

THE STATE OF TEXAS,

Plaintiff,

v.

XEROX CORPORATION, XEROX STATE
HEALTHCARE, LLC, and ACS HEALTHCARE,
LLC,

Defendants,

v.

ATLAS DENTAL, LP and DR. HIEU HUYNH;
IRMA CANTU-THOMPSON, DDS, PC and
IRMA CANTU-THOMPSON; DR. STEPHEN
CHU; DR. RICHARD F. HERRSCHER; MAN &
CFN ORTHO, PLLC, NAVARRO
ORTHODONTIX OF IRVING, PC, NAVARRO
ORTHODONTIX OF FT. WORTH, PLLC,
NAVARRO ORTHODONTIX OF MCALLEN,
PLLC, NAVARRO ORTHODONTIX OF
EDINBURG, PLLC, NAVARRO
ORTHODONTIX, PC, and DR. CARLOS F.
NAVARRO; RGV SMILES BY ROCKY L.
SALINAS, DDS, PA and DR. ROCKY
SALINAS; WESTMORELAND DENTAL, PA,
WESTMORELAND DENTAL OF GARLAND,
PC, WESTMORELAND DENTAL AND
ORTHODONTICS, PA, and SCOTTIE H.
NGUYEN, DDS; and VICTOR M. ZURITA,
DDS,

Intervenors.

IN THE DISTRICT COURT OF

TRAVIS COUNTY, TEXAS

53RD JUDICIAL DISTRICT

**XEROX'S MOTION FOR PROTECTION, FOR EXPEDITED DISCOVERY OF
CERTAIN MATERIALS, AND FOR ENTRY OF A QUALIFIED PROTECTIVE ORDER**

TO THE HONORABLE JUDGE OF THIS COURT:

Defendants Xerox Corporation and Xerox State Healthcare, LLC, formerly known as
ACS Healthcare, LLC (collectively, "Xerox") respectfully move (1) under Texas Rules of Civil

Procedure 191.1, 192.3, and 192.5 for a protective order permitting retention of materials related to prior civil investigative demands and pre-suit discovery requests made on behalf of the State through the Office of the Attorney General (the “OAG”); (2) under Rule 192.6 for a qualified protective order to reflect the confidentiality of protected health information contained in those materials; and (3) under Rule 192.6 for a protective order preserving Xerox’s privileges, including the attorney-client privilege and attorney work product protection.

I. SUMMARY OF ARGUMENT

1. Over the last two years, Xerox has cooperated and fully complied with the State’s civil investigative demands that required Xerox to collect and produce materials relating to its operation of the State Medicaid program and specifically the State’s orthodontia prior authorization program. The State knew that in order to respond to its pre-suit requests, Xerox would collect those materials from servers and electronic storage devices operated by the Texas Medicaid & Healthcare Partnership (“TMHP”), the name given to the program operations under Xerox’s contracts with the Texas Health and Human Services Commission (“HHSC”). But now, after taking action on those contracts and suing Xerox for more than a billion dollars, the State demands that Xerox return or destroy the documents that Xerox collected in compliance with the State’s investigative demands— at great expense to Xerox. The State makes these demands to return or destroy these materials even though the materials at issue contain information and documents indisputably relevant to this lawsuit.

2. The State’s demands are unwarranted. First, as a matter of law and fairness, Xerox is entitled to retain all documents and electronically stored information to defend itself against the State’s (and other) claims. Importantly, contained within these materials is valuable attorney work product that Xerox collected and developed in responding to the OAG

investigation. Further, Xerox has incurred attorney and vendor fees in collecting this material and complying with the State's previous investigative efforts. To vitiate that effort—and waste that money—serves no legitimate State interest.

3. Xerox also seeks a Court order protecting additional privileged materials, including attorney-client communications and attorney work product that reside on servers that will soon be in the possession and under the exclusive control of the HHSC. Xerox stored privileged materials and communications using these TMHP servers, and it expected—and the State acknowledged at the time—that those privileged communications and materials would *remain* privileged and confidential while stored on TMHP servers. Given an impending transition of TMHP operations, Xerox now seeks a Court order protecting its privileged communications and materials.

4. Xerox requests that the Court enter two protective orders: one addressing the confidential nature of the documents and protected private health information, and the other addressing Xerox's privileged communications.

5. Though the case is designated as a matter subject to a discovery control plan (Level 3), and no discovery plan has yet been ordered, the Court may, for good cause shown, order the discovery and protective measures requested here. TEX. R. CIV. P. 191.1, 192.6. As we show below, in view of the unusual circumstances giving rise to these requests, including the nature of the TMHP operations and the State's demand for immediate destruction or return of these materials, good cause doubtlessly exists.

II. BACKGROUND

6. From 2004 to 2014, Xerox has served as the State of Texas's fiscal agent and claims processor for the Texas Medicaid program. *See* Plaintiff's Original Petition at ¶ 8

(“Petition”). One of Xerox’s roles under its contracts with the State has been to administer the prior authorization (“PA”) program for orthodontic services. *See* Petition at ¶ 9.

7. Recently, the State of Texas sued Xerox alleging unlawful conduct, under the Texas Medicaid Fraud Prevention Act (“TMFPA”), relating to Xerox’s administration of the PA program for orthodontic services under the Texas Medicaid program. Some of the orthodontia service providers have intervened and asserted claims against Xerox and the State, and certain providers previously asserted claims against Xerox. Xerox denies the allegations leveled by the State and the providers.

8. The same day the State sued Xerox, HHSC issued a notice of termination with respect to its contract with Xerox. As a consequence, Xerox is in the process of turning over to the State’s successor vendor operations that it has conducted through TMHP. Until the turnover is complete, TMHP is staffed by Xerox employees and subcontractors. The turnover process will include, among other things, employment of TMHP personnel by the successor vendor and turnover of TMHP servers and other electronic storage and information technology operations. That turnover is currently expected to occur by August 1, 2014.

9. Certain communications and materials that currently reside on TMHP servers and electronic storage devices constitute privileged communications and attorney work product. Xerox does not and will not waive those privileges. Indeed, Xerox notified the State that these privileged communications and materials exist and that absent agreement, it would seek relief from the Court to protect the privileged nature of those materials.

Xerox’s Cooperation With the OAG’s Investigation

10. On June 8, 2012, the OAG issued a Civil Investigative Demand (“CID”) to Xerox under the TMFPA. On March 19, 2013 and April 30, 2013, the OAG supplemented the CID and

requested additional categories of documents. The CID and supplemental demands sought documents and electronically stored information “relevant to Medicaid fraud involving the prior authorization process for orthodontic services.” Civil Investigative Demand, June 8, 2012; Supplemental Civil Investigative Demand, March 19, 2013; Second Supplemental Civil Investigative Demand, April 30, 2013 (copies attached to the motion as **Exhibit 1**). The scope of the CID document requests was consistent with Rule 192.3(b) and includes discovery that is undeniably relevant in this litigation.

11. Xerox complied with the State’s CID and supplemental requests, as well as other related discovery requests. Following extensive and continuous discussions and cooperation with the OAG, Xerox collected materials from TMHP servers and hard drives, including electronic mail and other documents and data. Xerox loaded the collected materials into a database housed by a third-party vendor, Applied Discovery, now owned by DTI Global (“DTI”). Over the course of several months, Xerox produced more than 100,000 files from that collection, totaling more than 2,000,000 pages of documents and over a terabyte of data.

12. The OAG was aware at all times that Xerox was collecting materials from the TMHP servers to respond to the OAG’s pre-suit discovery requests.

The State’s Current Demands

13. Now, after two years of great expense and effort in complying with the State’s investigative demands, and with the State’s full knowledge of Xerox’s access to the TMHP servers to respond to the State’s pre-suit discovery requests, the State demands the immediate return or destruction of all documents or electronically stored information that Xerox obtained from the TMHP servers to comply with those pre-suit discovery requests. This demand for return or destruction includes the materials collected by Xerox for purposes of responding to the

CID, any copies disclosed to Xerox attorneys, and any attorney work product containing TMHP documents. Those documents are currently in two locations: (1) on the DTI servers, and (2) with Xerox in-house counsel (including other Xerox employees, at in-house counsel's discretion) and Xerox outside counsel (including employees and consultants working with them).

The DTI Databases

14. DTI servers currently house several databases containing documents collected from TMHP servers. The collected materials and review database also are housed on a DTI server and contain attorney work product. The collected materials reflect the judgments of Xerox's counsel regarding the CID response, and the review fields in the database contains attorney judgments regarding the responsiveness of documents and whether documents contain or may contain privileged communications or other materials.

