

DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Medicare & Medicaid Services



## MEDICAID COMPLIANCE AND YOUR DENTAL PRACTICE

### Background

Section 6411(a) of the Affordable Care Act expanded the Recovery Auditors program to Medicaid and requires each State Medicaid program to establish a recovery audit program to audit claims for services furnished by Medicaid providers. These Medicaid Recovery Auditors must identify overpayments and underpayments made to dental professionals by the Medicaid program.

In response to this requirement, dental practices should establish and maintain an internal compliance program to help identify and correct documentation and billing issues before submitting claims. According to the Office of the Inspector General (OIG), a compliance program can speed and optimize proper claims payment. In addition, the increased accuracy of documentation that may result from a compliance program will assist you in enhancing patient care.

**Please Note:** The information in this publication applies only to Medicaid Programs. Throughout this fact sheet, the term “you” refers to dental professionals or dental practice staff members.

Dental claims submitted to State Medicaid programs must be supported by documentation. Accurately billing dental services avoids unnecessary delays in payment. It is important for dental practices to ensure that medical necessity of services is properly documented and services are correctly billed.

### The Value and Core Elements of a Compliance Program

A compliance program helps to ensure that medical necessity is documented, that quality services are appropriately provided and accurately billed, and that Medicaid rules are followed.

The seven core elements below provide a solid basis upon which your dental practice can create a voluntary compliance program:

1. Conducting internal monitoring and auditing;
2. Implementing compliance and practice standards;
3. Designating a compliance officer or contact;
4. Conducting appropriate training and education;
5. Responding appropriately to detected offenses and developing corrective action;
6. Developing open lines of communication; and
7. Enforcing disciplinary standards through well-publicized guidelines.

## Establishing a Compliance Program

The Federal Register (FR) Vol. 65, No. 194, October 5, 2000 (<https://oig.hhs.gov/authorities/docs/physician.pdf>), provides details on establishing a voluntary compliance program for individual and small group practices. Similar components have been contained in previous guidance issued by the OIG. However, unlike other guidance issued by OIG, this guidance does not suggest that dental practices implement all seven components of a full-scale compliance program. Instead, the guidance emphasizes a step-by-step approach to follow in developing and implementing a voluntary compliance program. The guidance should not be viewed as mandatory or as an all-inclusive discussion of the advisable components of a compliance program. Rather, this list is intended to present guidance to assist dental practices that voluntarily choose to develop a compliance program.

### Steps to Establishing a Compliance Program

#### **Step One: Conducting Internal Monitoring and Auditing**

An ongoing evaluation process is important to a successful compliance program. This ongoing evaluation includes not only whether the practice's standards and procedures are current and accurate, but also whether the compliance program is working. Therefore, an audit is an excellent way for you to determine what, if any, problem areas exist and focus on the risk areas that are associated with those problems.

#### **Step Two: Implementing Compliance and Practice Standards**

After the internal audit identifies your risk areas, the next step is to develop a method for dealing with those risk areas through the practice's standards and procedures. Written standards and procedures are crucial to any compliance program. Those standards and procedures help to reduce the prospect of erroneous claims and fraudulent activity by identifying risk areas and establishing tighter internal controls to counter those risks, while also helping to identify any irregular billing practices. Many small practices already have something similar in their office manuals, which include practice policy statements regarding patient care, personnel matters, and practice standards, as well as procedures for complying with Federal and State law.

#### **Step Three: Designating a Compliance Officer or Contact**

After the audits have been completed and the risk areas identified, ideally, one member of your dental practice staff will accept responsibility for developing a corrective action plan and overseeing your adherence to that plan. This person can either be in charge of all compliance activities for the practice or play a limited role to resolve the current issue. It is acceptable for a dental practice to designate more than one employee with compliance monitoring responsibility.

#### **Step Four: Conducting Appropriate Training and Education**

Education is an important part of any compliance program and is the logical next step after problems have been identified and the practice has designated a person to oversee educational training. Ideally, education programs will be tailored to your needs, specialty, and size and will include both compliance and specific training.

#### **Step Five: Responding Appropriately to Detected Offenses and Developing Corrective Action**

When a possible violation has been detected, the next step is to develop a corrective action plan and determine how to respond to the problem. Violations of a practice's compliance program, significant failures to comply with Federal or State law, and other types of misconduct threaten your status as a reliable, honest, and trustworthy provider of dental care. Therefore, upon receipt of reports or reasonable indications of suspected noncompliance, it is important that the compliance contact or other practice employee look into the allegations to determine whether a significant violation of applicable law or the requirements of the compliance program has indeed occurred. If so, take decisive steps to correct the problem. As appropriate, such steps may involve a corrective action plan, the return of any overpayments, a report to the Government, and/or a referral to law enforcement authorities. When appropriate, the compliance procedures of the practice may need to be changed to prevent the problem from recurring.

**Step Six: Developing Open Lines of Communication**

To prevent problems from occurring and encourage frank discussion, you need open lines of communication within your practice. An open line of communication is an integral part of implementing a compliance program in large or small practices.

