JOURNAL OF INSURANCE FRAUD IN AMERICA

BY MICHAEL W. DAVIS, DDS | November 5, 2020

Medicaid fraud is the most lucrative business model in U.S. dentistry today. Inflated payouts can easily reach astronomical figures. Abusing vulnerable children and inflating billings for their treatment lie at the heart of this corrupt model. Medicaid fraud has allowed wrongdoers to amass huge personal fortunes from this state-federal taxpayer program for lower-income Americans.

Medicaid dental scams reflect three primary models today:

Children with modest to moderate tooth decay are grossly over-treated with painful stainless-steel crowns and root canals. Routine preventive dental sealants are upcoded to expensive fillings. Excessive and abusive “patient encounters” (a/k/a “patient churning”) at federally qualified health facilities. This scam is widespread, and growing.

Most Medicaid dental providers do honest and ethical work. Yet abuse of children still is rife.[1-4] Much of the fraud incentive stems from corporate chains that now define large segments of the Medicaid dental market. The chains, in turn, are often controlled by hedge funds. Intentionally or not, this business model breeds Medicaid mills that depend on fraud and over-billing as prime profit incentives.

The chain overseers impose intense pressure on clinics to churn healthy profits despite modest Medicaid reimbursement schedules. Fraud at the expense of the helpless children’s health and wellbeing is an easy shortcut to faster and higher profits.

Add in historically lax state and federal enforcement, and the tinder is in place to stoke the Medicaid dental fraud bonfire we see all too often today.

Painfully over-treating children

Gross over-treatment in Medicaid generally is directed at children under age six, for actual restorative dentistry.[5,6,7] Steel crowns are the tooth restorations of choice. Dentists can bill steel crowns at 3-6 times the direct Medicaid fillings. Steel crowns also are far easier and quicker than a typical tooth restoration.

Unneeded pulpotomies (baby root canals) can generate another lucrative income stream. Unethical dentists drill into a child's healthy dental pulp (tooth nerve). The soft tissue is partially removed and treated with medication. This procedure is faster and easier than less-invasive procedures the child may actually need, such as installing fillings between two teeth.

Without adequate anesthetic, installing multiple stainless steel crowns and doing pulpotomies also causes a child great pain and distress. Some young patients have night terrors or lifelong dental phobias.[8] Many never return for routine dental care, even as adults. Psychological trauma often contributes to a lifetime of dental disease.

> ***"… the incentive to reap excess profits leads some dentists to fix more teeth in one sitting, using more painkillers."***

Children and toddlers also risk overdosing on local anesthetics. Normally they should receive care for only 1-3 teeth per appointment. They have limited tolerance for anesthetics, and have short attention spans and stamina. However, the incentive to reap excess profits leads some dentists to fix more teeth in one sitting, using more painkillers. Medicaid children have died from overdoses.[9]

Commonly, children subjected to such painful or excessive dental treatment also cry, scream, soil themselves with urine or feces, try to escape, are physically combative and injure themselves.[10]

To meet financial production quotas and bonuses, children are frequently and abusively restrained on baby straight jackets called papoose boards.[11,12] Immobilizing children on papoose boards (a form of "protective stabilization") increases the dentist's dollar production, and often is not done in the child's interest.

Shifting to sedation

Negative media coverage of papoose boards has prompted a shift to more use of sedation with Medicaid children. Yet a child's substantially limited airway and increased vulnerability to drug reactions place Medicaid youths at greater risk. Far too regularly, dentists also sedate youths without the parent's valid informed consent about risks and benefits of treatment. Also missing can be proper training and certification of clinical personnel, and proper inspection and certification of the facility rendering sedation.

The topmost tendency for substandard anesthesia care rests with Medicaid patients.[13,14] Children die. Others may have permanent brain damage from prolonged lack of oxygen. Many dental facilities that use sedation may be uninspected and uncertified. Sedation equipment may be faulty, outdated medications are used, and improperly trained personnel are deployed.

