

State Regulation of Dental Service Organizations: A Solution in Search of a Problem

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Findings

- Current state law is sufficient to regulate licensed dentists and investigate claims of Medicaid fraud.
- Very few DSOs have been referred to the Attorney General for allegations of improperly influencing dental practices.
- Imposing regulations and fees on DSOs would confer an improper, government-sanctioned advantage on non-DSO-supported dental practices.

The imposition of special regulations on Dental Service Organizations (DSOs) is unwarranted and unnecessary. While increased regulation has been proposed in Texas and other states to allegedly detect Medicaid fraud or prevent improper influence, it will not stop Medicaid fraud and abuse or prevent DSOs from potentially influencing dentists. Rather, it will harm patients by decreasing access to dental care and increasing costs, and it will harm dentists who contract with DSOs by burdening them with punitive and unfair regulations while giving an unfair advantage to non-DSO-supported dental practices.

Background

DSOs are corporations that provide licensed dentists with non-clinical services such as marketing, personnel management, supply provision, operational support, and office administration. These corporations, which take advantage of economies of scale to lower operating costs for dental practices, have been in existence for more than 30 years but have become more common nationwide since the late 1990s.

In Texas, the number of DSOs has risen since 2007 largely as a result of a \$1.8 billion lawsuit settlement in which the Texas Legislature increased Medicaid reimbursement rates for dentists by 50 percent in order to increase access to dental care among Medicaid enrollees. This influx of Medicaid funding increased the number of dental practices in Texas that would accept Medicaid patients and also increased the number of DSOs operating in the state. Currently, there are approximately 300 DSO-supported dental offices in Texas.

In 2012, allegations of widespread dental fraud regarding orthodontia surfaced when

authorities claimed that 89 dental providers in Texas were suspected of overbilling Medicaid by \$154 million.¹ A series of investigations ensued and are currently pending. Last year, the Health and Human Services Office of Inspector General (OIG) put 23 orthodontic providers on payment holds pending investigation of fraud allegations.²

In 2012, the OIG identified more than \$229 million in potential overpayments of Medicaid funds for orthodontia and more than \$68.5 million in potential overpayments for general dentistry,³ and began implementing reforms of OIG's case management and analytics system, which had been scheduled for completion in January 2013.⁴

As a result of these allegations and subsequent investigations, attention has focused on DSOs as possible instigators of Medicaid fraud. By pressuring and incentivizing dentists to meet quotas for billing certain procedures—in the aforementioned cases, orthodontia procedures—DSOs, according to some, enable and encourage licensed dentists to commit Medicaid fraud; hence, the current effort to impose special regulations on DSOs.

Current Regulatory Authority is Sufficient

Under current state law, all licensed dentists in Texas are regulated by the Texas State Board of Dental Examiners (TSBDE), which also has authority to regulate the relationship between dentists and DSOs, including requiring dentists to disclose any contractual relationship with a DSO. The TSBDE also has authority to take civil actions in response to the illegal practice of a non-licensee improperly influencing a licensed dentist, which has been cited as a justification for DSO regulation.

However, the TSBDE already has authority to address that concern through the issuance of fines, cease and desist orders, and by obtaining injunctive relief through the Attorney General when necessary. In addition, the board can refer violators to the Attorney General for criminal prosecution. Over the last five years, the board has referred 98 cases to the Attorney General for enforcement, only two of which involved allegations of DSOs improperly influencing dentists.⁵

Last year, TSBDE acting director Glenn Parker told the House Public Health Committee that the board lacked resources to oversee all its licensees and review some 1,000 annual complaints.⁶ Currently, the board has 10 staff investigators and three administrative assistants in its enforcement division.⁷ Whether this level of staffing is sufficient to investigate complaints is a matter of dispute. However, it is undisputed that the board has legal authority to regulate dentists and their professional contracts.

Access to Dental Care Issues

Access to dental care is inadequate in Texas. As of December 2011, 46 counties in Texas had no practicing dentists, and 115 counties were classified as Dental Health Professional Shortage Areas.⁸ As of November 2012, there were 13,347 dentists working in Texas—one of the lowest rates of dentists per capita in the country.⁹

Although DSO-supported dental practices make up a small share of the total number of providers in the state, they are active throughout the state, including rural communities in West Texas that are underserved. For instance, there are at least eight DSO-supported dental practices

west of Abilene. By increasing administrative efficiency, DSO-supported dental practices are better able to offer services in traditionally underserved areas.

Conclusion: Protectionism Masquerading as Regulation

A sweeping regulatory approach to DSOs will do little to prevent Medicaid fraud, as the incentives to commit fraud—namely, to perform non-medically necessary orthodontic procedures, such as braces for cosmetic reasons—remain present regardless of whether or not a dentist chooses to contract with a DSO for non-clinical services.

Likewise, the opportunities to commit fraud are inherent in the Medicaid system itself and bear no relation to the administrative structure of a given dental practice. Improvements in the case management and analytics at the Office of Inspector General hold promise for stopping fraud before losses such as those experienced with dental orthodontia occur.

Any attempt to detect and prevent fraud must focus on bad actors rather than the DSO industry as a whole. Indeed, it is difficult to see an attempt to impose a regulatory regime on DSOs in particular as anything other than a protectionist scheme designed to benefit non-DSO-supported dental practices by giving them a competitive advantage. Rather than prevent Medicaid fraud, such a regulatory policy will likely result in higher administrative costs to DSO-supported dental practices, which will in turn drive up the cost of dental care and reduce patient access. ★

¹ David Heath, "Texas tries to crack down on dental chains that put profits ahead of patients," *The Center for Public Integrity* (7 Jan. 2013).

² Becca Aaronson, "Medicaid Dental System an Ongoing Challenge," *The Texas Tribune* (27 Jul. 2012).

³ Doug Wilson, "Update on OIG Activities: Preventing and Detecting Fraud and Abuse," Office of Inspector General (2013).

⁴ Chris Traylor, Deputy Chief Commissioner, HHSC, "Presentation to House Public Health Committee on Delivery of Dental Services in Medicaid" (15 Oct. 2012).

⁵ Sen. Jose Rodriguez to Senate Committee on Health and Human Services (6 Feb. 2013).

⁶ Donna Domino, "Texas hearing exposes ongoing dental board issues," *DrBicuspid.com* (13 April 2012).

⁷ Texas State Board of Dental Examiners, Agency Functions and Divisions (accessed April 1, 2013).

⁸ Department of State Health Services, "Supply Trends Among Licensed Health Professions Texas 1980-2011," Health Professions Resource Center at the Center for Health Statistics (Jan. 2012).

⁹ Kaiser State Health Facts, "Texas: Professionally Active Dentists" (Nov. 2012).