**Step Seven: Enforcing Disciplinary Standards Through Well-Publicized Guidelines**

The last step is to incorporate measures into your practice to ensure employees understand the consequences if they behave in a non-compliant manner. An effective compliance program includes procedures for enforcing and disciplining individuals who violate the practice’s compliance or other practice standards. Enforcement and disciplinary provisions are necessary to add credibility and integrity to a compliance program.

**The Role of Documentation and Compliance**

Medicaid coverage of dental services for adults is limited, but for children it includes screening services and other preventive, diagnostic, and treatment services that are medically necessary and properly documented. Under the mandatory Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) benefit, children enrolled in Medicaid are entitled to dental care at an age as early as necessary, needed for relief of pain and infections, restoration of teeth, and maintenance of dental health.

Determinations of medical necessity are generally made by the patient’s dentist, consistent with general practice standards, any specific guidelines issued by the State, and the patient’s individual treatment plan. Specific guidelines issued by the States can vary, but the common fundamental requirement is that reimbursement will only be paid for services that are medically necessary and adequately documented.

Medical necessity is a term that may be confusing when used in the dental context. It is widely used in Medicaid programs when referring to dental services. When you hear the term medical necessity, think dental necessity. To show medical necessity, it is a good practice to:

- Document not only the treatment but also the specific disease or condition that made the treatment necessary; and
- Document the disease or condition on the tooth chart, surface by surface, as determined by visual or tactile clinical examination or by X-ray.

Good documentation practices can answer common questions about treatments billed to Medicaid, such as why a tooth was treated twice, why the required treatment varied from the original treatment plan, or why a treatment was performed in the absence of an X-ray. The following table illustrates how a compliance program might be integrated into your office to properly document medical necessity.

<b>Key Compliance Element</b>	<b>Connection to Medical Necessity</b>
Conducting internal monitoring and auditing	The dental practice should designate a responsible person to review claims denied for lack of documentation, identify issues to monitor, continually monitor claims, and periodically audit selected charts to ensure medical necessity is properly documented.
Implementing compliance and practice standards	Practice policy should make clear to all employees that documentation of medical necessity, including the presence of disease, is required.
Designating a compliance officer or contact	Designated individuals should be responsible for ensuring compliance with policy and responding to any employee concerns about lack of documentation.
Conducting appropriate training and education	Appropriate staff members should be trained on what is required for documentation.

Key Compliance Element	Connection to Medical Necessity
Responding appropriately to detected offenses and developing corrective action	If documentation is lacking or does not support claims that already have been paid by the Medicaid program, the practice should report the overpayment to the State Medicaid Agency (SMA) and return the money.
Developing open lines of communication	The practice should make it possible for all employees to communicate concerns about lack of documentation to responsible individuals so problems can be corrected as soon as possible.
Enforcing disciplinary standards through well-publicized guidelines	If it is determined that employees have failed to complete their assigned roles in documenting medical necessity, appropriate disciplinary action should be taken.

## Report Suspect Practices

Dentists, patients, and outside oversight agencies all share the same goal: Provision of quality dental care that is appropriately documented. The Department of Health and Human Services (HHS)-OIG advises practitioners not to do something just because a competitor is doing it. If you suspect improper practices by another dentist, you can report this information to several agencies, including your SMA, your State Medicaid Fraud Control Unit, and HHS-OIG. Contact information is available on the “State by State Fraud and Abuse Reporting Contacts (<https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforConsumers/Downloads/smafraudcontacts-oct2014.pdf>)” document and the “How to Report Fraud and Suspected Fraud ([https://www.cms.gov/medicare-medicoid-coordination/fraud-prevention/fraudabuseforconsumers/report\\_fraud\\_and\\_suspected\\_fraud.html](https://www.cms.gov/medicare-medicoid-coordination/fraud-prevention/fraudabuseforconsumers/report_fraud_and_suspected_fraud.html))” web page on the Centers for Medicare & Medicaid Services (CMS) website. Contact HHS-OIG by calling 1-800-HHS-TIPS or going to the OIG Hotline Operations (<https://forms.oig.hhs.gov/hotlineoperations/index.aspx>) web page on the HHS-OIG website. If you believe your patient, a Medicaid beneficiary, is involved in suspect practices, such as card sharing or eligibility fraud, report the issue to your SMA.

## Resources

The chart below provides resource information for Medicaid provider dental practices.

For more information about...	Resource
Centers for Medicare & Medicaid Services – “Frequently Asked Questions — Section 6411(a) of the Affordable Care Act”	<a href="https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/MedicaidIntegrityProgram/Downloads/scanned_document_29-12-2011.pdf">https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/MedicaidIntegrityProgram/Downloads/scanned_document_29-12-2011.pdf</a> This document discusses general information regarding the Medicaid Recovery Auditors program.
Centers for Medicare & Medicaid Services – “Payment Error Rate Measurement (PERM) Overview” presentation	<a href="http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/PERMOverview.pdf">http://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicaid-and-CHIP-Compliance/PERM/Downloads/PERMOverview.pdf</a> This presentation provides details on PERM requirements for Medicaid providers.