Dr. Seth Lookhart billed Medicaid for general anesthesia for nearly all dental procedures in his Alaska clinic — whether patients needed them or not. He even billed anesthesia for routine dental cleanings.[15] Lookhart alone was responsible for 31% for all dental Medicaid billings for general anesthesia for the entire state in 2016. Lookhart also gained national notoriety on a ***YouTube* video**, for recklessly extracting a patient's tooth while riding a hoverboard.[16,17] He received 12-year prison sentence in August 2020.[17]

> ***"The crowns quickly failed, causing infections requiring extraction of the child's teeth."***

The Texas dental board revoked the license of Dr. Bethaniel Jefferson in 2016.[18] She did excessive and invasive pulpotomies on a Medicaid child, then installed a mouthful of unneeded stainless steel crowns. The crowns quickly failed, causing infections requiring extraction of the child's teeth. Jefferson sedated another child, who experienced seizure-like symptoms. Instead of contacting emergency personnel, Jefferson let the child remain in an oxygen-deprived state. The child suffered a severe brain injury.

Upcoding tooth sealants to fillings

Upcoding of dental sealants to full restorations is a taxpayer swindle of Medicaid patients of all ages. However, we commonly see sealant scams in older Medicaid children age 14 and younger. Allegedly, this paradigm for scamming taxpayers is popular with individual providers, but allegedly on a larger scale with Dental Support Organizations (DSOs), also called corporate dentistry.[19,20]

This model for cheating Medicaid has numerous upsides for dishonest dentists and their employers. Since there is no drilling beyond the tooth's outer enamel — if there is drilling at all — it is nearly impossible to cause patient pain. Patients offer few objections.

Further, unlike a true insurance plan with patient copayments as a front-end fraud deterrent, Medicaid patients usually pay nothing. Patients with no "skin in the game" are far more compliant for deceptions and misrepresentations.

A dental restoration can qualify as such only if the restoration goes into the tooth layer under enamel (dentin). The provider may place four quadrants of bogus fillings (actually, sealants) during a single patient visit. This usually takes only 10-15 minutes. The patient's entire mouth may be "restored" and billed for 4-14 fillings.

Cheating involves placing sealants onto two or three surfaces per tooth, thus doubling or more the billings per tooth. The sealant never enters the tooth's inner layer (dentin) yet is falsely coded as a full tooth restoration.

These upcoded sealants often break off from the tooth enamel in 6-18 months. The failed sealants are replaced, and again unlawfully billed to Medicaid as more-expensive fillings a second, third or fourth time. One tipoff to this scam is when x-rays show that tooth decay between teeth is not fixed. It is far more lucrative for dental fraudsters to ignore decay and simply place upcoded sealants.

Abusing so-called encounter fees

Federally Qualified Health Centers (FQHC) and look-alikes are designed to deliver medical and dental care for underserved rural and urban Medicaid patients. Dental FQHCs normally obtain reimbursement for each patient *encounter* at the clinic, not for individual services. A patient encounter thus may include multiple clinical services. A challenged demographic thus can receive a package of dental services at a single visit. Patients also gain a stable "dental home."[21]

While most FQHCs provide outstanding dental care, a minority cheat the program and underserved patients. The chief scam is excessive patient encounters — called patient churning.

Ten-year-old children might receive several services during their six-month dental visit. This normally includes x-rays, a doctor's exam, dental hygiene (teeth cleaning), oral hygiene instruction, preventive fluoride treatment and maybe dental sealants. The FQHC bills Medicaid for the encounter, as a total package.

> ***"Patient churning is almost never at the direction of clinical staff, who are worked to the bone."***

A dishonest FQHC breaks up services so the patient must return for 2-4 visits.[22] This piecemeal approach abuses the child, parent and taxpayers. More patient encounters also inflate FQHC revenues. Patient churning is almost never at the direction of clinical staff, who are worked to the bone.

