

House Public Health Committee – February 13, 2003

Rep. Kolkhorst: Our 3rd panel today, members, is Medicaid dental challenges. It consists of Dr. Karl Janek, Chris Traylor, who's in with us most of the day, and then Doug Wilson, Inspector General. And I see former member Jack Stick, walking in the shadows back there. So welcome, thank you for being here. For the new members, we have had several hearings on some pretty big news that broke during the interim about maybe some areas of improvement that we needed, and we learned a lot during that. And this is a follow-up, members, to the orthodontia and dental issues that we saw with overpayments and maybe some overutilization and maybe even some fraudulent activities. Maybe.

So: where do you want to start?

Dr. Janek : Mdm. chair, if you don't mind, I think I'm going to let Commissioner Traylor handle this part of the panel discussion.

Rep. Kolkhorst: We have missed having Commissioner Traylor talk very much today.

Chris Traylor: Good afternoon, Mdm. chair and members. I'm Chris Traylor, Deputy Executive Commissioner of the Health and Human Services Commission.

As we talked about in the interim and now today, there were many concerns raised about the extraordinary increase in the utilization of dental services and orthodontia services in the Texas Medicaid program. There [were] a number of things that we saw as we began to examine that. One, our prior authorization process at our claims administrator vendor, TMHP, was probably not what you would expect it to be.

Rep. Kolkhorst: But are they still with us?

Traylor: They are still with us.

Rep. Kolkhorst: And that you would have to explain to me. Keep going, and we will talk about that later.

Traylor: Sure. And there were also some policy changes as well as operational changes that needed to occur in the Medicaid dental program. We did change our fee-for-service policy limits to limit orthodontia services to children ages 13 and older. It was 12 and older, and children under age 21 with the cleft palate and other special medically necessary circumstances were also allowed to have braces too. Medicaid policy does not allow for orthodontia for cosmetic reasons. And so that was always prohibited in the program. But we've made extra special efforts to make sure that was not the case for the future.

Rep. Kolkhorst: Representative Laubenberg .

Rep. Laubenberg: Chris, so you're talking about the changes in policy. I think the one of the things that came out in the interim hearing was that a private sort of orthodontist has a set fee, regardless of how many visits.

Traylor: Yes. Right.

Rep. Laubenberg: But we found out that with Medicaid orthodontia, it was paid per visit. And sometimes there were 2 or 3 years worth of visits taking place. Has that changed?

Traylor: Yes. As a matter of fact, as we get later in the presentation, we've moved to a fully capitated dental maintenance organization model. And I think Doug will also want to talk to you more specifically about what he found in some of those incidences of billing for multiple services in orthodontia.

Rep. Laubenberg: Okay. So that's part of the change. I'm sorry.

Traylor: Thanks. And so, as we said earlier, HHC does contract with our Medicaid claims administrator for the fee-for-service part of this program. We did review those prior authorization evaluations. And we identified areas where changes absolutely had to occur in that fee-for-service system. One was review and retention of clinical information. As I said, Doug will talk to you about that later. Collection of additional clinical information, and they also needed to make sure that we employed sufficient and qualified staff to do those prior authorizations. In other words: to make sure you had the availability of a dentist on staff. They did have one dentist, but the dentist could not possibly keep track of the volume that was running through that particular vendor at the time.

On October 1, the submission of diagnostic models radiographs were required for orthodontia treatment in any kind of cross-bite therapy that would be required. We added language to allow substitution for photographs and diagnostic models in some cases, but we really do want the molds. In March of this past year, that's when we increased the age of requirement for treatment from 12 to 13 years of age for that comprehensive orthodontia. And we updated the criteria for prior authorization and clarified that a diagnostic tool was required. We are planning to offer comprehensive rates that include all services and orthodontia, even in fee for services, Representative Laubenberg (sp.), as you asked a moment ago.

Rep. Kolkhorst: Could you restate that? What did you say?

Traylor: Rep. Laubenberg asked earlier whether or not we were going to move to a comprehensive rate for orthodontia services instead of more a volume based rate. And we did move to that in March of 2012.

In March, we also did a number of other items. We did contract with some dental maintenance organizations. We wanted some quality improvement from them. We wanted to examine and monitor and revise their systems and processes and required the plans to submit their prior authorization policies to us for review before we put those in place, with the goal of ensuring that only medically necessary orthodontic services were provided. Dental plans conduct the provider profile to identify any unusual service delivery trends. Special investigative units track, trend and

report any possible fraud, waste and abuse and reported to the Inspector General. And since the implementation of dental managed care, there has been a significant decrease in the number of orthodontia services provided, and a substantial decrease in the number of prior authorizations approved.

Our next steps – we are still going on in the fee for services system. Most children are served in managed care, a dental maintenance organization now. But we will redefine medical necessity. We haven't done that yet. We'll get public input on that. We need to begin to recruit new orthodontic providers in remote access areas and encourage current providers to continue treatment for those orthodontists who have dropped individuals or who have a pending Inspector General's case. We are recruiting orthodontists to be able to do that. And I think if you read the *Amarillo Globe News*, and I know it's online so you can read. There was a particular orthodontist in the Amarillo area that did a very high volume Medicaid and is now out of business and the orthodontists there are doing a yeoman's work trying to attempt to take on the orthodontia work that orthodontist had left them essentially.

