

**Congress of the United States**  
**Washington, DC 20515**

February 13, 2014

The Honorable Daniel R. Levinson  
Inspector General  
U.S. Department of Health and Human Services  
Room 5541 Cohen Building  
330 Independence Avenue SW  
Washington, DC 20201

Dear Inspector General Levinson:

As Vice Chairman and Ranking Member of the House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations, we are writing to express our concerns regarding what we believe are deceptive practices of certain dental management service companies (DMSOs) as detailed by a recent joint report from the Senate Finance and Judiciary Committees. We appreciate the past work your office has done on this important issue but we continue to have concerns about the ongoing operation of some of these dental management companies and the reimbursement of their services under the Medicaid program.

DMSOs operate across the United States. DMSOs are typically organized as a corporation or limited liability company with the intent of managing the administrative aspects of individual dental clinics. Over the past decade an increasing number of DMSOs have been bought or backed by private equity firms and now account for eight percent or 12,000 of the dentists in the U.S<sup>1</sup>. In some cases, DMSOs not only provide managerial services to the dental clinics, but they also own the dental clinics and appear to exercise complete control over the operations and finances. It is in these situations that we are most concerned.

While there is no Federal requirement that licensed dentists, rather than corporations, own and operate dental practices, 22 states and the District of Columbia have laws that ban the corporate practice of dentistry<sup>2</sup>. States have expressed concerns, rightfully so, that patient care should always be determined by the patient and their health care provider.

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<sup>1</sup> "Dental Abuse Seen Driven by Private Equity Investments", <http://www.bloomberg.com/news/2012-05-17/dental-abuse-seen-driven-by-private-equity-investments.html>

<sup>2</sup> Joint Staff Report on the Corporate Practice of Dentistry in the Medicaid Program. June 2013. Appendix A: Jim Moriarty, *Survey of State Laws Governing the Corporate Practice of Dentistry*, Moriarty Leyendecker 2012, at 10–11,

Based on the work and investigation undertaken by our offices, we are very concerned that the corporate structure and management of dental clinics often results in a failure to meet basic quality and compliance standards and to provide unjustified and deficient procedures.

Dentists graduate from dental school with an average debt of over \$180,000. High levels of debt, in combination with Medicaid's low reimbursement rate, contribute to low dentist participation in Medicaid<sup>3</sup>. However, private equity firms operating dental clinics have been able to maintain large Medicaid patient populations by apparently compensating with increased volume. We fully support and encourage the participation of dentists in Medicaid. However, the improper utilization of Medicaid services by some dental providers has led to quality of care issues, which have been documented by numerous television news, legal cases, and Congressional investigations. Unfortunately, many of these practices have continued despite federal government intervention and have been directly linked to the structural problem of corporate ownership.

In response to whistleblower complaints, the Senate Finance and Judiciary Committees initiated a joint investigation in 2011 of five corporate dental chains that were reported to be involved in deceptive practices. The Joint Committee report, released on July 23, 2013, focused on Church Street Health Management (CSHM) and ReachOut. CSHM was the successor company of For Better Access (FORBA), which operated more than 60 "Small Smiles" clinics<sup>4</sup>.

In 2008 an investigative news report by ABC-7 in Washington, D.C. initially revealed poor treatment and abusive practices at Small Smiles clinics<sup>5</sup>. This report prompted the U.S. Department of Justice and the Department of Health and Human Services (HHS) Office of the Inspector General (OIG) to begin formal investigations of the clinics. FORBA eventually settled with the U.S. Department of Justice and entered into a Corporate Integrity Agreement (CIA) with the OIG at HHS. As part of the CIA, the company agreed to adhere to quality and compliance standards and undergo extensive audits by an Independent Monitor (IM).

Through the course of the CIA, FORBA repeatedly failed to meet quality and compliance standards that were required by the CIA. Examples of breaches include: unnecessary treatment on children; improper administration of anesthesia; providing care without proper consent; and overcharging the Medicaid program. In February 2012, FORBA filed for Chapter 11 bankruptcy, but eventually emerged under new management as CSHM<sup>6</sup>. However, similar to FORBA's management structure, CSHM retains all rights of ownership, employs all staff, recruits all staff, makes all personnel decisions, and receives all income from Small Smiles clinics.

Despite a change in ownership and repeated professed improvements, CSHM and Small Smiles clinics continue to operate under contracts that we believe circumvent state laws. It is unacceptable that the same problems first uncovered in 2008 continue to exist today, especially in light of oversight by the IM and HHS OIG.

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<sup>3</sup> U.S. Gov't Accountability Office, Gao-11-96, Oral Health: Efforts Under Way To Improve Children's Access To Dental Services, But Sustained Attention Needed To Address Ongoing Concerns (2010)

<sup>4</sup> Joint Staff Report on the Corporate Practice of Dentistry in the Medicaid Program. June 2013.

<sup>5</sup> ABC-7 I-Team: Small Smiles Investigation, <http://www.youtube.com/watch?v=pIoMaw4zC9Q>

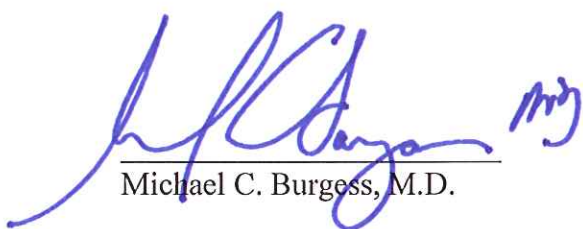
<sup>6</sup> Joint Staff Report on the Corporate Practice of Dentistry in the Medicaid Program. June 2013. Exhibit 4: Bankruptcy Filing, Case 3:12-bk-01573 (Feb. 2, 2012).

Under sections 1128 and 1156 of the Social Security Act, the OIG has the authority to exclude individuals and entities that have engaged in fraud or abuse related to Federal health care programs from participation in Medicare, Medicaid, and other Federal health care programs. While we want to ensure provider participation in Medicaid, patients should never be faced with the choice of no care or low quality care. All Medicaid patients deserve access to high quality dental care provided by licensed dentists.

Based on the report by the Senate Committees and the prior findings of HHS OIG, we concur with our Senate colleagues and recommend that HHS OIG should consider excluding any corporate entity that employs deceptive businesses practices that result in substandard care, from the Medicaid program. Every day that HHS does not exercise the tools at their disposal, the chance increases that more Medicaid patients will suffer.

We would appreciate your immediate attention to this matter. Please do not hesitate to contact our staff, Sarah Johnson with Congressman Burgess or Rachel Stauffer with Congresswoman DeGette, if you have additional questions regarding this request. Thank you for your prompt attention to this important issue.

Sincerely,



Michael C. Burgess, M.D.

Member of Congress



Diane DeGette

Member of Congress