Clinic directors within nonprofit FQHCs usually dictate fraud protocols. One simple method is to double- or triple-schedule every timeslot on the clinical schedule. Clinical staff find it impossible to provide standard services at any single patient encounter.

As nonprofits, ethical FQHCs can struggle to operate even at a breakeven point. Clinical personnel work demanding schedules, with often highly challenging patients.

By contrast, a dishonest FQHC generates significant income. Directors of unethical nonprofit FQHCs often command large salaries similar to directors and officers of Fortune 500 companies. Dental staff usually do not share in the largess.

Oversight lax, disincentives rife

A private dental insurer has a fiduciary responsibility to maintain a viable loss ratio. It also faces shareholder pressure to return a fair profit. For the most part, insurers watch their money flow like an osprey watches over a fish slough.

Yet states typically do not retain insurers for dental Medicaid. States bid out and approve managed-care organizations (MCOs) to administer credentialing of providers, and handle payouts. MCOs usually receive a set dollar amount per month, about $7 per enrollee per month.

Problems happen when MCOs rubber-stamp dental Medicaid claims. Inflated Medicaid payments are paid to fraudulent providers year after year, without an audit or holdbacks of dubious billings. Eventually the dam breaks and investigations ensue. The government usually is fortunate to claw back mere pennies on the dollar, with civil actions or criminal prosecution.

The classic example was the disturbing processing of claims and failed oversight of Xerox/Conduent in Texas.[23] At one point, dental orthodontics under Texas Medicaid cost more than the other 49 states' orthodontic Medicaid programs combined. Xerox agreed to repay $235.9 million to the state in 2019.

Taxpayers deserve oversight that catches Medicaid fraud before the money is paid out — not the antiquated and ineffective pay-and-chase approach. No government can print enough money to cover healthcare losses from a system where fraud is so widely allowed with little challenge.

The disincentive for MCOs to safeguard taxpayer money was highlighted by an HHS Inspector General report in 2018.[24] MCOs have little incentive to protect taxpayer dental costs. In fact, MCOs that report providers for suspected fraud, waste and abuse risk losing the deviant provider's enrollees, and monthly revenue.

Many outlier billings originate from large Medicaid-focused DSOs, conclude HHS investigations of New York,[25] California,[26] Indiana[27] and Louisiana.[28] Cracking down could generate a substantial loss for corporate dentistry providers affiliated with their plan, and lose money-generating patient enrollees. The findings also highlight the expansive role of corporate dental chains:

New York. "… almost a third of the general dentists were associated with a single dental chain that had settled lawsuits for providing services that were medically unnecessary or that failed to meet professionally recognized standards of care to children," a federal Inspector General report finds.[25]

California. "Services included pulpotomies — often called "baby root canals" — and extractions. Notably, half of dental providers with questionable billing in California worked for dental chains. The majority of these providers worked for five corporate dental chains, two of which faced state and federal investigations. A concentration of providers with questionable billing in chains raises concerns that these chains are encouraging their providers to perform unnecessary procedures to illegally increase profits. Certain providers also may bill for unneeded or phantom services. They also raise concerns about the quality of care provided to Medicaid children.[26]

Indiana. "Notably, two-thirds of the general dentists with questionable billing worked for four dental chains in Indiana. Three of these chains have been the subject of Federal and State investigations. A concentration of such providers in chains raises concerns that these chains may be encouraging their providers to perform unnecessary procedures to increase profits."[27]

Louisiana. "Unneeded baby root canals and extractions often were billed. Almost a third of providers with questionable billing worked for just two dental chains. These chains may be encouraging providers to perform unnecessary procedures to increase profits. Four providers with questionable billing had actions against them by the state dental board. "Certain providers also may be billing for services that are not medically necessary or were never provided. This also raises concerns about the quality of care provided to Medicaid children."[28]

MCO oversight over corporate dentistry may have devolved to the point of collusion. A DSO Medicaid mill is pressured to generate maximal quarterly earnings figures, by the private equity firm which retains the DSO in their portfolio. If the MCO detects a pattern of aberrant Medicaid billings in their computer algorithms by a DSO, there exists an inherent disincentive for the MCO to report findings to state or federal authorities.[29]

The MCO is neither reimbursed based on effective oversight of taxpayer moneys, nor working in collaboration with state investigators. The MCO is primarily funded by the number of patient enrollees in their specific MCO, on a monthly basis.

