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### Litch's Law Log

# Reminder About Medicaid Compliance Resources

The AAPD has worked for many years at the federal and state level on Medicaid dental reform, and it continues to be an integral part of our ongoing advocacy. Admittedly, it is sometimes an uphill slog, with progress followed by back-sliding. However, we remained focused on the ultimate goal of optimal oral health for all children—especially those most in need.

One key aspect of that goal is to assist AAPD members with navigating the Medicaid system, which is necessary to ensure an adequate network of providers. Pediatric dentists are at the forefront of oral health care for children in Medicaid. According to a February 2017 ADA Health Policy Institute Infographic, overall nationally **64.8 percent of pediatric dentists participate in Medicaid or CHIP**. This is far higher than the participation rate for general dentists or any other dental specialists.<sup>1</sup>

In the summer of 2017 the AAPD Pediatric Oral Health Research and Policy Center released an excellent resource entitled **Pediatric Dentist Toolkit for Seeing Patients with Medicaid: Changing Children's Lives One Smile at a Time**.<sup>2</sup> I strongly recommended this be reviewed by any pediatric dentist currently participating in or considering participating in Medicaid or CHIP.

With participation in these governmental programs comes the need for a good compliance plan. While AAPD has produced resources on dealing with Medicaid provider audits, the best outcome naturally is to avoid an audit in the first place.

A good starting point for a pediatric dentist and practice staff is to view the Centers for Medicare and Medicaid Services (CMS) video on **Medicaid Compliance for the Dental Professional**.<sup>3</sup> CMS Chief Dental Officer Dr. Lynn Mouden referenced this video during his presentation at the 2017 AAPD Annual Session.

One key concept is understanding the need to document medical/dental necessity. Excellent resources in this area are the AAPD's brochure from 2014 entitled **Documenting to Support Medical Necessity for the Pediatric Dental Professional**.<sup>4</sup> This concept is also discussed in the 2014 CMS publication **Medicaid Compliance and Your Dental Practice**.<sup>5</sup> Both are available via the AAPD website members-only section under Practice Management/Dental Coding and Insurance.

Another useful resource is the HHS Office of Inspector General's (OIG) **Compliance Program for Individual and Small Group Physician Practices**, which was published in the Federal Register back in 2000.<sup>6</sup> Note the **OIG's Seven Basic Components of a Voluntary Compliance Program**:

1. "Conducting internal monitoring and auditing through the performance of periodic audits;
2. Implementing compliance and practice standards through the development of written standards and procedures;
3. Designating a compliance officer or contact(s) to monitor compliance efforts and enforce practice standards;
4. Conducting appropriate training and education on practice standards and procedures;
5. Responding appropriately to detected violations through the investigation of allegations and the disclosure of incidents to appropriate Government entities;
6. Developing open lines of communication, such as (1) discussions at staff meetings regarding how to avoid erroneous or fraudulent conduct and (2) community bulletin boards, to keep practice employees updated regarding compliance activities; and
7. Enforcing disciplinary standards through well-publicized guidelines."

Finally, there is an **obligation to report overpayments**, which some might find ironic given that historically Medicaid dental programs have severely underpaid dentists as compared to commercial rates.<sup>7</sup> Section 6402 (a) of the ACA amended the Social Security Act to create an express obligation to report and return Medicaid or Medicaid overpayments within 60 days after the date on which the overpayment was identified. Failure to do so could subject the provider to liability under the False Claims Act.

*This column presents a general informational overview of legal issues. It is intended as general guidance rather than legal advice. It is not a substitute for consultation with your own attorney concerning specific circumstances in your dental practice. Mr. Litch does not provide legal representation to individual AAPD members."*

<sup>1</sup>[http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIGraphic\\_0217\\_1.pdf?la=en](http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIGraphic_0217_1.pdf?la=en). As expected, participation rates do vary greatly by state.

<sup>2</sup><http://www.aapd.org/assets/1/7/Medicaid2017.pdf>

<sup>3</sup><https://www.youtube.com/watch?v=47XrbEUTe7k&t=2998s>. This was published on YouTube in July, 2016.

<sup>4</sup><http://www.aapd.org/assets/1/7/MedicalNecessaryCareBrochure.pdf>

<sup>5</sup><http://www.aapd.org/assets/1/7/MedicalNecessaryCareBrochureCMS.Addendum.pdf>

<sup>6</sup><https://oig.hhs.gov/authorities/docs/physician.pdf>

<sup>7</sup>Nassef K, Vujicic M, Yarbrough C. A ten-year, state-by-state, analysis of Medicaid fee-for-service reimbursement rates for dental care services. Health Policy Institute Research Brief. American Dental Association. October 2014. Available from: [http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief\\_1014\\_3.aspx](http://www.ada.org/~/media/ADA/Science%20and%20Research/HPI/Files/HPIBrief_1014_3.aspx).