

The Vermont Medicaid Fraud & Residential Abuse Unit

2012 Annual Report

July 1, 2011 – June 30, 2012



Office of the Vermont Attorney General

**VERMONT MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT
ANNUAL REPORT**



July 1, 2011 - June 30, 2012

**Office of the Vermont Attorney General
Honorable William H. Sorrell**

To Report Medicaid Fraud:

If you would like to report a suspected case of Medicaid fraud or patient abuse or have questions, please contact the Medicaid Fraud and Residential Abuse Unit at (802)828-5511.

The Unit can be contacted by mail at:
109 State Street
Montpelier, VT 05609

Credits

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PREFACE

This Annual Report is submitted in support of the State of Vermont's Medicaid Fraud and Residential Abuse Unit's ("MFRAU") Federal Fiscal Year 2012 budget request to the U.S. Department of Health and Human Services, Office of Inspector General ("OIG"), and MFRAU's Application for Recertification under 42 C.F.R. § 1007.15(c).

Pursuant to 42 C.F.R. § 1007.15(c)(1), the State certifies that no changes in the conditions reported pursuant to 42 C.F.R. § 1007.15(a)(1) through (5) have occurred in the last twelve months. Pursuant to 42 C.F.R. § 1007.15(c)(3), the State incorporates by reference the following Annual Report Narrative.

2012 ANNUAL REPORT NARRATIVE

I. INTRODUCTION

Vermont's Medicaid Fraud and Residential Abuse Unit (“MFRAU” or “Unit”) is a law enforcement entity within the Criminal Division of the Vermont Attorney General’s Office. Funded jointly by the State and federal government,¹ MFRAU is comprised of eight staff members—three Assistant Attorney Generals, two Analysts, two Investigators, and a Program Technician—whose dual function is to investigate and prosecute fraud by healthcare providers in the Vermont Medicaid program, and to respond to complaints of abuse, neglect, and exploitation of vulnerable adults in Medicaid-funded facilities and programs. One of forty-nine Medicaid Fraud Control Units nationwide, MFRAU helps to ensure the fiscal integrity of the Vermont Medicaid program, which provides essential medical care and services to approximately 173,000 low-income Vermonters, including 65,000 children, or about twenty-eight percent of the Vermont population, at a total annual cost of approximately \$1.0 billion. Consistent with the time period of Vermont's annual budget, this narrative covers the Unit's activities from July 1, 2011 through June 30, 2012.

During the reporting period, the Unit continued to pursue the prosecution of four of the largest and most complex cases in the Unit’s history, including (1) the criminal prosecution of a licensed nursing aide for the murder and financial exploitation of a nursing home resident; (2) the criminal prosecution of an oral surgeon for Medicaid fraud and the unlawful sexual touching of a female Medicaid patient; (3) the civil prosecution of a local pharmacy and owner for charging the Medicaid program, and individual Medicaid beneficiaries, illegal dispensing fees, co-payments, and administrative fees; and (4) a multi-state civil enforcement action against a large pharmaceutical company for failing to accurately report the “best price” for a widely-used prescription drug as required by the federal Medicaid Drug Rebate Program, resulting in almost \$1 billion in damages nationally to state and federal programs.

¹ For every \$.25 invested by the State in MFRAU's enforcement activities, the federal government contributes \$.75. As discussed in Section IV below, the money that MFRAU recoups for the State through its case activities more than covers Vermont’s share of the Unit’s expenses. *See* Appendix G.

Despite the ongoing litigation demands posed by these four major cases, the Unit was able to sustain, focus, and in some respects significantly expand, its overall enforcement efforts. These changes were achieved by improving internal case efficiency and leveraging resources both within the Attorney General's Office and at other State and federal agencies. Notably, whereas in the prior reporting period (SFY'11) the Unit processed 161 complaints and opened 49 new investigations, in SFY'12 the Unit received 186 complaints and opened 70 new investigations. The Unit's focus has also shifted toward handling more Vermont fraud cases as a percentage of new investigations. In SFY'11, Vermont fraud cases constituted 30% of the Unit's new investigations. In SFY'12, this figure jumped to 54%. *See Appendix A.* The Unit has also increased the number of cases it closed in the past year, from 28 to 53, reflecting the Unit's efforts to resolve a backlog of older cases caused by recent staff turnovers and vacancies. Because of an increase in case referrals, at the end of the reporting period, the Unit had 128 pending cases, nine more than at the end of the previous year. *See Appendix C.* The Unit criminally charged seven persons during the reporting period, and achieved seven criminal convictions, about the same as in the previous year.

In terms of actual recoupment, the Unit recovered \$2,316,357 in State and federal funds taken by fraud, and has entered into settlements under which the State will collect an additional \$6,962,211 – for a total of \$9,278,568. This is more than achieved by the Unit in any prior year, and derives mostly, but not exclusively, from multi-state or “global” cases against pharmaceutical companies for off-label marketing and kickback violations. *See Appendix F.* These cases were handled by litigation teams organized by the National Association of Medicaid Fraud Control Units (NAMFCU), of which the Unit is an active member. Independent of the NAMFCU case process, the Unit reached a settlement with a Vermont hospital for \$262,500 related to Medicaid billing fraud. This settlement resulted after prolonged negotiations and in close cooperation with the State Medicaid program's Program Integrity Unit.

In addition to these case activities, Unit staff helped achieve two legislative victories this past year. The first involved the passage of a bill that permits the Attorney General to investigate and bring civil—as opposed to criminal—prosecutions against individuals, caregivers, and facilities for abuse, neglect and exploitation of vulnerable adults. This law is codified at 13 V.S.A. §§ 1384-85. The second victory involved the

defeat of provisions in a “pharmacy shield” law that would have significantly hampered the State’s ability to audit pharmacies that receive Medicaid funds.

Unit staff also engaged in various outreach efforts to deter and prevent Medicaid fraud and elder abuse in Vermont, and benefitted from attending various training programs conducted by NAMFCU and other organizations throughout the year. These training and outreach events, along with the Unit’s operations, case activities, and legislative involvement, are described in more detail below.

To learn more about the Unit or to submit a case referral, please contact MFRAU Director, Ed Baker, at (802) 828-5511 or ebaker@atg.state.vt.us.

II. MFRAU OPERATIONS

A. Organization and Personnel

Vermont’s Medicaid Fraud and Residential Abuse Unit has both criminal and civil jurisdiction and is a part of the Criminal Division of the Vermont Office of the Attorney General. Vermont has one of the smallest Medicaid Fraud Control Unit’s in the country.² Whereas the Vermont Medicaid budget has increased more than ten-fold since the Unit was founded in 1979, during that same time period the Unit's staff has grown by only two: from six to eight. Unit personnel now include three Assistant Attorneys General (one of whom is the Director), two Investigators with full law-enforcement authority, two Analysts, and one Program Technician. The Unit also benefitted for a portion of the reporting period from the services provided by two legal interns and a temporary paralegal.

B. Equipment and Facilities

The Unit is located in a newly renovated area on the third-floor of the Attorney General’s Office in Montpelier, Vermont. Most staff members have their own offices. The Unit’s location enables staff to maintain the privacy of medical and financial records, the confidentiality of law enforcement information and equipment, and promotes the team concept.

This past year the Unit implemented a new case management system to improve our ability to track and process cases. This system has facilitated the reporting of case data to the federal government. It will soon be superseded, however, by a more

² States with smaller Medicaid Fraud Control Units include Wyoming, Alaska, New Hampshire, and South Dakota.

sophisticated case management system being adopted by the Attorney General's Office. It is expected that the Unit's transition to this new system will occur in the next few months.

C. Outreach

Unit personnel actively engage in outreach efforts to raise awareness of Medicaid fraud and elder abuse throughout Vermont. Notably, this past year, Unit staff once again provided training on elder and vulnerable adult abuse to two separate classes of cadets at the Vermont Police Academy. Also, in November, the Unit Director gave a presentation to pharmacists and pharmacy students on "The Practice of Pharmacy and Medicaid Enforcement" as part of a symposium at the Albany College of Pharmacy and Health Sciences. In March Attorney General Sorrell gave a presentation to Vermont physicians at a continuing medical education seminar on Drug Diversion and Prescription Drug Abuse. In May, in conjunction with the United States Attorney's Office (USAO) and DVHA's Program Integrity Unit, the Unit organized and hosted the first annual meeting of the Vermont Health Care Fraud Enforcement Task Force. This event brought together representatives from various state and federal agencies to learn about the latest developments in health care fraud enforcement in the State. In addition, Unit staff conducted two training sessions with representatives from the Vermont Department of Aging and Independent Living on how to detect and prevent home health care fraud.

D. Training Received

In order to increase the Unit's enforcement capabilities and effectiveness, Unit staff received training in a variety of forums this past year, including the "Fraud 101" program sponsored by NAMFCU, seminars by NHCAA, CLE programs by the Attorney General's Office, and various classes offered by the State Medicaid agency and/or its contractors. The Unit maintains a complete list of training events attended by staff, which is available upon request.

E. Coordination with Other Government Agencies and Community Organizations

1. Department of Vermont Health Access

This reporting period the Unit again benefited from a close working relationship with the Department of Vermont Health Access ("DVHA" or "the Agency"), the State

agency that oversees the Vermont Medicaid program. In particular, Unit staff worked closely with DVHA to collect data and documents in response to subpoenas and discovery requests in several complex fraud cases that are in active litigation. The Agency also assisted Unit staff with a number of fraud cases that are in the early stages of investigation.

The Unit works closely with DVHA's Program Integrity Unit ("PIU") to identify appropriate fraud referrals. The Program Integrity Unit is responsible for identifying fraud, waste, and abuse within the Medicaid program, and is required to refer all credible allegations of fraud to the Unit. During the 2012 reporting period, MFRAU received fourteen (14) referrals from the Program Integrity Unit. *See* Appendix B. This represents a significant increase over the number of referrals (3) received from PIU during the previous year. The Unit has taken several steps to increase the quality and number of referrals from PIU further. First, the Unit continues to meet with PIU staff on a bi-monthly basis to discuss existing and potential cases. Second, the Unit and PIU have formed five "Provider Focus Groups," comprised of several individuals from each unit. These groups meet bi-monthly to discuss existing and potential cases, develop provider training, and draft program recommendations related to a particular provider type. These efforts have enhanced case-related communication between Unit and PIU staff, led to a number of informal case referrals, and increased staff awareness of fraud detection and enforcement issues. In the next few months, MFRAU's Director will be working with the PIU Director to recalibrate the Provider Focus Groups to more closely reflect actual State Medicaid expenditures by provider type, consistent with OIG performance guidelines and DVHA's strategic goals. *See* Appendix I.

