



TEXAS STATE BOARD OF DENTAL EXAMINERS

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October 9, 2012

The Honorable Lois Kolkhorst, Chair
House Public Health Committee
Capitol Extension Room E2.172
Austin, Texas

Chair Kolkhorst:

I am unable to attend the committee hearing scheduled for October 15, 2012 regarding "the delivery of dental services in Medicaid" because I will be attending a national meeting of the Association of Dental Boards and Administrators at that time. However, the Dental Board will be represented at the hearing by Lisa Jones (Director of Enforcement) and by Julie Hildebrand (General Counsel). I am confident that they will be able to address your questions and concerns.

Lisa Jones has been with the agency for approximately 10 years and is knowledgeable about the types of complaints the agency deals with on a regular basis and is extensively involved with the Dental Board's efforts to work with HHSC, OIG and OAG regarding Medicaid dental fraud and other issues.

Julie Hildebrand has been General Counsel for the Dental Board for approximately two-three months and has been involved in meetings concerning Medicaid issues as well as meetings with dental services organizations (DSOs). Julie spent the past eleven years in the legal department at the Board of Pharmacy and is thoroughly familiar with health licensing agency responsibilities.

I would like to give a brief overview of the agency's perspective on Medicaid fraud and on the organizations known as dental services organizations (DSOs) or dental management services organizations (DMSOs). Medicaid fraud and DSOs are two separate issues that sometimes intersect.

Medicaid Fraud: The Dental Board and staff are aware of the many media stories concerning the allegations of Medicaid fraud and patient abuse as they relate to the practice of dentistry in Texas. We are appalled by stories indicating that some dentists have over-treated young patients by placing unnecessary crowns, fillings or braces on those children or have defrauded the State of Texas by billing Medicaid millions of dollars for services that they should have known were not covered by Medicaid.

The Board of Dental Examiners has statutory authority over our licensees, which are dentists, dental hygienists, registered dental assistants, and dental laboratories. While the Board does have the authority to take disciplinary action against a dentist who commits fraud, we are not the state agency that is primarily responsible for the investigation and resolution of cases involving Medicaid and Medicaid fraud issues. It is our understanding that HHSC, OIG and the OAG are the agencies that have the statutory responsibility for investigating and prosecuting the abuses of the Medicaid system in Texas.

The Dental Board receives very few complaints directly involving Medicaid fraud. When we do get a complaint of that nature, we refer it to HHSC. The Dental Board usually does not open a complaint on Medicaid fraud until that complaint has been investigated by HHSC/OIG and has been resolved. One reason we do not open a complaint immediately is that the Dental Board is obligated to inform the licensee when we open a complaint. That could make it more difficult for HHSC/OIG to conduct an investigation once the dentist knows that he or she is under investigation.

As a result, the Dental Board usually waits for HHSC/OIG to complete their fraud investigation before we open our own case and take action against the dentist. If the HHSC/OIG investigation results in a felony conviction against a dentist, then the Dental Board will proceed with a statutory revocation of his or her dental license. If the HHSC/OIG investigation does not result in a conviction, then the Dental Board will review the evidence we get from HHSC/OIG after the completion of their case and will conduct its own investigation. The Dental Board will then take whatever action it thinks is appropriate, based on the evidence in each case. Action could include fines, license suspension or license revocation.

The Dental Board has taken very few disciplinary actions for Medicaid fraud since the Frew decision because we have received almost no completed cases from HHSC/OIG to this point. It is our understanding that prosecution of several cases is ongoing and we expect to receive referrals in those cases after they are concluded.

The Dental Board staff members have been cooperating with staff at the OIG and the OAG to provide information and support as possible in the understanding and investigation of Medicaid fraud cases. At the request of the OIG, the Dental Board has also mailed out letters to approximately 600 dentists to remind them of their obligations not to abandon patients. This is being done in an effort to encourage dentists to continue to treat Medicaid patients even after they come under investigation by HHSC/OIG.

In summary, the Dental Board is not the lead state agency in investigating and resolving Medicaid fraud issues, but it is actively working with HHSC, OIG and the OAG to assist them as possible.

