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March 13, 2014

Copy Received

Cliff Foster
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MAR 14 2014

Porter Foster Rorick LLP

**RE: Centralia School District
ER 408 Pre-filing Settlement Offer**

Dear Mr. Foster:

As you know from previous communications, the Medicaid Fraud Control Unit (“MFCU”) has been investigating several matters related to the Medicaid Administrative Claiming program (“MAC”). As a result of our investigation of MAC activities in the Centralia School District (“CSD” or “District”), we intend to file a lawsuit asserting claims under RCW 74.09.210 and RCW 74.66.040 and seeking civil penalties.¹ I am writing to extend your client an offer to settle these claims for \$1,658,000 before we file the lawsuit.

Thus far, primarily focusing on Centralia Middle School, we have obtained evidence establishing that the CSD knowingly filed scores of false time study forms to obtain MAC reimbursement payments that it was not legally entitled to receive. Based on information available to us, we believe that virtually all of the MAC reimbursement generated by the Middle School from March 2011, through June 2013, was wrongfully obtained by your client.

Due to the scope of the misconduct, the MFCU has interviewed more than fifty witnesses and invested a significant amount of time investigating your client. Our investigation is ongoing and, as we turn our attention to other CSD schools, we expect to discover additional false statements. As explained in more detail in the penultimate paragraph below, investment of additional MFCU resources will be necessary should your client choose to reject the offer extended in this letter. This settlement offer is made in an effort to balance the interests of justice and make efficient use of MFCU resources. The offer will expire on March 25, 2014.

The MAC Program

As described in the the Interagency Agreement executed by CSD (“Contract”), the MAC program is designed to reimburse schools for 50% of certain defined Medicaid administrative

¹ Likely we would assert breach of contract and other common law claims as well.

activities.² The Contract prescribes a limited set of reimbursable MAC activities and provides numerous examples of activities that are not reimbursable. Non-reimbursable activities include regular educational duties such as teaching, instruction, discipline, attendance, and the provision of direct medical services. In addition other services that schools are legally required to provide, such as the coordinating and monitoring of Individual Education Plans for special education students, IDEA § 504 “child find” tasks, and services provided free of charge to all students are explicitly non-reimbursable. In the MAC program, reimbursement is determined by a time study that samples the amount of time participating employees devote to reimbursable activities and the compensation paid each employee. The time study forms contain brief descriptions of the rules and appropriate reimbursable activities and the Quick Reference Guide (Exhibit B to the Contract) contains a detailed list of conditions or filters applicable to each reimbursable activity.

The Contract requires the CSD to maintain documents and internal controls sufficient to assure compliance with material terms of the contract. District documentation “must clearly demonstrate that the activities/services directly support the administration of the Medicaid state plan ...” The Contract also requires the District to train time study participants and ensure that they adhere to the time study rules and conditions. The Contract allows the District to use consultants, but places “all responsibility for work performed by the Contractor’s consultants or billing agents” upon the District.

Centralia Middle School

This school came to MFCU’s attention when we obtained an email sent by the Principal to building time study participants. The email, entitled “Big Money! Big Money! Big Money!” encourages participants to manufacture reimbursable activities on time study days in order to generate funds for the school. It suggests that such funds could be used to send teachers to conferences. Notably, the email fails to mention important terms and conditions and materially misrepresents rules applicable to the time study process. According to time study participants, this email, along with summary materials prepared by a consultant was supplied to participants; apparently in lieu of the official Quick Reference Guide. One participant from another school told us that, although he was not on the original distribution list, the “Big Money!” email was provided to him in response to his inquiry about relatively low MAC claim levels in his own building.

Our review of the documentation maintained by the CSD in support of the Middle School claims showed that it does not meet contractual standards and does not support the claims submitted on behalf of the CSD. The narratives on the time study forms do not identify students, providers, or sufficient other detail that would enable us to determine that the nature of the service provided or that the time claimed was necessary and proper for the support of the state’s Medicaid outreach plan. We understand that there was no other documentation maintained by the District. However, as explained in the following paragraphs, our case is not based solely on the absence of required documentation and, based on the evidence available to us, we believe that Middle School personnel knowingly submitted false time study forms.