15. In addition to the collected materials and review database, the DTI servers also house other databases containing, among other things, documents produced in response to the CID. Over the last two years, Xerox counsel have used these databases to review the documents and record attorney impressions (through tagging and other mechanisms) relating to ongoing and anticipated litigation.

CID Materials Disclosed to Xerox In-House and Outside Counsel

16. Certain CID materials also have been disclosed to Xerox's outside counsel and their consultants to defend Xerox in ongoing litigation and to carry out legal responsibilities. These materials have been provided in both hard copy and electronic form, and all outside counsel and the consultants working with them have maintained the material in the strictest confidence.

Xerox's Requests for Production in this Case

17. On July 18, 2014, following unsuccessful negotiations regarding these issues, Xerox served the State with a second set of requests for production, formally requesting through discovery continued access to the materials the State recently demanded be returned or destroyed by Xerox. The purpose of the requests is to establish Xerox's continued access, through discovery in the lawsuit, to the materials to which Xerox has had, for the past two years, full and unfettered access.

18. Xerox has also provided the State with a proposed Qualified Protective Order designed to protect the confidentiality of TMHP information and any protected health information in accordance with HIPAA (the Health Insurance Portability and Accountability Act) and other privacy regulations. A copy of the draft protective order sent to the State is attached as **Exhibit 2** to this motion.

III. XEROX IS ENTITLED TO RETAIN ITS COLLECTIONS OF PRE-SUIT DISCOVERY MATERIALS

19. After requiring Xerox to collect, cull, search, review, and produce voluminous materials in response to its pre-suit discovery demands, the State now seeks to strip from Xerox copies of materials that constitute work product (developed at considerable expense) and material that, in any event, Xerox is entitled to have in these proceedings to defend against the State's billion-dollar claims. Xerox should be permitted to retain its collection and any copies of the pre-suit discovery materials for at least two reasons: (1) the collections currently stored on DTI servers constitute Xerox's attorney work product, and (2) Xerox is entitled to possess the pre-suit discovery materials to defend against the State's claims in this proceeding.

A. The Pre-Suit Discovery Material Collections Are Xerox Attorney Work Product

20. The DTI collections are Xerox's attorney work product. The DTI servers currently contain three categories of material, all of which constitute protected attorney work product. As to the first category—the copies of materials originally collected from TMHP and stored on DTI servers—these materials constitute attorney work product in that they reflect and reveal the attorneys' thought processes about what source materials should be collected to respond to the State's pre-suit discovery requests. As to the second category—the review database—it reflects the search terms applied to identify potentially responsive or privileged materials, as well as the reviewing attorneys' impressions regarding, for example, the responsiveness of each particular documents. And as to the third—other databases containing copies of the document produced in response to the pre-suit discovery requests—those databases are used by attorneys in the provider and state litigation, as well as internal investigations, and include attorney impressions in the form of document tagging, comments and the like. The entirety of the materials stored at DTI, therefore, constitute protected attorney work product.

21. Work product is protected from discovery, unless the party seeking the materials demonstrates a substantial need. TEX. R. CIV. P. 192.5(b)(2). The State cannot show a substantial need for Xerox's work product materials related to coding of documents pulled for potential production to what is now a party opponent in this lawsuit.

22. Notably, however, the State seeks more than disclosure; it has also made demands over time that Xerox destroy existing work product. Where the State has no basis for seeking disclosure of the work product, it can have no basis for demanding its destruction, particularly when the work product was created as a result of the State's own investigative demands. Xerox

expended substantial resources in complying with each of the State's requests; it should not now be stripped of the resulting work product.

B. The Pre-Suit Discovery Materials Contain Documents and Data That Are Otherwise Discoverable in this Litigation

23. Even setting aside the protected work product, Xerox is entitled to retain the pre-suit discovery material in this litigation. Under the Texas Rules of Civil Procedure, Xerox is entitled to discovery of any unprivileged information "relevant to the subject matter" of the action, even if it would be inadmissible at trial, so long as the information appears "reasonably calculated" to lead to the discovery of admissible evidence. TEX. R. CIV. P. 192.3(a); *see also In re CSX Corp.*, 124 S.W.3d 149, 152 (Tex. 2003) (orig. proceeding). The phrases "relevant to the subject matter" and "reasonably calculated" are to be "liberally construed" to allow litigants to obtain "the fullest knowledge of the facts and issues prior to trial." *Ford Motor Co. v. Castillo*, 279 S.W.3d 656, 664 (Tex. 2009); *Axelson, Inc. v. McIlhany*, 798 S.W.2d 550, 553 (Tex. 1990) (orig. proceeding).

24. Xerox has served the State with requests for the production of the pre-suit discovery materials, and there can be no reasonable basis to object to those requests as outside the scope of permissible discovery. The parameters of the State's CID are coextensive with the State's claims against Xerox. The CID was issued as part of an investigation into "the possibility of Medicaid fraud involving the prior authorization process for orthodontic services" under the TMFPA. Civil Investigative Demand 1, June 8, 2012. The State's allegations in this litigation relate to the "evaluation and proper disposition of prior authorization requests submitted to Medicaid by dental providers for approval of orthodontic treatment." Plaintiff's Original Petition at ¶ 9 ("Petition"). The pre-suit discovery materials thus contain information and document that properly discoverable by Xerox.

25. Furthermore, as indicated below, the retention by Xerox of custodial email files that were pulled in order to cull them for responsive and non-privileged information is necessary to allow Xerox to maintain its claims of privilege with respect to materials that qualify for a privilege claim.

IV. Xerox Is Entitled to Maintain Its Privilege over Attorney-Client Communications Residing on TMHP Servers

26. Xerox employees working on TMHP servers and using the TMHP.com email domain communicated at times with attorneys, and those communications and any other work product are privileged and protected from discovery by the State and any other parties. Attorney-client privilege protects confidential communications between client and counsel made for the purpose of facilitating the rendition of legal services. *See* TEX. R. EVID. 503(b); *Huie v. DeShazo*, 922 S.W.2d 920, 922 (Tex. 1996).

27. The fact that these privileged communications and materials reside on TMHP servers does not undermine the privilege. Understandably, the mere presence of privileged data on an electronic server in the control of a third-party does not affect confidentiality or the privilege. In cases of data privacy, courts have increasingly turned to the Fourth Amendment “reasonable expectation of privacy” test to determine whether or not a party waived its attorney-client privilege. *See, e.g., In re Royce Homes L.P.*, 449 B.R. 709, 733 (Bankr. S.D. Tex. 2011). Under this accepted standard, attorney-client privilege is not waived so long as the party possessed a reasonable expectation that his attorney communications were confidential and would remain so. *Id.*

28. Given the commercial realities of its contract with HHSC, Xerox plainly had and continues to have a reasonable expectation of privacy that its attorney-client communications and work product remain confidential while that information is stored on TMHP servers. Whether

someone has a reasonable expectation of privacy is a two-part inquiry: (1) whether the person has exhibited an actual subjective expectation of privacy, and (2) whether that expectation is objectively reasonable. *Katz v. United States*, 389 U.S. 347, 361 (1967) (Harlan, J., concurring).

29. Xerox's expectation of confidentiality is demonstrably genuine and reasonable under the circumstances. Importantly, as part of its response to the CID, Xerox entered into a written "snap-back" agreement with the OAG that formally acknowledged Xerox had not waived its attorney-client privilege regarding any of the data hosted on the TMHP servers. A copy of the agreement is attached as **Exhibit 3** to the motion. The snap-back agreement speaks to Xerox's subjective and objective belief that its privileged communications would remain confidential. This and other communications demonstrate that the State and Xerox have consistently acknowledged the confidentiality of Xerox's attorney-client communications and that Xerox has not waived its privilege.

30. Xerox has not waived and will not waive any applicable privilege. Though a client may waive attorney-client privilege if he discloses or consents to the disclosure of any significant part of the privileged matter, *see* TEX. R. EVID. 511(1), Xerox has not done so and has no intention of waiving its privileges.

31. Pending Xerox's appeal to the Court for specific relief on turnover of TMHP operations to the State and its successor vendor, the State has agreed not to access Xerox's privileged communications and materials. Xerox should be permitted to review and remove privileged communications and material from TMHP and is willing to negotiate with the State a mutually agreeable protocol to accomplish this task. In the meantime, Xerox seeks a Court order protecting its privilege regarding these communications and materials.