Rep. Kolkhorst: Okay. But follow-up to that: we've got a lot of cases out there that are still not - you know, we've worked with your staff, and we're sending out letters that are way behind. Some may say, "oh, that's pretty good." The numbers are miniscule compared to how many people who have braces on who are maybe not receiving services. So what's the exit strategy here?

Traylor: Well, we tried to reach out to everyone who had braces applied. And we want to make sure they get those services. We developed a payment option, a specific code that we have just for these children that received braces during this period of time. We continue to work with the Board of Dental Examiners and others to encourage other orthodontists and dentists that can perform these services. But I would agree with you. There are children who have braces placed on their teeth that we at this time do not know whether or not someone has served them. But we will continue to reach out to them. But I do agree with you. Our outreach efforts need to be improved.

Rep. Kolkhorst: So would we want to set up a goal on that? I'm very concerned about some of the bad results that can happen when someone is not careful with braces on. Let's just really set a goal. There's got to be an endgame there. Representative Laubenberg.

Rep. Laubenberg: So you are saying when you change the policy, some of these providers dropped out and didn't follow up with their patients. And so there are children out there – no one knows who they are?

Traylor: No. We absolutely know who they are. They have claims for these orthodontia services –

Rep. Laubenberg: That's what I was thinking.

Traylor: – that's not completed. We have reached out to the parents of those children individually. But we know that –

Rep. Laubenberg: Some of them are not following up with your outreach.

Traylor: That is correct.

Rep. Laubenberg: So a parent who let their child go forever with something unfinished?

Rep. Kolkhorst: Or maybe we haven't really been able to find them.

Traylor: That may be the case.

Rep. Laubenberg: Oh! We can't find them? Why not?

Rep. Kolkhorst: They may have moved.

Traylor: They may have moved, their address may have changed, they may no longer be eligible for Medicaid. There's a number of issues that these children may encounter. We have had very extraordinary cooperation from the dental community to serve these children.

Rep. Kolkhorst: And how are you paying the dental community?

Traylor: In some cases – I want you to keep in mind that this was not an issue that was just limited to Medicaid. There were some private practice issues or private pay patients that were involved in this or orthodontists and dentists that did not finish their treatment. And so a number of orthodontists and dentists have volunteered their service in a lot of cases. We did develop a payment option code – I think it was in your presentation – kind of a global code to help finish out the treatment for these children that need their treatment to be finished. And we want to continue to reach out to make sure we touch everybody. Now some maybe getting their treatment finished with a dentist that's doing it *pro bono*. We just don't know.

Rep. Kolkhorst: Yes. Representative Guerra?

Rep. Guerra: I understand what you are saying. But isn't there also a great percentage of children out there that receive these services where the same provider is trying to get further instructions and it's fallen on deaf ears? And these kids can't be treated because they're not getting authorization to do it? Don't we have that problem as well?

Traylor: Well, I certainly hope not. And if you have cases of that, I would like those, and we'll follow up on that.

Representative Collier: Mdm. chair.

Rep. Kolkhorst: Yes. Representative Collier.

Rep. Collier: Are there cases where there's no other provider who will accept or who accepts the managed care program and that may be an instance where the child cannot get their braces cared for or their dental work done?

Traylor: Yeah. If there's a child in our current dental program DMO, they should have full access to the dental benefits including orthodontia services. It may be a rural area where access is limited. We do require our DMO to be able to outreach those individuals to make sure that they do have access to that. But in our larger urban areas, we think we have pretty strong coverage with our DMO's.

Rep. Collier: Okay.

Rep. Kolkhorst: Continue.

Traylor: Turn it over to Doug.

Doug Wilson: Good afternoon, Mdm. chair, members. My name is Douglas Wilson and I serve as the Inspector General for the Health and Human Services Commission. I'm going to pick up on page 7 in your handout regarding activities for my Office of the Inspector General

Subsequent to the news breaking about issues in orthodontia, we identified more than 50 overutilizers of orthodontia services. We hire consultants to work with us in those cases, identified overutilization ranges from 39% to 100%, with an average error rate of around 93%. We've completed more than 36 investigations [...] identifying potential overpayments of approximately \$303 million. And we've got 28 providers on payment hold right now, which are also known as credible allegations of fraud holds.

Rep. Kolkhorst: Point of clarification. You say 28 orthodontic providers – not necessarily orthodontists. They could be general dentists doing orthodontia.

Wilson: Yes. Who have taken certain hours to allow them to do orthodontic services in the Medicaid program. Yes.

Rep. Kolkhorst: Did we have those hours in place before we allowed them? My understanding was that we had a lot of general dentists doing orthodontia. There was.

Wilson: Yes. Technically, they require hours as I understand it.

Rep. Kolkhorst: Okay. Representative Guerra.

Rep. Guerra: What was the criteria used to decide who your targets were going to be?

Wilson: Most of the work we do in the Office of the Inspector Gen. based upon the resources that we have is risk based. So what I will say is [...] investigations and audits as well. So some of the criteria will be things like dollars at risk, complexity of the service, the number of complaints we've gotten in that particular area. There are a number of things that go into it. Risk assessment has been around for a number of years now. So we use that to identify whether or not a target – in this particular case, with orthodontia, we knew there was orthodontic problem. And so we started out by targeting the highest utilizer of service, getting records, then reviewing the records and then getting that review to determine if we saw a problem or not.

