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Texas Dentists for Medicaid Reform

Testimony Submission to the Senate Finance Committee re HHSC

Submitted by Gregory Ewing, President, January 30, 2013

The Texas Dentists for Medicaid Reform was formed in December of this past year, after a discussion of several months by a number of Texas dentists. The TDMR is concerned about the adverse effect on patients and dentists who have been affected by changes in Medicaid and by the lack of due process in HHSC/OIG investigations and payment holds.

We are making this submission to the Senate Finance Committee because over the last two years there has been a disinformation campaign which alleges widespread Medicaid related dental (orthodontic) fraud, when the actual evidence and rulings determined by administrative courts have since throws this claim into doubt.

This affects the State in two ways financially and we believe that the Senate Finance Committee should ask some hard questions of the HHSC/OIG bureaucracy to get at the truth of the situation:

1. The HHSC/OIG claims, which have been stated to legislators in both the House and Senate that hundreds of millions of dollars will be collected from dental providers because of fraudulent orthodontic and other billings will not occur and is an incorrect statement meant to cover blunders within the department.
2. That the fruitless ongoing litigation against dental and others providers is costing the State tens of millions of dollars itself that will be lost – and hundreds of thousands more every month that this continues. One unconfirmed report is that \$65 million has already been spent over the last two years with little collected for the State.

THESE CLAIMS ARE BASED ON THE FOLLOWING:

1. HHSC estimates of orthodontic Medicaid fraud have already dropped by \$170 million in the last year.

That initial claims of dollar value of dental fraud were stated by both Inspector General Douglas Wilson and his Deputy Inspector for Enforcement Jacks Stick to be in the range of \$400 million early last year. This value was reduced to \$229 million when testimony was given to the House Public Health Committee last October, roughly eight months later. That is a decrease of \$170 million, a fact that raises questions about the veracity of HHSC's claims.

2. Public statements have been exaggerated about the extent of the spending on orthodontia in Texas, creating a climate of prejudice.

The Pulitzer-winning news source Politifact, which investigates the truth of political claims, labeled the statement that *"the state of Texas spent more through Medicaid on orthodontia than all other states combined"* a half-truth.

Per HHSC's own records, spending on orthodontia had actually increased at a lesser rate than spending non-dental services from 2006 to 2011. While the dollar amount of orthodontic Medicaid billings was larger than expected, it was not what was claimed.

3. The investigatory technique of OIG is not based on actual evidence of fraud by providers but merely the fact that they have large practices and are a high volume Medicaid provider.

Jack Stick, Deputy Director for Enforcement for OIG, told a national webinar on Medicaid fraud last March, that OIG *"goes where the money is."* He said, *"We have got our division divided into both provider investigations and recipient investigations. And the overwhelming majority of the staff and financial resources were dedicated to recipient investigations. And of course that is just not really where the money is. So we make a conscious decision that we were going to reevaluate our priorities and that we were going to go where the money is."* He continued in relation to the orthodontic billings *"we identified the top 50 [orthodontic] utilizers. Identified about \$400 million dollars in overpayments. And conducted a series, actually, we are in the middle of conducting a series of investigations on those providers."*

This is also reflected in the case of a medical provider, Carousel Pediatrics of Austin which OIG is trying to get back \$18 million in past payments, based on allegations of Medicaid fraud. Carousel is being supported in its fight against OIG by an insurer and the Texas Medical Association which did an independent review of Carousel's operations and billing practices and found no evidence of fraud. They found highly efficient clinics helping the underprivileged.

4. Administrative court judges have found no evidence of fraud.

In the only case of litigation on Medicaid orthodontic billings we are aware of to complete, that of Harlingen Family Dentistry, two administrative court judges concurred that HHSC/OIG allegations of fraud and misrepresentation by this major dental Medicaid provider were not founded. They found no evidence of fraud.

5. That public statements by OIG that 90% of orthodontic billings from 2007 to 2011 do not qualify for Medicaid are false.

In this particular case, OIG had represented that 84 out of 85 orthodontic cases its expert had reviewed did not qualify for Medicaid funding and had placed a credible allegation of fraud hold on the provider.