V. REQUESTED RELIEF

For these reasons, Xerox respectfully requests the court grant this Motion and enter an order providing as follows:

(a) That Xerox may retain any and all pre-suit discovery materials, including documents and electronically stored information collected or documents or electronically stored information produced by Xerox in response to the OAG pre-suit discovery demands;

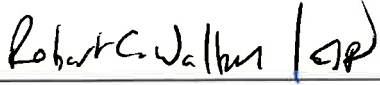
(b) That any privileged attorney-client communications or attorney work product currently residing at TMHP and/or on TMHP servers are confidential and privileged and excluded from discovery, and that the turnover of TMHP operations shall not and does not constitute a waiver or otherwise destroy any applicable privilege;

(c) That documents to be retained by Xerox pursuant to the Court's order and/or also exchanged between the parties during discovery will be formally provided protections pursuant to HIPAA and other privacy laws; and


(d) Granting such other and further relief to which Xerox may show itself to be entitled.

Respectfully submitted,

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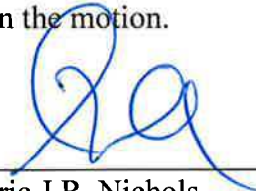
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ATTORNEYS FOR DEFENDANTS
XEROX CORPORATION AND
XEROX STATE HEALTHCARE, LLC,
FORMERLY KNOWN AS
ACS STATE HEALTHCARE, LLC

CERTIFICATE OF CONFERENCE

In accordance with Rule 191.2, I certify that counsel for Xerox have made reasonable efforts to resolve this dispute without the necessity of court intervention, but these efforts have failed to date to resolve the matters presented in the motion.


Eric J.R. Nichols

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of July, 2014, I caused a copy of the foregoing to be served to the following counsel via e-mail:

Counsel for Plaintiff State of Texas:

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A handwritten signature in black ink, appearing to read 'C. R. Cowan', written over a horizontal line.

Christopher R. Cowan



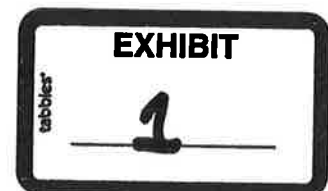
**Office of the Attorney General
State of Texas**

CIVIL INVESTIGATIVE DEMAND

**To: Affiliated Computer Services (ACS State Healthcare, LLC) (A Xerox Company)
12357 Riata Trace Pkwy, Suite B250
Austin, TX 78727**

The Office of the Attorney General of Texas (OAG) is investigating the possibility of Medicaid fraud involving the prior authorization process for orthodontic services. Such activities may violate the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code §§ 36.002, *et. seq.*, and other Texas law.

The OAG has reason to believe you may have information relevant to its investigation and requests that you file a statement in writing, under oath, pursuant to Tex. Hum. Res. Code § 36.053(b)(1) and produce documents pursuant to Tex. Hum. Res. Code § 36.054. Definitions and instructions to be used in responding to this Civil Investigative Demand are attached. Please review these instructions and definitions carefully before responding to this Civil Investigative Demand. It is a violation of the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code § 36.002(11) to knowingly obstruct an investigation by the Attorney General of an alleged unlawful act under this section.



DEADLINES: The written statement and all documents shall be submitted to Deputy Chief Margaret Moore, Civil Medicaid Fraud Division, P.O. Box 12548, Austin, Texas 78711-2548 (physical address 300 W. 15th St., 9th Floor, 78701), within 30 days of your receipt of this CID or as otherwise agreed to by the Office of the Attorney General. In lieu of providing the original documents to the Attorney General for inspection and copying, you may provide true and correct copies of all requested documents **provided that such copies are accompanied by a completed affidavit in the form provided in Exhibit B.**

NOTICE

Any person who refuses to comply, in whole or part, with a Civil Investigative Demand issued under Tex. Hum. Res. 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 Tex. Hum. Res. Code § 36.054(f).

ISSUED this 8th Day of June 2012.

DEFINITIONS

As used herein, the following terms are defined as indicated:

1. "ACS" means Affiliated Computer Services or ACS State Healthcare, LLC (A Xerox Company) and any successor companies.
2. "TMHP" means the Texas Medicaid & Healthcare Partnership (TMHP), the coalition of contractors headed by ACS, including agents and subcontractors authorized to act on ACS's behalf, who are under contract with the Texas Health and Human Services Commission to carry out the Medicaid claims payment for the state of Texas, and any entity who has contracted with ACS or TMHP to provide services that pertain to the authorization or reimbursement of orthodontic services by Texas Medicaid.

3. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
4. "Documents" mean paper or electronic documents, no matter how they are maintained. Documents shall be construed broadly in accordance with Texas Rule of Civil Procedure 192.3(b), and includes, but is not limited to: papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, data, data compilations, presentations, and any electronic documents, including those maintained on computers, laptops, smartphones, flashdrives, etc. These requests ask for documents in your possession, custody, or control under Texas law.
5. "Texas Medicaid" means the Texas Medicaid program and personnel developing and/or administering dental and/or orthodontic services for Texas Medicaid recipients as well as the personnel in the Texas Health and Human Services Commission ("HHSC"), and its predecessor agencies who supervise or supervised that program.
6. "You" or "your" means ACS, and/or any agents, third parties, or others within ACS's control.

INSTRUCTIONS

1. Documents not otherwise responsive to these Document Requests shall be produced if such documents mention, discuss, refer to, or explain the documents that are called for by these Document Requests, or if such documents are attached to documents called for by these Document 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. Unless a different time period is specified, the specified time period is January 1, 2000, until May 31, 2012.
4. Format for the production of electronically stored information:
 - a. Electronically stored communications, such as e-mails, shall be produced in their native format;
 - b. Unless other agreements are made between the parties, databases, such as price lists, shall be produced in fixed-width ASCII format accompanied by the layout;

- c. Spreadsheets shall be produced in their native format; and
 - d. All other documents shall be produced according to the specifications outlined in the attached Exhibit A.
5. For each document withheld from production based on a claim of privilege:
- a. Provide a log that includes the following information: a document identifier (such as a Bates number), author(s), source(s), addressee(s), recipients of the original and any copies, date, a description of the document and the nature of the information withheld without revealing the privileged information itself, document title, document type, number of pages, the privilege asserted, and the document request or interrogatory number of this CID for which the document is responsive.
 - b. Attachments to a document should be identified as such and entered separately on the log;
 - c. If an attorney is referenced, identify the attorney in the log with an asterisk and provide the attorney's employer, position, and involvement in the matter; and
 - d. If an assertion of privilege is based upon attorney work product, state whether the document was prepared in anticipation of litigation or for trial, and identify the anticipated litigation or trial upon which the assertion is based.

DOCUMENTS REQUESTED

- 1. Documents or communications, such as personnel files, performance reviews, appraisals, or evaluations, used by ACS or TMHP to evaluate Jerry Felkner's qualifications for employment, promotion or demotion, compensation or benefits, retention, or disciplinary or adverse employment actions.
- 2. Documents or communications by ACS or TMHP regarding meetings or discussions about performance reviews, appraisals, or evaluations of Jerry Felkner.
- 3. Documents or communications by ACS or TMHP reflecting awards, promotions, commendations, compliments, or disciplinary actions regarding Jerry Felkner's job performance.

4. Documents or communications by ACS or TMHP regarding Jerry Felkner's competency, diligence, honesty, or integrity in his employment with ACS or TMHP.
5. Documents or communications regarding the circumstances and specific details of Jerry Felkner's resignation or termination from ACS or TMHP.
6. Documents or communications, including but not limited to separation agreements, severance agreements, confidentiality agreements, or non-compete agreements, presented to or signed by Jerry Felkner at the time he resigned or was terminated from ACS or TMHP.
7. Documents or communications between ACS or TMHP and Jerry Felkner regarding his employment, the conditions of his employment, and job performance with ACS or TMHP.
8. Documents or communications between ACS or TMHP and Jerry Felkner since his resignation or termination from ACS or TMHP regarding his employment with ACS or TMHP.
9. Documents or communications by ACS or TMHP regarding procedures, rules, guidelines, or commentary about ACS or TMHP's prior authorization process for orthodontic services under Texas Medicaid.
10. Documents or communications by ACS or TMHP regarding procedures, rules, guidelines, or commentary about ACS or TMHP's document retention or destruction guidelines for the prior authorization process for orthodontic services under Texas Medicaid.
11. Documents or communications between ACS or TMHP and providers regarding procedures, rules, guidelines, or commentary about ACS or TMHP's prior authorization process for orthodontic services under Texas Medicaid.
12. Prior authorization request forms and supporting documentation, whether electronic or hard-copy, submitted by providers to ACS or TMHP for orthodontic services under Texas Medicaid.
13. Documents or communications created by or sent to Jerry Felkner regarding ACS or TMHP's prior authorization process for orthodontic services under Texas Medicaid.