Rep. Guerra: No other criteria was used?

Wilson: Other than the risk-based approach? I'm not sure I follow.

Rep. Guerra: Yes.

Wilson: No.

Rep. Guerra: Okay.

Rep. Kolkhorst: So high-volume.

Wilson: High-volume was one of the indicators, absolutely. Sort of the beginning step to [...].

Rep. Kolkhorst: Representative Cortez.

Rep. Cortez: Thank you Mdm. chair. 330 million – 303, \$100 million? I'm sorry. We were saying 300,000 and you are saying it's 300 million.

Rep. Kolkhorst: No, it's 300 million.

Wilson: Yes. There's a 0 missing in my calculation in my presentation [garbled] for you guys.

Rep. Cortez: And how did this number get thrown out of control?

Wilson: What I say is – we were talking about prior auth in orthodontia. I want to say from about 2007 the 2010, there was about a 240% increase in the prior auth requests in orthodontia. I want say it went from about 58,000 requests to about 142,000 requests coming to TMHC for them to review. I think Commissioner Traylor indicated we realized through work here that it was almost impossible given the one dentist that they had on staff for one person to review that type of volume for prior auth. I think that a number of things perhaps led to where we are. I couldn't begin to talk about them because –

Rep. Kolkhorst: Okay, so we will go with Representative Laubenberg and then Representative Collier, if you're through, Representative Cortez.

Rep. Laubenberg: Okay, so I'm going back and forth Doug to Chris, kind of following up on your question of how did it get there. All of this happened so rapidly, this huge influx. You know, we've exposed – news media exposed some of those cases. [garbled] I saw that. HHSC stepped in and that was the interim hearing. You all stepped in and immediately began changing policy, digging in and fixing it. And do you feel like you have a handle on it today?

Traylor: I think our approval rates on prior authorization and our utilization are significantly decreased since we've gone to the DMO.

Rep. Laubenberg: Significantly.

Traylor: Yes.

Rep. Laubenberg: Okay. So you didn't need us to come in with legislation to tell you what to do. You did it on your own.

Traylor: Yeah. But to be quite frank about it, this is something we should've noticed earlier on in the process that we did.

Rep. Laubenberg: But there wasn't anything we could have done here. I'm just trying to think ahead that would have changed it.

Traylor: I think a more aggressive management of the contracts. We did expect to see an increase in dental and orthodontia services after the legislative session in 2007.

Rep. Laubenberg: Because of the Frew.

Traylor: Because of the Frew the substantially. But the increases – we had an increase in caseloads, too. But the increases in dental and orthodontia services over that period greatly exceeded anything that could have been expected for either of those two.

Rep. Kolkhorst: I'm going to hit on something after Representative Collier something that I think will clarify it for you, Jenny.

Rep. Laubenberg: Well, I'm saying that the agency –

Rep. Kolkhorst: We messed up. [garbled]. I'm not saying it's totally us. I'm hoping that TMHP – we're looking at trying to recover some of this fraud from them.

Rep. Laubenberg: And that's a different issue that we need to –

Rep. Kolkhorst: [We?] were hired to manage this contract.

Rep. Laubenberg: Yes.

Rep. Kolkhorst: And if my information is correct, they stopped asking for molds of the teeth. The scoring criteria that was supposed to be 25 was very loose. When we bring in expert witnesses, they may say that it doesn't score 25. But there's the approval from TMHP. That's a problem for us. And I'm guessing that TMHP might have made a little money on this contract. I'm not sure that, but I'm guessing they wouldn't be in the business of managed contracts unless we paid them something to do it.

Heretofore, there is some responsibility. Like we are going to talk about in [garbled] in a little bit, is someone needs to pay the taxpayers back. Somewhere, somehow. Maybe I'm just old-fashioned. A country girl from Broom (?). I don't know. You-all hear that a few times.

Rep Collier: Thank you Mdm. chair. I want to ask you a question, Inspector General, something about 36 investigations. They were completed. And in those 36 –because you're probably doing more investigation into that –

Wilson: Yes.

Rep Collier: Okay. In that time with just 36, you found out that there was \$303 million in fraud, right?

Wilson: Yes ma'am, that is correct.

Rep Collier: And is that the same 28 – is that 28 orthodontists –

Wilson: Of the 36, 28 were orthodontists on a credible allegation of fraud hold.

Rep Collier: Okay. All right. I just wanted clarification of that. That 28 comes from the same 36.

Wilson: Yes. It does.

Rep. Kolkhorst: Representative Guerra.

Rep. Guerra: When you said high-volume, what exactly did you mean by that? High-volume in the number of patients or high-volume in the number of dollars?

Wilson: It could've been both numbers and dollars.

Rep. Guerra: Did you also take into account the regions where the services were being provided?

Wilson: Yes we did.

Rep. Guerra: Okay. So – did you make an assumption already because they were a high volume or that they were billing a lot that there was fraud going on already?

Wilson: No, we didn't. We utilize that is a criteria to determine who to look at. Which is sort of normal. For instance, the Medicaid program is always audited because it's a big dollar program instead of Texas. It's a high volume that they look at. The dollars don't necessarily indicate there's a problem, it just says that there's a lot of dollars being paid [...] there, we should take a look to see what's going on. So looking at them doesn't mean they're putting a credible allegation of fraud hold. It's just beginning. After we decide to look into their records, if we saw something that indicated there might be a problem, the additional work that we did, the investigative work, having a consultant review those records – that's what led us to deciding which providers to put on fraud hold.

