

Medicaid Compliance for the Dental Professional

February 2014



Introduction

Index Meeting, April 15, 2013

CMS Seeks to Increase Delivery of Preventive Dental Care for Children Through Medicaid and CHIP

Medicaid and the Children's Health Insurance Program (CHIP) are major sources of health coverage for low-income children ranging in age from infants to early adulthood. Together, these programs provide coverage for about 63.5 million children during the course of a year. For every percent of the 1.5 million children enrolled, or 8.2 million, enrolled dental care in fiscal year 2011. These figures show the important role dentists play in the Medicaid and CHIP programs.



- Dentists are critical partners in the success of Medicaid and the Children's Health Insurance Program (CHIP)
- The Centers for Medicare & Medicaid Services (CMS) plans to increase the percentage of enrolled children receiving preventive dental services from 42 to 52 percent by 2015

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Media Scrutiny of Children's Dental Care

Dental Abuse Seen Driven by Private Equity Investments

By Sydney F. Freedberg - May 16, 2012 11:01 PM CT - Provided by Bloomberg.com

Isaac Gagnon stepped off the school bus sobbing last October and opened his mouth to show his mother where it hurt. She saw steel crowns on two of the 4-year-old's back teeth. A dentist's statement in his backpack showed he had received two pulpomies, or baby root canals, along with the crowns and 10 X-rays - all while he was at school. Isaac, who suffers from seizures from a brain injury in infancy, didn't need the work, according to his mother, Stacy Gagnon. "I was absolutely horrified," said Gagnon, of Camp Verde, Arizona. "I never gave them permission to drill into my son's mouth. They did it for profit."

Isaac's case and others like it are under scrutiny by federal lawmakers and state regulators trying to determine whether a popular business model fueled by Wall Street money is soaking taxpayers and having a malign influence on dentistry.

Isaac's dentist was dispatched to his school by ReachOut Healthcare America, a dental management services company that's in the portfolio of Morgan Stanley Private Equity, operates in 22 states and has dealt with 1.5 million patients. Management companies are at the center of a U.S. Senate inquiry, and audits, investigations and civil actions in six states over allegations of unnecessary procedures, low-quality treatment and the unlicensed practice of dentistry.

Allegations like Gagnon's "are not representative" of the more than 500 cases handled by ReachOut affiliates in Isaac's school district, said Mickey Mandelbaum, a company spokesman.

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Government Scrutiny of Children's Dental Care



Attorney General Bondi's Office Arrests West Palm Beach Dentist on Medicaid Fraud and Grand Theft Charges

Attorney General Pam Bondi News Release | Media Contact: Mally McFarland Phone: (850) 245-0150

TALLAHASSEE, Fla. —Attorney General Pam Bondi announced today that her office has arrested a West Palm Beach dentist on charges of Medicaid fraud, grand theft, and employing a person to perform duties outside the scope of their license. Dr. Thomas Floyd, 61, surrendered and was taken into custody following an investigation by the Attorney General's Medicaid Fraud Control Unit.

"Employing a person to perform duties outside the scope of their license and billing Medicaid for those services is endangering patients and stealing from the Medicaid program," stated Attorney General Pam Bondi.

Medicaid Fraud Control Unit investigators allege that between 2008 and 2012, Floyd employed an unlicensed dental hygienist and allowed her to perform periodontal root cleaning and scaling on 71 different children. Under Florida law, this procedure is only authorized to be performed by a licensed dentist or dental hygienist. Floyd then billed the Medicaid program for these procedures.

Floyd is charged with one count of Medicaid fraud, one count of grand theft and one count of employing a person to perform duties outside the scope of their license, all third-degree felonies. If convicted, he faces up to 15 years in prison and more than \$30,000 in fines. The case is being prosecuted by the State Attorney's Office for the 15th Judicial Circuit.

Attorney General
Pam Bondi

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Government Scrutiny of Children's Dental Care—Office of the Inspector General

Report on pediatric dental claims in five states:

- Thirty-one percent of services billed resulted in improper payments
- Eighty-nine percent of improper payments were due to errors in documentation

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Goals

At the conclusion of this presentation, participants will be able to:

- Explain how to document "medical necessity" for dental procedures
- List at least two ways in which a compliance program can benefit a dental practice
- Identify the seven elements of a compliance program and how each element can be applied to a dental practice
- Recall where to report suspected issues of fraud, waste, and abuse

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Medical Necessity

Under the mandatory Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit, children in Medicaid are entitled to “dental care at as early an age as necessary, needed for[.]”