2. Other State Agencies and Community Organizations

Unit staff also benefit from active working relationships with many other State departments and community organizations. The overall structure of Vermont's state healthcare fraud enforcement network is depicted on the attached chart. *See* Appendix J. The three agencies that Unit staff work most closely with on patient abuse cases are the Department of Aging and Independent Living ("DAIL"), the Secretary of State's Office of Professional Regulation ("OPR"), and the Vermont Health Department. The majority of the Unit's patient abuse referrals are generated from Adult Protective Services ("APS") and Licensing and Protection ("L&P"), two departments within DAIL. Unit

staff notify the appropriate licensing boards of all possible licensing actions. When a case is accepted for investigation by multiple agencies, the Unit coordinates joint investigations whenever possible to minimize the number of interviews and investigative resources utilized.

3. Federal Agencies and Joint Task Forces

One of the Unit's priorities is the cultivation of close and effective working relationships between State and federal agencies to combat fraud and abuse in the Medicaid programs. During this reporting period, Unit staff interacted with their federal counterparts in a number of ways. First, the Unit worked closely with a federal agent assigned to Vermont by the U.S. Department of Health and Human Services, Office of the Inspector General (OIG) on a number of investigations involving both Medicaid and Medicare fraud. Second, the OIG Office of Auditing Services assisted the Unit in developing a statistical sampling plan in a major pharmacy billing fraud case. Third, the Unit worked closely with federal prosecutors in Vermont, Massachusetts, and at DOJ headquarters in D.C. on a variety of multi-state cases, including the *Wyeth* litigation described below. Finally, the Unit has worked closely with an OIG Agent, and staff at the USAO in Burlington, to create two separate task forces to better combat healthcare fraud and resident abuse in Vermont. These task forces combine the experience, expertise, and perspective of various state and federal agencies.

a. *Vermont Elder Justice Task Force*

The Vermont Elder Justice Task Force first convened during the summer of 2011 and continues to meet every other month. The working group is comprised of representatives from Vermont state and federal agencies. The mission of the task force is to create opportunities for improving quality of care for the elderly in long-term care settings and other care-giving programs by improving communications among stakeholders and law enforcement. In addition to MFRAU, State participants include the Office of Chief Medical Examiner, DAIL, L&P, APS, Vermont Legal Aid, and the Vermont Department of Health. Federal participants include both the U.S. Attorney's Office and OIG.

This past year the group has focused on the overprescribing of antipsychotics to elderly residents with dementia in Vermont nursing homes. The discussions have

centered on what resources and methods are currently available for collecting reliable data on Vermont nursing home use of atypical antipsychotics for their residents. The group has also gathered information on what other agencies such as CMS, OIG, and DAIL are doing to address this nationwide problem.

b. The Vermont Health Care Fraud Enforcement Task Force

This past January, the Unit Director met with the USAO in Burlington and the OIG Agent assigned to Vermont to create the Vermont Health Care Fraud Enforcement Task Force. The objectives of the task force are to: (1) improve collaboration and coordination of civil and criminal healthcare fraud cases among Vermont state and federal agencies; (2) identify trends in Vermont healthcare fraud; (3) share and leverage resources; and (4) develop new fraud enforcement tools and resources. The task force meets on a quarterly basis to discuss active cases, and is comprised of representatives from MFRAU, USAO, OIG; and FBI. Non-law enforcement representatives from various other agencies are invited to participate in quarterly meetings as appropriate. These additional partners include PIU, the U.S. Drug Enforcement Agency, the Benefit Integrity Support Center of the Centers for Medicare and Medicaid Services (“BISC”), the Vermont Medical Practice Board, the Vermont Board of Pharmacy, and the U.S. Dept. of Defense Criminal Investigation Services (DCIS). Private partners include BCBS of Vermont and Hewlett Packard (“HP”), a fiscal agent of the Vermont Medicaid program.

On May 10, the Task Force held its first annual “invitational” meeting at the Attorney General’s Office, offering members of Vermont’s healthcare fraud enforcement community the opportunity to meet one another, learn about healthcare fraud trends in New England, and develop new strategies for fighting healthcare fraud in Vermont. Speakers included Susan Waddell, HHS OIG Special Agent in Charge for New England; Karen Fondry, Program Director for Fraud Waste and Abuse at BCBS-VT; Richard Cannon, Special Agent, DCIS; and Joshua Hayes, Supervisory Special Agent, FBI. Representatives from PIU, BISC, and BCBS-VT also discussed strategies and tools for detecting healthcare fraud at both the state and federal level. The meeting was attended by approximately 50 state and federal employees.

F. License Suspensions and Provider Exclusion

Consistent with federal regulations, the Unit informs OIG of all fraud convictions, allowing OIG to formally exclude convicted providers from the Medicaid and Medicare programs. The Unit also keeps DVHA and the Vermont Office of Professional Regulation informed of relevant enforcement actions, so that appropriate licensing sanctions, including suspension, can be imposed. Exclusions and suspensions are an important enforcement tool that prevents convicted providers from continuing to cheat the healthcare system. In this reporting period, as a result of the Unit's efforts, five (5) providers were suspended from the Medicare and Medicaid programs. The Unit's Program Technician submitted three (3) additional requests to the Office of the Inspector General to exclude providers from the Medicaid program. To date, a total of 126 providers have been excluded by the OIG as a result of the Unit's requests.

G. Program Recommendations and Legislative Initiatives

During the reporting period, Unit staff participated in two major legislative initiatives. First, the Unit was successful in getting House Bill 413 passed that expands the Attorney General's ability to investigate and prosecute cases of abuse, neglect and exploitation of vulnerable adults. Codified at 13 V.S.A. §§ 1384-85, and modeled after similar statutes in Massachusetts and California, this new law permits the Attorney General to investigate and bring civil prosecutions against individuals, caregivers, and facilities for abuse, neglect and exploitation when jail and/or criminal penalties are not appropriate.

Second, in April, the Unit's Director and counsel for DVHA testified against certain provisions in House Bill 674, which were intended by its sponsors to curtail the private oversight of local pharmacies by Pharmacy Benefit Management companies. If passed as originally written, the bill would also have restricted the Attorney General's and DVHA's ability to audit pharmacies suspected of Medicaid billing fraud. Because of the Unit's and DVHA's joint objections, the law, as passed, excluded the Attorney General's Office and DVHA from the scope of its provisions.

Unit staff also met with representatives from various State agencies throughout the year, including DVHA and DAIL, to share recommendations for closing regulatory loopholes and increasing efficiency. Many of these recommendations related to the

provision of home health care services. The Unit's Director is currently working on a document formalizing these recommendations. Unit staff also met with DAIL representatives to provide input on a new electronic timesheet system being implemented by DAIL for home health care employees.

III. MFRAU CASE DEVELOPMENTS AND PROSECUTIONS

A. Complaint Referrals

The Unit received 186 referrals from a variety of sources during the reporting period. *See* Appendix B. A large number of these referrals (119) came from other Vermont state agencies, primarily Licensing and Protection (86), DVHA (14), and Adult Protective Services (7). The next largest number of referrals came from private individuals (20). The Unit also received a small number of referrals from State contractors (7), other State law enforcement entities (1), federal agencies (5), and healthcare providers (12). The Unit will continue to encourage referrals from a variety of sources through its training and outreach efforts, press releases on enforcement actions, task force activities, the AGO website, and word of mouth.

B. Fraud Investigations

This past year the Unit opened new investigations of Medicaid fraud in numerous sectors of the Vermont health care industry, including 16 institutions (e.g., hospitals, nursing facilities), 36 practitioners or individual health care workers (e.g., doctors, nurses, home health care workers), and 18 medical support entities (e.g., pharmacies, durable medical equipment suppliers). *See* Appendix C. The Unit also worked on many global multi-state cases involving large pharmaceutical and other large healthcare companies. At the end of the current reporting period, the Unit's fraud caseload was comprised of 53 open Vermont fraud cases and 46 open "multi-state" or "global" cases. *Id.* In total, Unit staff processed 86 fraud complaints and opened 54 fraud investigations. *See* Appendix A. Four fraud investigations opened this past year resulted in criminal convictions.

C. Fraud Prosecutions

Following are cases that the Unit actively prosecuted in the past year. Several of these cases were either resolved short of actual charges being filed and/or are currently ongoing.

1. *State v. McGRX, Inc. et al.*

During the reporting period, Unit staff continued to prosecute the largest civil Medicaid fraud case in its history against a local pharmacy and its owner for fraudulently billing the Vermont Medicaid program. The pharmacy set up an elaborate scheme to “churn” dispensing fee claims for individual seven-day supplies of continuous-use drugs and charge both “service fees” and co-payments to Vermont Medicaid recipients contrary to State and federal Medicaid regulations. The State’s complaint seeks restitution, civil penalties, and injunctive relief through six different causes of action including civil Medicaid fraud, consumer fraud, and numerous common law claims of action. In February, following oral argument, the Second Circuit Court of Appeals affirmed the dismissal of the pharmacy’s related lawsuit against the State on *Younger* abstention grounds. The Unit filed a motion to dismiss the defendants’ amended counterclaims, which incorporated their federal claims, and presented oral argument. With the help of OIG Office of Auditing Services, the Unit also developed and filed a statistical sampling plan, engaged in electronic discovery, took depositions, and participated in settlement negotiations with the defendants. The case remains in active litigation and may be tried sometime within the next year.

2. *State v. Gray (“Gray fraud case”)*

Another significant fraud case being prosecuted by the Unit involves a Vermont oral surgeon charged with upcoding surgical extractions, performing medically unnecessary procedures, and overbilling Vermont Medicaid for anesthesia. Hundreds of patient records were examined by investigators and experts and over 50 witnesses were interviewed. As a result of this investigation, in October of 2010, the State filed twenty-three felony charges against the defendant. In March 2012, the Court heard oral argument on the defendant’s motion to suppress all evidence in the case. In August 2012, the Court issued a ruling on that motion largely in the State’s favor. The trial, which is expected to last two weeks, will likely be set for November 2012.

3. *Hospital Billing Fraud Related to Rehabilitative Services*

In June the Unit settled a fraud investigation into the Medicaid billing practices of a Vermont hospital for children's rehabilitative services. In exchange for a release of the covered conduct, the hospital agreed to pay \$262,500 to resolve the State's allegations that it had improperly billed the State for Medicaid claims. The settlement was achieved after prolonged negotiations and extensive data analysis by PIU and Unit staff.