Blowing the whistle on a DSO with rampant violations risks the loss of dozens of provider dentists, and a sharp decline in monthly state payments, for many hundreds of enrolled Medicaid patients.

Industry insiders have privately told me that MCO administrators and DSO Medicaid mill directors often keep each other's numbers on speed-dial. If the MCO's computer algorithms signal excessive billings from a given DSO provider, the DSO manager is alerted. The DSO then can reassign names of providers submitted for Medicaid billings to better fly under any regulatory radar. The DSO wins, the MCO wins, and taxpayers lose.

Profits motivate Medicaid dental fraud

Making money is the over-simplified motivation for widespread abuse of Medicaid children. Unfortunately, DSOs focused on Medicaid fraud, which represents an entrenched business model, are powerful. Most are in the portfolios of mainstream venerated private equity firms and hedge funds. Intentional or not, fraud incentivizing is built into the business models.

The average dentist graduates with student loan debt nearly $300,000, and that figure is rising. These young dentists also frequently lack ethical and legal sensibilities from working in the profession. Thus, they are vulnerable to recruitment by DSO Medicaid mills.

"Abused child patients are merely collateral damage."

Nearly one-third of U.S. dentists also are foreign nationals. To obtain a state dental license, they generally must be a U.S. citizen, or sponsored by their employer for a green card. DSO Medicaid mills target recent U.S. graduates and foreign recruits because of such vulnerabilities. Yet Medicaid mill DSOs too often abuse their foreign

doctors with harsh working conditions, improper overtime pay, and subpar employee benefits and salary. Abused child patients are merely collateral damage.

Most foreign nationals do not complain to authorities because they risk losing their dental license and income. “It’s somewhere between a sweatshop and a gameshow,” a noted attorney said of working conditions at Medicaid dental mills. Production quotas and bonuses take priority over patient welfare.[30]

A Texas court awarded the state $16.5 million from Dr. Richard Malouf in 2020, former owner of All Smiles Dental Center.[31] Malouf was well-known for his lavish lifestyle, which included private jets and luxury sports cars. He also owned a $32-million mega-mansion in North Dallas, with a large-scale waterpark.[32]

Conclusion

Most Medicaid dentists give honest and ethical patient care. Sadly, too many honorable providers accept Medicaid patients at a financial loss. They basically act as a charity. Honest providers thus are being squeezed out of Medicaid service. The program is broken.

Unfortunately, dental Medicaid fraud is encouraged because of paltry and lopsided fee schedules, lack of effective enforcement, and flawed business models. Gresham’s Law states, “Bad will drive out good.” Reforms and restructuring of dental Medicaid are necessary. Especially, Medicaid should install more of the stringent anti-fraud safeguards that typify private-sector dental insurers, which are more-effective in rooting out scams. Until the fraud incentives in Medicaid dentistry are cleaned up and cleared out, the ultimate victims will remain honest taxpayers and trusting children.

