Office of the Attorney General
State of Texas

CIVIL INVESTIGATIVE DEMAND

RECEIVED
FEB - 7 2014

To: [redacted]

[redacted]

The Office of the Attorney General of Texas (OAG) is investigating possible violations of the TEXAS MEDICAID FRAUD PREVENTION ACT, TEXAS HUMAN RESOURCES CODE §§36.001 *et. seq.*, regarding the processing by Xerox State Healthcare, LLC and/or Xerox, Inc. of orthodontic prior authorization requests submitted by dental providers to Texas Medicaid. The OAG requests that you produce the Documents specified herein that are in your possession, custody, or control pursuant to TEXAS HUMAN RESOURCES CODE §36.054. Definitions and instructions to be used in responding to this Civil Investigative Demand (CID) are attached. Please review these instructions and definitions carefully before responding to this CID.

DEADLINE: The requested Documents shall be submitted to Assistant Attorney General Margaret Moore, Deputy Chief, Civil Medicaid Fraud Division, P.O. Box 12548, Austin, Texas 78711-2548 (physical address 300 W. 15th St., 9th Floor, 78701), on or before 15 days from the date you receive this CID, or as otherwise agreed to by the Office of the Attorney General. In lieu of providing the original Documentary Material to the Attorney General for inspection and copying, you may provide true and correct copies, if feasible, of all requested Documentary Material **provided that such copies are accompanied by a completed sworn certificate and business records affidavit in the form provided in Exhibit A.**

NOTICE

Any person who refuses to comply, in whole or part, with a CID issued under TEXAS HUMAN RESOURCES CODE §36.054 is subject to penalty, including contempt of court. *See* TEX. HUM. RES. CODE § 36.054(g) - (l). Objections to this demand may be made in accordance with TEXAS HUMAN RESOURCES CODE §36.054(f).

ISSUED this 6th day of February, 2014.

THIS CIVIL INVESTIGATIVE DEMAND is a continuing one and, if additional information or documents are located after your initial response is made, supplementation must be made promptly.

The instructions and definitions that follow are an integral part of this request and must be followed in responding to these requests. For the purpose of interpreting or construing the scope of the request or requests made herein, all terms shall be given the most expansive and inclusive interpretation, unless otherwise specifically restricted.

INSTRUCTIONS

1. Documentary Material not otherwise responsive to these requests shall be produced if such documents mention, discuss, refer to, or explain the Documents that are called for by these requests, or if such documents are attached to documents called for by these requests and constitute routing slips, transmittal memoranda, letters, and cover sheets.

2. Documents attached to each other should not be separated, including, but not limited to, e-mail attachments.

3. The Specified Time Period is from **January 1, 2003 to the date this CID is received by you.**

DEFINITIONS

1. The use of the singular form of any word includes the plural and vice versa.

2. This Civil Investigative Demand requires production of documentary materials and communications that are in your "possession, custody or control," including all circumstances where you have a superior right to compel the production of the materials from a third party.

3. "Concerning" means relating to, referring to, describing, evidencing, or constituting.

4. "Document" is synonymous in meaning and equal in scope to the usage of the term "document" under the TEXAS RULES OF CIVIL PROCEDURE and, as used herein, includes, without limitation, any written, printed, recorded, electronic or graphic material, including without limitation writings, phone records, memoranda, reports, letters, diaries, electronic correspondence, e-mail, notes, minutes, records, photographs, tapes, diskettes, and computer printouts, however stored, printed, reproduced, or coded and other data compilations from which information can be obtained, or translated (if necessary) into reasonably usable form, and all portions, summaries, extracts, condensations, abridgments and excerpts of any of the foregoing, and all non-identical copies of any of the foregoing. A draft of a non-identical copy is a separate document within the meaning of this term. This definition of document further includes any electronic or magnetic data or other electronically stored information of any kind (collectively "ESI"). Responsive ESI should be produced in native format, unless otherwise provided by express signed written agreement by an authorized representative of the Office of the Attorney General. See **Exhibit B**, formatting requirements for electronic discovery production.

NOTE: this CID is NOT requesting patient records.

5. "Medicaid" means that cooperative federal and state program created and administered pursuant to the federal MEDICAID ACT, 42 U.S.C. § 1396 *et seq*.

6. "Provider" means a person who participates in or who has applied to participate in the Medicaid program as a supplier of a product or service and includes:

   (A) a management company that manages, operates, or controls another provider;

   (B) a person, including a medical vendor, that provides a product or service to a provider or to a fiscal agent;

   (C) an employee of a provider;

   (D) a managed care organization; and

   (E) a manufacturer or distributor of a product for which the Medicaid program provides reimbursement.