For more information about...	Resource
Centers for Medicare & Medicaid Services – “Program Integrity: Medicaid Compliance for the Dental Professional” web page	<a href="https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Provider-Education-Toolkits/dental-tookit.html">https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/Medicaid-Integrity-Education/Provider-Education-Toolkits/dental-tookit.html</a> The Medicaid Compliance for the Dental Professional materials review the basic elements of a compliance program and how to facilitate compliance at the practice level. The products explain good documentation expectations and using dental software as a tool for good documentation practices.
Centers for Medicare & Medicaid Services – “State by State Fraud and Abuse Reporting Contacts”	<a href="https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforConsumers/Downloads/smafraudcontacts-oct2014.pdf">https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforConsumers/Downloads/smafraudcontacts-oct2014.pdf</a> This document shows the state contact information for reporting fraud and abuse.
Code of Federal Regulations – 42 CFR §440.100 “Dental Services”	<a href="http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&amp;SID=d1fa89c4fe41ea21e9d1828dfba6a628&amp;ty=HTML&amp;h=L&amp;n=42y4.0.1.1.9&amp;r=PART#42:4.0.1.1.9.1.112.12">http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&amp;SID=d1fa89c4fe41ea21e9d1828dfba6a628&amp;ty=HTML&amp;h=L&amp;n=42y4.0.1.1.9&amp;r=PART#42:4.0.1.1.9.1.112.12</a> This document describes the definition of dental services.
Code of Federal Regulations – 42 CFR §441.50 – §441.62 “Subpart B - Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of Individuals Under Age 21”	<a href="http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&amp;SID=e1ce94ce245f4c1b836e1c963d9e7d33&amp;ty=HTML&amp;h=L&amp;r=PART&amp;n=42y4.0.1.1.10#42:4.0.1.1.10.2">http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&amp;SID=e1ce94ce245f4c1b836e1c963d9e7d33&amp;ty=HTML&amp;h=L&amp;r=PART&amp;n=42y4.0.1.1.10#42:4.0.1.1.10.2</a> This subpart implements sections 1902(a)(43) and 1905(a)(4)(B) of the Social Security Act, by prescribing State plan requirements for providing early and periodic screening and diagnosis of eligible Medicaid beneficiaries under age 21 to determine physical and mental defects, and providing treatment to correct or improve or correct defects and chronic conditions.
Code of Federal Regulations – 42 CFR §441.56(c)(2) “Required Activities”	<a href="http://www.ecfr.gov/cgi-in/retrieveECFR?gp=1&amp;SID=ac622dfb9c94ea1f01157cca4f1a3fb6&amp;ty=HTML&amp;h=L&amp;r=SECTION&amp;n=42y4.0.1.1.10.2.112.3">http://www.ecfr.gov/cgi-in/retrieveECFR?gp=1&amp;SID=ac622dfb9c94ea1f01157cca4f1a3fb6&amp;ty=HTML&amp;h=L&amp;r=SECTION&amp;n=42y4.0.1.1.10.2.112.3</a> This document provides information on medical necessity for dental services.
Federal Register – Vol. 65, No. 194, October 5, 2000, “OIG Compliance Program for Individual and Small Group Physician Practices”	<a href="https://oig.hhs.gov/authorities/docs/physician.pdf">https://oig.hhs.gov/authorities/docs/physician.pdf</a> This Federal Register notice sets forth Compliance Program Guidance developed by the OIG for Individual and Small Group Physician Practices.

For more information about...	Resource
Office of Inspector General (OIG) – Compliance Guidance web page	<a href="https://oig.hhs.gov/compliance/compliance-guidance/index.asp">https://oig.hhs.gov/compliance/compliance-guidance/index.asp</a> OIG has developed a series of voluntary compliance program guidance documents directed at various segments of the health care industry to encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. This web page provides links to compliance resource materials.
Office of Inspector General (OIG) – “Health Care Compliance Program Tips”	<a href="https://oig.hhs.gov/compliance/provider-compliance-training/files/Compliance101tips508.pdf">https://oig.hhs.gov/compliance/provider-compliance-training/files/Compliance101tips508.pdf</a> This tip sheet provides information on establishing a compliance program and creating a culture of compliance.
Office of Inspector General (OIG) – “Operating an Effective Compliance Program”	<a href="https://oig.hhs.gov/compliance/provider-compliance-training/files/OperatinganEffectiveComplianceProgramFinalBR508.pdf">https://oig.hhs.gov/compliance/provider-compliance-training/files/OperatinganEffectiveComplianceProgramFinalBR508.pdf</a> This tip sheet provides information on how to implement and maintain a successful compliance program.
MLN Provider Compliance	For additional information and educational materials related to provider compliance, visit the MLN Provider Compliance ( <a href="http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/ProviderCompliance.html">http://www.cms.gov/Outreach-and-Education/Medicare-Learning-Network-MLN/MLNProducts/ProviderCompliance.html</a> ) web page on the CMS website.



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