Endnotes:

1. “States reach False Claims Act Settlement with Southington Dental Provider.” Office of Attorney General, State of Connecticut. Dec. 21, 2015. https://portal.ct.gov/AG/Press-Releases-Archived/2015-Press-Releases/AG-Jepsen-State-Reaches-False-Claims-Act-Settlement-with-Southington-Dental-Provider

2. “Oklahoma Dental Clinics Pay Over $5 Million to Settle Allegations of False Medicaid Claims.” U.S. Department of Justice. Oct. 30, 2014. https://www.justice.gov/usao-wdok/pr/oklahoma-dental-clinics-pay-over-5-million-settle-allegations-false-medicaid-claims

3. “Illinois Dental Management Company to Pay $3 Million to Settle Allegations of Improper Billing.” U.S. Department of Justice, April 11, 2018.https://www.justice.gov/archive/usao/ilc/press/2008/04April/0411.html

4. “Abilene, Texas, Dentist Pleads Guilty in Medicaid Fraud Scheme.” U.S. Department of Justice. Aug. 27, 2013. https://www.justice.gov/usao-ndtx/pr/abilene-texas-dentist-pleads-guilty-medicaid-fraud-scheme

5. “Stealth Dental Clinic Operator Pleads Guilty to Healthcare Fraud and Tax Evasion.” U.S. Department of Justice. June 3, 2013. https://www.justice.gov/usao-ct/pr/stealth-dental-clinic-operator-pleads-guilty-health-care-fraud-and-tax-evasion-offenses

6. “National Dental Mangement Company Pays $24 Million to Resolve Fraud Allegations.” U.S. Department of Justice. Jan. 20, 2010. https://www.justice.gov/opa/pr/national-dental-management-company-pays-24-million-resolve-fraud-allegations

7. “Dental Management Company Benevis and its Affiliate Kool Smiles Dental Clinics Pay $239 Million. U.S. Department of Justice. Jan. 10, 2018. https://www.justice.gov/opa/pr/dental-management-company-benevis-and-its-affiliated-kool-smiles-dental-clinics-pay-239

8. “Why Are People Afraid of the Dentist?” U.S. National Library of Medicine. July 24, 2014. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5586885/

9. “Child Died At DeRose Owned Small Smiles Dental Clinic.” Blog: Dentist the Menace. May 28, 2004. http://blog.dentistthemenace.com/2008/01/child-dead-from-papoose-board-and_04.html

10. “Dentists Accused of Harming Patients While Making Millions of Dollars.” ABC News. Sept. 23, 2016. https://abcnews.go.com/Health/dentist-accused-harming-child-patients-making-millions-dollars/story?id=36528657

11. “Protective Stabilization for Pediatric Patients.” American Academy of Pediatric Dentistry. https://www.aapd.org/research/oral-health-policies–recommendations/protective-stabilization-for-the-pediatric-dental-patients/

12. “Inside Edition Investigates the Use of Papoose Boards by Dentists.” Inside Edition, April 26, 2014. https://www.insideedition.com/investigative/4249-inside-edition-investigates-the-use-of-papoose-boards-by-dentists

13. “Protections for Children with Dental Sedation.” Dentistry Today, Feb. 1, 2019. https://www.dentistrytoday.com/news/todays-dental-news/item/4358-protections-for-children-with-dental-sedation-part-2

14. “Aftermath of Child’s Death Continue to Highlight Risks of Pediatric Dental Anesthesia.” Health Journalism. Jan. 9, 2019. https://healthjournalism.org/blog/2019/01/aftermath-of-childs-death-continues-to-highlight-risks-of-pediatric-dental-anesthesia/

15. “Anchorage Dentist Seth Lookhart Convicted of Medical Assistance Fraud.” Alaska Department of Law. Jan. 17, 2020. http://www.law.state.ak.us/press/releases/2020/011720-Lookhart.html

16. “’Hoverboard Dentist’ Found Guilty of Medicaid Fraud.” Dentistry Today. Jan. 21, 2020. https://www.dentistrytoday.com/news/todays-dental-news/item/5901-hoverboard-dentist-found-guilty-of-medicaid-fraud

17. “Anchorage Dentist Seth Lookhart Sentenced for Medical Assistance Fraud.” Alaska Department of Law. Sept. 15, 2020. http://www.law.state.ak.us/press/releases/2020/091520-MFCU.html

