



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

**Testimony Before the United States House of Representatives
Committee on Energy and Commerce
Subcommittee on Oversight and Investigations**

***Combating Waste, Fraud, and Abuse
in Medicaid's Personal Care Services Program***

**Testimony of:
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Good morning, Chairman Murphy, Ranking Member DeGette, and other distinguished Members of the Subcommittee. I am Christi Grimm, Chief of Staff of the Office of Inspector General (OIG) of the U.S. Department of Health and Human Services.

Thank you for the opportunity to appear before you to discuss the importance of protecting Medicaid personal care services (personal care or PCS) from fraud, waste, and abuse and protecting the beneficiaries who rely on those services from abuse and neglect. OIG has an extensive body of work examining vulnerabilities in PCS and recommending improvements to address the lack of program integrity safeguards, high improper payments, and health and safety vulnerabilities. Safeguarding beneficiaries and the Medicaid PCS program through better program integrity continues to be one of OIG's top priorities.

In the last 5 years, OIG has opened more than 200 investigations involving fraud and patient harm and neglect in the PCS program across the country. Sadly, some of these cases have involved loss of life and serious harm to Medicaid beneficiaries who are especially vulnerable. These include cases like the elderly woman in Idaho who was hospitalized to treat malnutrition and dehydration because the caregiver failed to provide water and food. When investigators served a search warrant suspecting she was a victim of neglect, they found that she had been living in filth despite the fact that Medicaid was paying a PCS attendant to care for

her everyday needs. Or the Pennsylvania beneficiary with autism who died of exposure to the cold while under the care of an attendant. The attendant lost the beneficiary in a crowded store and waited an hour to notify authorities.

These are just two of the heartbreaking stories that no one should ever experience, regardless of the State they live in or what type of personal care services they receive. OIG is testifying today to highlight the important needs that an effective Medicaid PCS program serves and identify ways to help the program better fulfill that potential. Systemic problems related to the design and delivery of Medicaid PCS must be rectified so that the Federal Government can help prevent similar tragedies from happening in the future and better combat fraud, waste, and abuse. My testimony today will highlight: our work overseeing the PCS program; the problems we have identified; our recommendations for improvement; and the progress to date.

Background on Medicaid Personal Care Services

PCS enable Medicaid beneficiaries who are elderly, have disabilities (including children with disabilities), or have chronic or temporary conditions to live with as much independence as possible in their homes and communities, rather than in nursing homes or institutions. The services provided by PCS attendants include a broad range of nonmedical services to support Activities of Daily Living – bathing, dressing, toileting, and personal hygiene. PCS can also offer support for Instrumental Activities of Daily Living, such as meal preparation, money management, shopping, and telephone use. The services place providers directly in the homes

of our most vulnerable beneficiaries, heightening the risk of fraud and abuse of the program, and abuse or neglect of the beneficiary.

While PCS is an optional Medicaid benefit, all States provide this benefit to some Medicaid beneficiaries in their State under their State plan or through home- and community-based services waivers. PCS are generally provided under either an agency-directed or self-directed model. Under an agency-directed model, a personal care agency is an enrolled Medicaid provider and employs personal care attendants to provide services in beneficiaries' homes. Under a self-directed model, the beneficiary or their representative has the responsibility for managing the delivery of PCS, including hiring the personal care attendant. These options allow States to have significant flexibility when designing PCS programs to meet the needs of their beneficiaries. As a result, States often have several different programs that provide PCS to a wide range of Medicaid beneficiaries.

Recent data suggest that PCS will continue to grow rapidly, partly because of the aging baby boom population. For example, the U.S. Department of Labor, Bureau of Employment Statistics, in its *Occupational Outlook Handbook*, 2016–2017 edition, projected that employment of personal care aides will grow by 26 percent from 2014 to 2024. This growth is faster than the average for all occupations. As of 2012, more than 3.2 million beneficiaries relied on personal care, and in fiscal year 2014, Federal and State spending on personal care totaled \$14.5 billion, or about 18 percent of Medicaid's spending on home- and community-based services. Growth in personal care and other home- and community-based services has

come about, in part, to fulfill the mandate of the United States Supreme Court in its decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999) to help individuals with disabilities to live and be cared for in their homes and communities whenever possible.

PCS Program Vulnerabilities

For the past 8 years, OIG has identified program integrity for home- and community-based services, particularly PCS, as a top management concern. We have issued more than 30 audits and evaluations, recommending the recovery of over \$700 million and improvements to service delivery. OIG, often in partnership with the State Medicaid Fraud Control Units (MFCU), has investigated hundreds of PCS fraud schemes. Our work demonstrates the persistent vulnerabilities in PCS that contribute to high improper payments, significant fraud, and that place vulnerable beneficiaries at risk for abuse and neglect.