4. *Home Health Care Timesheet Fraud*

This past year, Unit staff, with the assistance of an OIG agent, actively investigated numerous timesheet fraud cases, resulting in several state and federal criminal convictions. Since 2009, the Unit has charged and convicted eleven different individuals in separate cases resulting in over \$56,000 in court-ordered restitution. Following is a description of several timesheet fraud cases successfully prosecuted during the past reporting period:

a. *State v. Tammy Thomas*

On May 15, 2012, Tammy Thomas of Granville, New York, was convicted in Vermont District Court for Windsor County of four misdemeanor counts of False Pretenses. The convictions stemmed from Ms. Thomas's submission of falsified time sheets in order to obtain payment for services that were not provided while she was employed as a personal caregiver under Vermont Medicaid.

b. *State v. Danny Francis*

On July 12, 2011, Danny Francis of Colchester, Vermont, was convicted of five misdemeanor counts of False Pretenses. The convictions stemmed from Mr. Francis's submission of falsified timesheets in order to obtain payment for services that were not rendered, while he was employed as a personal caregiver under Vermont Medicaid.

c. *U.S. v. Anne Roberts; U.S. v. Rebecca Earle*

In December of 2011, following an investigation by the USAO assisted by Unit staff, a federal Grand Jury indicted Anne Roberts of Ferrisburgh, VT, and Rebecca Earle of Bomoseen, VT, with defrauding Vermont Medicaid by submitting false time sheets for personal care services that they did not receive, and arranging for pay-checks destined for their care-givers to be sent to their own addresses. They subsequently pled guilty to the charges and await sentencing.

D. Global Cases

The Unit actively participates with other state Medicaid fraud control units in multi-state or “global” cases against pharmaceutical and other large companies coordinated by the National Association of Medicaid Fraud Control Units (“NAMFCU”) in conjunction with the Department of Justice and regional U.S. Attorney Offices. These cases are typically raised in the first instance by a whistle-blower or “relator” and involve allegations that the defendant corporations paid kickbacks to doctors to prescribe drug products, violated federal “best price” reporting requirements, and/or marketed drugs for uses not approved by the Food and Drug Administration. *See* Appendix H. Following are summaries of the largest several global cases in which the Unit participated this past year.

1. *United States of America, et. al v. Wyeth Pharmaceuticals, Inc. (“Wyeth”)*

The Unit Director is part of a NAMFCU litigation team representing the interests of thirty-six states that have intervened in a joint federal/state civil enforcement action against Wyeth Inc., a large pharmaceutical company owned by Pfizer. Wyeth is alleged to have submitted inaccurate “best price” reports for sales of Protonix, a widely-used prescription drug for reflux disease, thereby inflating the prices paid by the Plaintiff States’ Medicaid programs as well as by the federal government. The Unit Director has taken and/or participated in several depositions in the case, assisted with summary judgment briefing, mediation, and pre-trial preparations. The States and federal government estimate their damages to be in the hundreds of millions of dollars.

2. *United States v. Abbott Laboratories, Inc. (“Abbott”)*

In May 2012, the Unit participated in a national Medicaid/consumer protection prescription drug settlement reached with Abbott Laboratories, Inc. over allegations of illegal off-label marketing of its drug Depakote. Under the terms of the settlement, Vermont received approximately \$1.7 million (including \$693,000 in Medicaid-related damages) to resolve allegations that, from 1998 to 2008, Abbott promoted the sale of the seizure drug Depakote for uses that were not approved by the FDA, including the treatment of dementia in nursing home patients and psychiatric conditions in children. The agreement also resolved allegations that Abbott paid kickbacks to doctors, in the form of speaker programs and continuing medical education events, to induce them to prescribe Depakote for these same off-label conditions.

3. *United States v. Merck Sharpe & Dohme Corp.* (“Merck”)

In November 2011, the Unit participated in a national settlement with pharmaceutical manufacturer Merck regarding its illegal marketing of the drug Vioxx. Under the terms of the settlement, Vermont received approximately \$600,000 in damages and penalties related to allegations that Merck marketed Vioxx for uses not approved by the FDA, misrepresented its cardiovascular safety, and also made other false and misleading statements concerning the drug. As part of the settlement, Merck entered into a Corporate Integrity Agreement with the federal government to closely monitor the company’s future monitoring practices.

4. *United States v. GlaxoSmithKline* (“GSK”)

In June, the Unit participated in the largest healthcare fraud settlement in U.S. history, obtaining approximately \$2 million from pharmaceutical manufacturer GlaxoSmithKline (GSK) to resolve criminal and civil allegations that GSK unlawfully marketed certain drugs—including Paxil, Wellbutrin, Advair—for uses for which the drugs were not approved by the Food and Drug Administration (FDA), and that GSK made false representations regarding the safety and efficacy of certain drugs, offered kickbacks to medical professionals, and underpaid rebates for various drugs paid for by Medicaid and other federally-funded healthcare programs. As part of the settlement, GSK pled guilty to federal criminal charges that it violated the federal Food, Drug, and Cosmetic Act (“FDCA”) by introducing certain drugs into interstate commerce without proper labeling, and failed to report clinical data regarding Avandia to the FDA.

5. *U.S. v. McKesson Corp.* (“McKesson”)

In June, the Unit participated in a national settlement with McKesson, one of the nation’s largest drug wholesalers, relating to allegations that McKesson reported inflated pricing data for a large number of prescription drugs, causing Vermont’s and other state Medicaid programs to overpay for those drugs. The drug pricing data at issue concerned the “Average Wholesale Price” (AWP) benchmark used by most states to set pharmacy reimbursement rates for drugs dispensed to Medicaid beneficiaries. McKesson reported the inflated AWP prices to First Data Bank, a co-conspirator. Under the terms of the settlement, Vermont will receive approximately \$700,000.

E. Resident Abuse Investigations

Unit personnel use both criminal and civil enforcement authority to combat the abuse, neglect, and exploitation that tragically occur in Vermont nursing homes, residential care facilities, home health programs, and hospitals. The Unit has historically investigated and prosecuted cases involving the death of residents due to a lack of quality care, sexual and physical abuse, misappropriation of patient trust funds, and drug diversion.

In total, the Unit received 72 abuse complaints, of which 13 investigations were opened. *See* Appendix A. The Unit obtained two abuse and neglect convictions. *See* Appendix D. Currently, the Unit is actively investigating 27 cases of vulnerable adult abuse, neglect, and exploitation, and we have two abuse cases pending in criminal court. *See* Appendix C.

1. Assistance to Local Police Unit with Exploitation Investigation

In June, we agreed to assist a small local police agency in the investigation of a couple who were luring vulnerable adults into their home, and then physically abusing and financially exploiting them. The couple is also accused of physically abusing the small children that were in the home. The two caregivers have been charged with aggravated assault and child cruelty. The investigation is pending.

2. Nursing Home Quality of Care Investigation

During this reporting period we increased our investigative efforts into a failure of care case involving a corporation that owns multiple nursing homes in Vermont. Investigators, an Analyst, and a prosecutor from our Unit meet monthly with the USAO, the OIG, and a DOJ attorney to discuss and analyze data relating to the corporation's Vermont facilities. In December, and again in May, we received complaints arising in two facilities owned by the corporation concerning the deaths of two residents due to inappropriate medication administration. The Unit is continuing to investigate the circumstances surrounding the deaths of these residents.

3. Investigation of Resident Death at County Mental Health Agency

Last year, the Unit investigated the death of a developmentally disabled young man in a board and care facility owned and operated by a county mental health agency. The victim died of an apparent Prozac overdose. The mental health agency was

responsible for his medication administration and 24/7 supervision of the client. This past year, the facility entered into a civil settlement with the victim's parents. The Unit is continuing to investigate the facts and circumstances of this death.

4. Nursing Home Failure of Care Investigation

The Unit is also following up on an investigation into the death of an 89-year-old resident of a Vermont nursing home that involved failure of care. As part of a settlement three years ago, the nursing home agreed to be monitored at its own expense by an out-of-state independent monitor for at least one year. Two years ago, the agreement was extended indefinitely because of serious deficiencies cited throughout the year by the monitors. This past reporting period, the monitors visited the facility again and generated a report citing continued concerns and making repeat recommendations. The facility has recently requested that the monitoring be ended. The Unit is currently evaluating this request.

5. Joint Investigation into Quality of Care Issues at Vermont Nursing Homes

As described above, the Unit is participating in an Elder Justice Task Force with the United States Attorney's Office. This reporting period we are also jointly working on a case with the USAO, OIG, and the Department of Justice into quality of care issues at several nursing homes. The investigation is still in the initial stages.

F. Resident Abuse Prosecutions

During the past year, Unit staff successfully investigated and prosecuted the following resident abuse cases.

1. State v. Jodi LaClaire

In January, the Unit arrested a licensed nurse's aide in New Hampshire and brought her to Vermont to face charges of second degree murder and abuse of a vulnerable adult in connection with the April 1, 2009, death of a non-diabetic nursing home resident. The resident died while in the care of the defendant as a result of being injected with insulin. The defendant is also alleged to have injected insulin into another non-diabetic resident of the nursing home, causing her to be hospitalized for several days. The Unit earlier charged the defendant with sixteen counts of financial exploitation of a vulnerable adult and attempted financial exploitation involving the unauthorized use of the deceased resident's credit card. This complex case has taken up considerable Unit investigative and prosecutorial resources during the past reporting period. In the past

year, the Unit has issued three search warrants, interviewed over 50 witnesses (including 7 expert witnesses), and taken over 22 depositions in this case alone. The case is expected to go to trial sometime in the spring of 2013.

2. *State v. Robyn Page*

In August of 2011, the Unit successfully prosecuted a nursing aide for abusing an elderly resident of an assisted living facility. The aide pled guilty to charges of Abuse of a Vulnerable Adult and Obtaining a Regulated Drug by Deceit, and was sentenced to three months in jail. The charges stemmed from the aide removing Oxycodone pills from a medication bottle prescribed to an elderly resident for pain relief. The aide then substituted the missing pills with generic Tylenol, in place of the victim's Oxycodone. Her actions deprived the elderly resident of his prescribed pain medication, causing him unnecessary pain. In addition to jail, the court imposed a three-year probation term with special conditions that will prohibit the aide from employment providing direct care to vulnerable adults and working in any setting where she would have direct access to narcotics. She was also ordered to undergo substance abuse screening and must participate in any counseling that her probation officer directs.

3. *State v. Shannon Bedard*

In September, the Unit charged a nurse's aide with two felony counts of Obtaining a Regulated Drug by Deceit, two misdemeanor counts of Abuse of a Vulnerable Adult, and two misdemeanor counts of Financial Exploitation of a Vulnerable Adult. The aide, while working at a residential care home, stole fentanyl patches that were prescribed for elderly patients under her care. The aide also withdrew funds from an elderly patient's bank account without legal authority to do so. In February, the aide was convicted on several of the counts and given deferred sentences by the court.

4. *State v. Gray ("Gray L&L case")*

In December, the Unit criminally charged oral surgeon Dr. Peter Gray with the unlawful sexual touching of a female Medicaid patient while performing a dental procedure. As discussed above, the Unit is also prosecuting Dr. Gray on 23 counts of Medicaid fraud. Both cases will go to trial sometime within the next reporting period.