Although the “Big Money!” email piqued our interest, we became more concerned with the Middle School claiming after an analysis of state wide MAC claims data showed that it generated the highest rate of MAC reimbursement of any middle school in Washington. It is likely no coincidence that its’ Principal (the author of the Big Money! email) consistently over an extended period of time generated the highest level of Medicaid reimbursement of any middle school principal in the state. According to his signed time study forms, the Principal spent an average of more than three hours per day (of eight contract hours) on reimbursable MAC activities over the course of 35 time study days. In other words, the Principal claimed to spend about 40% of his contract work time “informing families about Medicaid services” and “referring students/families for Medicaid services” or “gathering information required by a

² A copy of the Contract is provided as Exhibit 1 for your convenience.

Medicaid provider”³ The time recorded by this Principal was remarkably consistent over the seven quarters we examined. He recorded no MAC time on the four days he was away from the building and on one day he was in training in the building. On the other 30 days, he recorded an average of 3.4 hours per day of reimbursable time. He recorded less than two hours of reimbursable time on only one of those 30 days.

Based on interviews with people familiar with Middle School operations and data from other schools throughout Washington, it appears that the Principal’s claims are grossly exaggerated. In two interviews, the Principal provided vague and implausible explanations for the extraordinary amount of time he recorded spending on these activities. The descriptions on his time study form entries were also vague and inconsistent with the entries on his Outlook calendar. After his first interview with MFCU investigators, the Principal recorded no reimbursable time on subsequent time study forms.⁴ Again before the first interview, he consistently claimed over three hours per day of reimbursable time.

The Principal knew that because he was highest paid employee in the Middle School he generated the highest reimbursement per unit of MAC time recorded. But he was not the only Middle School participant who recorded extraordinary time claims. For virtually all reporting days over seven quarters, Middle School staff reported time that was significantly greater than statewide averages reported by similar staff in similar schools.⁵

Like the Principal, staff members submitted time study forms that lacked detail narratives or supporting information that would enable us to determine if they were actually performing reimbursable activities. Interviews revealed that staff lacked knowledge about basic requirements of the MAC program or allowable reimbursable activities. Participants failed to use the required parallel coding process and, as a consequence, claimed time that was explicitly not allowed by the terms of the time study form and the Contract.⁶

For example, one Middle School teacher said that he did not record his time contemporaneously during the time study day but instead recreated his time study form after the fact. He used his lesson plans to identify topics likely to have stimulated discussions about “health issues.” This teacher admitted to being “creative” but, said he could have been taught to do it differently. Another teacher reported recording time spent making calls to check on students’ excuses for missing class and other attendance activities. She also admitted to tacking together several short duration activities to meet the 7.5 minute threshold of the time study. Several reported claiming MAC time for referring students to the school nurse for first aid, referring kids for vision checks, IEP coordination, and other activities explicitly excluded by the Contract. Several staff reported counting time on “health issues” or “medical issues” apparently unrelated to Medicaid outreach or a referral for Medicaid services. An interview with the Middle School’s time study coordinator showed, although she knew parallel coding was required, she did not enforce that important requirement. The building coordinator also knew that many teachers did not adhere to the time study requirements and she assisted some teachers in recreating their time study forms.

³ The reimbursement amount is based on the reimbursable time recorded in each ‘B’ code category, the participant’s compensation, and the Medicaid eligibility rate for the District.

⁴ The CSD Superintendent was responsible for reviewing and approving the Principal’s time study forms. However, the Superintendent frequently allowed this Principal to approve his own time study forms.

⁵ Attached as Exhibit 2 is a report showing a statistical analysis of statewide MAC claiming. This report was downloaded from a web site maintained by CSD’s MAC consultant. <http://districtconcerns.org/images/2007Review.pdf>. We understand that this consultant may have been delegated certain compliance duties by CSD.

⁶ A building coordinator from another CSD school reported that although she knew that the purpose of the program was to connect students to the Medicaid program and Medicaid services, staff interpreted the requirements much more broadly in practice to include activities related to “medical issues.”

CSD Knowingly Submitted False Time Study Forms Material to the Payment of False Claims

Entities that knowingly submit false records or statements in support of Medicaid reimbursement claims are liable for civil penalties. RCW 74.66.020. We believe that each time study form submitted by the Middle School is a "false record or statement material to a false or fraudulent claim." The definition of "knowingly" is set forth in RCW 74.66.010(7).