OIG's October 2016 *Investigative Advisory* on Medicaid Fraud and Patient Harm Involving Personal Care Services summarized various PCS fraud schemes OIG has seen in Federal investigations. These cases show that PCS fraud takes many forms. Common schemes involve payments for PCS that were unnecessary or not provided. Some PCS investigations have uncovered schemes organized by caregiving agencies that involve numerous attendants and beneficiaries, while other investigations have targeted individual attendants and the beneficiaries these attendants claim to serve.

For example, in 2016 OIG investigated a PCS attendant who submitted duplicate time sheets to claim payment for services not rendered to multiple clients with developmental disabilities. Although Medicaid was paying the PCS attendant to clean and cook for the clients and help integrate them into the community, some clients lived in squalor. The PCS attendant also endangered clients by driving while impaired by pain pills. Increased data and internal controls would have revealed that services were not being provided to the beneficiaries. Federal qualifications and screening standards would have revealed the attendant's own substance abuse problems, providing beneficiaries and their families with valuable background information with which to make care decisions.

MFCUs are often on the front lines of investigating fraud in PCS. MFCUs regularly report PCS as a top fraud concern; between fiscal years 2012 and 2015, approximately one-third of their convictions involved PCS attendants. OIG consistently partners with MFCUs to combat PCS fraud across the country. In June 2016, OIG participated in a National Health Care Fraud Takedown and partnered with 24 MFCU offices on health care fraud issues, including Medicaid PCS fraud. OIG has ongoing work exploring MFCUs' efforts to combat PCS fraud. We expect to issue the results this summer.

Although MFCUs are vital in the fight against fraud because of their position on the front lines, they are limited in their ability to investigate allegations of patient abuse or neglect by personal care attendants. MFCUs lack the authority to investigate Medicaid patient abuse or neglect that occurs in a home- or community-based setting. A legislative change is needed to

expand MFCUs' statutory mission to include the investigation of abuse and neglect in beneficiaries' homes.

OIG's November 2012 *Personal Care Services: Trends, Vulnerabilities, and Recommendations for Improvement* (PCS Portfolio) summarized the findings of OIG's body of work on PCS and made recommendations to improve program vulnerabilities. OIG found that PCS payments were often improper because the services did not comply with basic requirements. OIG also found that there were inadequate controls in place to ensure proper payments and quality of care. PCS services and controls vary significantly from State to State because of a lack of Federal requirements for PCS and PCS attendants. This lack of consistency across and within States regarding the use of internal controls and qualifications makes it difficult to effectively pursue fraud and abuse in the PCS program.

Prevention, Detection, and Enforcement of PCS Fraud and Abuse

OIG's long history of oversight and enforcement has demonstrated that to effectively combat fraud, waste, and abuse and safeguard beneficiaries, action must be taken to

prevent bad actors from participating in our programs,

detect potential fraud, waste, or quality concerns quickly, and

enforce the laws of these programs through Federal and State investigations and prosecutions of fraudulent and abusive practices.

OIG's work has consistently demonstrated that these basic pillars of program integrity are lacking in PCS.

Prevent. First, there is a lack of basic Federal qualifications for PCS attendants. As a result, the Government does not consistently know who they are doing business with and cannot effectively prevent bad actors from serving beneficiaries and billing the Medicaid program. PCS places attendants directly in the homes of elderly or disabled beneficiaries who may be particularly vulnerable, creating a real risk of patient abuse and neglect. Requiring all PCS attendants to meet basic, minimum qualifications, such as having a State identification card, minimum age requirements, and a background check, better ensures that only qualified attendants are providing care. Requiring these minimum qualifications also ensures that necessary steps are being taken to prevent bad actors from committing fraud and harm in this important program. Some States currently require these basic safeguards in some of their PCS programs, but not in others. It is important that States have flexibility to implement various types of PCS to appropriately tailor these programs to the specific needs of their beneficiaries. However, that flexibility must be balanced with the need to provide all beneficiaries with the protections of these basic safeguards. **Thus, OIG continues to recommend that CMS establish minimum Federal qualifications and screening standards for all PCS attendants.**

Detect. Second, PCS attendants are not required by Federal law to be enrolled as providers or otherwise registered by States. As a result, we lack consistent information across States on who is actually entering the beneficiary's home. Without this critical information, we

cannot quickly identify and investigate a bad actor, including those who have engaged in fraud or abuse in other States. A single PCS attendant may provide services to multiple beneficiaries, putting each of them at risk. In addition, that same PCS attendant may have fraudulently claimed reimbursement for services not actually provided by billing for services provided to multiple beneficiaries at the same time. Without knowing the individual who is providing the services to a beneficiary, detecting fraud and abuse is severely hampered. **Accordingly, OIG continues to recommend that CMS require States to enroll or register all PCS attendants and assign them unique numbers.** This information will make it possible to protect beneficiaries and identify potential fraud more quickly, and assure that minimum qualifications are met.

