# Overview of Dental Claims Audits and Investigations by Medicaid and Private Payors in 2019


**(March 4, 2020):** Many dentists and dental practices around the country are glad that 2019 is behind us. Last year was a banner year for law enforcement investigators and administrative auditors of dental claims. Federal and State prosecutors around the country actively pursued both civil and criminal cases against individual dentists for a variety of offenses. Notably, a number of the defendants prosecuted by the government were first identified as engaged in wrongdoing by Unified Program Integrity Contractors (UPICs) conducting Medicaid dental claims audits and private payor Special Investigative Units (SIUs) reviewing dental claims submitted by a practice for payment. In this article, we examine the administrative, civil and criminal cases that were brought against dentists in 2019 in order to identify the conduct that led to the imposition of overpayments, the imposition of civil penalties by the government, and in some instances, the criminal prosecution of dentists for various violations of law.

## I. Administrative Dental Claims Audits Expanded in 2019:

- **Medicaid Claims Audits.**

Almost a decade ago, the enactment of the Affordable Care Act[1] made it possible for state Medicaid programs to greatly increased their eligibility criteria and the scope of services offered to program beneficiaries. While eligible child enrollees were already receiving dental benefits, in many states, the number of adults qualifying for Medicaid dental benefits doubled. Not surprisingly, as Medicaid dental services have grown, the costs associated with these benefits also greatly expanded. In response, Federal and State authorities have steadily devoted ever increasing resources to the audit and investigation of improper dental business, coding and billing practices.

The Centers for Medicare and Medicaid Services (CMS) has engaged a number of third-party, UPIC contractors (such as Qlarent, AdvanceMed, the CoventBridge Group, and SafeGuard Services LLC) to perform program integrity audits of Medicaid dental claims around the country. It is important to keep in mind that UPICs are expressly required to refer suspected cases of fraud and abuse to law enforcement for further investigation and possible prosecution. UPICs are also required to recommend the revocation of participating providers and suppliers that are non-compliant with Medicare regulations and policies.

Notably, several large private dental management companies, such as DentaQuest and Delta Dental also currently serve as dental plan administrators for various state Medicaid Advantage dental plans around the country.[2] SIUs at DentaQuest, Delta Dental and other dental plan administrators have implemented a number of measures to identify and investigate instances of suspected fraud or improper dental billing practices.

- **DentaQuest, Delta Dental and Other Private Payor Dental Audits.**

DentaQuest, Delta Dental and a number of other payors serve as administrators for private dental plans and various employer-sponsored dental insurance policies around the country. In 2019, private dental payors greatly expanded the scope and frequency of audits conducted by their SIUs. Additionally, these private dental payors greatly increased their use of ***"prepayment review"*** and ***"payment hold"*** actions, both of which can adversely impact a dental practice's cash flow and possibly cripple a practice's ability to operate.

## II. Common Reasons for Denial Cited in Administrative Dental Audits by UPICs, DentaQuest and Delta Dental:

In 2019, the following reasons for denial were commonly cited by UPICs, DentaQuest and Delta Dental in audits we handled:

**Failure to sign progress notes (either electronically or by hand). At first glance, you may feel that the failure to electronically-sign a dental progress note is a mere technical deficiency. Unfortunately, that isn't necessarily the case, CMS contractors (such as UPICs) are actively denying dental claims if the associated progress note has not been signed by the rendering dentist. As set out in the Medicaid Program Integrity Manual[3] reflects, *"unsigned entries"* (referring to electronic and handwritten), *"shall be excluded from consideration when performing [a] medical review."* Similarly, in several of the private dental payors cases that we handled, the payors denied claims that were not supported by signed progress notes and / or orders. *As a final point in this regard, please keep in mind that most State Dental Practice Acts include specific requirements mandating that progress notes, orders and treatment records be signed by the licensed dental professional who performed the service*.**

**Billing for dental services not rendered. Unfortunately, this reason for denial has been a recurring theme cited by UPICs and SIUs alike when auditing dental records and claims for many years. For example, *recent private payor audits conducted have alleged that multiple instances were found where dentists billed for periodontal services***

***(CDT Code D4331 – periodontal scaling and root planing) that were not performed based on the auditor's review of the patient dental treatment records and radiographs in the file***. **Similarly, insufficient documentation has been cited when denying these services based on failure to establish medical necessity.** ***In these instances, the auditors noted that in order to diagnose and treat periodontal disease, dated pre-operative diagnostic quality radiographs and pre-operative periodontal charting is needed. Without these, periodontal disease cannot be properly diagnosed and periodontal scaling and root planing should not be conducted*****.**