7. "Texas Medicaid" means the Medicaid program administered by and/or on behalf of the State of Texas.

8. "Texas Health & Human Services Commission (HHSC)" means the current entity and its predecessors.

9. "You" and "your" means the entity or entities to which this request is addressed, together with its/their affiliates.

10. "Medicaid recipient" means an individual on whose behalf a person claims or receives a payment from the Texas Medicaid program or a fiscal agent, without regard to whether the individual was eligible for benefits under the Medicaid program.

11. "TMHP" means the Texas Medicaid Health Partnership.

INFORMATION REQUESTED

You are hereby instructed to produce the following:

1. Documents created or possessed during the Specified Time Period that support the allegations contained in ¶¶ 8, 13, 16, 17, 18, 20, 21, 22, 23, 24, 25, 45, 46, 48, 49, 49 [sic], 53, 59, 60, 63, and 64 of the Original Petition filed by you on February 3, 2014 in the District Court of Travis County [redacted]

2. Documents created or possessed during the Specified Time Period comprising and/or reflecting communications between you and the Texas Health & Human Services Commission concerning the submission of prior authorization requests by dental providers for orthodontic treatment of Texas Medicaid recipients.

3. Documents created or possessed during the Specified Time Period comprising and/or reflecting communications between you and TMHP concerning the submission of prior authorization requests by dental providers for orthodontic treatment of Texas Medicaid recipients.

4. Documents created or possessed during the Specified Time Period comprising and/or reflecting communications between you and any other Texas Medicaid dental provider concerning the submission of prior authorization requests by dental providers for orthodontic treatment of Texas Medicaid recipients.

5. Documents created or possessed during the Specified Time Period reflecting your understanding of, compliance with, and/or implementation of Texas Medicaid policies regarding the submission of prior authorization requests for orthodontic treatment.

6. Documents created or possessed during the Specified Time Period reflecting your instructions to your employees regarding the submission of prior authorization requests by dental providers for orthodontic treatment of Medicaid recipients.

7. Documents, including teaching materials, either created or received by you during the Specified Time Period from any source reflecting instructions and/or suggestions to Texas Medicaid providers regarding the submission of authorization requests by dental providers for orthodontic treatment of Medicaid recipients.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for Civil Litigation

RAYMOND C. WINTER
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Austin, Texas 78711-2548
(512) 512-936-1319 direct dial
(512) 499-0712 fax

Attorneys for the State of Texas

CERTIFICATE OF SERVICE

[redacted]

Margaret Moore

Margaret Moore
Assistant Attorney General

EXHIBIT A

SWORN CERTIFICATE

STATE OF _____ §
§
COUNTY OF _____ §

On this ____ day of _____, 2014, _____ , a person known to me, appeared before me, the undersigned notary public, and after I administered an oath to him/her, upon his/her oath (s)he said:

I am the _____ (title) of _____, and I am duly authorized to respond and to make this certification on behalf of _____. I have knowledge of the facts and circumstances relating to the production of documents in response to the Requests for Production contained in this Civil Investigative Demand. I hereby verify that true and correct copies of all of the requested material within _____'s possession, custody, or control have been produced to the Office of the Attorney General.

Signature _____

Printed Name _____

Title _____

Telephone Number _____

SWORN TO and SUBSCRIBED BEFORE ME this _____day of _____ _____, 2014.

_____
Notary Public in and for
The State of _____

[SEAL]

My Commission expires: _____

BUSINESS RECORD AFFIDAVIT

Before me, the undersigned notary, on this day personally appeared _____, a person whose identity is known to me. After I administered an oath to this person, upon this oath the person said:

1. "My name is _____. I am of sound mind and capable of making this affidavit. I have personal knowledge of the facts stated in this affidavit, and they are true and correct.

2. I am the custodian of records of _____ [the "Company"].

3. In response to a Civil Investigative Demand from the State of Texas, the Company produced _____ pages of documents from the Company Bates labeled _____ through _____.

4. These records are kept by the Company in the regular course of business, and it was the regular course of business of the Company for an employee or representative of the Company, with knowledge of the act, event, condition, opinion, or diagnosis that was recorded, to make this record or to transmit the information to be included in this record. The record was made at or near the time or reasonably soon after the act, event, condition, opinion, or diagnosis that was recorded. The records produced to the State of Texas are the original or exact duplicates of the original."

FURTHER AFFIANT SAYETH NAUGHT.

_____
Signature
Name: _____
Title: _____

SWORN TO and SUBSCRIBED BEFORE ME this ____ day of _____, 2014.

