHC	Federally Qualified Health Center
HCBS	Home and Community Based Services
MFCU	Medicaid Fraud Control Unit
MOA	Memorandum of Agreement
MPD	Mission and Priority Document
NF	Nursing Facility
POC	Plan of Correction
SA	Survey Agency
SMA	State Medicaid Agency
SME	Subject Matter Expert
UOIG	Utah Office of Inspector General

## MANAGEMENT RESPONSE



State of Utah

GARY R. HERBERT  
Governor

SPENCER J. COX  
Lieutenant Governor

### Utah Department of Health

JOSEPH K. MINER, MD, MSPH, FACPM  
Executive Director

#### Division of Medicaid and Health Financing

NATE CHECKETTS  
Deputy Director, Utah Department of Health  
Director, Division of Medicaid and Health Financing

October 24, 2017

Gene Cottrell  
Inspector General  
Office of the Inspector General of Medicaid Services  
P.O. Box 14103  
Salt Lake City, Utah 84114

Dear Mr. Cottrell:

Thank you for the opportunity to respond to the audit entitled *A Performance Audit of Survey and Certification's Corrective Action Plans* (Report 2017-02). We appreciate the effort and professionalism of you and your staff in this review. Likewise, our staff spent time collecting information for your review, answering questions, and planning changes to improve the program. We believe that the results of our combined efforts will make a better, more efficient program.

We concur with the recommendation in this report. Our response describes the actions the Department plans to take to implement the recommendation. The Department of Health is committed to the efficient and effective use of taxpayer funds and values the insight this report provides on areas that need improvement.

Sincerely,

Nate Checketts  
Deputy Director, Department of Health  
Division Director, Medicaid and Health Financing



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*Response to Recommendations*

Recommendation 1.1

*Medicaid should create and execute the required interagency agreement between the SMA (Department of Health Medicaid Health Financing) and the SA (Department of Health Bureau of Health Facility Licensing and Certification).*

Department response:

We concur with this recommendation. Medicaid will create and execute the interagency agreement between the Division of Medicaid and Health Financing and the Bureau of Health Facility Licensing and Certification.

*Contact: Janica Gines, Assistant Director, Division of Medicaid and Health Financing, 801-538-6027*

*Implementation Date: May 1, 2018*

## EVALUATION OF MANAGEMENT RESPONSE

The UOIG accepts the Management Response issued by the Utah Department of Health, Division of Medicaid and Health Financing. We are satisfied that the course of action complies with the recommendation 1.1 to create and execute an interagency agreement between the Division of Medicaid and Health Financing and the Bureau of Health Facilities Licensing and Certification.

**UTAH OIG CONTACTS AND STAFF ACKNOWLEDGEMENT**

**UTAH OIG CONTACT**



David P. Stoddard, CIGA  
Auditor

Neil Erickson  
Audit Manager

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**UTAH OIG MISSION STATEMENT**

The Utah Office of Inspector General will enhance the integrity of the Utah State Medicaid program by preventing fraudulent, abusive, and wasteful practices within the Medicaid program and recovering improperly expended Medicaid funds while promoting a high quality of patient care.

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