14. Documents or communications between Jerry Felkner and any consultants or other third parties regarding the prior authorization process for orthodontic services under Texas Medicaid.
15. Documents that identify the contractors in ACS or TMHP that perform any function related to the prior authorization approval process for orthodontic services.
16. Documents that identify the contractors in ACS or TMHP that perform any function related to the reimbursement of Texas Medicaid funds to providers for orthodontic services which require prior authorization.
17. For each entity identified in Request Numbers 15 and 16, above, documents related to the entity's role in the prior authorization approval process for orthodontic services or the reimbursement of Texas Medicaid funds to providers for orthodontic services which require prior authorization.
18. For each entity identified in Request Numbers 15 and 16, above, documents related to the organizational structure of the entity.
19. Documents that identify the person(s) or entity responsible for determining whether to approve or reject a prior authorization request for orthodontic services, including interrupted or incomplete orthodontic services.
20. Documents that reflect internal ACS or TMHP rules, policy, guidelines, procedures, or commentary regarding the prior authorization process for orthodontic services.
21. Documents that reflect ACS or TMHP communications to providers regarding ACS, TMHP or Texas Medicaid rules, policy, guidelines, procedures, or commentary regarding orthodontic services subject to prior authorization.
22. Documents reflecting correspondence between ACS or TMHP and providers regarding the prior authorization process for orthodontic services. Examples include, but are not limited to, the "Texas Medicaid Bulletin," "Banner Messages," or correspondence between ACS's or TMHP's Provider Support Services and a provider.
23. Produce documents which identify the standard, whether established by statute, rule, or policy, by which ACS or TMHP reviews or approves orthodontic prior approval requests.

INFORMATION REQUESTED

1. Identify any positions which Jerry Felkner held while employed by ACS or TMHP and the years which he held each position.

RESPONSE:

2. For each position listed in response to Request for Information #1, please identify all duties or obligations required of Jerry Felkner in the scope of his employment.

RESPONSE:

3. Identify all supervisors, by name and position, to whom Jerry Felkner reported while employed by ACS or TMHP and the years in which Jerry Felkner reported to them.

RESPONSE:

4. Identify all individuals who reported to Jerry Felkner, or who Jerry Felkner oversaw, for each position listed in response to Request for Information #2, above.

RESPONSE:

5. Please state the topics, objectives, or criteria which determined Jerry Felkner's compensation, including any bonuses, for each position listed in response to Request for Information #1, above.

RESPONSE:

6. Please state all records retention policy obligations Jerry Felkner had while employed for each position listed in response to Request for Information #1, above.

RESPONSE:

7. Please state the record retention efforts undertaken by ACS and/or Jerry Felkner at the termination of Jerry Felkner's employment with ACS or TMHP.

RESPONSE:

8. Please state the location – at the time of the termination of Jerry Felkner's employment with ACS or TMHP – of all records necessary to complete Jerry /Felkner's duties and obligations.

RESPONSE:

9. Identify any record destruction authorized by ACS or Jerry Felkner while Jerry Felkner was employed with ACS or TMHP.

RESPONSE:

10. Please state the reasons for the termination of Jerry Felkner's employment with ACS or TMHP.

RESPONSE:

11. Identify any document which identifies the reasons for termination listed in Request for Information #10, above.

RESPONSE:

12. Identify any outside employment Jerry Felkner participated in while employed by ACS or TMHP.

RESPONSE:

13. Please state any compensation received, whether monetary or otherwise (including reimbursement of expenses) by either Jerry Felkner, ACS or TMHP, for any employment identified in Request for Information #12, above.

RESPONSE:

14. Please identify all individuals who assisted ACS or TMHP in the prior authorization process used to determine eligibility for orthodontic services under Texas Medicaid.

RESPONSE:

15. Please describe the steps taken at ACS or TMHP to complete the prior authorization process used to determine eligibility for orthodontic services under Texas Medicaid.

RESPONSE:

16. If an employee approved orthodontic services under Texas Medicaid for individuals under the age of 12, please state the reasons for any such approvals.

RESPONSE:

17. If an employee approved orthodontic services under Texas Medicaid for individuals for whom orthodontic services were not medically necessary, please state the reasons for any such approvals.

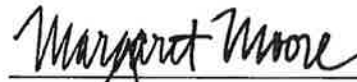
RESPONSE:

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for Civil Litigation



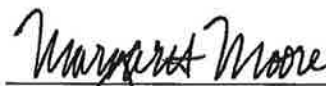
RAYMOND C. WINTER
State Bar No. 21791950
Chief, Civil Medicaid Fraud Division
(512) 936-1709 direct dial
MARGARET MOORE
State Bar No. 14360050
Deputy Chief, Civil Medicaid Fraud Division
(512) 936-1319 direct dial
DREW WRIGHT
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State Bar No. 06502452
(512) 936-1703 direct dial
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State Bar No. 24065846
(512) 936-6615 direct dial
MATTHEW MILLER
State Bar No. 24051959
(512) 936-1420 direct dial

Assistant Attorneys General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 499-0712 fax

Attorneys for the State of Texas

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Civil Investigative Demand was sent by certified mail, return receipt requested to Bill Deckelman on the 8th day of June 2012.

A handwritten signature in black ink, appearing to read "Margaret Moore", written over a horizontal line.

Margaret Moore
Deputy Chief, Civil Medicaid Fraud Division



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

SUPPLEMENTAL CIVIL INVESTIGATIVE DEMAND

TO; Affiliated Computer Services (ACS State Healthcare, LLC)(A Xerox Company)
c/o Andrew Weber
KELLY HART
301 Congress Ave., Suite 2000
Austin, Texas 78701

In furtherance of its investigation into the possibility of Medicaid Fraud involving TMHP's prior authorization process for orthodontic services, the Office of the Attorney General issued its original Civil Investigative Demand (CID) to you on June 8, 2012. This Supplemental Civil Investigative Demand is issued under the same authority as the original CID, and incorporates all Definitions and Instructions included in the original CID. The requested Documents and Information should be produced to the Assistant Attorney General named below no later than ten (10) business days following receipt of the Supplemental CID.

The following Documents, to the extent not requested in the original CID, are requested:

1. All personnel records, including applications for employment, resumes, performance reviews, and compensation records, for those persons employed by you from January 1, 2004 to the present who reviewed and processed prior authorization requests for orthodontic treatment or who supervised the review and processing of prior authorization requests for orthodontic treatment.

2. Electronic data related to orthodontic prior authorizations and claims, comprising: (a) a “snapshot” of all relevant data, and (2) an extract from the snapshot as described in the query attached hereto as Appendix I.

3. All documents, including internal communications, related to Policies and Procedures applicable to Prior Authorization, whether medical or dental.

4. All training manuals and/or work instructions related to Prior Authorization, whether medical or dental.

5. Indices for documents stored at Iron Mountain.

6. Documents related to or reflecting internal assessments, risk analyses, or audits related to TMHP’s performance of prior authorization reviews.

The following Information, to the extent not requested in the original CID, is requested:

1. Identify the individuals involved in drafting and submitting Section 3.8.9 of the ACS State Healthcare, LLC, Proposal in response to HHSC’s 2008 Request for Proposal.

2. Identify the individuals involved in drafting the work instructions, known as the “WIKI,” related to Prior Authorization.

3. Identify other State Medicaid programs for which Xerox or ACS before it performed prior authorization reviews of requests for orthodontic treatment by Medicaid providers.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for Civil Litigation

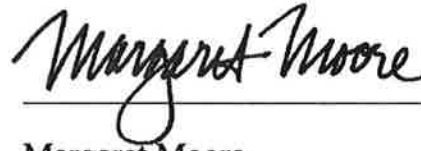


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State Bar No. 14360050
Deputy Chief, Civil Medicaid Fraud Division
(512) 936-1319 direct dial

Assistant Attorneys General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 499-0712 fax

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Civil Investigative Demand was sent by both e-mail and certified mail, return receipt requested, to Andrew Weber on the 19th day of March, 2013.