The OIG expert witness was found by the judges to be not credible because he had never taken Medicaid patients in his career and was totally unfamiliar with the Medicaid grading of orthodontic difficulties. Two other OIG witnesses were found to be not credible as well.

6. That the real reason for such differences of expert opinion on what is or is not “medical necessity” for orthodontic cases is the vagueness and subjectiveness of the Medicaid diagnosis of orthodontic difficulties.

The judges found that the discrepancy between the expert opinions and the attending dentists had to do with the vagueness of the Medicaid policy manual and the subjectivity of the grading orthodontic difficulty between dentists, **not fraud**.

THERE'S ALSO A NUMBER OF FACTORS THAT IMPINGE ON THIS SITUATION:

1. It appears because of this ruling that all OIG litigation involving dentists we are aware of has come to a halt – while maintaining payment holds that are crippling dentists and their practices and holding them under a cloud of suspicion. This appears to be a public relations gambit to limit bad news on collections while the Legislature sits.

Yet, their investigations continue. In the above mentioned case of Harlingen Family Dentistry, within days of the decision being published last October, OIG sent investigators again to the practice to request more dental records having to do with other parts of the practice – pediatrics and general dentistry.

OIG have refused to do anything about the payment hold or return withheld money despite the administrative judge decision. This is costing the State more and more money.

2. HHSC/OIG is ignoring the role of their private contractor in Medicaid, the Texas Medicaid and Health Partnership (TMHP).

HHSC/OIG has made no public statements about how much it plans to collect from TMHP in essentially providing no oversight of the orthodontic Medicaid expenditures.

In 2008, HHSC/OIG conducted an audit of TMHP that highlighted the lack of dental staff to correctly evaluate pre-approval applications for orthodontic cases. Nothing was done.

One of our Medicaid orthodontic providers has evidence of 40 cases in which their dentists and orthodontists denied patients treatment because they did not qualify for Medicaid. Yet, when the case files were sent to TMHP, as all the paperwork for denials is also sent as well as applications for pre-approvals, these 40 cases were approved. The HLD scores were recorded by the dentists as 0 (zero) when the required score was 26 points or more.

An arms-length investigation needs to be done of this situation to find out if there was internal malfeasance leading to anyone financially benefiting from this cozy relationship.

3. That irresponsible public statements continue to be made by HHSC/OIG regarding the allegations of dental Medicaid fraud.

Douglas Wilson has opined in the Austin American Statesman that *“good doctors don’t get rich off of Medicaid.”* Yet, HHSC, starting in 2006, gave *“high volume providers” additional funding.* This included doctors, dentists and orthodontists.

Wilson, in the same piece, alluded to the fact that *“we’ve all heard the horror stories of dentists who built mansions with Medicaid money.”* Jack Stick in an earlier article in the Texas Tribune stated *“The message to those providers out there who see the Medicaid program as an ATM, who use it to make monthly withdrawals to buy jets and \$8 million houses, is that there’s a different inspector general’s office now.”*

These derogatory statements undoubtedly refers to Dr. Richard Malouf in Dallas whose home has become a focal point for this issue. But has anyone, including Wilson and Stick, ever investigated whether or not Dr. Malouf’s mansion came from Medicaid funds? Despite stating this publicly repeatedly to apparently inflame public opinion on the issue, we discovered that no one from HHSC/OIG even asked Dr. Malouf about this. If they had they would have discovered that Dr. Malouf has been wealthy for a long time and has other income sources, such as owning substantial real estate assets, and was a multi-millionaire before he ever started taking a single Medicaid patient.

While this submission has dealt primarily with dental Medicaid providers, it must be made clear that it is also Medicaid patients that have suffered. There are today some 3 million Texas children that are Medicaid eligible. This is a tremendous burden but also a tremendous duty of care.

Dental and other Medicaid providers must be protected from undue and improper treatment without due process so that they can help these children without fear or worry. While no one challenges the right of the State to come down hard on Medicaid fraud, we submit that those allegations must be based on facts, not on exaggerated media statements, and pursued dispassionately with integrity and justness. Otherwise, the state is again wasting its limited financial resources.

In conclusion, we ask the Senate Finance Committee to look into this wasteful matter to resolve it in the best interested of Medicaid patients, providers and the People of Texas.

Respectfully submitted by,

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President

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