Rep. Guerra: And would you agree with me that [in] many of those cases, there was preauthorization that had already been granted, and of course, the procedure was performed?

Wilson: In many of those cases, yes, preauthorization had come from TMHP [garbled].

Rep. Guerra: Okay. And yet you were holding – okay, [garbled] that the status there was preauthorization. The service was provided. Did you decide or did you make determinations that possibly there was fraud going on? [22:19]

Wilson: We made determinations that yes, possibly fraud was going on because as the [chair?] indicated [garbled] the results done by our consultants indicated that the scores that were submitted by the providers stating that the child needed braces were incorrect, way incorrect. Error rates were as high as 99%. The average was 93%.

Rep. Guerra: Did the same people that preauthorized it, were they also the same ones who came back and looked at it later?

Wilson: By the same people, do you mean TMHP?

Rep. Guerra: Yes.

Wilson: No. As I recall, the other director who was with TMHP at the time, he left TMHP soon in this process.

Rep. Guerra: Well, they're pre-authorizing it before the procedure. They perform the procedure. Then the person who pre-authorizes is no longer there. Correct? Is that what your saying?

Dr. Janek: Representative Guerra, if I may pitch in here – when we contract with a claims processor, contract with TMHP, the idea is not that they look at every single x-ray or every single mold. A claim will come in and there is a certain score that needs to be met before it was legitimate to approve one of these. I think that score was 26, based on – there's a scoring system for the mal-alignment. And so if a doc calls in and says, "I've got this kid and I'm looking for prior authorization. The score is 28." And TMHP said, "Great, you've got x-rays, you've got molds. So sure, if that's it, we now are pre-authorizing you." But then if you have some reason to go back in – the state has reason to go back in, and go to the OIG and say, "Look, you seem to have an abnormally high number based on the Medicaid population around your area. We'd like to look."

And so you look and you go and you find out that in fact that score was not a 28. That score was a 24. It didn't clear the hurdle. Now, at some point, TMHP – as I said, we make this program prohibitively expensive. We can't hire enough dentists to prior authorize every single claim or request that comes in. And so, there's an element of faith in there, that when a dentist says the score is 26 or 28, and okay, go ahead. But later you find out that was not the case, it is every bit the right of the state to jump back in. I follow your question to its logical conclusion which is, once preauthorization has been granted, there's no going back and looking. And I would dispute that. That clearly cannot be the case.

Otherwise, we will have to hire a dentist to look at every single case, and I would hate to see what the fiscal note is. We've allowed an element of trust to providers who contract through their managed care organizations and then ultimately with the state to do things in a rational fashion, to understand what the guidelines are, to then maintain the records. And we will not accept "I lost the x-rays" or "I moved and I don't know where the x-rays were" or "the dog ate my x-rays."

Rep. Guerra: That's understandable.

Dr. Janek: We're not going there.

Rep. Guerra: Sure.

Dr. Janek: If they falsely give us information as to that scoring, even though TMHP prior authorized it and said, "Yes, we now have you on record saying that the score is a 28. Go ahead, put the braces on." And later we find out the score was not 28, it is every bit responsibility, it's not just that you're paying us to do it, it's our duty to go in and say, "No sir. No sir. We want the money back. You did not meet the scoring system and yet you told us you did."

Mdm. chair, I'd put fault – and Rep Guerra – I'd put fault in a lot of different places on this score. [garbled voices]. I think it's with us and I think there may be some element of we just got through working through this [sounds like "frew"] issue. That was my last session of the legislature and I know what a big deal that was, the financial impact to the state to come up with the money to do this. And so maybe there was maybe there was na element of that where we've got to do the outreach, we got to show that we're doing everything that ["frew"] requires us to do to make sure the kids and their parents and their dentists know that these services are available.

So we do the outreach and we tell them when they come in and all of a sudden an outreach works. And you've got a lot of people coming in wanting services and a lot of providers willing to give those services. And then you turn to TMHP and say, "were you looking? How many were you looking at? Were you looking at every 10 claims? Every hundred claims?"

Rep. Kolkhorst: Well, depends on how our contracts are written, Commissioner, which would be a curiosity. And I think probably open records do [too?]. Representative Collier and then Representative Laubenberg.

Rep. Collier: Thank you Mdm. chair. Just for perspective so that I can know – because this number 36 could be a really the deal, or it could be. I mean, it's a concern either way, but tell me how many medical providers – dentists or orthodontists – are included in the program.

Traylor: If I'm not mistaken – let me get these numbers out – [voices] roughly – we'll have that number shortly, just give us a second here. Several thousand.

Rep. Collier: Is that right? We're just trying to get the percentage of providers that you found where the charges are suspect.

Wilson: As Chris is indicating, it's going to be a couple of thousand providers. So we are not investigating a majority of providers in the program. As matter of fact, percentage of providers is relatively small that we're looking at. But in those that we are looking at, we're finding a lot of missteps.

Rep Collier: Okay.

Rep. Kolkhorst: Rep. Laubenberg and then Vice Chair Naishtat.

Rep. Laubenberg: Okay. You have identified over \$300 million in potential overpayment.