5. *State v. James Erwin*

In July, the Unit successfully defeated the motion by James Erwin, a registered nurse, to have a nine month prison sentence reconsidered. Erwin had been convicted in April 2009 for stealing a syringe containing fentanyl from an anesthesia tray in a hospital

operating room. Following oral argument by the Unit's senior attorney, the Court ordered Erwin to begin serving his sentence two weeks after the hearing.

IV. MONETARY RECOUPMENT AND OPERATING COSTS

During the past reporting period, the Unit recovered \$2,316,357 for the Medicaid Program while protecting some of Vermont's most vulnerable citizens from harm. In addition, the Unit entered into settlements under which the State will collect an additional \$6,962,211 – for a total of \$9,278,568. This is more than achieved by the Unit in any prior year, and derives mostly primarily from multi-state or “global” cases against pharmaceutical companies for off-label marketing and kickback violations. *See* Appendix F. These cases were handled by litigation teams organized by the National Association of Medicaid Fraud Control Units (“NAMFCU”), of which MFRAU is an active member. In each instance, the Unit's analysts provided data from the State's Medicaid Management Information System (“MMIS”) to facilitate the determination of Vermont's damages and share of settlement. Also included in the Unit's total recoveries is a settlement achieved by the Unit against a Vermont hospital for Medicaid billing fraud. This settlement totaled \$262,500 and was reached after lengthy negotiations and data analysis carried out in close cooperation with the State Medicaid program's PIU. The remaining money returned to the Vermont Medicaid program came from restitution ordered in criminal cases successfully prosecuted by Unit personnel.

MFRAU's total operating costs during the reporting period were \$793,786. *See* Appendix G. Seventy-five percent of these expenses, or \$595,339, was paid for by the federal government as part of the Unit's federal grant. The remaining twenty-five percent, or \$198,447, was more than off-set by the Unit's share of “additional recoveries” from the Unit's recoupment. In the past year, MFRAU's share of these additional recoveries totaled \$304,801. *See* Appendix F.

V. UNIT PROJECTIONS

During the next recertification period, the Unit anticipates spending a considerable amount of its resources preparing for, and conducting, trials in at least two major cases, while maintaining a number of active investigations. In addition, the Unit plans to continue working with the Program Integrity Unit through the Provider Focus Groups to increase the number of referrals in the following areas: hospitals; long-term

care facilities and nursing homes, pharmacies, and physicians. The Unit projects that the investigative, prosecutive, and civil recovery efforts of the Unit will result in 75 new investigations, 28 prosecutions, and \$3,550,000 in monetary recoupment. *See* Appendix F, H. In addition, the Unit anticipates continuing its outreach efforts to the Medicaid provider, recipient, and enforcement communities related to fraud and abuse issues.

VI. SUMMARY

We are honored to be entrusted with policing critical Medicaid dollars and protecting our elderly citizens in nursing homes, facilities and programs. In the next year, we will continue our commitment to aggressively investigate and prosecute those who seek financial gain at the expense of the Vermont Medicaid program. Equally important, we will continue to protect and serve our most vulnerable Vermont citizens from patient abuse, neglect and exploitation.

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**VERMONT ATTORNEY GENERAL'S OFFICE
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2012 ANNUAL REPORT - APPENDIX A

COMPLAINTS

Complaint Type	Complaints Received	Investigated by Unit	Referred Out	Deferred	Declined
Patient Abuse & Neglect	72	13	7	12	40
Vermont Fraud	70	38	9	18	5
Multi-State Fraud	16	16	0	0	0
Patient Funds	28	3	4	4	17
TOTAL	186	70	20	34	62

*Complaints of mixed type--involving both fraud and abuse/neglect elements--are categorized as either fraud or abuse/neglect at the Unit Director's direction.

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MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX B

COMPLAINTS TO MFRAU - BY REFERRAL SOURCE

Referral Source	SFY '10	SFY '11	SFY '12
Vermont State Agencies			
DVHA / Program Integrity Unit	5	3	14
Adult Protective Services	15	20	7
Choices for Care	1	3	1
Department of Aging and Independent Living	1	0	2
Department of Children & Families	1	0	2
Licensing and Protection	134	88	86
Medical Examiner	1	1	2
Medical Practice Board	1	1	1
Office of Professional Regulation	12	4	4
Office of the Public Guardian	1	0	0
Office of the State Auditor	1	0	0
Subtotal	173	120	119
State Contractors			
ARIS (fiscal ISO)	12	0	6
Transition II (supportive ISO)	0	0	1
GMTA	0	2	0
Visiting Nurse Association	2	0	0
Subtotal	14	2	7
State Law Enforcement			
Local Police	1	3	0
VT State Police	0	1	0
States Attorney	4	0	0
VT Attorney General / CAP	0	0	1
Subtotal	5	4	1
Federal Law Enforcement			
Office of Inspector General	2	2	2
United States Attorney Office	1	2	3
FBI	1	0	0
Subtotal	4	4	5
Federal Contractors			
MIGs, RACs, ZPICs	0	0	0

Vermont Providers			
Health and Rehabilitation Centers / LTC	0	4	0
Area Agency on Aging for Northeastern VT	0	0	1
Central Vermont Counseling on Aging	1	0	1
Central Vermont Home Health and Hospice	1	0	2
Community Health Services of Lamoille Cty.	0	0	1
Counseling Services of Addison County (DA)	0	0	3
Howard Center (DA)	0	0	1
Northwest Counseling & Support Services	2	1	0
United Counseling Services	0	0	1
Visiting Nurses Association		0	1
Washington County Mental Health (DA)		0	1
Northeast Kingdom Human Services	2	0	0
Subtotal	6	5	12
Private Individuals / Corporations			
Vermont Citizens	17	14	20
Corporations	0	0	1
Subtotal	17	14	21
Other			
Legal Aid	1	0	0
MFRAU (arising from other investigations)	4	1	1
NAMFCU ("global" cases)	14	10	16
Other MFCUs	1	0	0
Press	0	1	3
Public Officials	1	0	0
Supervisory Unions / Schools	1	0	1
Subtotal	22	12	21
TOTAL	241	161	186

COMPLAINTS TO MFRAU - BY COMPLAINT TYPE

Complaint Type	Number of Referrals SFY'10	Number of Referrals SFY'11	Number of Referrals SFY'12
Patient Abuse & Neglect	108	90	72
Vermont Fraud	77	36	70
Multi-state Fraud	14	10	16
Patient Funds	42	25	28
TOTAL	241	161	186

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX C

MFRAU INVESTIGATIONS BY PROVIDER TYPE

Provider Type	Pending at Start of Period	Opened Within Period	Closed Within Period	Pending at End of Period
Institutions				
Hospitals	2	2	2	2
Home Health Care Agencies	1	2	1	2
Nursing Facilities / LTC	14	9	5	18
Substance Abuse Treatment	1	0	0	1
Other Institutions	1	3	0	4
Subtotal	19	16	8	27
Practitioners/Individuals				
All Nurse/PA/NP	3	0	1	2
Chiropractors	0	0	0	0
Counselors/Psychologists	5	2	5	2
Dentists	2	1	0	3
Home Health Care Aides	26	18	18	26
Doctors	1	3	0	4
RN/Licensed Nurse/PA/NP	6	2	2	6
CNA	1	3	2	2
Home/PCA	3	2	2	3
Other Practitioner	1	5	4	2
Subtotal	48	36	34	50
Medical Support				
DME	1	2	1	2
Transportation	2	1	2	1
Pharmaceutical Manufacturer	34	10	8	36
Laboratories	2	0	0	2
Pharmacy	5	4	0	9
Other Medical Support	0	1	0	1
Subtotal	44	18	11	51
TOTAL	111	70	53	128

MFRAU INVESTIGATIONS BY COMPLAINT TYPE

Complaint Type	Pending at Start	Opened	Closed	Pending at End
Patient Abuse & Neglect	26	13	12	27
Vermont Fraud	47	38	32	53
Multi-state Fraud	38	16	8	46
Patient Funds	0	3	1	2
TOTAL	111	70	53	128

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX D

MFRAU CASES

Complaint Type*	Carried Over	Opened	Prosecuted	Resolved	Investigated but Not Prosecuted
Criminal Cases					
Patient Abuse & Neglect	26	13	2	10	27
Vermont Fraud	45	37	6	25	51
Multi-State Fraud	0	0	0	0	0
Patient Funds	0	3	0	1	2
Subtotal	71	53	8	36	80
Civil Cases					
Patient Abuse & Neglect	0	0	0	0	0
Vermont Fraud	2	1	0	1	2
Multi-State Fraud	38	16	0	8	46
Patient Funds	0	0	0	0	0
Subtotal	40	17	0	9	48
TOTAL	111	70	8	45	128

*Complaints of mixed type--involving both fraud and abuse/neglect elements--are categorized as either fraud or abuse/neglect at the Unit Director's direction.

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX E

MFRAU CASE OUTCOMES

CASE OUTCOMES	SFY '10	SFY'11	SFY'12
Criminal Prosecutions			
Plea agreement	7	9	6
Dismissed	0	0	0
Conviction at trial	0	0	0
Acquitted at trial	0	0	0
Other	0	0	1
<i>Subtotal</i>	7	9	7
Civil Prosecutions			
Settled prior to trial	10	10	13
Dismissed	0	0	0
Resolved on Summary Judgment	0	0	0
Judgment for State at trial	0	0	0
Judgment for Defendant at trial	0	0	0
Other	0	0	0
<i>Subtotal</i>	10	10	13
TOTAL	17	19	21

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX F

RECOUPMENTS BY AGENCY

	Recovery Actions Initiated	Referred to Another Agency	Overpayments* Identified	Overpayments* Collected	Overpayments* to be Collected
MFRAU			\$9,278,568	\$2,316,357	\$6,962,211
DVHA/PIU under agreement with Unit	NA	NA	NA	\$3,293,089	
TOTAL				\$5,609,446	\$6,962,211

* Overpayments include the total state *and* federal share.