A handwritten signature in black ink that reads "Margaret Moore". The signature is written in a cursive style with a large, looping "M" and "M".

Margaret Moore

Deputy Chief, Civil Medicaid Fraud Division

APPENDIX I

SUGGESTED CLAIMS FIELD NAMES

Query 1 and Query 2

QUERY 1:

SELECT

Subm Bill Prov Identifier Nbr
Subm Bill Prov Suffix Nbr
Submitted Client PCN Nbr
Client Last Name
Client First Name
Client Middle Initial
Submitted Client Birth Dt
Client Sex Desc
Claim Program Cd from Detail
Claim Type Cd from Detail
Claim Media Type Cd from Detail
Claim Internal Control Nbr from Dlt
Claim Current Status Cd from Detail
Claim Status Dt from Detail
Complete Mother Claim ICN
Adjustment Reason Cd
Claim Remittance Advice Nbr
Claim Check Nbr
Hdr Paid Dt
Endorsement Nbr
Hdr From Date Of Service Dt
Hdr To Date Of Service Dt
Receipt Dt
Authorization Nbr
Hdr Total Billed Amt
Hdr Paid Amt
Detail Sequence Nbr
Detail Current Status Cd
Submitted Perf Prov Identifier Nbr
Submitted Perf Prov Suffix Nbr
Dtl From Date Of Service Dt
Dtl To Date Of Service Dt
Place of Service Cd
Type of Service Cd
Procedure Cd
Procedure Desc
Procedure Modifier 1 Cd
Procedure Modifier 2 Cd
Procedure Modifier 3 Cd
Procedure Modifier 4 Cd
Procedure Modifier 5 Cd
Submitted Procedure Cd
Submitted Procedure Desc
Submitted Procedure Cd Change Ind
Dtl Billed Quantity Amt
Dtl Allowed Quantity Amt
Dtl Billed Amt
Dtl Allowed Amt
Dtl Paid Amt
Hdr Claim Count
Authorization Type Cd
Authorization Area Cd

Field suggestions by Xerox Counsel, Janice Hernandez(OAG-MFCU), Xiaoling Huang(HHSC) and Jolie Tate (OAG-LTS)

SUGGESTED CLAIMS FIELD NAMES

Query 1 and Query 2

Dtl Claim Count
Dtl Diagnosis Cd
Dtl Manual Quantity
Dtl Partial Authorization
Dtl Authorization Required Ind
Tooth Cd
Tooth Surface 1 Cd
Tooth Surface 2 Cd
Tooth Surface 3 Cd
Tooth Surface 4 Cd
Tooth Surface 5 Cd
Auth Procedure Cd
Auth Submitted Procedure Cd
Auth Tooth Cd
Auth Tooth Surface Cd

FROM AHQP_CLAIMS

Suggested Query Criteria: WHERE [Claim Status Dt] Greater than or Equal to 1/1/2004 AND [Dtl From Date of Service Dt] Between 1/1/2004 and 12/31/2012 AND [Claim Program Cd] In List (100;200) AND [Procedure Cd] In List

(1000D;1001D;1002D;1003D;1004D;1005D;1006D;1007D;1008D;1010D;1011D;1012D;1013D;1014D;1015D;1016D;1017D;1018D;1019D;1020D;1021D;1022D;1023D;1024D;1025D;1026D;1027D;1028D;1029D;1030D;1031D;1032D;1033D;1034D;1035D;1036D;1037D;1038D;1039D;1040D;1041D;1042D;1043D;1044D;1045D;1046D;1047D;1048D;1049D;1050D;1051D;1052D;1053D;1054D;1055D;1056D;1057D;1058D;1059D;1060D;1061D;1062D;1063D;1064D;1065D;1066D;1067D;1068D;1069D;1070D;1071D;1072D;1073D;1074D;1075D;1076D;1077D;1078D;8110D;8120D;D0330;D0340;D0350;D0470;D5951;D5952;D5953;D5954;D5955;D5958;D5959;D5960;D7280 ;D7997;D8050;D8060;D8080;D8210;D8220;D8660;D8670;D8680;D8690;D8693 ;D8999;Z2008;Z2009;Z2010;Z2011;Z2012;Z2013;Z2014;Z2015;Z2016;Z2017;Z2018) OR [Submitted Procedure Cd] In List (1000D;1001D;1002D;1003D;1004D;1005D;1006D;1007D;1008D;1010D;1011D;1012D;1013D;1014D;1015D;1016D;1017D;1018D;1019D;1020D;1021D;1022D;1023D;1024D;1025D;1026D;1027D;1028D;1029D;1030D;1031D;1032D;1033D;1034D;1035D;1036D;1037D;1038D;1039D;1040D;1041D;1042D;1043D;1044D;1045D;1046D;1047D;1048D;1049D;1050D;1051D;1052D;1053D;1054D;1055D;1056D;1057D;1058D;1059D;1060D;1061D;1062D;1063D;1064D;1065D;1066D;1067D;1068D;1069D;1070D;1071D;1072D;1073D;1074D;1075D;1076D;1077D;1078D;8110D;8120D;D0330;D0340;D0350;D0470;D5951;D5952;D5953;D5954;D5955;D5958;D5959;D5960;D7280 ;D7997;D8050;D8060;D8080;D8210;D8220;D8660;D8670;D8680;D8690;D8693 ;D8999;Z2008;Z2009;Z2010;Z2011;Z2012;Z2013;Z2014;Z2015;Z2016;Z2017;Z2018)

INTO TABLE 1

Query 2:

SELECT *
FROM TABLE 1

Suggested Query Criteria: WHERE [Claim Current Status Cd] In List (E;P) AND [Procedure Cd] In List

(1000D;1001D;1002D;1003D;1004D;1005D;1006D;1007D;1008D;1010D;1011D;1012D;1013D;1014D;1015D;1016D;1017D;1018D;1019D;1020D;1021D;1022D;1023D;1024D;1025D;1026D;1027D;1028D;1029D;1030D;1031D;1032D;1033D;1034D;1035D;1036D;1037D;1038D;1039D;1040D;1041D;1042D;1043D;1044D;1045D;1046D;1047D;1048D;1049D;1050D;1051D;1052D;1053D;1054D;1055D;1056D;1057D;1058D;1059D;1060D;1061D;1062D;1063D;1064D;1065D;1066D;1067D;1068D;1069D;1070D;1071D;1072D;1073D;1074D;1075D;1076D;1077D;1078D;8110D;8120D;D8050;D8060;D8080;D8210;D8220;D8670;D8680;D8690;D8693 ;D8999;Z2008;Z2009;Z2011;Z2012;Z2013;Z2014;Z2015;Z2018) OR [Submitted Procedure Cd] In List (1000D;1001D;1002D;1003D;1004D;1005D;1006D;1007D;1008D;1010D;1011D;1012D;1013D;1014D;1015D;1016D;1017D;1018D;1019D;1020D;1021D;1022D;1023D;1024D;1025D;1026D;1027D;1028D;1029D;1030D;1031D;1032D;1033D;1034D;1035D;1036D;1037D;1038D;1039D;1040D;1041D;1042D;1043D;1044D;1045D;1046D;1047D;1048D;1049D;1050D;1051D;1052D;1053D;1054D;1055D;1056D;1057D;1058D;1059D;1060D;1061D;1062D;1063D;1064D;1065D;1066D;1067D;1068D;1069D;1070D;1071D;1072D;1073D;1074D;1075D;1076D;1077D;1078D;8110D;8120D;D8050;D8060;D8080;D8210;D8220;D8670;D8680;D8690;D8693 ;D8999;Z2008;Z2009;Z2011;Z2012;Z2013;Z2014;Z2015;Z2018)