Wilson: That is correct.

Rep. Laubenberg: Have we recovered anything?

Wilson: We've had some cases where people have come in to talk with us and have settled. But we like to say in the office that it's been our experience that the longer it takes us to identify that an overpayment has occurred, the more difficult it will be to recover. As you can well imagine, people aren't earning money to hold onto it and save it. They're [...] and living on the money. [voices]. It's just our experience to date has been somewhat [garbled] the way the IRS does with taxpayers. You're talking about recovering \$.30-\$.40 on the dollar if you're lucky. And in some cases less than that. Because [...] my staff around, the model that led to these kinds of dollars no longer exists. As Chris indicated, the managed programs have tightened down the prior auth process. So you've been chugging along for number of years [doing the program out?] of millions of dollars. Now that income is not there. And so now the state is coming back saying, "we think you have definitely been overpaid. We want money back."

Rep. Laubenberg: But we haven't gotten anything.

Wilson: Nothing compared to what we've identified. We've gotten some, but [garbled] close yet.

Rep. Laubenberg: A hundred thousand?

Wilson: It's bigger than that.

Rep. Kolkhorst: Yes. Commissioner. And then Vice chair Niesdadt.

Dr. Janek: That add something to that because I think this is going to be something for the Legislature to look at as we continue to refine our processes. There's a couple of things you can do when you're engaged in this business of contracting with providers for healthcare stuff. You can either delay it until you're able check the prior authorization. You can say, "No, send us more information." And that's very frustrating for the providers. Or you can say, "Yes, we can give you a temporary okay, but we reserve the right come back in and look and see later on – we just may spot check records. We may show up and say we want to pull a random sample of your records and make sure that everything is on the up and up." With the expectation that it's a good random sample, you'll catch whether there were mistakes that were made.

There is another way to do this, however. The old way we call it pay and chase. You pay, you find out later there's a problem 2, 3, 4 years down the line and you go chase the money and the money's gone and you wave bye-bye. The other way to do this, though, is to look at those deviations from what we consider to be normal practice at an early stage. Perhaps it's an innocent billing error on the part of the provider's office. If that's the case, you want to catch that early.

Let me give you an example. As an anesthesiologist, if I determine that every single patient that came into the operating room needed what we call central line – a major IV that goes in the neck rather than a small IV that goes in the hand. If I determined that every single patient that came into my operating room needed a central line and I would get paid more for that, it would be up to the Inspector General to follow that pattern and say, “the computer software helps us pick up, Dr. Janek, that every patient you take care gets a central line. That seems a little unusual, can you justify it?” And I may say, “Yes, because all I do is cardiac anesthesia. Every patient gets one of those. Or I cannot and I don't have the documentation to prove why I didn't want to do that. If it's an innocent mistake, we'd like to know early before we have to hassle the provider to go back in and look at records for the last 3 years. We'd like to know early before the state loses hundreds and thousands, maybe millions of dollars.

And so that's the next iteration but where we need to go in my opinion with the Office of Inspector General: to give them the software tools they need to identify deviations from the normal pattern and lets the provider justified or not. I'm with you, Rep. Guerra. Just because somebody does a lot of something, it doesn't necessarily mean there's fraud. It does, in some instances, depending on the procedure, depending on what you're looking at, enable the state to go back in and say, “You seem to do a lot of this. And maybe your just good at it, maybe you've figured out the model. Maybe you just simply cater to Medicaid patients and you don't take care of a lot of commercial insurance. But we are here to take a look. So let's see the records, show us a random sample of the patients. We want to see how do you've justified your billing practices.

My point is that we can have both worlds. We can have a system that identifies even innocent mistakes early on. And if it's an innocent coding error, correct the office. Or they can justify it, so be it. But let's do that early, before we hassle these providers and get into protracted investigations that drag on for months and years in some cases.

Rep. Guerra: Maybe a provider that has several different offices.

Dr. Janek: That's right.

Rep. Guerra: As opposed to just one.

Dr. Janek: Absolutely. And I think you may remember this, Mdm. chair. When I was a freshman in the House of Representatives in '95 and '97, there was a big brouhaha about dentists making a lot of money putting this silver crowns on young kids' teeth. And I remember thinking at the time, everybody's saying there must be fraud because this dentist made \$1 million. But to me, as a member of the legislature [...] interested in taxpayer dollars, I kept on saying it seems as if we should say what do we pay to put a silver crown on a tooth – what do we pay? If this dentist did all

of those, the question is did he really do them, or did she really do them? Okay? That's a separate question.

And then the last question is if she really did them or he did, was it necessary? If you can satisfy those 3 elements, I don't care if they make \$2 million. If they have figured out a way to do this in rapid fashion and the state's getting value for somebody who knows how to do this over and over and over and do it well, and do it effectively, as long as it needed to be done, and as long as they agreed upon ahead of time what the cost would be for doing it, I don't want that to be the sole criteria. Right now, it's one of the best criteria we have. Who's making a lot of money doing something? But we can do better than that. An answer in my opinion is to put the tools in Mr. Wilson's and so that they can identify pattern deviations early and determine whether you need to have a conversation with the provider.

Rep. Guerra: One last question.

Rep. Kolkhorst: Hold on.

Rep Guerra: I'm sorry.