MFRAU RECOUPMENTS BY CASE TYPE

Case Type	Overpayments Collected SFY'11	Overpayments Collected SFY'12	Projected SFY'13
Multi-State	\$2,479,359	\$2,053,433	\$3,000,000
Vermont Civil	\$200,990	\$262,924	\$500,000
Vermont Criminal	\$8,286	\$7,952	\$50,000
TOTAL	\$2,688,635	\$2,324,309	\$3,550,000

MFRAU RECOUPMENTS BY CASE SHARE

Case Share	Overpayments Collected SFY'11	Overpayments Collected SFY'12
Federal Share	\$1,651,363	\$1,200,383
State-Only Share	\$1,028,986	\$1,115,974
TOTAL	\$2,680,349	\$2,316,357

STATE-ONLY SHARE BREAKDOWN

Case Share	Overpayments Collected SFY'11	Overpayments Collected SFY'12
Restitution to DVHA	\$758,230	\$811,173
MFRAU's Share of "additional recoveries"	\$270,756	\$304,801
TOTAL	\$1,028,986	\$1,115,974

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX G

MFRAU COSTS

Expense Category	SFY'10	SFY'11	SFY'12	Projected FFY'13
Personnel	\$572,160	\$566,500	\$600,965	\$753,803
Non-Personnel	\$155,329	\$122,220	\$126,532	\$205,604
Indirect Costs	0	0	\$66,289	\$110,332
TOTAL	\$727,489	\$688,720	\$793,786	\$1,069,739

**VERMONT ATTORNEY GENERAL'S OFFICE
MEDICAID FRAUD AND RESIDENTIAL ABUSE UNIT**

2012 ANNUAL REPORT - APPENDIX H

MFRAU PROJECTIONS - BY CASE TYPE

Case Type	Pending at Start (7/1/12)	Projected New Complaints	Projected New Investigation	Projected Open Cases	Projected Closed Cases	Projected Prosecuted	Projected Resolved
Patient Abuse & Neglect	27	70	15	10	25	5	10
Vermont Fraud	53	70	40	30	50	20	20
Multistate Fraud	46	15	15	15	10	1	10
Patient Funds	2	25	5	3	3	2	2
TOTAL	128	180	75	58	88	28	42

MFRAU PROJECTIONS - BY PROVIDER TYPE

Provider Type	Pending at Start (7/1/12)	Projected New Complaints	Projected New Investigation	Projected Open Cases	Projected Closed Cases	Projected Prosecuted	Projected Resolved
Institutions	27	50	15	20	13	3	5
Practitioner / Individual	50	100	45	30	50	20	27
Medical Support	51	30	15	8	25	5	10
TOTAL	128	180	75	58	88	28	42

Appendix I

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Press Releases

Caregiver Convicted For Falsely Obtaining Monies From Medicaid Program

CONTACT: Ultan Doyle, Assistant Attorney General, (802) 828-5512

July 12, 2011

Attorney General William H. Sorrell announced today that Danny Francis, age 48, of Colchester, Vermont, was convicted on July 12, 2011, in Vermont Superior Court, Criminal Division, Windsor County, of five misdemeanor counts of False Pretences. The convictions stemmed from Mr. Francis's submission of falsified timesheets in order to obtain payment for services that were not rendered, while he was employed as a personal caregiver under a Vermont Medicaid Program.

Judge M. Patricia Zimmerman sentenced Mr. Francis to 55 to 60 months in jail, all suspended, and placed him on two years of probation, subject to standard conditions and a special condition that he not work as a home-based provider under a Medicare Waiver program. The judge also ordered him to pay \$2,960.00 in restitution to the Vermont Medicaid Program.

The Office of the Inspector General and the Vermont Attorney General's Office Medicaid Fraud Unit conducted the investigation of this case.

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Operating Room Nurse Will Serve 9 Months In Jail For Stealing And Possessing Narcotic Drug

CONTACT: Linda A. Purdy, Assistant Attorney General, (802) 828-5511

July 14, 2011

Attorney General William Sorrell announced today that a former Registered Nurse at the Copley Hospital in Morrisville, convicted by a jury of stealing fentanyl, a powerful narcotic, from a hospital operating room in June 2006, will be imprisoned for nine months following the denial of his motion for sentence reconsideration.

James Erwin, age 63, was convicted in April 2009 of stealing a syringe containing the drug from an anesthesia tray in the operating room, where it had been prepared in advance of a surgical procedure. Fentanyl is routinely used as a painkiller in hospitals and is a widely abused drug throughout the United States.

Erwin was sentenced in August 2009, to six months to three years all suspended except nine months to serve. Superior Court Judge Christina Reiss stayed his sentence pending his appeal of his convictions to the Vermont Supreme Court.

In April of this year, the high court affirmed his convictions. The defendant subsequently requested that he be allowed to participate in the Department of Corrections Home Confinement Furlough program, rather than serve his time in prison.

Erwin's motion to have his sentence reconsidered was denied after a hearing today in Lamoille Superior Court. Judge Dennis Pearson ordered Erwin to report to the Department of Corrections on August 1, 2011. Erwin will remain on probation before and after he is incarcerated.

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Nursing Aide Jailed For Narcotics Substitution And Abusing An Elderly Resident

CONTACT: Steven J. Monde, Assistant Attorney General, (802) 828-5511

August 2, 2011

A nursing aide formerly employed at The Lodge at Otter Creek was sentenced to three months in jail yesterday based on her convictions for the abuse of an elderly resident of an assisted living facility. Attorney General William H. Sorrell announced today that Robyn Page, age 59, of Brandon, Vermont, pled guilty yesterday to charges of Abuse of a Vulnerable Adult and Obtaining a Regulated Drug by Deceit, a misdemeanor and felony, in Vermont Superior Court for Addison County. The charges stem from Ms. Page's employment as a Licensed Nursing Assistant at The Lodge, located in Middlebury, Vermont. Ms. Page removed approximately eighteen Oxycodone pills, a narcotic painkiller, from a prescription bottle prescribed to the victim for pain relief. Ms. Page admitted to substituting the missing pills with generic Tylenol, in place of the victim's Oxycodone. Her actions deprived the elderly resident of his painkiller, causing him unnecessary pain.

As a result of her convictions, Ms. Page received a total sentence of 1 to 3 years. All but 90 days of this sentence was suspended. The court also imposed a three-year probation term with special conditions that will prohibit her from employment providing direct care to vulnerable adults and working in any setting where she would have direct access to narcotics. The defendant will also undergo substance abuse screening and must participate in any counseling that her probation officer directs. Noting that prescription drug abuse is the nation's fastest-growing drug problem, Attorney General Sorrell stated that "My Office will vigorously investigate cases of this type of drug diversion to ensure that our seniors are protected in care-giving facilities and nursing homes."

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Licensed Nursing Aide Charged With Drug Diversion And Abuse And Financial Exploitation Of Vulnerable Adults

CONTACT: Linda A. Purdy, Assistant Attorney General, (802) 828-5511

September 8, 2011

Attorney General William H. Sorrell announced today that Shannon Bedard, age 27, of St. Albans, Vermont, was arraigned on September 6, 2011 in Vermont Superior Court, Criminal Division, Franklin County, on two felony counts of Obtaining a Regulated Drug by Deceit, two misdemeanor counts of Abuse of a Vulnerable Adult, and two misdemeanor counts of Financial Exploitation of a Vulnerable Adult.

According to papers filed in Court, while working as a nursing aide at the Holiday House Residential Care Home in St. Albans, Ms. Bedard, on two occasions, allegedly obtained a regulated drug that had been prescribed for elderly patients in her care. Ms. Bedard also allegedly withdrew funds from an elderly patient's bank account without legal authority to do so.

The drug diversion charges each carry a possible sentence of not more than two years and one day imprisonment. The abuse and financial exploitation charges each carry possible sentences of not more than one year, and not more than eighteen months, respectively.

The Vermont Secretary of State's Office of Professional Regulation conducted the investigation and the State of Vermont's Nursing Board has suspended Ms. Bedard's nursing assistant license.

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Press Releases

Vermont To Receive \$600,000 From Settlement Of Claims Against Merck For Off-Label Marketing Of Vioxx

CONTACT: Edward A. Baker, Assistant Attorney General, (802) 828-5511

November 23, 2011

Attorney General William H. Sorrell announced today that Vermont will receive approximately \$600,000 in damages and penalties to the Vermont Medicaid program as part of a national settlement with pharmaceutical manufacturer Merck Sharp & Dohme Corp. ("Merck") regarding its illegal marketing of the drug Vioxx. Merck marketed Vioxx for uses not approved by the FDA, misrepresented the cardiovascular safety of the drug, and made other false and misleading statements. The settlement resolves complaints filed by the federal government and a number of States after Merck voluntarily withdrew Vioxx from the market in September 2004, citing an increase in the incidence of adverse cardiovascular events in patients taking Vioxx. In May 2008, Vermont obtained a \$1.7 million dollar settlement with Merck on its consumer protection claims related to the illegal marketing; this current settlement addresses separate damages to the Vermont Medicaid program. As part of the settlement, Merck will plead guilty to a criminal misdemeanor for misbranding Vioxx, pay a \$300 million criminal fine, pay \$615 million in damages and penalties, and enter into a Corporate Integrity Agreement with the federal government to closely monitor the company's future marketing practices.

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PRESS RELEASE **BURLINGTON, VERMONT December 21, 2011**

TWO CHARGED WITH FEDERAL HEALTH CARE FRAUD FOR DEFRAUDING MEDICAID

The Office of the United States Attorney for the District of Vermont stated today that a Grand Jury has returned indictments against two Vermont women charging them with violation of the federal health care fraud statute. Both women are accused of defrauding Vermont Medicaid by falsifying records that indicated they had received care, when they had not.

According to one Indictment, Anne Roberts, 54, of Ferrisburgh, submitted to Vermont Medicaid false time sheets indicating she had received care under Vermont's Choices for Care program. That program allows certain Medicaid-eligible Vermonters to receive personal care and assistance with activities of daily living in their homes, and allows the Medicaid beneficiary to select and hire the person providing that care. Roberts is accused of falsely representing to Vermont Medicaid that she had received care from particular care-givers when, in fact, she had received no such care. Roberts furthermore arranged for the pay-checks destined for those care-givers to be sent to her address. According to the Indictment, many of those checks were cashed by Roberts or deposited into Robert's bank account.

In the other Indictment, Rebecca Earle, 52 of Bomoseen, is accused of engaging in a similar scheme, also involving the Choices for Care program. The cases are not otherwise related.

Both women were arrested today, and were later released subject to conditions by imposed United States Magistrate Judge John M. Conroy. Both Roberts and Earle enjoy the presumption of innocence to which all criminal defendants are entitled.

These cases have been investigated by the Office of Inspector General of the United States Department of Health and Human Services and the Vermont Medicaid Fraud and Residential Abuse Unit.

Both Roberts and Earle are represented by the Federal Public Defender.

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Press Releases

Rutland Oral Surgeon Charged Criminally With Lewd And Lascivious Conduct In Connection With His Practice

CONTACT: Linda A. Purdy, Assistant Attorney General, (802) 828-5511

December 29, 2012

A Rutland oral surgeon, Peter B. Gray, was arraigned today in Rutland Superior Court on one felony count of lewd and lascivious conduct, announced Attorney General William H. Sorrell. According to papers filed in the criminal court, Dr. Gray is accused of unlawful sexual touching of a female patient while performing a dental procedure. If convicted, Gray faces up to five years in prison and a fine of up to \$300.00.

In addition to imposing standard conditions of release governing Dr. Gray's conduct while the case is pending, the Court ordered Dr. Gray not to administer patient care to female patients and prohibited him from working in any setting where he would have direct access to controlled substances without supervision by a licensed provider approved by the State.