**Misrepresentation of a non-covered service. In some respects, this improper practice is nothing more than another form of "billing for services not rendered. "*Simply put, in the recent cases we have seen where this has occurred, a dentist or dental practice has either purposely or erroneously characterized a non-covered dental service as a covered service. Keep in mind, the definition of a non-covered service varies from policy to policy. Additionally, the list of non-covered services under a specific policy may change from year-to-year.* In any event, it is important that dental providers regularly check to ensure that the services being provided qualify for coverage and payment.**

**Misrepresentation of the provider of the dental service. This type of billing error is still commonly found in both dental and medical practices around the country.** ***In the cases we have seen, "fraud" wasn't the reason for the underlying misrepresentation on the ADA Claims form. In most instances, it was merely a matter of a credentialing delay. In other cases, dental practices appeared to believe that they were permitted to bill for the services under a concept similar to Medicare's "Incident-To" rule.*** **Although we have not seen a dental misrepresentation case of this type referred for criminal prosecution, it is important to remember that the ADA Dental Claims form is being electronically submitted to the health plan for payment. Depending on the facts, an aggressive prosecutor could argue that such conduct constitutes were fraud. 18 U.S.C. §1343.**

**Unlicensed individuals found to have performed dental procedures. Generally speaking, we have seen two categories of cases where this has occurred. In the first example, a licensed professional failed to renew his  Because of this administrative error, the dentist inadvertently performed dental procedures while his license had**

**lapsed. In the second example, a dental assistant or dental hygienist was found to have performed one or more dental procedures that were outside of their scope of practice. *Both of these examples typically lead to claims denials. They may also result in complaints to the State Dental Board*.**

**Routine failure to collect the patient's full payment or share of cost without notifying the carrier. Is your dental practice consistently collecting co-payments and deductibles that may be owed by a covered beneficiary? *In the case of non-government administered plan, the unsupported waiver of these amounts may constitute a breach of contract. However, if the dental plan is Federally funded, such a failure may constitute a violation of the Anti-Kickback Statute*.**

**Misreporting dates to circumvent calendar year maximums or time limitations. *The misreporting of dates in an effort to evade calendar year maximums and / or time limitations may constitute a violation of one or more State and Federal fraud statutes.***

**Failure to properly document support for medical necessity. Properly documenting medical necessity continues to be a problem. Over the last year, our reviews have found that there was often little detail provided to support medical necessity of pediatric dental treatments provided. *For example, prophylaxis was typically provided because it was medically required. Although dental notes often indicated that plaque was visible, the notes often failed to specify any areas of build-up. Also, the level of decay was typically not included to support services such as fillings and crowns.***

**Missing dental treatment plans / consent forms. *Completed dental treatment plans and consent forms have frequently been found to be missing from patient dental records. The dental treatment plans that were included were typically signed by the pediatric dental patient's parent, but the signatures were often not dated*. Signatures should be dated and these dates should correspond with the date listed as the date of authorization noted on the claim form. Many of the dates of authorization for the "signatures on file" on the claim form were after the date of service, which is an error cited in recent audits.**

Have you received a request for dental records from a government or private payor? Take care. You don't want to inadvertently turn an administrative or civil audit into a criminal case. Dental records, progress notes, x-rays and other documents must be signed and dated by the health care provider at the time the services are rendered or conducted. In conducting your review, did you find that the claims documentation is legible and complete? If not, change your practices ***now***. ***Wholesale efforts to go back and supplement incomplete documentation may constitute obstruction of justice if incorrectly handled. Never make changes to a patient's documentation or dental records without first discussing the issues presented with legal counsel so that you can ensure that a third party reviewing the updated records will not be misled as to the nature of the changes or revisions AND when the changes or revisions were made***.

In other words, your records must accurately show when changes, corrections or additions were made to the patient's dental records. Late entries to a record must be dated as such. More than likely, government and private payor auditors will give very little (if any) credit to late entries or supplemental records unless the service being supplemental was recently performed. The falsification of information in a patient's dental record (or in other records presented to the government, its agents or private payor auditors) can constitute a criminal violation and could lead to much bigger troubles for you and your dental practice than a mere overpayment.

