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Dental Fraud Report Hints At Emerging Medicaid Crackdown

By **Jeff Overley**

Law360, New York (August 20, 2014, 7:37 PM ET) -- An inspector general's report Wednesday about possible overbilling of Medicaid by Louisiana dentists is calling attention to a fast-emerging area of fraud around the country that's incurring the wrath of prosecutors, False Claims Act whistleblowers and personal injury lawyers, according to experts and public records.

Wednesday's report had relatively narrow findings, concluding that roughly two dozen dental professionals in Louisiana are "extreme outliers" when it comes to the magnitude of their billing. But that's just a microcosm of the recent enforcement landscape, which has witnessed a surge in FCA suits and criminal charges.

"In recent years, a number of individual dental providers and chains have been prosecuted for providing services that were medically unnecessary or that failed to meet professionally recognized standards of care," the Office of Inspector General at the U.S. Department of Health and Human Services wrote.

Many dental practices have been accused of distributing kickbacks, such as gift cards, manicures and amusement park tickets, in order to lure poor families in for examinations. According to various lawsuits, indictments and government reports, children in many instances have then been intentionally misdiagnosed and subjected to numerous root canals, with each procedure representing more money from Medicaid.

"Once you get the child in the chair, there's some incentive for them to do as much work as possible," said Thomas A. Crosley of Texas-based Crosley Law Firm PC, which this year settled two personal injury suits alleging needless dental procedures performed on more than 300 children.

In the FCA realm, one of biggest civil punishments came earlier this year, when the inspector general booted dental management chain CSHM LLC from Medicaid, effective next month, for flouting a corporate integrity agreement. That agreement, in turn, stemmed from a **\$24 million FCA settlement** that CSHM's predecessor inked in 2010 amid allegations its young patients were regularly given unnecessary root canals and anesthesia so that Medicaid could be billed.

On the criminal side, numerous dental professionals have recently wound up behind bars for ripping off Medicaid. They include a North Carolina dentist sentenced last year to a five-month term for mischaracterizing the dentures he supplied; a Texas orthodontist who last year got 50 months for letting assistants perform certain tasks without supervision; and a Texas dentist who this year received an 18-month sentence after billing for nonexistent procedures in order to earn bonuses from his employer, Kool Smiles PC.

James S. Brady, head of the white collar criminal defense practice at Dykema Gossett PLLC, says Medicaid audits of dentists have increased noticeably of late.

"[It] causes the dentists who provide services to the indigent poor great consternation," said Brady, who successfully defended a dentist against Medicaid fraud charges in a criminal trial several years ago.

As with any government health care program, avoiding trouble means staying abreast of intricate regulations that dictate which services are covered and when prior authorizations are required, Brady added.

"Really dot your i's and cross your t's — know the billing rules and regulations," he said.

Those rules and regulations can be extremely precise, as evidenced by some of the fraud schemes that have been publicized. In 2012, for example, prosecutors accused an Oklahoma dentist of fraud for allegedly restoring smaller portions of individual teeth than she claimed.

As a result, cases can require enlisting experts to perform exhaustive examinations of dental records, such as X-rays and charts, to demonstrate conclusively that misconduct occurred.

"We kind of ending up having to prove, on a tooth-by-tooth analysis, the fraud that was done," Crosley said.

There are several signs that dental fraud is getting the attention of regulators across the nation. Wednesday's OIG report prompted Louisiana officials to enact what they hope will be stronger oversight. A similar OIG report in March targeted dental professionals in New York, where regulators responded by saying they were "actively investigating and monitoring numerous orthodontists and general dentists."

Most prominently, officials in Texas have acknowledged a fraud-plagued orthodontics program where Medicaid payments in 2010 exceeded those in the rest of the nation's other 49 states combined. In May, **the state sued a Xerox Corp. unit** to recover millions of dollars in improper payments the company allegedly approved for braces and dental services.

Medicaid spent roughly \$7.5 billion on dental care in 2010, a figure that has almost certainly grown since that time, especially as the program for low-income Americans expands under the Affordable Care Act. A sizable portion of those expenditures is for kids, as Medicaid requires states to provide pediatric dental care but provides leeway when it comes to adults.

While many types of health care fraud are getting attention these days, experts say the confluence of disturbing allegations in dental fraud cases — fleecing taxpayers, harming children and taking advantage of poor people — may make such litigation especially attractive to government attorneys and the plaintiffs bar.

"We feel that these cases are pretty strong for that reason," Crosley said.

--Additional reporting by Jeremy Heallen. Editing by Kat Laskowski and Katherine Rautenberg.

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