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Licensed Nursing Assistant Arrested For Second Degree Murder And Abuse Of Nursing Home Resident

CONTACT: Linda A. Purdy, Assistant Attorney General, (802) 828-5511

January 17, 2012

Attorney General William H. Sorrell announced today that Jodi LaClaire, age 37, has been arrested in Bennington, New Hampshire in connection with the death of a nursing home resident in Brattleboro, Vermont. The Vermont Attorney General's Office is seeking her return to the State of Vermont to face charges of second degree murder and abuse of a vulnerable adult in connection with the April 1, 2009, death of a non-diabetic nursing home resident who, the State alleges, died as a result of being injected with insulin by LaClaire.

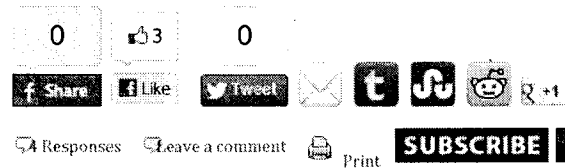
In April of last year LaClaire was charged with sixteen counts of financial exploitation of a vulnerable adult and attempted financial exploitation involving the unauthorized use of the same resident's credit card. According to documents filed in court, on March 23, 2009, LaClaire was employed as a licensed nursing assistant at the Thompson House Nursing home and was exclusively assigned to the second floor of the facility when the 83 year old nursing home resident, in otherwise good health, fell into an insulin induced coma. The documents allege that LaClaire used the resident's credit card over the course of the next ten days while the woman was in a coma and after she had died.

The second degree murder charge carries a possible sentence of twenty years to life or life without the possibility of parole. The abuse of a vulnerable adult charge carries a potential maximum sentence of twenty years imprisonment.

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Bill would ease prosecution of elder abuse

by Erin Hale / January 30, 2012



UPDATE: House Judiciary passed H.413 out of committee on Tuesday.

A bill currently under discussion in the House Judiciary Committee could expand the attorney general's ability to prosecute abuse of Vermont's vulnerable adults.

Under current Vermont law, criminal prosecution of such abuse results in the automatic shutdown of a nursing home or expulsion of an employee found guilty of abuse. House Bill 413 will give the Vermont Attorney General authority to curb behavior through civil monetary penalties.

Rep. Maxine Grad, D-Moretown, who is vice chair of the judiciary committee, said the legislation gives the attorney general more options in prosecuting cases of abuse or exploitation where jail or criminal penalties may not be appropriate. Currently, Vermont's attorney general can file criminal charges against individuals and facilities under Title 13 "Crimes and Criminal Procedures." This amendment will expand civil enforcement options.

"Quite a few years ago, we revised laws and added further protection for vulnerable adults. After that, it came to my attention that this is a tool prosecutors could really use to help protect vulnerable adults while not necessarily penalizing nursing homes or individuals," Grad explained.

In her testimony on the proposed bill before the House judiciary committee on Jan. 18, Assistant Attorney General Linda Purdy said that the bill would enable the attorney general to prosecute in cases where it is difficult to assign blame or where it may not be desirable to shut down an entire facility.

If a facility or individual is criminally prosecuted, they are placed on the List of Excluded Individuals and Entities by the federal Office of Inspector General, which bars the facility from receiving Medicare or Medicaid funds for a minimum of five years or the individual from being rehired, in most cases.

"If it's a one-time event, the nursing home may not have known about this event. But if there's a history and a pattern, and they do nothing about it, then it's our obligation as an enforcement agency to try to change that behavior," Purdy said. "And how do we try and change it? Well, there's a couple of different ways. You can criminally prosecute, but if you criminally prosecute, the whole facility – you know, how do you assign blame?"

Discussion of H.413 in the House Committee on Judiciary came a day after Jan. 17 when nursing assistant Jodi LaClaire was charged with second-degree murder and abuse of a vulnerable adult in the 2009 death of a Brattleboro nursing home resident. LaClaire is accused of injecting an 83-year-old woman in her care with insulin, according to Purdy, so as to incapacitate her and access her credit cards.

LaClaire is facing an additional 16 counts of financial exploitation, and could receive 20 years to life for the second degree murder charge and a maximum of 20 years for abuse of a vulnerable adult, according to a press release on the attorney general's website.

Under the new legislation, the attorney general would be able to sue for damages and also impose conditions on the facility or caretaker to improve their quality of care. Penalties would range from \$5,000 if "no bodily injury occurs" to \$50,000 in the case of death.

Licensing and Protection can also impose separate administrative penalties on facilities, though Purdy said sometimes this might not be enough. "When we call a facility or we send a letter, they tend to sit up and take notice a little more attention more than when Licensing and Protection or Adult Protective Services knocks on their door," Purdy said.

The attorney general has relied on Vermont's consumer protection laws, as well as common law claims of breach of contract in past cases of civil prosecution of abuse, neglect or exploitation. A third option of collaborating with the assistant U.S. attorney under the Federal False Claims Act is available, though it is significantly more time consuming.

The advantage of Bill 413, according to Purdy, is that it would give the attorney general a “specific civil enforcement tool for these types of violations” and the right to initiate a civil investigative demand process. The bill’s language is based on Vermont’s consumer protection laws and Massachusetts’s civil monetary penalty law, which is attached to its statute on abuse, neglect and exploitation of vulnerable adults.

The Medicaid Fraud & Residential Abuse Unit within the attorney general’s office carries out many of the investigations into allegations of abuse through referrals from the state Department of Disabilities, Aging and Independent Living’s (DAIL) Division of Licensing and Protection, as well as Adult Protective Services, the Medical Examiner’s Office, and law enforcement.

The Medicaid Fraud & Residential Abuse Unit tends to investigate more serious cases involving abuse or neglect of multiple vulnerable adults or where there appears to systematic abuse in a care home, while DAIL units typically investigate individual cases, Purdy said.

Both Grad and Purdy said the bill was in no way related to the recent lawsuit filed in December against DAIL for failure to respond to allegations of abuse in a timely manner.

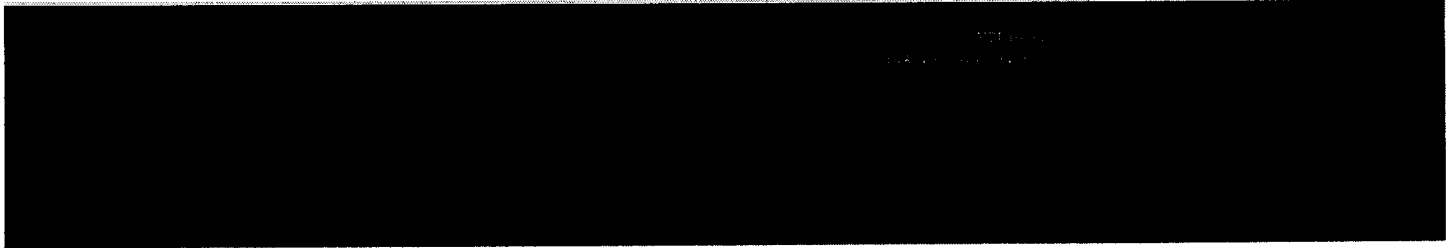
“This is very separate from DAIL. The introduction of this bill pre-dated the lawsuit,” Grad said.

Purdy said that her office has seen the number of cases of abuse, neglect or exploitation increase in recent years.

“Sadly, the whole range of activity occurs in home and residential care facilities because they are a vulnerable population, and I think until the last couple of years, it’s basically been a hidden crime. Many times the vulnerable adults don’t want to cooperate because they’re ashamed, especially if it occurs in their home or in a facility that’s a nice residential home, where they’re comfortable. They’re afraid they’re going to have to leave what has now become their second home so they don’t want to cooperate,” Purdy said.

Though much of discussion around Bill 413 has focused on Medicare and Medicaid funded nursing homes, the attorney general has jurisdiction to prosecute cases of abuse or neglect where there are “two or more vulnerable adults in any sort of home care setting,” including private pay homes or facilities for adults with disabilities.

Posted in Human Services | Tagged Adult Protective Services, Aging and Independent Living, Department of Disabilities, Division of Licensing and Protection, elder abuse, House Judiciary Committee, Vermont attorney general, Vermont Department of Disabilities, Vermont House Bill 413 Vermont Department of Disabilities, Vermont legislature



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Caregiver Charged With Medicaid Fraud And False Pretenses

CONTACT: Steven J. Monde, Assistant Attorney General, (802) 828-0269

April 11, 2012

Attorney General William H. Sorrell announced today that Tammy Thomas, age 21, of Granville, New York, was arraigned on April 10, 2012, in Vermont Superior Court for Windsor County on four felony counts of Medicaid Fraud and one felony count of False Pretenses. The court imposed conditions of release governing Ms. Thomas's conduct while the case is pending.

According to papers filed in court, Ms. Thomas is accused of submitting claims for payments in excess of \$3,100 for providing care under Vermont Medicaid's Children's Personal Care Services program when, in fact, she provided no such care. Court papers also state that Ms. Thomas allegedly caused another person's signature to be signed on these claims, thereby falsely authorizing payment to herself. Ms. Thomas pleaded not guilty to the charges. The Medicaid Fraud charges carry a maximum penalty of up to ten years imprisonment, and/or fines equal to twice the amount of payments wrongfully obtained. The False Pretense charge carries a maximum penalty of up to ten years imprisonment, and/or a fine of up to \$2,000.

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Caregiver Convicted For Falsely Obtaining Monies From The Vermont Medicaid Program

CONTACT: Steven J. Monde, Assistant Attorney General, (802) 828-5518

May 16, 2012

Attorney General William H. Sorrell announced today that Tammy Thomas, age 21, of Granville, New York, was convicted on May 15, 2012, in Vermont District Court for Windsor County, of four misdemeanor counts of False Pretenses. The convictions stemmed from Ms. Thomas' submission of falsified timesheets in order to obtain payment for services that were not provided while she was employed as a personal caregiver under a Vermont Medicaid program.

Ms. Thomas was sentenced to two to four years in jail, all suspended, and placed on two years of probation subject to standard conditions and a special condition that she not work as a home-based care provider under a Medicaid waiver program. Ms. Thomas was also ordered to pay \$3,140 in restitution to Vermont Medicaid.

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Legislative wrap up: A handful of little-known bills seek to remedy legal issues

by Anne Galloway | May 16, 2012

Follow Anne on Twitter @GallowayVTD

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Editor's note: Taylor Dobbs and Kate Robinson contributed to this report.



Sen. Dick Sears, chair of the Senate Committee on Judiciary. VTD/Alan Panebaker

This legislative session, two judicial issues captured the headlines — the death with dignity bill and a proposal to allow police access to the state's prescription drug database. Both attempts at sweeping reforms failed.