## III. Civil Investigations / False Claims Act Dental Cases Brought in 2019:

Last fiscal year, the Federal government won or negotiated over **$3 billion** in judgments and settlements under the civil False Claims Act. Of the $3 billion in settlements and judgments recovered by the Department of Justice this past fiscal year, **$2.6 billion involved the health care industry**. It is worth noting that these recoveries only reflect Federal funds, millions of dollars more were also recovered for State Medicaid programs. Despite the fact that literally billions of dollars were recovered from health care providers and suppliers using the False Claims Act, very few of the settlements and judgments were related to dentists, dental practices and / or dental management companies. Examples of False Claims Act dental recoveries made in 2019 include:

**December 2019. In this case, the government alleged that from 2014 through 2015, *the defendant dentist presented claims to the State Medicaid program for dental services that were never provided*. Connecticut's Superior Court ordered the defendant to pay treble damages, along with a *civil penalty of $1.5 million*.**

**March 2019. In this case dental fraud case, after reviewing a sample of patient dental records, the State Attorney General's Office found that a dental practice has defrauded the State Medicaid program. *To resolve the allegations, the defendant dentists agreed to pay $1 million under the State False Claims Act and agreed to be voluntarily excluded from***

***participating in the Medicare and Medicaid programs*.**

## IV. Criminal Prosecutions of Illegal Dental Business Practices in 2019:

As the case overviews below reflect, both Federal and State prosecutors aggressively prosecuted dentists for their illegal conduct in 2019. Examples of the criminal prosecutions pursued in dental cases last year include:

**October 2019. Virginia. In this case, a Virginia-licensed dentist was sentenced to nearly eight and a half years in prison for conspiracy to distribute prescription opioids and muscle relaxant pills without a legitimate medical purpose. *The government alleged that the defendant was involved in an elaborate scheme to prescribe opioids such as hydrocodone and oxycodone pills for his personal use and the use of his co-conspirators*.**

**October 2019. Missouri. *Federal prosecutors allege that two dentists at a Missouri dental practice participated in two different schemes to defraud Medicaid. In the first scheme, patients were allegedly provided a $50 Ortho-Tain mouth pieces designed to straighten teeth but the Medicaid program was then billed $700 for a "speech aid prosthesis." In the second scheme, federal prosecutors say the dentists provided dentures and other dental services to patients who did not qualify for Medicaid reimbursement and then submitted claims to Medicaid anyway*. Federal prosecutors say these two schemes netted $885,748.**

**September 2019. Maryland. *The dental practice owner (and former dentist) at a Maryland practice agreed to pay over $5.4 million in restitution and nearly $4 million in a forfeiture money judgment after pleading guilty to health care fraud for involvement in a $5 million-plus Medicaid fraud scheme*. Authorities said the former dentist (who is currently serving a 16-year sentence for sexual assault of patients), used his dental practices to submit fraudulent claims to D.C. Medicaid for thousands of unprovided provisional crowns, which resulted in around $5.4 million worth of improper payments from the program between August 2012 and February 2016.**

**August 2019. Illinois. *An Illinois dentist was indicted on 13 counts of health care and wire fraud after prosecutors say he billed Illinois Medicaid hundreds of thousands of dollars for dental procedures he never performed*. The U.S. Attorney's Office for the Southern District**

**of Illinois stated. In all, it is alleged that Kim collected more than $700,000, which prosecutors want paid back to the state.**

**July 2019. Arkansas. In the case, an Arkansas dentist received a five-year suspended prison term and was ordered to pay *$33,383.05 in restitution, $100,149.15 in damages and $2,500 in fines* after pleading guilty to defrauding Medicaid. *Authorities said the dentist submitted more than 3,100 fraudulent claims to Medicaid for X-rays and various dental services between September 2015 and December 2017, which resulted in $186,461 worth of improper payments from the program*.**

**June 2019. Tennessee. *A Tennessee dentist and practice owner was sentenced to two years and nine months in prison and was ordered to pay $965,448 in restitution after pleading guilty to conspiracy to commit health care fraud for orchestrating a scheme to defraud TennCare and other health care benefit programs*. Authorities said the dentist caused the submission of fraudulent claims to TennCare and other health benefit programs for unprovided or incomplete dental work from November 2013 to January 2018.**