18. Texas State Board of Dental Examiners. http://ls.tsbde.texas.gov/dts-zoom.php?id=30455

19. “Mechanisms of Dental Sealant Scams.” Blog: Dentist the Menace. Sept. 16, 2014. http://blog.dentistthemenace.com/2014/09/mechanisms-of-dental-sealant-scams.html

20. “Texas Dental Management Firm, 19 Affiliated Practices … Agree to Pay $8.45 Million to Resolve Allegations.” U.S. Department of Justice, Jan. 9, 2017. https://www.justice.gov/usao-ndtx/pr/texas-dental-management-firm-19-affiliated-dental-practices-and-their-owners-and

21. “Definition of Dental Fraud.” American Association of Pediatric Dentists. 2019-2020. https://www.aapd.org/research/oral-health-policies–recommendations/Dental-Home/

22. “Sea Mar to Pay $3.65M to settle probe into Medicaid Billings.” Seattle Times, Jan. 16. 2015. https://www.seattletimes.com/seattle-news/sea-mar-to-pay-365m-to-settle-probe-into-medicaid-billings/

23. “Companies settle with State of Texas for record $235M.” Dallas Business Journal, Feb. 20, 2019. https://www.bizjournals.com/dallas/news/2019/02/20/conduent-xerox-state-of-texas.html

24. “Weakness Exists in Medicaid Managed Care Organizations’ Efforts to Identify and Address Fraud and Abuse.” U.S. Office of Inspector General, U.S. Department of Health & Human Services. July 11, 2018. https://oig.hhs.gov/oei/reports/oei-02-15-00260.asp

25. “Questionable Billing of Pediatric Medicaid Services in New York.” U.S. Office of Inspector General, U.S. Department of Health & Human Services. March, 2014. https://oig.hhs.gov/oei/reports/oei-02-12-00330.pdf

26. “Questionable Billing of Pediatric Medicaid Services in California.” U.S. Office of Inspector General, U.S. Department of Health & Human Services. May 2015. https://oig.hhs.gov/oei/reports/oei-02-14-00480.pdf

27. “Questionable Billing of Pediatric Medicaid Services in Indiana.” U.S. Office of Inspector General, U.S. Department of Health & Human Services. November 2014. https://oig.hhs.gov/oei/reports/oei-02-14-00250.pdf

28. “Questionable Billing of Pediatric Medicaid Services in Louisiana.” U.S. Office of Inspector General, U.S. Department of Health & Human Services. August 2014. https://oig.hhs.gov/oei/reports/oei-02-14-00120.pdf

29. “Office of Inspector General Calls MCOs’ Medicaid Reporting Weak.” Dentistry Today. July 30, 2018. https://www.dentistrytoday.com/news/todays-dental-news/item/3606-office-of-inspector-general-calls-mcos-medicaid-reporting-weak

30. “Not Guilty Verdict Returned in Chattanooga Dental Office Theft Case.” Chattanoogan, June 15, 2017. https://www.chattanoogan.com/2017/6/15/349864/Not-Guilty-Verdict-Returned-In-Dalton.aspx

31. “Court Awards Texans $16.5 Million in Medicaid Fraud Lawsuit.” Texas Attorney General. Aug. 11, 2020. https://www.texasattorneygeneral.gov/news/releases/ag-paxton-court-awards-165-million-texans-medicaid-fraud-lawsuit#:~:text=Attorney%20General%20Ken%20Paxton%20today,ordered%20final%20judgment%20against%20Dr.&text=The%20Court%20previously%20found%20that,vacationing%20out%20of%20the%20country.

32. “Richard Malouf Water Park Mansion for Sale.” Cosmopolitan. Oct. 11, 2016. https://www.cosmopolitan.com/lifestyle/a5273978/richard-malouf-water-park-mansion-for-sale/

About the author:

Michael W. Davis, DDS is a **nationally recognized dental expert** . He frequently lectures and publishes, and is a court-certified expert witness. Dr. Davis also is chairperson of the Santa Fe District Dental Society peer review, and a New Mexico state peer review member.