SUGGESTED AUTHORIZATION FIELD NAMES

Query 3

SELECT

Last Refreshed by
 Authorization Nbr
 Auth Header Role Provider
 Auth Hdr Role Prov NPI
 Auth Hdr Role Prov Identifier Nbr
 Auth Hdr Role Prov Suffix Nbr
 Current Tax Info IRS Nbr
 Provider Combined Name
 Auth Hdr Role Prov Subm NPI Info
 Auth HR Prov Prcd NPI
 Doing Business As Name
 Provider City, State Zip Ext Combo
 RoleSuffix Current Physical Address
 Provider Physical City, State Zip
 Submitted Prov Contact Name
 Documentation Locator Nbr
 Auth Header Status Cd
 Area Cd
 Area Desc
 Type Cd
 Type Desc
 Deny Reason Cd
 Deny Reason Desc
 Media Type Cd
 Media Type Desc
 Authorization Header Dates
 Header FDOS Dt
 Header TDOS Dt
 Auth Dtl Seq Nbr level Measures
 Requested Service Unit Cnt
 Approved Service Unit Cnt
 Used Service Unit Cnt
 Auth Detail Status Cd
 Auth Detail Status Desc
 Auth Detail Status Effective Dt
 Auth Detail Status Terminate Dt
 Authorization Detail Codes
 Category Cd
 Category Desc
 Procedure Cd
 Procedure Desc
 Submitted Procedure Cd
 Submitted Procedure Desc
 Client Age
 Auth Detail From Dates of Service
 Dtl FDOS Dt
 Dtl TDOS Dt
 Authorization Period Limits
 Period Limit From Dates of Service
 Period Limit FDOS Dt
 Period Limit TDOS Dt
 Client Complete Name
 Patient Control Nbr
 Birth Dt
 Authorization Performing Provider
 Auth Perf Prov NPI
 Auth Perf Prov Identifier Nbr
 Auth Perf Prov Suffix Nbr
 Provider Combined Name
 Provider City, State Zip Ext Combo
 Override Code and details
 Name or ID of person who reviewed prior authorization request
 Name or ID of person who approved prior authorization request

FROM AHQP AUTHORIZATION

Suggested Query Criteria: WHERE [Authorization Nbr] In List ('Mapping Table' of Authorization Numbers from Query 1)

SUGGESTED AUTHORIZATION FIELD NAMES

Query 4

SELECT

Last Refreshed by
 Authorization Nbr
 Auth Header Role Provider
 Auth Hdr Role Prov NPI
 Auth Hdr Role Prov Identifier Nbr
 Auth Hdr Role Prov Suffix Nbr
 Current Tax Info IRS Nbr
 Provider Combined Name
 Auth Hdr Role Prov Subm NPI Info
 Auth HR Prov Prcd NPI
 Doing Business As Name
 Provider City, State Zip Ext Combo
 RoleSuffix Current Physical Address
 Provider Physical City, State Zip
 Submitted Prov Contact Name
 Documentation Locator Nbr
 Auth Header Status Cd
 Area Cd
 Area Desc
 Type Cd
 Type Desc
 Deny Reason Cd
 Deny Reason Desc
 Media Type Cd
 Media Type Desc
 Authorization Header Dates
 Header FDOS Dt
 Header TDOS Dt
 Auth Dtl Seq Nbr level Measures
 Requested Service Unit Cnt
 Approved Service Unit Cnt
 Used Service Unit Cnt
 Auth Detail Status Cd
 Auth Detail Status Desc
 Auth Detail Staus Effective Dt
 Auth Detail Staus Terminate Dt
 Authorization Detail Codes
 Category Cd
 Category Desc
 Procedure Cd
 Procedure Desc
 Submitted Procedure Cd
 Submitted Procedure Desc
 Client Age
 Auth Detail From Dates of Service
 Dtl FDOS Dt
 Dtl TDOS Dt
 Authorization Period Limits
 Period Limit From Dates of Service
 Period Limit FDOS Dt
 Period Limit TDOS Dt
 Client Complete Name
 Patient Control Nbr
 Birth Dt
 Authorization Performing Provider
 Auth Perf Prov NPI
 Auth Perf Prov Identifier Nbr
 Auth Perf Prov Suffix Nbr
 Provider Combined Name
 Provider City, State Zip Ext Combo
 Override Code and details
 Name or ID of person who reviewed prior authorization request
 Name or ID of person who approved prior authorization request

FROM AHQP AUTHORIZATION

Suggested Query Criteria: WHERE [Category Cd] In List ('ORTH') AND [Dtl FDOS Dt] Between 1/1/2004 and 12/31/2012 AND [Submitted
 Client Program Cd] In (100;200)



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

SECOND SUPPLEMENTAL CIVIL INVESTIGATIVE DEMAND

TO; Affiliated Computer Services (ACS State Healthcare, LLC)(A Xerox Company)
c/o Andrew Weber
KELLY HART
301 Congress Ave., Suite 2000
Austin, Texas 78701

In furtherance of its investigation into the possibility of Medicaid Fraud involving TMHP's prior authorization process for orthodontic services, the Office of the Attorney General issued its original Civil Investigative Demand (CID) to you on June 8, 2012 and its Supplemental Civil Investigative Demand on March 19, 2013. This Second Supplemental Civil Investigative Demand is issued under the same authority as the original CID, and incorporates all Definitions and Instructions included in the original CID. PLEASE NOTE, the **Specified Time Period** is **January 1, 2000** to the present.

In addition to the electronic data described in the queries for claims and authorization data attached to the March Supplemental Civil Investigative Demand, produce the following:

- a. PA WorkFlow data, including the following fields:
 - PA number
 - Portal ID
 - TPI DCN (included in the Malouf extract)
 - PA Owner
 - Nurse Specialist Decision
 - MD Name
 - MD Decision

- Pending info due date

b. Client Eligibility data

Produce a lookup table containing historical eligibility for each PCN in the claims and authorization data.

c. Historical data

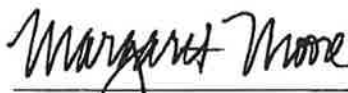
The time period for the electronic data (claims, authorization, PA WorkFlow or its equivalent) is **January 1, 2000** to present.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy Attorney General for Civil Litigation

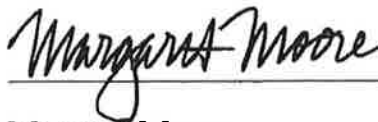


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Deputy Chief, Civil Medicaid Fraud Division
(512) 936-1319 direct dial

Assistant Attorneys General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 499-0712 fax

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of this Civil Investigative Demand was sent by both e-mail and certified mail, return receipt requested, to Andrew Weber on the 30th day of April, 2013.

A handwritten signature in black ink, reading "Margaret Moore", is written over a horizontal line.

Margaret Moore
Deputy Chief, Civil Medicaid Fraud Division

THE STATE OF TEXAS,

Plaintiff,

v.

XEROX CORPORATION, XEROX STATE
HEALTHCARE, LLC, and ACS HEALTHCARE,
LLC,

Defendants,

v.

ATLAS DENTAL, LP and DR. HIEU HUYNH;
IRMA CANTU-THOMPSON, DDS, PC and
IRMA CANTU-THOMPSON; DR. STEPHEN
CHU; DR. RICHARD F. HERRSCHER; MAN &
CFN ORTHO, PLLC, NAVARRO
ORTHODONTIX OF IRVING, PC, NAVARRO
ORTHODONTIX OF FT. WORTH, PLLC,
NAVARRO ORTHODONTIX OF MCALLEN,
PLLC, NAVARRO ORTHODONTIX OF
EDINBURG, PLLC, NAVARRO
ORTHODONTIX, PC, and DR. CARLOS F.
NAVARRO; RGV SMILES BY ROCKY L.
SALINAS, DDS, PA and DR. ROCKY
SALINAS; WESTMORELAND DENTAL, PA,
WESTMORELAND DENTAL OF GARLAND,
PC; WESTMORELAND DENTAL AND
ORTHODONTICS, PA, and SCOTTIE H.
NGUYEN, DDS; and VICTOR M. ZURITA,
DDS,

Intervenors.

§ IN THE DISTRICT COURT OF

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TRAVIS COUNTY, TEXAS

§ 53RD JUDICIAL DISTRICT

PROPOSED PROTECTIVE ORDER

WHEREAS, discovery and briefing in this case will likely involve the production or disclosure of confidential information, including documents and information defined as



“Confidential Information” by the following agreements between Defendant and the Texas Health & Human Services Commission (“HHSC”):

i. Texas Medicaid Claims/Primary Care Case Management Administrative Services Agreement;

ii. Medicaid/Children with Special Health Care Needs Services Program Claims Processing, Primary Care Case Management and Pharmacy Claims and Rebate Administration Agreement; and

iii. Data Use and Business Associate Agreement Between Health and Human Services Commission and Xerox State Healthcare, LLC (collectively, the “HHSC Contracts”).

WHEREAS, the parties also recognize it may be necessary during the course of this litigation to produce or disclose Protected Health Information (as defined herein) of Medicaid recipients, as well as Protected Health Information as to other individuals; and

WHEREAS, the parties seek a protective order limiting disclosure of Confidential Information and Protected Health Information in accordance with TEX. R. CIV. P. 192.6(b) and 45 C.F.R. § 164.512.