At this point in our investigation, we can prove, at a minimum, that the CSD acted "in deliberate ignorance of the truth or falsity of the information" contained in its time study forms, which is sufficient to establish CSD liability. RCW 74.66.010(7)(a)(ii). The Contract describes the required level of supervisory oversight. However, our investigation has revealed that CSD administrators were disturbingly selective in their approach to managing their MAC claiming. For example, the District created a system of disbursing funds to the schools in proportion to the amount generated by the school, which created an incentive for participants to exaggerate their time study records. Although the potential for problems created by that structure was brought to the attention of CSD administrators well before our investigation began, they failed to seriously examine the issue. In the few instances, where the CSD administration provided guidance to participants, the guidance appears to have been intended to increase claims rather than ensuring compliance with the Contract and applicable laws. Also, based on information provided to us, the Superintendent was aware of the extraordinarily large claims asserted by the Middle School principle and other "red flag" compliance issues, but failed to investigate any of those leads, even after our investigation began.

The administration's evident lack of interest in the CSD's MAC claiming process is surprising. The topic was reported in the local newspaper and we understand that administrators met with the reporter in an effort to convince her that there were no problems with CSD claiming. We know that administrators presented the Middle School Principal to explain to how MAC claiming worked in the CSD. We also understand that MAC claiming was widely discussed in the recent school board elections and various CSD administrators repeatedly contacted the Health Care Authority ("HCA") and the MFCU purporting to seek information about our investigation so that they could to assuage community concerns about the allegations. Yet despite the evident importance of the topic to the community and the District, we are aware of no evidence that the administration ever examined the underlying allegations of a well-placed whistleblower.

To the contrary our investigation has revealed repeated and widespread efforts to discredit the former CSD employee who provided some information about the District's conduct of the MAC program. This employee provided specific credible information to the District administration about suspected wrongdoing. If administrators would have conducted a cursory investigation or meaningfully engaged HCA, problems such as the examples discussed above, would have been readily apparent. However, instead of fulfilling their oversight obligations, it appears that they instead chose to attack the employee's motives and credibility.

Settlement Offer

The MFCU offers to settle all of its potential civil claims relating to MAC reimbursements received by CSD for the period from March, 2011, through June, 2013, in return for a payment of \$1,658,000. This figure was calculated based on \$186,000 in actual damages related to claims generated by the Middle School time study forms. The total amount is comprised of a treble damage civil penalty of \$558,000, and an additional civil penalty of \$1,100,000 (\$5,500 x 200 false Middle School time study forms lodged after the effective date of the Ch. 74.66 RCW). If your client is interested in this settlement offer, we will require a tolling agreement while we complete the necessary documentation.

If we are unable to settle our claims, our Complaint will seek additional damages, penalties, prejudgment interest, fees and costs. From March, 2011, through June, 2013, the CSD received

\$858,000 in reimbursements for its MAC activities. It submitted hundreds of time study forms after the effective date of RCW 74.66. Our initial review of other CSD schools indicates that at least one of those schools displayed conduct similar to that at the Middle School, which if confirmed will lead to much greater penalties than set forth in this settlement offer.

Next Steps If Settlement Declined

If your client declines this settlement offer, we intend to issue a Civil Investigative Demand ("CID") pursuant to RCW 74.09.120 seeking the depositions of Centralia School Board Member Neil Kirby, CSD Superintendent Dr. Steve Bodnar, Matt McCauley, Mitch Thompson, and Scott Niemann and, possibly, a few other Board members and District staff. I would like to complete these depositions by April 25, 2014. Please check with the people named above and provide me with some potential deposition dates in April. I anticipate that the depositions of Mr. Kirby and Dr. Bodnar would require one day each and the others approximately one-half day. The CID will also seek emails and other records related to the CSD's participation in the MAC program, compliance efforts, and the District's response to concerns raised by its employees. Please ensure that all such records are preserved by your client.

Please contact me at the number below if you have questions about the settlement offer or anything else in this letter.

Sincerely,



STEVE E. DIETRICH
Senior Counsel
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SED:ks
Enclosures