For Consideration by the Committee: If directed by the Legislature and authorized by statutory changes, the Dental Board could establish its own separate operation to review, investigate and prosecute Medicaid dental fraud. However, that would require a major commitment of resources (investigators, attorneys and support staff) that would likely double or triple the size of the agency (from 36 FTEs to 100 or more). It would also duplicate efforts already underway at other state agencies. It seems more prudent to designate either HHSC/OIG or the OAG as the primary agency responsible for investigating and resolving Medicaid fraud issues and then giving them the additional resources they may need. The Dental Board staff will continue to serve as a resource to assist other agencies as possible.

Dental Services Organizations (DSOs)

Dental Services Organizations are business entities that provide various kinds of management services to dentists or dental practices to help them be more successful. The general idea is that the DSO takes care of business arrangements for the dentist so that the dentist can concentrate on providing the needed dental services to the patient. An ethical, competent DSO can provide valuable services and support for a dentist or dental practice.

DSOs usually enter into a contractual arrangement with an individual dentist or a group of dentists who are (in theory at least) the actual owners of the dental practice or practices. The DSO may own the building and the equipment, provide for scheduling and billing services, maintenance of patient records, and perhaps provide for support staff such as dental hygienists and dental assistants.

Some DSOs are owned by an individual dentist. Some are owned by a group of dentists organized into a professional corporation. Other DSOs are owned by private equity firms who see dentistry (especially as it relates to providing dental services to Medicaid families) as a potentially lucrative investment. The treatment of Medicaid patients is not necessarily a large portion of the practice of all dentists who are associated with a DSO.

Texas law prohibits anyone other than a dentist from practicing dentistry or owning a dental practice. A non-dentist may not influence or attempt to influence a dentist in his or her professional judgment on how to treat a patient. Attempting to influence a dentist in his or her professional judgment is considered to be practicing dentistry without a license.

Concerns have been raised that some DSOs are illegally practicing dentistry by attempting to influence dentists with whom they contract to over-treat patients or

engage in other actions that result in increased billings or insurance reimbursements. There are allegations that some DSOs owned by private equity firms are willfully engaging in Medicaid fraud and pushing their dentists to do so as well. Other charges are that the DSOs are paying dentists to pretend to be the owners of the practice when in fact the DSO management employees make many of the decisions or otherwise impose requirements (such as billing quotas) that affect patient treatment.

The Dental Board at this time has no authority over DSOs. We do not know how many are operating in Texas or which dentists or dental practices are associated with DSOs. In addition, the Dental Board has no records of how many dental practices there are in Texas or who owns each practice. Therefore, when the Board receives a complaint, we can only link it to a specific dentist and not to any associated ownership group or to a DSO.

Based on evidence, the Dental Board can take disciplinary action against a dentist for violations of the Dental Practice Act, including fraud, substandard treatment, and several other things. The Board has no authority over individuals who are not dentists or organizations that engage in the practice of dentistry without a license. By law, the Board refers those cases to the Office of the Attorney General and/or to local county district attorneys for prosecution. Practicing dentistry without a license is a third degree felony but most district attorneys are reluctant to prosecute the cases.

The Dental Board has no information that could prove that any DSO has engaged in the practice of dentistry or in any fraudulent activity – at least in part because we do not regulate DSOs in any way.

In summary, DSOs provide services to dentists. DSOs may be owned by dentists or by organizations owned by non-dentists. Some DSOs are alleged to be involved in willfully perpetrating Medicaid fraud and engaging in the practice of dentistry by influencing the professional decisions of dentists with whom they have contracts. The Dental Board has no first hand, direct knowledge of any illegal activity committed by DSOs because it does not regulate those entities.

For Consideration by the Committee: If directed by the Legislature and authorized by statutory changes, the Dental Board could enact a licensing program under which DSOs would be required to register with the Board annually. In addition, information could be gathered regarding DSO ownership and the contracts DSOs sign with dentists and dental entities that own and operate dental practices. Linkages could be made between dentists, dental practices and DSOs so that any systematic abuses or violations of the Dental Practice Act or other state laws could become more apparent. The Board would need authorization for additional investigators, attorneys, licensing staff and support staff which could be funded by registration fees paid by DSO and their associate clients.

Representative Kolkhorst, if you or the committee members have further questions or concerns that cannot be addressed by Ms. Jones or Ms. Hildebrand, please contact me at 512-475-1660 or send an email to glenn@tsbde.texas.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Glenn Parker', with a long horizontal flourish extending to the right.

Glenn Parker
Executive Director