- [R]elief of pain and infections,
- [R]estoration of teeth and
- [M]aintenance of dental health.”*



*42 C.F.R. § 441.56(c)(2)

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Documenting Medical Necessity

Adequate documentation of medical necessity can help avoid questions about:

- Multiple treatments on the same tooth
- Treatment more expansive than the treatment plan

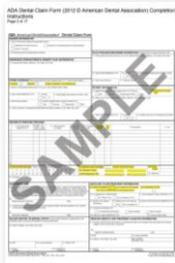


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Why Is Having a Compliance Program Important?

“All health care providers have a duty to ensure that the claims submitted to Federal health care programs are true and accurate.”*



*U.S. Department of Health and Human Services, Office of Inspector General

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Benefits of a Compliance Program

Benefits of an effective compliance program include:

- Ensuring true and accurate claims are submitted
- Identifying and correcting issues before they become big problems
- Placing a dental practice in a better position to comply with the forthcoming compliance program requirement and oversight by regulatory agencies



Compliance Program Goals

Goals of a compliance program include:

- Providing high quality, medically necessary services
- Adequately documenting dental services
- Appropriately billing for services rendered



Compliance Program Elements

The seven elements of a compliance program can be summarized as:

- 1 Written policies
- 2 Designation of compliance officer or contact(s)
- 3 Training
- 4 Communication
- 5 Monitoring
- 6 Enforcing disciplinary standards
- 7 Responding promptly



Written Policies

The written policies of a dental practice should refer to:

- Medicaid program requirements
- State dental laws and regulations
- Current Dental Terminology codes

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Written Policies—False Claims

Any entity receiving or making payments of \$5 million or more annually under the State Medicaid program must have written policies that provide detailed information on:

- The False Claims Act
- Administrative remedies for false claims
- State laws pertaining to false claims
- Detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse
- Whistleblower protections

This information must be included in any existing employee handbook.

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Designate a Compliance Officer or Contacts

To ensure implementation of the compliance program, the practice may wish to assign:

- Overall responsibility for the compliance program to a compliance officer
- Responsibility for specific compliance tasks to different individuals

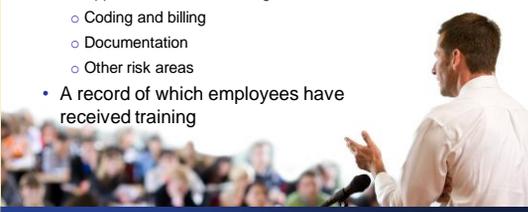


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3 Training

An effective compliance program should require:

- Recurrent training on:
 - The compliance program
 - Applicable statutes and regulations
 - Coding and billing
 - Documentation
 - Other risk areas
- A record of which employees have received training



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4 Why Are Open Lines of Communication Important?

Internal reporting from employees lets the dentist:

- Find out about the problem
- Correct the problem before the practice is at risk



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4 What Methods Can Be Used for Effective Communication?

Encourage internal reporting of compliance issues by:

- Having an open door policy
- Having a mechanism for anonymous reporting
- Discussing compliance issues in staff meetings

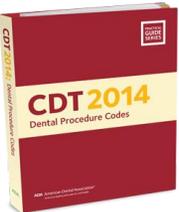


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 **Conducting Internal Monitoring and Auditing**

An effective compliance program can monitor for changes in:

- Government regulations
- Professional standards
- Billing codes



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 **Monitoring for Licensure**

Monitor to ensure licenses or certificates are:

- Current for persons performing specified services
- Displayed as required by State law

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 **Monitoring for Exclusions**

Screening for exclusions is important because:

- Excluded employees cannot participate in Federal health care programs
- Federal health care programs cannot pay for any items or services that are furnished, ordered, or prescribed by an excluded individual

“Furnished” includes items or services provided or supplied, directly or indirectly.

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 **How to Monitor for Exclusions**

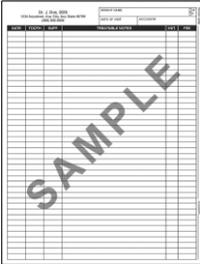
Ensure you do not employ excluded individuals.

Check the List of Excluded Individuals/Entities at <http://exclusions.oig.hhs.gov/> on the U.S. Department of Health and Human Services, Office of Inspector General (HHS-OIG) website.

