



ATTORNEY GENERAL  
**LESLIE RUTLEDGE**

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November 30, 2021

Secretary Elizabeth Smith  
Department of Inspector General  
Office of Medicaid Inspector General  
323 Center Street, Suite 1200  
Little Rock, AR 72201

Dear Secretary Smith:

The Medicaid Fraud Control Unit (“MFCU”) has received fraud allegations and referrals alleging fraud and false claims against Empower Healthcare Solutions, LLC (“Empower”). The MFCU has concluded that these allegations constitute sufficient credible evidence of fraud to support suspension by the Office of the Medicaid Inspector General. If you have questions please contact me. We want you to have enough information to make the best decision concerning the Medicaid program and the many recipients dependent on Empower for services.

While there are a number of different types of transactions under investigation, all of them, if found to be improper, would directly impact the calculation of Empower’s Medical Loss Ratio (“MLR”), its State MLR ratio and risk corridor settlements.

**Behavioral Health Capitation Stabilization Program and Behavioral Health Incentive Plan**

In 2020, the provision of services to Medicaid beneficiaries was largely interrupted by the COVID-19 pandemic. With encounters down and a precipitous drop in services provided, a significant amount of Medicaid dollars paid to Empower based on the capitation rate for CY 2020 would accumulate and eventually have to be reconciled and repaid to the Medicaid program.

Empower engaged an actuarial consulting firm, Wakely Consulting Group, LLC, “to develop the Behavioral Healthcare Capitation Stabilization Program (“Program”).” According to Empower, Wakely identified 25 contracted Behavioral Health providers who were treating the largest number of Empower enrolled members. “The Program was in operation from April 1, 2020 through August 31, 2020” and “was designed to provide short-term capitated payments (from April 2020 – August 2020) to providers, with all such payments being reconciled following the end of the term of the Program.” Although Empower communicated with DHS and made DHS aware of the Program, it never sought or received DHS approval or authorization for the Program, nor did it respond to requests for details on the program, at least not in a timely manner.

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The capitated payment amounts were determined by Wakely on a provider-by-provider basis by analyzing prior historical payment data and adjusting for the five-month Program period. Empower reported approximately \$11.7 million in “BH Stabilization payments” on its financial template report submitted to DHS. According to Empower, at the conclusion of the reconciliation period at the end of November 2020, Wakely and Empower determined that the 25 BH providers were collectively overpaid approximately \$3.7 million in BH Capitation Stabilization payments.

The MFCU determined that credible evidence exists of at least \$3.7 million Medicaid dollars that were illegally retained and improperly reported as payment for Medicaid services for 2020.

### **Community Investments**

Empower’s audited 2020 financials indicate a Community Investment expense of \$18,520,074. During 2020, Empower committed to and paid the following amounts that were approved by DHS as community investments: Arkansas Community Health Network, LLC – \$1,885,750; Woodruff Health Group, LLC – \$3,000,000; Arkansas Healthcare Alliance, LLC – \$1,885,750; Independent Case Management, Inc. – \$5,039,000; and Access Health Services, LLC – \$2,015,000. These five DHS approved grant programs total \$13,825,500 in approved Community Investment expenditures. Empower claimed an additional \$4,694,574 in Community Investment expenditures in 2020 for which there is no support.

### **Misappropriation of Community Investment Funds**

Documents obtained during the course of investigation indicate that one or more of the five approved Community Investment programs are not operating as required by their proposals and that some of the Medicaid dollars may have been spent inappropriately or on expenses, costs or fees not included in the proposals.

### **Misuse of Empowers Special Investigations Unit**

Interviews and documents obtained during the course of investigation indicate that no provider audits were done for 6 months in 2019 at the direction of Empower. It has also been alleged that certain providers were protected from the normal audit process.

The MFCU is investigating whether this alleged conduct resulted in overpayments being made to providers in the Empower network. We are also trying to determine if costs related to Empower’s SIU process should be disallowed and recouped for the six month period where Empower had directed the SIU to standdown.

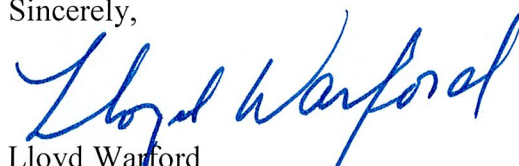
**Conclusion**

The finding of credible evidence of fraud is based upon a careful and judicious review of all allegations, facts and evidence specific to this case. It is important to note that a finding of credible evidence of fraud is the threshold necessary to open a formal investigation and not a final determination. It simply means that the allegations have been found sufficiently verified and credible to require a full investigation.

The MFCU will move as quickly as possible to resolve this investigation, but there is a massive amount of information that must be collected and carefully analyzed. It also should be noted that to date Empower has fully cooperated with our investigation.

We believe that we are well past the threshold of when federal law requires a decision to be made on payment suspension and that we have a duty to pass along sufficient information for you to consider all options permissible under federal and state regulations.

Sincerely,



Lloyd Warford  
Deputy Attorney General  
Medicaid Fraud Control Unit

cc: Deputy Dawn Stehle  
Director for Health and Medicaid  
Arkansas Department of Human Services