A number of other changes to the legal system addressed by the Legislature's Senate and House judiciary committees have garnered little attention. This session lawmakers approved changes to divorce proceedings for gays, criminal record expungement and new child-support enforcement rules, highway condemnation requirements and search and rescue protocols.

Though these pieces of legislation may not have hit the media spotlight, many will have real-world consequences for Vermonters. Some are designed to protect the vulnerable; others make it harder for individuals to flout the law.

H.413 will allow the state to assess fines on nursing homes for cases of abuse

One of the new public safety bills that expands the attorney general's authority to prosecute abuse of vulnerable adults — went into effect on Tuesday when Gov. Peter Shumlin signed H.413 into law at a senior center in Shelburne.

At a press conference and bill signing at Shelburne Bay Senior Living Community, Shumlin told the story of 81-year-old Daniel Wright who died shortly after moving into Green Mountain Nursing Home in Colchester in 2005. Wright was assaulted by another resident who had dementia and had a history of violence against staff and other patients. The perpetrator's mental state made prosecution impossible. A subsequent case involving Wright's family and the home was settled out of court.

Shumlin said though the nursing home staff did not deal the deathblow against Wright, they failed in other areas.

"None of the prior assaults upon residents had been reported as required by both state and federal law," he said. "They were covered up. The nursing home had taken no steps to protect its residents and gave no special orders for supervisors so that other residents wouldn't be harmed. ... On the day of the assaults, nursing staff failed to take Mr. Wright's vital signs and failed to notify the physicians of the assaults that he had endured. After his death, they failed to notify the medical examiner."

Shumlin did not name Green Mountain Nursing Home in his speech. Sorrell confirmed Wright was a resident of the home.

Robert Sterling, administrator of Green Mountain Nursing Home, said he understood Wright's case differently. "He died, according to the autopsy of natural causes and everything," Sterling said.

Wright's death was one of the cases that spurred the attorney general's office to seek a legislative remedy.

Assistant Attorney General Linda Purdy, who investigated the case, said autopsy results stated Wright's primary cause of death was natural, but his conditions were complicated by the assaults.

"He died of both some cardiovascular problems and the secondary cause, which they couldn't really quantify, was the attack and the injuries he sustained," Purdy said.



Vermont AG William Sorrell, VTD/Josh Larkin

The nursing home's attorney, Scott McGee, said that despite the tragic nature of the events, staff at the home were all doing their jobs correctly. "As far as we were concerned, all the right steps had been taken," McGee said. "In these kinds of things, people can second-guess lots of steps. Everyone was working in good faith."

Sorrell's office threatened a civil action against the nursing home, but found they didn't have strong legal footing to do so.

"We wanted more clear legal authority to bring such a suit," he said.

H.413 does exactly that, Sorrell said. Under the new law, the state may bring a civil action of up to \$50,000 against a nursing home or individual caretaker where neglect, abuse or exploitation results in death and other actions for lesser amounts when the victim survives.

H.535, Bias-free policing

For the first time, local law enforcement will be required to adopt bias-free policing policies and to collect racial information from routine traffic stops.

H.535 requires all Vermont law enforcement agencies to implement "bias-free" policing policies designed to deter police from racial discrimination. The policies would be based on Vermont State Police guidelines and recommendations the Attorney General's office made to the state's 73 independent policing entities in 2010. About 30 municipal police and sheriffs departments have policies addressing racial discrimination.

The growing disproportionate representation of blacks in prison has raised questions about racial bias among law enforcement officials and the court system.

H.758, dissolution and divorce

Gays from out of state who obtain civil unions or marriage certificates from Vermont have had no way of dissolving that union or divorcing in home states that didn't recognize their Vermont status.

This bill makes it possible for couples to break up through a no-fault process based on mutual agreement.

Previously under Vermont law, gay couples had to live in Vermont for six months before they could get a divorce or dissolution.

S.37, expungement of a nonviolent misdemeanor criminal record

This bill creates a process for expunging the record of an arrest or conviction for many nonviolent misdemeanors.

Sen. Dick Sears, D-Bennington, says he supported the legislation because he heard from Vermonters who had been arrested and convicted of minor crimes 20 to 30 years ago for possession of small amounts of marijuana and other petty offenses but who hadn't been in trouble with the law for decades and wanted to apply to have their records expunged.

"The bill provides a process for people to apply to state's attorney in the county where they were convicted," Sears said. "If they are clean of any crime for 10 years or more ... they can apply to have the record expunged."

The basic conditions? Ten years must have elapsed, any sentence must have been completed, restitution paid or conditions met and there can have been no subsequent criminal convictions. The final decision is at the discretion of the court.

Certain offenses, such as sexual exploitation of children and violation of a protection order, cannot be expunged.

When the court decides in favor of removing the criminal record, it issues a certificate that "must state that such person's behavior after the conviction has warranted the issuance of the order." The FBI and all other agencies which have or might have the record are notified. The statute requires that from the time the certificate is issued the person "be treated in all respects as if he or she had never been arrested, convicted or sentenced for the offense."

S.203, child support enforcement

According to a report from the Department of Children and Families, about 30 percent of court-ordered child support goes unpaid each month. The state of Vermont has nearly \$100 million in unpaid child support on the books.

Under a new statute, parents who refuse to pay child support may be subject to civil contempt. If the court finds the individual in contempt, he or she may be required to search for work, participate in employment, educational, or training-related activities. If the individual fails to complete the court-ordered program, he or she may be subject to incarceration.

Sears said, under the new provisions, the nonpaying parent "holds the keys to jail cell" — he or she can be released from prison by paying up or complying with the court's recommendation.

While the state can't hold someone in jail for lack of funds, it can detain an individual for contempt of court.

Though scofflaws wouldn't be held for long, Sears said "it's enough to grab some people's attention."

The legislation softens requirements for parents who are willing to make payments but who have been hurt by the economic downturn, Sears said.

The bill also revises the options for calculating available income in determining child support, and it makes it easier to get relief from a default child support order if the parent can show the court used incorrect financial information in calculating income.

S.122, human trafficking, prostitution provision

If someone is convicted of prostitution and can show they have been a victim of human trafficking, the court can allow the individual to file a motion to vacate.

Once the motion is granted, the victim's name is removed from all the related court records.

The victim need not have reported the crime of human trafficking to law enforcement before the arrest. Various protections are now offered to victims of human trafficking that parallel those provided for victims of domestic violence, sexual assault and stalking, such as providing lists of counseling and shelter services. State services will now be revised to meet the needs of human trafficking victims.

S.115, a bill barring ineffective assistance claims against assigned counsel

Some defendants have sought to hamper the criminal justice process by suing assigned defense attorneys who were in the middle of litigating their cases, according to Defender General Matthew Valerio.

Valerio says S.115 bars defendants from inappropriately manipulating the system. "Now you have to follow the normal process and get redress through courts before suing your attorney," he said.

"It doesn't take away your rights to pursue a negligence case, it just tells you what order it has to be done in and by doing that it prevents individuals who for the wrong reasons are attempting to manipulate the criminal justice system," Valerio said.

Valerio's office hires more than 50 lawyers a year to work on contract with the state. These attorneys have to purchase their own malpractice insurance. There was a concern that the lawsuits against some contract attorneys who are doing serious felony work with the most difficult clients and getting a number of claims could get to point where it would be difficult to obtain malpractice insurance.

Convicted criminals had been taking a page from Michael Brillon, who was sent to jail on a domestic violence charge and went through six assigned public defenders. His case went to the Vermont Supreme Court, which ruled that his right to a speedy trial had been hampered, and eventually the U.S. Supreme Court, where justices ruled that "delay caused by the defense weighs against the defendant."

H.751, juvenile delinquent custody

This legislation allows 16- to 17-year olds who have committed minor crimes the option to stay in state custody and receive services for an additional six months.

That additional time could make a difference for some kids, Sears said. The bill also calls for a study to evaluate the success rate of the juvenile system.

Editor's note: This story was updated between 5:15 a.m. and 6:30 a.m. May 16.

Posted in Courts & Corrections / Tagged child support, criminal justice, elder abuse, gay marriage, human trafficking, Michael Brillon, Vermont legislature

Articles in this series

- Legislative wrap up: A handful of little-known bills seek to remedy legal issues
- Legislative wrap up: Health care bills addressed insurance coverage, tanning beds, patient-directed death, prescription drugs and immunizations
- Legislative preview (and review): Capital bill details emerge and miscellaneous tax bill in the House hopper; Pot decrim bill tabled
- Crossover day winners and losers

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Caregiver Charged With Medicaid Fraud

CONTACT: Edward A. Baker, Assistant Attorney General, (802) 828-5511

May 29, 2012

Attorney General William H. Sorrell announced today that Beverly Whittemore, age 48, of Rutland, Vermont, was arraigned on May 29, 2012, in Vermont Superior Court for Windsor County on 12 felony counts of Medicaid Fraud. The court imposed conditions of release governing Ms. Whittemore's conduct while the case is pending.

According to papers filed in court, Ms. Whittemore is accused of submitting claims for payments in excess of \$6,600 for providing care under Vermont's Medicaid program when, in fact, she provided no such care. Court papers also state that Ms. Whittemore allegedly caused another person's signature to be signed on these claims, thereby falsely authorizing payment to herself. Ms. Whittemore pleaded not guilty to the charges. The Medicaid Fraud charges carry a maximum penalty of up to ten years imprisonment, and/or fines equal to twice the amount of payments wrongfully obtained.