**June 2019. California. *A California dentist based out of Los Angeles was sentenced to more than three years in prison for health insurance fraud and was ordered to pay restitution of more than $1.4 million after pleading guilty to submitting fraudulent claims to multiple private insurers* for unprovided dental care services.**

**April 2019. New Jersey. An unlicensed dentist from New Jersey was convicted in a $2 million fraud case in New York. The unlicensed dentist was sentenced to two years in prison and ordered to pay restitution of almost $1 million after being convicted for his role in the $2 million health insurance fraud scheme. *Prosecutors allege that the unlicensed dentist worked as a dentist in Manhattan and conspired with others to pay kickbacks to patients and submit fraudulent claims to health insurers for unprovided dental services or services.***

## V. Steps a Dental Practice Can Take to Reduce Regulatory / Statutory Risk:

- **Don’t Ignore a Request for Dental Records from a Medicaid or Private Payor Auditor?**

It has been our experience that a significant portion of all requests for dental records and claims information are either overlooked or ignored by a dental practice. This error can result in a payor terminating your agreement. Legal counsel can often intervene on your behalf and obtain an extension of time in which to submit the requested documents. We have seen several cases where

a dental practice's failure to response to the payor's records request in a timely fashion resulted in the automatic denial of the claims being audited.

- **Implement an Effective Dental Compliance Program.**

First and foremost, it is recommended (and if you take Medicaid it is required by law) that you develop and implement an effective Compliance Program. This would include an aggressive plan to conduct periodic internal audits of your dental claims to ensure that the services have been provided, fully documented, were medically necessary and were coded / billed properly. When was the last time you conducted an internal dental claims audit and examined whether the services you are providing fully reflect medical necessity requirements, are documented to meet the requirements of the payor, and are properly coded and billed? What did you find? Who conducted the audit, someone from your dental practice, or an outside dental consultant? Be sure and engage any outside dental consultant through legal counsel.

- **Screen Your Employees, Contractors and Agents Against Available Screening Databases.**

Dental providers should screen their applicants, clinical staff, administrative staff, contractors, vendors and agents on a monthly basis. At this time, there are more than 40 different databases that need to be checked. These databases include:

**(1) List of Excluded Individuals and Entities (LEIE). Maintained by HHS-OIG.**
**(2) System for Award Management (SAM). Maintained by the General Services Administration.**
**(3) 40 State Medicaid Exclusion Registries. Maintained by either the State Attorney General's Office or the State Medicaid Fraud Control Unit (MFCU).**

Questions regarding your screening obligations? Call the helpful folks at ***Exclusion Screening, PLLC*** with any screening questions. They can be reached at: 1 (800) 294-0952

- **Call a Qualified Health Law Attorney for Help in Responding to a Dental Audit.**

Hopefully, you won't face a Medicaid or private payor dental audit in the near future. If you do, it is essential that you engage qualified legal counsel to guide you through the process. A knowledgeable, experienced lawyer can interact directly with the payor and work towards a reasonable resolution of the case. Legal counsel can also provide guidance with respect to payor

documentation, coding and billing requirements. Importantly, the Liles Parker attorneys who would represent you and your practice in a dental audit are both experienced health lawyers ***AND*** have achieved certification as ***Certified Medical Reimbursement Specialists (CMRSs)*** by the American Medical Billing Association (AMBA) and / or ***Certified Professional Coders (CPCs)*** by the American Academy of Professional Coders.

Are you facing a dental claims audit or investigation? We can help. ***For a free consultation, please call Robert at: 1 (800) 475-1906.***

Robert W. Liles **serves as Managing Partner at the health law firm, Liles Parker, Attorneys and Counselors at Law. Liles Parker attorneys represent health care providers and suppliers around the country in connection with dental claims audits and investigation. Is your dental practice being audited? Give us a call.** ***For a free initial consultation regarding your situation, call Robert at:*** **1 (800) 475-1906.**

[1] Signed into law by President Obama on March 23, 2010.

[2] As Medicaid dental rolls have increased, many states have chosen to engage a third-party to administer their Medicaid dental programs, such as Delta Dental or DentaQuest. At last count, Delta Dental administers dental programs serving more than 80 million Americans, many of whom are participants in a government-sponsored program. Similarly, DentaQuest administers dental programs serving over 25 million beneficiaries, most of whom are covered by a government-sponsored program.

[3] **Medicaid Program Integrity Manual**, 1.7.5 "*Medical Review for Program Integrity Purposes*."