Having considered the parties’ agreements and concluded that it is in the interest of justice to issue this Agreed Protective Order (this “Order”), the Court hereby **ORDERS**:

DEFINITIONS

1. This “Case” means the above-captioned litigation.

2. “Confidential Information” means any information of any type, kind, or character that is designated as Confidential by any of the producing or receiving persons, whether it be a document, information contained in a document, information revealed during a deposition, information revealed in an interrogatory answer, or otherwise. The designation shall apply to

copies, excerpts, abstracts, summaries, descriptions or other forms of recorded information or data containing, reflecting, or disclosing all or parts of designated information. A party or non-party shall designate as Confidential Information only such information that the party or non-party believes is in fact confidential. Information and documents that may be designated as Confidential include, but are not limited to, trade secrets, confidential or proprietary financial information, operational data, business plans, competitive analyses, personnel files, personal information protected by law, Protected Health Information, as defined below , and other sensitive information that, if not restricted as set forth in this Order, may subject the producing or disclosing person to competitive or financial injury or potential legal liability to non-parties. Correspondence and other communications between the parties or with non-parties may be designated as Confidential if the communication was made with the understanding or reasonable expectation that the information would not become generally available to the public. Information that is generally available to the public shall not be designated as Confidential Information.

3. The term “documents” as used herein is intended to be comprehensive and includes any and all materials in the broadest sense contemplated by Rule 192.3(b) of the Texas Rules of Civil Procedure, and shall include all written, oral, recorded, or graphic material, however produced or reproduced, including, but not limited to, all written or printed matter of any kind, computer data, all graphic or manual records or representations of any kind, and electronic, mechanical, or electric records or representations of any kind.

5. “Qualified Persons” means:

- i. Counsel for the parties in this Case and their respective staff;
- ii. Actual or potential experts or consultants (and their administrative or clerical staff) engaged in connection with this Case;

- iii. This Court, court reporters, court personnel, jurors, any witness at deposition or trial, and any other persons necessary for any deposition, hearings, trials or other similar judicial administration of this Case;
- iv. Litigation vendors and other litigation support personnel;
- v. Any person who was an author, addressee, or intended or authorized recipient of the information and who agrees to keep the information confidential, provided that such persons may see and use the information but not retain a copy;
- vi. A party, if a natural person;
- vii. If a party is an entity, such officers or employees of the party who are actively involved in the prosecution or defense of this case and who agree to keep the information confidential;
- viii. Mediators or other neutral parties mutually selected by the parties or by Court order for purposes of alternative dispute resolution activities; and
- ix. Such other persons as the Court may designate after notice and an opportunity to be heard.

6. “Covered Entities” means those entities defined by 45 C.F.R. § 160.103.

7. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996.

8. “Protected Health Information” means protected health information, as that term is defined in 45 C.F.R. § 160.103. Without limiting the definition and merely for purposes of providing relevant examples, Protected Health Information includes, but is not limited to, a patient's dental and orthodontia information and related care information health information, including demographic information, relating to either: the past, present, or future physical or

mental condition of an individual; the provision of care to an individual; or the payment for care provided to an individual, which identifies the individual or which reasonably could be expected to identify the individual.

TERMS CONCERNING CONFIDENTIAL INFORMATION

1. **Marking of Documents:** Documents produced in this Case in paper or electronic image format may be designated by the producing person as Confidential Information by marking each page of the documents so designated with a stamp indicating that the information is Confidential, or through correspondence designating Bates ranges as Confidential Information. Electronic documents produced in native format may be designated by the producing person as Confidential by adding a suffix of “Conf” or “Confidential” to the end of the electronic document filename.

2. **Unintentional Disclosures:** Documents unintentionally produced without designation as Confidential Information may later be designated as Confidential Information and, other than Protected Health information, which shall be treated as confidential at all times, shall be treated as Confidential Information from the date written notice of the designation is provided to the receiving party. If a receiving party learns of any unauthorized disclosure of Confidential Information, the party shall immediately upon learning of such disclosure inform the producing party of all pertinent facts relating to such disclosure and shall make all reasonable efforts to prevent disclosure by each unauthorized person who received such information.

3. **HHSC Designation of Xerox Production:** HHSC may also designate documents produced by Xerox in this Case as “Confidential Information” consistent with the terms of the HHSC Contracts. HHSC will be considered a “producing person” through this order

to the extent necessary to (i) effectuate its right to designate information as Confidential Information, and (ii) establish the procedure to be followed for making such designations.

4. **Non-party Designations:** Persons and entities who are not parties to this lawsuit may designate as Confidential Information any information that they furnish in response to discovery requests received by them in connection with this lawsuit. Such non-parties will be considered “parties” and “producing persons” through this order to the extent necessary to (i) effectuate their right to designate information as Confidential Information, and (ii) establish the procedure to be followed for making such designations.

5. **Receiving Party Designation:** A party receiving documents from a producing person may designate such documents as Confidential Information by providing written notice to the producing person and other parties identifying each specific document requiring the designation and requesting that the documents be produced with the appropriate stamp or electronic filename designation.

6. **Documents to be Used for Litigation Only:** All information produced by any party or non-party in the course of this Case designated as “Confidential Information,” shall be used by the non-producing parties and non-parties solely for the purpose of preparation, trial, and appeal of this Case and for no other purpose.

7. **Disclosure at Depositions:** Information disclosed at (a) the deposition of a party or one of its present or former officers, directors, employees, agents, consultants, representatives, or independent experts retained by counsel for the purpose of this Case, or (b) the deposition of a non-party, may be designated by any party as Confidential Information by requesting on the record at the deposition that the reporter designate the transcript or any portion of the transcript as Confidential and subject to the provisions of this Order. Any party may also designate

information disclosed at a deposition as Confidential Information by notifying all parties in writing not later than 10 days after receipt of the final transcript of the specific pages and lines of the transcript that should be treated as Confidential Information. Each party shall attach a copy of each such written notice to the face of the transcript and each copy thereof in that party's possession, custody, or control. All deposition transcripts shall be treated as Confidential for a period of 10 days after initial receipt of the final transcript. If a party fails to designate particular testimony as subject to this Order during the deposition or the review period, it may nonetheless designate deposition testimony as subject to the Order. Such designation, however, shall only be effective as of the date notice is given to the other parties to this lawsuit except as to Protected Health information, which shall be treated as confidential at all times. A party receiving a late designation shall act reasonably promptly to attempt to retrieve, or have destroyed, any transcripts or copies of transcripts previously sent to any persons no longer entitled to possess the Confidential Information under this Order.

8. **Disclosure to Qualified Persons:** Confidential Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons except as necessary to comply with applicable law or the valid order of a court of competent jurisdiction; provided, however, that in the event of a disclosure compelled by law or court order, the receiving party will so notify the producing party as promptly as practicable (if at all possible, prior to making such disclosure) and shall seek a protective order or confidential treatment of such information.

9. **Consent to Disclosure and Use in Examination:** Nothing in this order shall prevent disclosure beyond the terms of this Order if each party designating the information as Confidential Information consents to such disclosure or if the Court, after notice to all affected

parties and nonparties, orders such disclosure. This Order shall not prevent any counsel of record from using Confidential Information with any witness or potential witness who is indicated on the document as being an author, source, or recipient of the Confidential Information (for example, during witness preparation, direct examination, or cross-examination), irrespective of which party produced such information. Disclosure of material pursuant to this section shall not constitute a waiver of the confidential status of the material so disclosed.

10. **Challenging the Designation:** A receiving party may challenge a confidential designation at any time. In the event that any party to this Case disagrees at any stage of these proceedings with the designation of any information as Confidential Information, the parties or non-parties shall first try to resolve the dispute on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the objecting party may invoke this Order by objecting in writing to the party who designated the document or information as Confidential Information. The designating party or non-party shall then have 10 court days to move the Court for an order preserving the designated status of the disputed information. The disputed information shall remain Confidential Information unless and until the Court orders otherwise. Failure to move for an order shall constitute a termination of the status of such item as Confidential Information.

11. **Manner of Use in Proceedings:** In the event a party wishes to use any Confidential Information in a pleading or other paper filed in this Case, the party shall do one of the following: (1) with the consent of the designating party or non-party, file only a redacted copy of the information; (2) where appropriate (*e.g.*, in connection with discovery and evidentiary motions) provide the information solely for in camera review; or (3) provide at least three business days' notice to the designating party of its intent to file the Confidential

Information, so that the producing party may seek to seal the information consistent with the sealing requirements of the Court.