Rep. Laubenberg: He can go ahead. He can go ahead. He can finish his question.

Rep. Kolkhorst: I'm going to – Vice chair Naishtat.

Rep. Guerra: I'm sorry. I'm sorry.

Rep. Kolkhorst: Vice chair Naishtat patiently waited.

Rep. Naishtat: Yeah. We know that 36 or more than 36 investigations have been completed, generating potentially a little over \$300 million in potential overpayments. Are there a whole bunch of overpayment investigations there have not been completed and could wind up generating hundreds of millions more?

Wilson: Yes, representative, that is correct. In 2012, we conducted about 109 investigations total, so it goes beyond orthodontia. On page 8 it talks about investigations conducted on general dentistry, [...] hearing aid providers, DME durable medical equipment providers. So our office conducts a number of investigations, the dental program is just one area that we focused on. Of course, given all the news that came out about orthodontia in the state, the potential for overutilization [...]. So yes, there are a number of other investigations that are ongoing. Some are being completed, others are still out there. And so the caseload as of today is about 400 – about 400 open investigations, maybe 450.

Rep. Naishtat: And do you know approximately how many of those relate to Medicaid orthodontia claims? 400 open.

Wilson: Yeah. I think on that [far slide?] about another 20.

Rep. Naishtat: I'm sorry, what?

Wilson: [It's?] actually talking about another 20 above the 36.

Rep. Naishtat: 20?

Wilson: So about 56 total. You [see?] 50 in the [leading slot?], so about 56 total in orthodontia.

Rep. Naishtat: And about how much time? What's the duration of a fraud investigation?

Wilson: We've tried to work on that. We've talked about it before, I think in years past the average time per investigation was around 48 months or longer. We're trying to get them down to about 8 to 10 weeks to turn these things around a lot quicker. And that kind of gets to what Commissioner Janek was talking about. The sooner we can identify an error, an aberrant behavior and investigate it and identify that there's a problem, the better off everyone is. We've put in metrics for our investigators in terms of timelines for pulling the records. As we've indicated, we work with consultants who have private practices themselves in many cases. So were trying to get them to commit to a time frame that fits within our 8 to 10 weeks and review the records and give us the results, report back saying what they found and then all of that goes into our investigative [project?].

Rep. Naishtat: And then the last question. During a fraud investigation, do the facilities – do they shut down or do they continue to serve patients?

Wilson: I think I can answer that by saying both. In some cases, they'll shut down, and in some cases they'll continue to provide services. We've seen it happen both ways.

Rep. Kolkhorst: So just point of clarification [...] to the committee that we saw an influx of dentists in the state of Texas probably after the Frew is what I'm gathering. I know that we've got some bills coming our way with a lot of thought processes on management of dental offices. Again [me?] not taking any position. I had a lot of phone calls from New York investors and different things about different legislation. Anytime you get Wall Street calling about something in healthcare, you can pretty much say, "Wow, there must be a lot of money there." So we did have venture capitalists and different things setting up clinics. Am I correct? I mean, it's just a bit of a difference in us thinking about – my dad was a dentist, and him kind of being a Texas boy that hangs out a shingle is a bit different. Were talking about big clinics.

Wilson: Yes, you're right. In several locations.

Rep. Kolkhorst: Not all of those clinics being guilty of anything, I'm just saying after the Frew when we increase rates and did different things that we did see a lot of interest in coming to serve the children of Texas. Am I correct?

Wilson: That is correct.

Rep. Kolkhorst: Okay.

Rep. Laubenberg: OK, I did skip down to page 9 so I did see that you all did get approval for the software that the Commissioner was talking about.

Wilson: Yes we did. And we are extremely excited about that, Rep. Laubenberg.

Rep. Kolkhorst: It's a good place to start.

Rep. Laubenberg: And not to get too far ahead of you, but you just started implementing it at the end of the year.

Wilson: Yes we did. End of December, we sort of began the process, giving the provider [...] looking at our data, beginning to talk about how we were going to utilize the system. This is exactly what Commissioner Janek as indicated.

Rep. Laubenberg: So you said earlier, typically, seriously, it would take 48 months to do an investigation?

Wilson: On average, or longer.

Rep. Laubenberg: But this software should help you bring it down to 8 to 10 weeks?

Wilson: We're working the cases is now in 8 to 10 just weeks because we have sort of put structure around –

Rep. Laubenberg: How come it took 48 months?

Wilson: That's a good question. I'll try to answer that by saying that we don't exactly know – I'll try to answer that by saying that when I came to [be] Inspector General, I noticed that we had 19 total investigators looking at Medicaid provider cases for [...] fraud investigations. You can sort of imagine that the caseloads were extremely high and so for instance, now with [...] orthodontia, we get a complaint there's something serious going on with orthodontia. The investigator begins to work on that. He gets another call that something bad is happening in durable medical equipment and so he spends some time on that. Sort of what found out when I was beginning to meet with investigators was how long do we have to work an investigation? I was getting answers like, "well, I've got several investigations." Yeah, I know. But you have an investigation that was given to you. What's your timeframe to complete it? "Well, I'm working several investigations." And I quickly realized that they had no timeframe. They were just sort of scattered. So we had to structure what we were doing. There wasn't enough of them to begin with. So over time, we tripled that investigative size. Working with Jack, we added more resources to it, decreased their caseloads and then provided structure around how to conduct the investigations.