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 **Monitoring for Documentation of Medical Necessity**

Dental practices should monitor their records to ensure that the medical necessity of all services rendered is properly documented



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 **Monitoring for Documentation of Informed Consent**

Document:

- Name and date of birth
- Authority to consent for child
- Description of procedure
- Known risks
- Alternative treatments
- Opportunity to ask questions
- Signature and witness

http://www.cms.gov/medicare/Parties_Guidelines/CI_InformedConsent.pdf



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Monitoring Other Risk Areas

Some other risk areas a dental practice could monitor may include:

- Unnecessary pulpotomies
- Too many or too few X-rays
- Inappropriate use of protective stabilization devices

This is not an exhaustive or comprehensive list.

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Monitoring—Issues in Recent Cases

Review issues identified in recent settlements and prosecutions. Some examples are:

- Unnecessary services: Nationwide dental management company
 - <http://www.justice.gov/opa/pr/2010/January/10-civ-052.html>
- Upcoding: New Haven pediatric dentist
 - <http://www.justice.gov/usao/ct/Press2011/20111011.html>
- Patient recruiting: Brooklyn dentist
 - <http://www.ag.nv.gov/press-release/ag-schneiderman-and-comptroller-dinapoli-announce-guilty-plea-brooklyn-dentist-who>

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Monitoring—Other Recent Cases

Additional issues detected in recent cases include:

- Services not rendered: Illinois dental management company, Texas dentist
 - <http://www.justice.gov/dea/pubs/states/newsrel/chicago041408a.html>
 - http://www.justice.gov/usao/txn/PressRelease/2011/sep21crow_ames_dentist_HCF_sen_pr.html
- Unbundling: New York dental center
 - <http://www.ag.nv.gov/press-release/ag-schneiderman-announces-325000-medicaid-fraud-settlement-erie-county-dental-clinic>
- Lack of documentation: Texas dental center
 - http://www.justice.gov/usao/txn/PressRelease/2012/MAR2012/mar21Malouf_AllSmiles_Settlement_PR.html

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5 Monitoring and Auditing

Self-Audits

- What to audit
 - Standards and procedures
 - At least five or more randomly selected records per Federal payor
 - <http://oig.hhs.gov/compliance/self-disclosure-info/files/Provider-Self-Disclosure-Protocol.pdf>
- Which risks to audit
 - Coding, billing, and documentation errors
 - Improper inducements, kickbacks, and referrals

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6 Enforcing Disciplinary Standards

Disciplinary standards should be enforced through:

- Simple and available disciplinary guidelines
- Timely and consistent disciplinary action

There should be an expectation that compliance concerns will be reported.



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7 Prompt Responses and Corrective Action

- Examine the issue
- Collect relevant documentation
- Identify the standard that applies



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Prompt Responses and Corrective Action

- Return any funds improperly paid
- Take internal corrective action
- Report to the State Medicaid agency (SMA) or other government agency, as appropriate

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graph TD
    REVIEWS --> TRAINING
    TRAINING --> EDIT
    EDIT --> POLICIES
    POLICIES --> PROCESSES
  
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**Program Integrity Landscape—
Federal Agencies**

- CMS
 - Payment Error Rate Measurement (PERM) program
 - Medicaid Integrity Contractors (MICs)
- HHS-OIG
- Federal Bureau of Investigation (FBI)
- Federal prosecutors' offices

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**Program Integrity Landscape—
State Agencies**

- SMAs
- Medicaid Recovery Audit Contractors (RACs)
- Medicaid Fraud Control Units (MFCUs)
- State prosecutors' offices

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Reporting

Report suspect practices by other dental professionals to:

- The SMA
- The MFCU
 - Contact information for SMAs and Medicaid Fraud Control Units is available at <http://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforConsumers/Downloads/smafraudcontacts-october2013.pdf> on the CMS website
- HHS-OIG
 - 1-800-HHS-TIPS
 - <https://forms.oig.hhs.gov/hotlineoperations/complaint.aspx#english>



Conclusion

A compliance program can protect your practice by:

- Ensuring that patients receive high-quality care
- Finding and correcting problems before the government does
- Having well-documented files in the event of a government investigation
- Resolving employee concerns before those concerns result in:
 - A complaint to a government agency
 - A whistleblower lawsuit

Disclaimer

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