12. **Duty to Ensure Compliance:** Any party disclosing Confidential Information to any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this Order.

13. **Modification and Exceptions:** The Parties may, by stipulation, provide for exceptions to this Order and any party may seek an order of this Court modifying this Order, with notice to any non-party that has produced Confidential Information pursuant to this Order.

14. **No Prejudice:** Producing or receiving information designated under this Order or otherwise complying with the terms of this Order, will not: (a) operate as an admission by any party that any particular Confidential Information contains or reflects trade secrets or any other type of confidential or proprietary information; (b) prejudice the rights of a party to object to the production of information or material that the party does not consider to be within the scope of discovery; (c) prejudice the rights of a party to seek a determination by the court that particular materials be produced; (d) prejudice the rights of a party to apply to the presiding judge for further Orders; or (e) prevent the parties from agreeing in writing to alter or waive the provisions or protections provided for in this Order with respect to any particular information or material.

15. **Claw-Back:**

(a) For purposes of this case, this Paragraph 15 shall apply to all information and documents produced in discovery.

(b) If a producing party produces information that otherwise is not discoverable for reasons of a legal (including statutory or contractual) obligation of confidentiality, a privilege (including the attorney-client privilege), an exemption from discovery, or protection under the

attorney work-product doctrine, the producing party shall inform the receiving party and request that the item or items of information be destroyed, and no party to this action shall thereafter assert that such production waived any protection, legal obligation, privilege, exemption, or immunity. Upon such notice by the producing party, the receiving party shall promptly destroy all copies of the produced information, including copies made available to other persons by the receiving party, and the receiving party must not use or disclose such information. Prior to the receipt of such notice, disclosure to persons not authorized to receive such information shall not be deemed a violation of this Order and shall not be deemed to be a waiver of any protection, legal obligation, privilege, exemption, or immunity held by the producing party as to that information or document or as to any other privileged, exempt, or protected information or documents. Within ten (10) business days of informing the receiving party of the disclosure, with respect to any item that contains both privileged, excepted or immune information and relevant, responsive non-privileged information, the producing party shall provide a replacement, redacted to obscure only the privileged, excepted, or immune information.

(c) If the receiving party fully complies with paragraph 15(b), including the destruction of the inadvertently produced documents, then nothing in this paragraph shall prevent the receiving party from challenging in court the designation of the protection, legal obligation, privilege, exemption, or immunity after the documents in the possession of receiving party have been destroyed, and/or from seeking production of any such documents or information in accordance with the Texas Rules of Civil Procedure. In no instance, however, shall the receiving party rely on or use its knowledge gained from the inadvertently produced document to support its challenge of the protection, legal obligation, privilege, exemption, or immunity claimed.

16. **Return of Documents:** Not later than 90 days after conclusion of this Case and any appeal related to it, any Confidential Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any Qualified Person shall be returned to the producing party or destroyed, except as this Court may otherwise order or to the extent such information has been used as evidence at any trial or hearing. Notwithstanding this obligation to return or destroy information, counsel may retain attorney work product, including one set of documents and transcripts designated as containing Confidential Information, provided such information is stored in a manner so as to preserve its confidentiality. Counsel, however, may not retain Protected Health Information, any reproductions of such information, or any notes, summaries, or descriptions of Protected Health Information.

TERMS CONCERNING PROTECTED HEALTH INFORMATION

1. All Covered Entities are hereby authorized to produce, release and disclose Protected Health Information (to the extent such information is relevant to the Case) to the parties and their attorneys in this Case in response to a subpoena, deposition notice, or other discovery request in this Case. This Order is intended to authorize such production, release and disclosure pursuant to 45 C.F.R. § 164.512(e) of the Privacy Regulations issued pursuant to HIPAA. Further, this Order is a Qualified Protective Order pursuant to 45 C.F.R. § 164.512(e)(1)(v).

2. The parties and their attorneys are hereby authorized to use the Protected Health Information produced, released or disclosed in response to a subpoena, deposition notice, or other discovery request in this Case in any manner reasonably connected with the prosecution or

defense of this Case including any appeals of this Case. Use of such Protected Health Information for any other purpose or in any other proceeding is hereby prohibited.

3. Protected Health Information within any deposition transcript must be designated by underlining the portions of the pages that are confidential and marking such pages with the following legend: “PROTECTED HEALTH INFORMATION SUBJECT TO PROTECTIVE ORDER.”

4. The use of Protected Health Information authorized by this Order includes, but is not limited to, disclosure of the Protected Health Information to Qualified Persons. Disclosure to any other person of the Protected Health Information produced, released or disclosed in response to a subpoena, deposition notice, or other discovery request in this Case is hereby prohibited.

5. Within 90 days after the issuance of a final order, or the extinguishment of all appeals, the parties and their attorneys and any other person or entity in possession of Protected Health Information pursuant to this Order shall destroy any and all copies of the Protected Health Information in such person or entity’s possession, except as this Court may otherwise order.

6. This Order does not control or limit the use of Protected Health Information that comes into the possession of the parties or their attorneys from a source other than a Covered Entity.

7. This Order does not authorize either party to seal court filings or court proceedings. The Court will make a good cause determination for filing under seal if and when the parties seek to file Protected Health Information under seal.

8. Notwithstanding any provision of this Order to the contrary, in accordance with any applicable Federal, State, or local laws that afford heightened protection to certain categories of Protected Health Information including, but not limited to, records or diagnosis

or treatment for alcohol or substance abuse, certain sexually transmitted diseases such as HIV/AIDS, mental health, any research pertaining to genetic testing, the producing party may completely exclude from production any information afforded heightened protection by such Federal, State, or local laws.

9. Nothing in this Order shall affect the rights of the parties or non-parties to object to discovery on grounds other than those related to the protection of Protected Health Information, nor shall it preclude any party or non-party from seeking further relief of protective orders from this Court as may be appropriate under the Texas Rules of Civil Procedure.

SIGNED this the ____ day of _____, 2014.

PRESIDING JUDGE



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

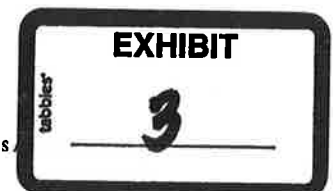
September 10, 2012

Andrew Weber, esq.
KELLY HART
301 Congress Ave., Suite 2000
Austin, Texas 78701
Via email: andrew.weber@kellyhart.com

Re: Rule 11 Agreement, recognizing non-waiver of privileges and confidentiality with production of documents, including ESI, produced by Affiliated Computer Services (ACS State Healthcare, LLC) (A Xerox Company) or its agents or representatives (collectively, "ACS") responsive to a Civil Investigative Demand ("CID") issued to ACS by the Office of the Attorney General, State of Texas ("OAG").

Dear Andrew,

In June, 2012, the OAG issued a CID to ACS. OAG and ACS desire to expedite ACS's document production pursuant to the CID. Accordingly, this letter confirms OAG's agreement to recognize that any documents ACS produces pursuant to the CID that contain, or reasonably appear to OAG to contain, privileged or confidential information will be deemed to have been inadvertently and involuntarily produced and, therefore, such production will not waive any privileges or confidentialities. Under no circumstance will the production of privileged or confidential data be considered or deemed a waiver of privilege or confidentiality by ACS as to the specific data in question or to the subject matter to which the data relates. Additionally, in the event OAG determines it is viewing such a document containing or appearing to contain privileged or confidential data, OAG will cease such review as soon as possible and notify ACS of the document so that ACS may take appropriate action to remove the document, or the privileged or confidential portions thereof, from OAG's access. OAG further agrees to abide by and recognize the snap-back provisions of Texas Rule of Civil Procedure 193.3.

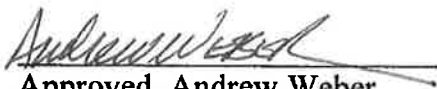


Mr. Weber
September 10, 2012
Page 2

If ACS is in agreement, then please sign below and return this to me. Thank you for your help on this. As always, let me know if you have any questions.

Sincerely,

Margaret Moore
for Drew Wright
Assistant Attorney General
(512) 936-1486
<drew.wright@oag.state.tx.us>


Approved, Andrew Weber
Counsel for Xerox

cc: Raymond Winter, via email
Margaret Moore, via email