Rep. Laubenberg: Well, I think the structure is part of it because you can bring in more people. And if they're still disorganized and not functioning in an efficient way –

Wilson: We [...] an investigative claim that they're expected to follow, which includes our consultants etc., and it's short and that window.

Rep. Laubenberg: So –

Wilson: We are still working on streamlining that.

Rep. Laubenberg: What would be interesting, Mdm. chair, is this software is just being implemented, your structure has changed. I'd love to hear from you at the end of session

Wilson: Absolutely.

Rep. Laubenberg: On progress with it.

Wilson: We're excited about the potential.

Madame chair: OK, so we're on page 9. And that Jody actually covered that point pretty good. Very well. Got us back on task here. So pick up on page 10.

Wilson: On page 10, we were pointing out that in 2008, our office conducted an audit of TMHP, with regard to prior authorizations. That audit did indicate that there was room for improvement in the prior auth process in orthodontia, indicated that the [...] were in compliance with the contract [and?] the Texas Medicaid providers procedures manual. Subsequent to – on page 11 now – subsequent to that work, we did a follow up audit when a lot of the additional news occurred with orthodontia.

The follow-up audit was done in conjunction with the US Dept. of Health and Human Services, Office of Audit Services. So there [was] a joint process on that. We did the internal control report, issued that August first. The findings what you might well imagine. Not hiring medically knowledgeable staff to process the prior auths. In the contract, the dental director was not approving our prior authorizations. The volume was just too high. [They had] a quality assurance review tool regarding prior authorizations. But it did not address medical necessity, so we found that lacking. And their approving multiple prior authorizations for the same client and same service.

The next steps today are the federal government is still working with us. They have sent letters to the providers in their sample. They pulled a sample in the state of Texas, identified some providers that they wanted to pull records from. They are going to send the results of the sample and the record-pull to Texas. We will have one of our consultants review those records like they do in our cases. We will send the results of the consultant's review to the federal government. They intend to extrapolate those results to the total population and will likely identify an overpayment amount that the state of Texas will owe the federal government from the work conducted by –

Rep. Laubenberg: [We don't] get the money back, they do?

Wilson: Well, ultimately, any overpayment we receive, they get their share since it's a joint funded program. Even the dollars that we were talking about [that were?] identified, the federal government will get their share of those overpayments.

Rep. Kolkhorst: Yeah, keep in mind this is a 60/40 match, so they recover 60% of it anyway. And they have great interest in seeing how we do on this.

Wilson: Yes, they do. And actually, news reports are what brought them to Texas. They were reading about it, and they decided to conduct the audit. We were already doing the audit, so they joined us.

Rep. Kolkhorst: Thanks goodness for the freedom of the press. Rep. Zedler then Guerra.

Rep. Zedler: Now, we pay them their share when we get the money back. Right?

Wilson: No, sir, not in all cases. [garbled].

Rep. Zedler: So we give them their share even though we don't get any money back? In other words, obviously there could be cases where you find the fraud, but they could be gone or whatever. Right?

Wilson: Yes, you are correct. If we send a final notice of an overpayment, the federal government wants their share of that overpayment within one year whether or not we collect. That's the way it works today. [garbled]

Rep. Kolkhorst: Do we have a fiscal note on that yet?

Wilson: Not yet. If you'll notice in my handout, we're calling them "potential identified overpayments" not "identify overpayments."

Rep. Kolkhorst: Right. Right. I know that we are working with our partners.

Wilson: We are working with the words careful about what we say –

Madame chair: Right. Sure.

Wilson: [garbled]

Rep. Kolkhorst: Representative Guerra.

Rep. Guerra: I'm just curious: did you notice any pattern in your investigations as to providers that were dental-owned as opposed to corporation or a subsidiary-owning the outfit that is basically providing the services? Did you see any pattern there?

Wilson: What I suggested – in some of the cases that we worked where there were sort of private ownership non-dentist-owned practices, in some instances there was a higher error rate, I would

say based upon how those patients were treated. And so I think that's some of the things that the Dental Board is trying to work on today in terms of addressing the concern that I think you are getting at.

Rep. Guerra: So in other words, a subsidiary owned by a corporation that is basically hiring dentists to do the work.

Wilson: And sort of yeah, indicating the volume of work and that sort of thing –

Rep. Guerra: To another corporation.

Wilson: Correct.

Rep. Guerra: Okay. Thank you.

Madame chair: Chairman Coleman.

Rep. Coleman: If there is an issue of fraud, when is the determination made that it's sent to the investigation unit. So, in other words, you do the abuse piece, you do the error piece, and then you indicate that this might be fraud? So what is the trigger for sending investigators in, or is it just regular audits that are done on the submittals for reimbursement by the provider?

Wilson: So, for instance, we get a case from a number of means, Rep. Coleman. It can be from hotline calls or data mining. When we think there's an issue with a provider, we'll open an investigation. It may be fraud, it may not be. We don't know until we get the records. In our case, once we pull records, start reviewing those records, we something we think looks interesting, we'll engage a consultant. The consultant does their work, we'll review the records, the results of that record. If we think we see fraud, statutorily, we are required to refer any suspicions of fraud to the Medicaid Fraud Control Unit in the Office of the Attorney General.