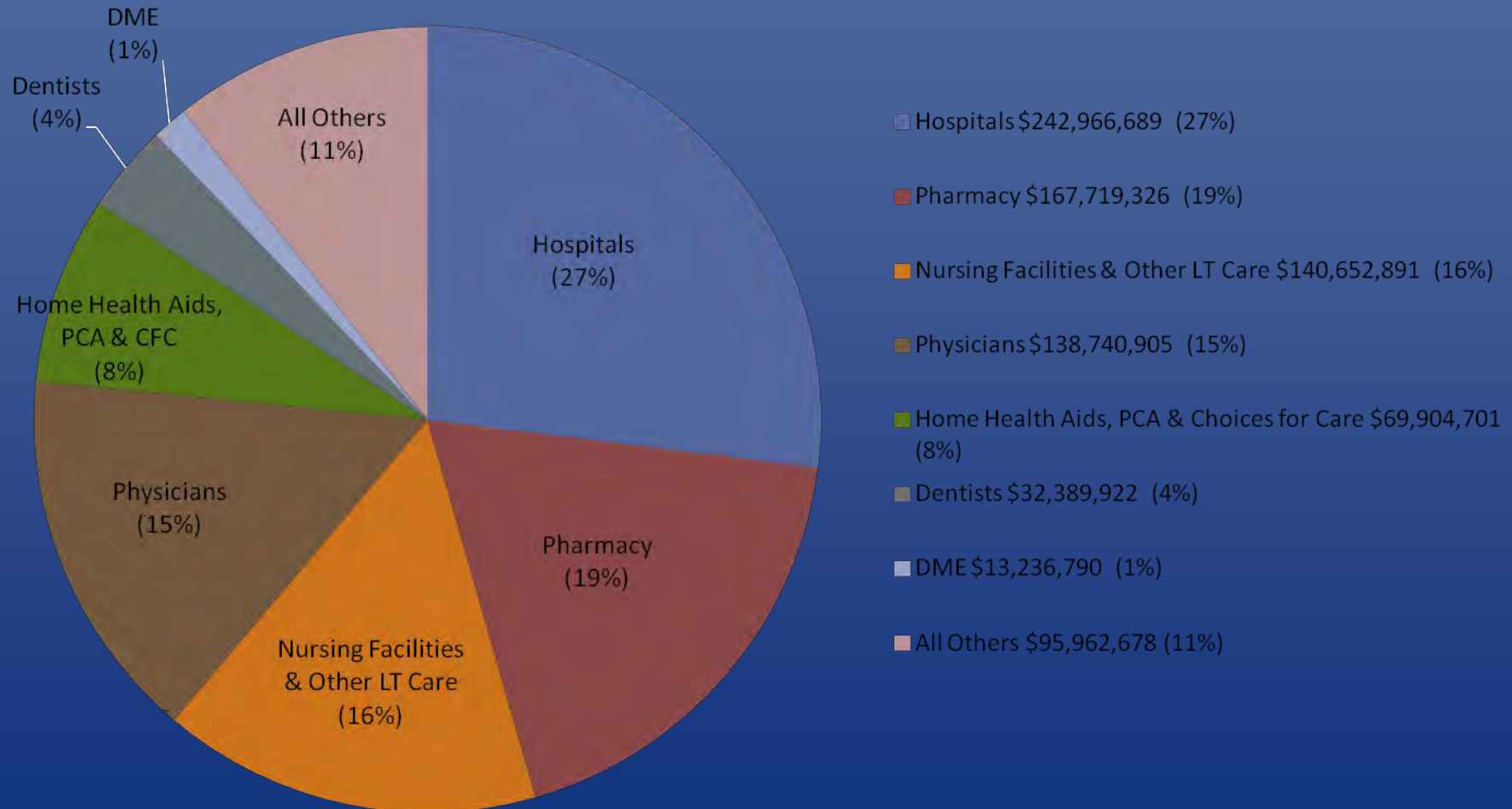
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Appendix J

Vermont Medicaid Expenditures

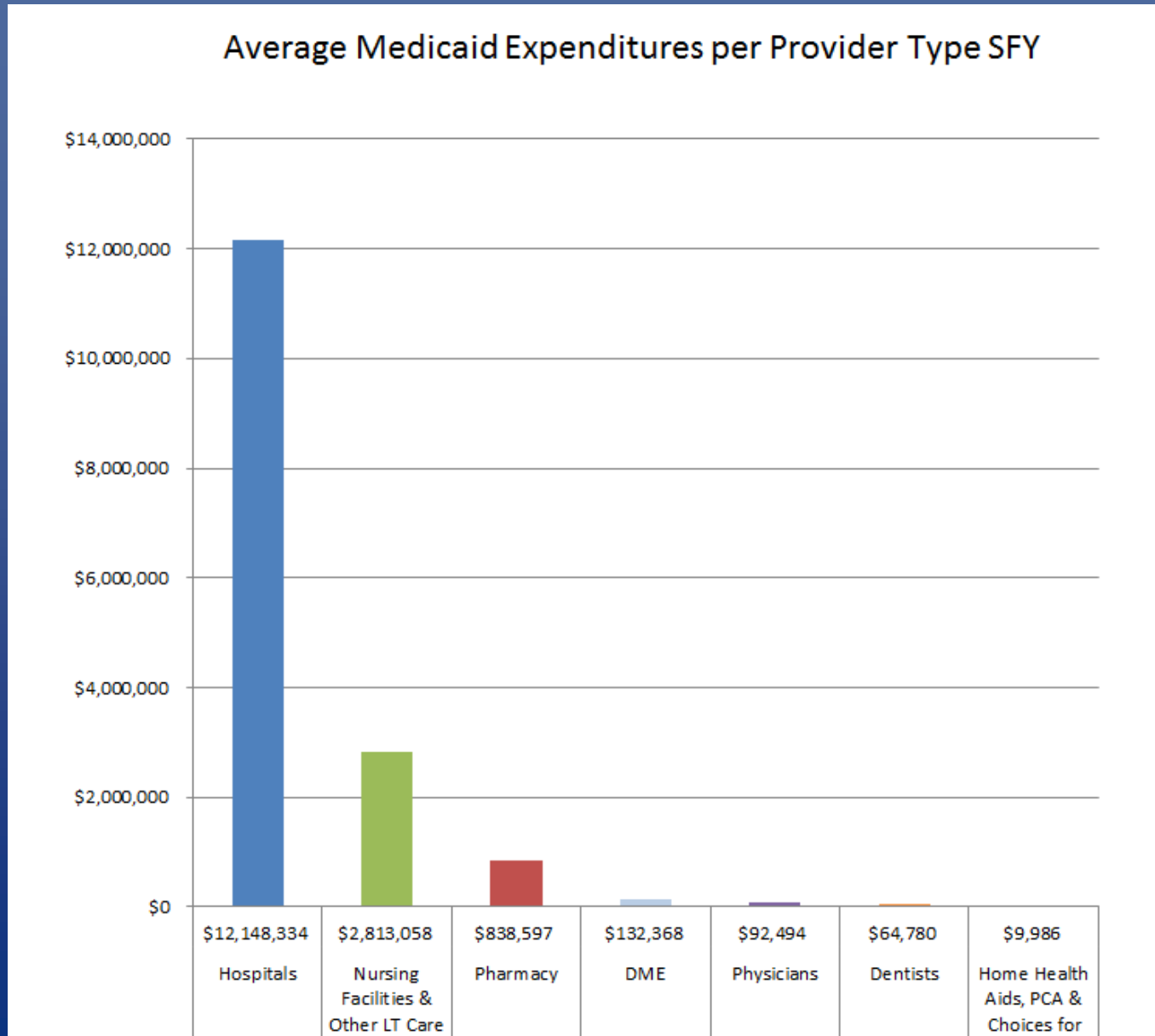
Anticipated Medicaid Expenditures by Category of Service SFY 2012



Vermont Medicaid Providers

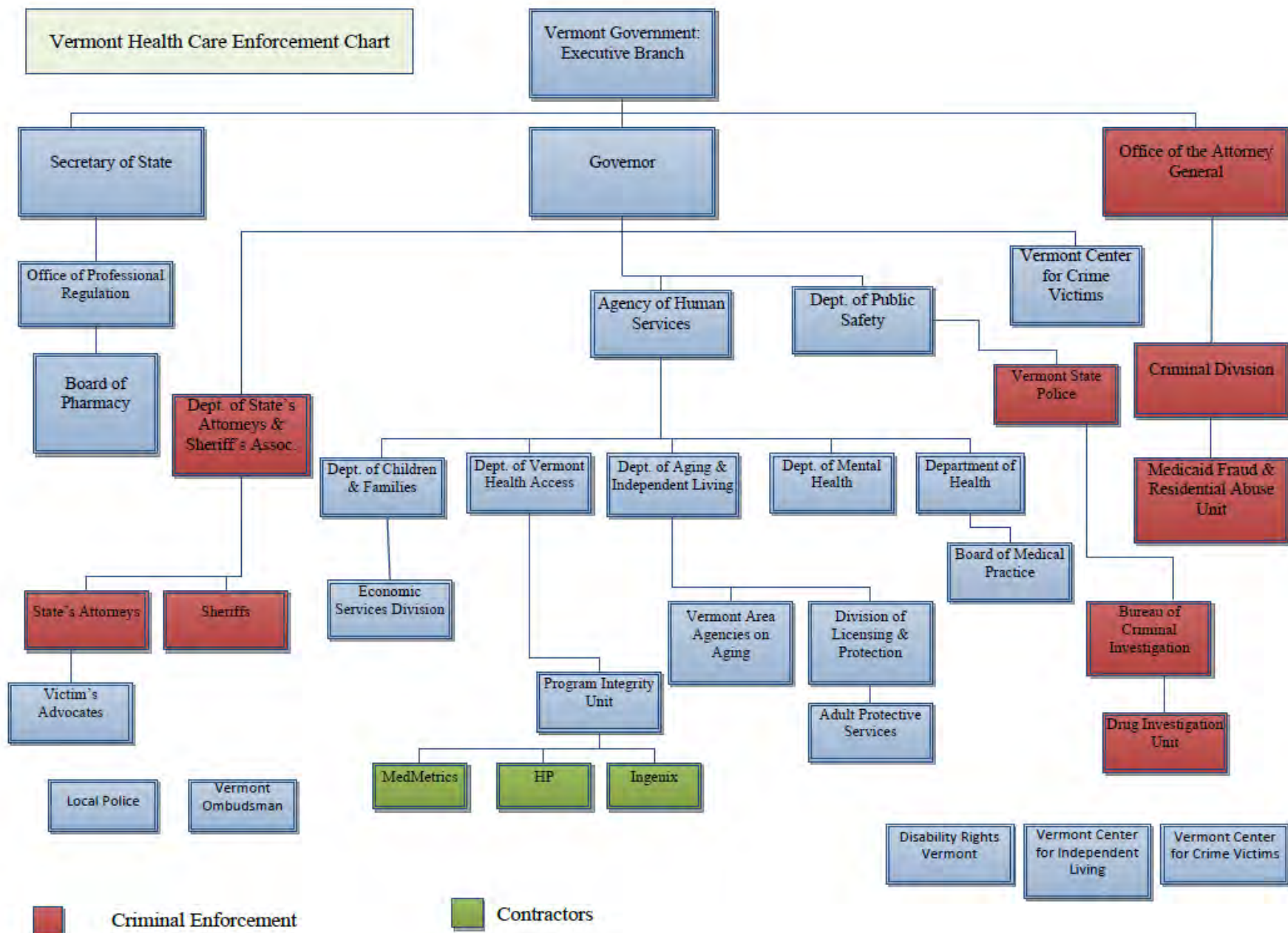
Provider	Est. #	Percentage
Home Health Aids, PCA & Choices for Care	7000	74.71%
Physicians	1500	16.01%
Dentists	500	5.34%
Pharmacy	200	2.13%
DME	100	1.07%
Nursing Facilities & Other LT Care	50	0.53%
Hospitals	20	0.21%
TOTAL	9370	-

Vermont Expenditures by Provider Type



Appendix K

The State Healthcare Fraud Enforcement Network



The Federal Healthcare Fraud Enforcement Network