Enforce. Third, to mitigate improper payments and fraud in PCS, **OIG recommends that CMS require that PCS claims identify the dates of service and the PCS attendant who provided the service.** When States have adopted measures that make available better data about PCS, it has a dramatic effect on the ability to identify and take action to stop fraud, waste, and abuse. For example, Alaska implemented a requirement that all PCS attendants be enrolled with the Medicaid agency. This allowed the Alaska MFCU and the Alaska Program Integrity Unit to compare and match provider information against other data, such as Medicaid claims. Having that provider data available significantly improved their capability to investigate bad actors. In a short span of 2 years, that type of data analysis helped support 108 criminal convictions and led to \$5.6 million in restitution. It also had a sentinel effect that helped the State reduce its PCS costs from \$125 million in 2013 to \$85 million in 2015.

As this example shows, better data leads to better enforcement and reduced costs. The savings achieved through better program integrity could provide funding for increased services to a larger number of beneficiaries in need, increasing access to critical care. Access to reliable national PCS data allows fuller visibility into the program operations, vulnerabilities, and even best practices. In addition, service-specific PCS data are critical to ensuring that oversight and enforcement efforts are able to find fraud, waste, and abuse quickly and protect vulnerable beneficiaries from harm.

21st Century Cures includes some promising steps forward to safeguard beneficiaries and makes better data available for the PCS program by requiring that all States implement electronic visit verification systems (EVVS) by 2019. The law requires that EVVS collect information on who receives and who provides the service; the service performed; and the date, time, and location of the service. As States begin implementing these new requirements, it will be important to ensure that the data gathered is complete, accurate, and timely.

As the PCS program grows and evolves, OIG continues to recommend that **CMS consider whether additional controls are needed to ensure that PCS are allowed under program rules and are provided.**

Progress in Implementation of OIG Recommendations

Notwithstanding progress, much remains to be done. To date, four PCS recommendations remain unimplemented, and two have been implemented.

OIG has worked with CMS to explore actions that it can take to address vulnerabilities in the delivery of PCS. CMS has issued an informational bulletin, *Strengthening Program Integrity in Medicaid Personal Care Services* (December 2016), that summarizes program integrity vulnerabilities and highlights safeguards States can use right now to strengthen program integrity in PCS. In addition, CMS has issued guidance, entitled *Preventing Medicaid Improper Payments for Personal Care Services* (July 2016), describing steps that PCS agencies and attendants can take to prevent improper payments. CMS also issued a Request for Information (RFI) entitled *Federal Government Interventions to Ensure the Provision of Timely and Quality Home and Community Based Services* (November 2016). CMS conducted a series of trainings, webinars, and conferences with States. These activities outlined approaches for States to identify overpayments. As a result, OIG closed the two recommendations related to adequate prepayment controls and data States need to identify when beneficiaries are receiving institutional care paid for by Medicare or Medicaid.

We have four recommendations that remain unimplemented:

- 1. Establish minimum Federal qualifications and screening standards for PCS workers, including background checks.**
- 2. Require States to enroll or register all PCS attendants, and assign them unique numbers.**
- 3. Require that PCS claims identify the dates of service and the PCS attendant who provided the service.**

4. Consider whether additional controls are needed to ensure that PCS are allowed under program rules and are provided.

The RFI sought stakeholder comments, information, and data on policy options that CMS can consider to address issues affecting home- and community-based services, including PCS. CMS has indicated that it is currently analyzing the comments it received to determine potential policy options. Depending on the actions CMS chooses to take, these recommendations could be resolved.

Conclusion

OIG work has demonstrated that PCS is subject to persistent fraud and beneficiary harm. CMS, in partnership with States, must implement basic safeguards to preserve this critical benefit that allows millions of beneficiaries to remain in their homes and communities. Combatting fraud and abuse in PCS not only protects beneficiaries and programs, but it also elevates the many honest, professional, and dedicated care attendants that enable beneficiaries to live independently. OIG is committed to the program integrity of home- and community-based services and ensuring beneficiary health and safety. To achieve that goal, OIG will continue to work with CMS and partner with other oversight agencies like MFCUs, the Department of Justice, the Administration for Community Living, and the Department of Health and Human Services' Office of Civil Rights.