Rep. Coleman: I remember that bill, Mr. Stick. That was the reason I'm asking the question. Because when the bill was done, and Representative Stick will remember, I said, "If it's waste fraud abuse, what determines whether or not it goes to the AG, if we have them work through the administrative portions of the work done by HHSC or whomever else. And so my concern then was things that go straight to the fraud category and there would be some form of criminal investigation based on an error. You know, waste, an error or abuse that before that was in the "criminal" – civil and/or criminal act. So, I'm trying to get an understanding here of how you do this internally before you send it over to the Atty. General.

Wilson: So ideally – and you're right – statutorily even on the Medicaid Fraud Control side [garbled] which is really us, the administrative side. We're required to do an [integrity?] review before we refer anything to the Medicaid Fraud Control Unit. And the way the statute reads from a federal perspective is if the PI unit, the [garbled] unit sees 4 suspects fraud, we are required to immediately send it over to those guys. And then they will handle it.

To get to your point, the integrity review is where a decision is made whether we see fraud or not. If we don't see anything that looks like fraud, we don't make the referral to the Medicaid Fraud Control Unit at all.

Rep. Coleman: OK, so that's internal.

Wilson: It's in house. Right. So there are some cases, and this doesn't come up often, but there's a unit within our office called utilization review who sort of justice surveillance utilization of just identifying the number of errors. They'll see a blip on the system through our detection systems, targeted queries that we run on the data. They will pull records from that provider, see if the Fraud Unit has made some errors. They will send some educational letters out, and we will just recoup those dollars. It's not really a formal investigation. We talk with the provider, provide education where needed. Dollars come in.

Rep. Coleman: [garbled]

Wilson: Yeah. So there is a process for that. It doesn't really involve investigation at all. And there are others where we see things that look more systemic. An investigation is conducted. If there's no fraud involved, Medicaid Fraud Control Unit does not get a referral. If it looks like fraud, we are required to refer it. They may investigate or not, they may see something, they may not.

Rep. Coleman: Then again, I'm glad that you are there. [If there are] people stealing money from us, we need to get it back. And they need to go to jail. The other keys is a discussion on the new data mining software. And we had done that before and called it a neural net –

Wilson: [garbled] network.

Rep. Coleman: Right. That went in and it learned. And I know we've done that before. So I know things have come a long way since then in computers and how they do things. Were you mentioning that? You're going to use this software to go in and find patterns of bad – you know, whatever the case may be.

Wilson: Yes, sir. You are referring earlier to a system called the Medicaid fund [garbled] detection system that we now have for over 10 years.

Rep. Coleman: Yes.

Wilson: And there's sort of a neural network involved in it. And that's what has allowed us to build targeted queries. So when we thought we knew something may be trending, we worked with the contractor to build a targeted query to pull this information out for us so we could take a look at what we thought was trending. What were talking about now is a system of graph pattern analysis. We were looking for something that sort of told us the things we don't know. Because there is activities and relationships going on all the time in the system in the data that unless we're looking for it, we don't know what's happening. This system that we're hoping to get online that we began deploying in December is one of the cutting edge technologies now that we think that

will go in and tell us things as they're trending just from looking at the data itself without any sort of human manipulation. The prior system required human manipulation to know what to look for.

So this is a lot more promising, and you're right, technology has grown tremendously since 10 – 12 years ago. And so this one looks extremely promising. I think it will catapult us to where Commissioner Janek is talking about so that we can things that are happening in 30, 60, 90 days as opposed to 3, 4, 5 years.

Rep. Coleman: Yeah, that's really good to be able to identify those patterns within what's been sent in requests for reimbursement and know it sooner than later.

Rep. Kolkhorst: OK. So we just finished page 11 and I think page 12 is the last thing you have to cover there.

Wilson: Page 12 is talking about the federal auditing [garbled] underway. It's been going on for almost – over a year. They just finished pulling a sample. They're sending those records to our office. We will have our consultants review the sample that has been pulled, provide the results and that's where I was saying the feds will then take those results and extrapolate those results with the total population and then approach Texas about an overpayment.

Rep. Kolkhorst: OK. So to wrap this up: I think, members, we may see some bills this session in regards to maybe doing this a little bit better. Or good discussion points as we move forward. I know there's some in the Senate, the some in the House, they should come here. And so there will be an open discussion. I wanted to have you all present today so that we didn't feel pressure and we could ask the questions we felt necessary. I will just leave you with this parting thought which would be that there was some bad decisions made along the way. And I'm not sure how our contract reads with our contractor, but I think the responsibility needs to be shared. And I hope that we're pursuing that.

Wilson: Madame Chair, I didn't mention this, so I apologize. As you know, we're working on a joint task force with the Office of the Attorney General. The Medicaid orthodontia task force. And one of the things we're looking at is the approaches to not only the providers, but also TMHP and the best avenues for the state with regard to how to recover. So we are pursuing all avenues in this particular case.

Rep. Kolkhorst: Yeah, and just know that the public trust is very important. And oftentimes we get fraud and we think it's the poor person out there that's committing fraud with their SNAP card when it's actually the people on the other side of the counter. And we just need to set an environment where certain things aren't going to be tolerated and we don't want to make it impossible to work with government in the Medicaid program or other assistance for people that have hit hard times. But we do want to make sure that there's not fraudulent behavior.

Rep. Kolkhorst: Thank you. Look forward to working with you.

