

OIG Legislative Proposal

Federal Share Under TGC 531.1131

Background

When a Managed Care Organization (MCO) sends a fraud or abuse referral to the Office of the Inspector General (OIG) and the OIG is successful in making a recovery based on that referral, TGC 531.1131(c-1) allows the MCO to retain one-half of the recovery collected.

Similarly, TGC 531.1131(c) allows MCOs to retain one-half of recoveries MCOs collect if the OIG declines to pursue a referral. In this situation, if the MCO makes a recovery they send half of the recovery to the state and the state pays the federal share on its portion.

Problem

As written, the statute can be interpreted to require the federal share to be paid on the entire recovery and that the state and MCO is to share equally in the amount the state retains. Whether the federal share is paid on the total recovery or after the state and MCO split the recovery, the state's share remains the same. However, there is a significant difference in the recoveries for the MCOs.

Example of distributions depending on when the federal share is applied:

\$1M Recovery	If Fed Share is Applied Prior to 50/50 Split	If Fed Share is Applied After 50/50 Split
Federal Share	\$600,000	\$300,000
MCO Share	\$200,000	\$500,000
State Share	\$200,000	\$200,000

There is limited federal guidance on managed care recoveries. 42 CFR 438 requires MCO contracts to contain direction on the treatment of recoveries of overpayments due to fraud, waste and abuse. Texas managed care contracts direct MCOs to follow TGC 531.1131.

Recommendation

The OIG recommends clarifying that federal share is to be paid in a similar fashion to TGC 531.1131(c). This can be accomplished by removing the "applicable federal share" language that allows for different interpretations. Additionally, if this language is removed, the limitation on MCO payments is no longer necessary.

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Suggested Language

AN ACT

relating to the authority and duties of the office of inspector general of the Health and Human Services Commission.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 531.1131, Government Code, is amended by amending Subsection (c-1) to read as follows:

(c-1) If the commission's office of inspector general notifies a managed care organization under Subsection (b), proceeds with recovery efforts, and recovers all or part of the payments the organization identified as required by Subsection (a)(1), the organization is entitled to one-half of the amount recovered for each payment the organization identified ~~after any applicable federal share is deducted.~~ ~~The organization may not receive more than one-half of the total amount of money recovered after any applicable federal share is deducted.~~

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.