_____
[SEAL] Notary Public in and for the State of _____
My commission expires:_____

EXHIBIT B
Formatting Requirements for Electronic Discovery Production

Office of the Texas Attorney General
Standard Procedures and Specifications for Production

This document describes the procedures and specifications for producing an image-based production to the Office of the Texas Attorney General (OAG) in the form of load files in an industry standard Concordance format. Page 1 lists necessary procedures and areas of potential concern. Page 2 provides the actual **Image & Load File Specifications**. Page 3 Provides Samples of data and image files to be produced.

For any technical questions regarding these specifications, please contact -
OAG Electronic Discovery Services at Electronic.Discovery Services@oag.state.tx.us or 512-936-9904.

Special Areas of Concern

1) Database files (such as an Access .MDB) should not be produced in this manner. Database productions should be discussed with the appropriate OAG legal and technical staff to determine the optimal production format.

2) Regarding attachments, pay special attention to the PARENTID and ATTCHIDS fields, which are used to keep track of email families, and have often been delivered incorrectly by vendors.

3) Note that PowerPoint and Excel files require special handling. Both PowerPoint and Excel files should be produced natively, with links referenced in the DOCLINK field. In addition, you must provide TIFF images of the entire PowerPoint. PowerPoint files should be produced in full slide image format along with speaker notes, with any speaker notes following the appropriate full slide image. For Excel spreadsheets, in addition to native production, provide a placeholder tiff image. Images of spreadsheets often comprise thousands of pages, and are thus not useful for review purposes.

4) Extracted text should be provided with all records, except for documents that originated as hard copy. For the hard-copy records, please provide OCR text. For redacted documents, provide full text for the redacted version.

5) Before beginning production, produce a sample, including emails, attachments, and non-email files. The OAG will evaluate that sample and confirm the technical details. If the OAG identifies a problem, you will need to resubmit the sample until the OAG confirms there are no problems.

6) When you provide the full production, the OAG must receive a cover letter that provides the total document and page counts, so the OAG can verify the records in the database. The counts

should also be reported by custodian. With any submission, documents from an individual custodian should be confined to a single load file.

7) You must label the media provided, whether CD, DVD, or hard drive. At a minimum, the label must include a unique number (Submission #), the name of the company providing the response, and any references necessary to link to the information in the cover letter.

Image & Load File Specifications

- IMAGES: Provided Images should be standard, single page TIF images
  - Images should be single-page, Group IV TIFF files.
  - File names cannot contain embedded spaces.
  - Bates numbers should be endorsed on the lower right corner of all images.
  - The number of TIFF files per folder should not exceed 500 files.

- LOAD FILES: Provide standard Concordance load files, including data file (.DAT) and Image Cross-Reference file (Opticon .OPT or .LOG).

  - The data file (.DAT) contains all of the fielded information that will be loaded into the database.
  - All attachments should sequentially follow the parent document/email.
  - All metadata associated with email and native electronic document collections must be produced.
  - The first line of the .DAT file must be a header row identifying the field names.
  - DAT files should be limited in size to allow editing in a standard text editor such as TextPad or Notepad++ (less than 100 MB per file, preferred).
  - OCR Data should not be embedded in the DAT.

- Text and OCR DATA: Provide separate TXT files containing extracted or OCR text, one file per imaged document (commonly referred to as document level text). TXT files should have same file name as first image of document (BEGDOC).
- The metadata of Email and attachments, and native file document collections should be extracted and provided in the .DAT file using standard field definitions and formatting.

The specifications listed above are standard in the e-Discovery industry, and Litigation Support providers are familiar with this format and should be able to provide guidance and assistance if needed.

Sample DAT File

DAT file should include all metatadata fields available from produced documents.

þFIRSTBATESþþLASTBATESþþIMAGEIDþþCUSTODIANþ
þAGTX0000001þþAGTX00000005þþTXOAG00000001þþCitizen, Johnþþ

Sample OPT File

The format is as follows:
ImageID,VolumeLabel,ImageFilePath,DocumentBreak,FolderBreak,BoxBreak,PageCount

IMG0000001, ,E:\001\IMG0000001.TIF,Y,,,
IMG0000002, ,E:\001\IMG0000002.TIF,,,,
IMG0000003, ,E:\001\IMG0000003.TIF,,,,
IMG0000004, ,E:\001\IMG0000003.TIF,Y,,,
IMG0000005, ,E:\001\IMG0000003.TIF,Y,,,
IMG0000006, ,E:\001\IMG0000003.TIF,,,,