

# Policy on Third-Party Payor Audits, Abuse, and Fraud

## Latest Revision

2019

**How to Cite:** American Academy of Pediatric Dentistry. Policy on third-party payor audits, abuse, and fraud. The Reference Manual of Pediatric Dentistry. Chicago, Ill.: American Academy of Pediatric Dentistry; 2022:167-70.

## Purpose

One of the aims of the Deficit Reduction Act<sup>1</sup>, approved by the United States (U.S.) Congress in 2005, was to prevent Medicaid fraud and abuse through an audit process. Despite the good intentions of this law, experts predicted health care providers would see more investigations, enforcement actions, and whistleblower cases and would need to devote more resources toward compliance.<sup>2</sup> Pediatric dentists play a critical role in the Medicaid program, and there will be negative impact on access to care if providers are burdened with excessive regulations and unfounded audits. Nonetheless, the American Academy of Pediatric Dentistry (AAPD) supports efforts to eliminate Medicaid abuse. Such unprofessional conduct could result in loss of membership status in AAPD.<sup>2</sup> This policy is intended to help AAPD members understand the audit process, both internal and external audits.

## Methods

This document was developed by the Council on Clinical Affairs and adopted in 2014. This policy is based upon a review of current dental and medical literature, including a literature search of the PubMed®/MEDLINE electronic database using the terms: dental audits, dental abuse and fraud, peer review, dental peer review committee, provider profiling, practice management, Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) field: all; limits: within the last 10 years; human; English. Papers for review were chosen from this list as well as references within the selected articles.

## Definitions

**Abuse:** “provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or reimbursement for services that are not medically necessary or that fail to meet the professionally recognized standards for health care. It also includes beneficiary practices that result in unnecessary cost to the Medicaid program.”<sup>3</sup> The AAPD supports medically-necessary care (MNC) and recognizes that dental care is medically necessary for the purpose of preventing and eliminating orofacial disease, infection, and pain, restoring the form and function of the dentition, and correcting facial disfigurement or dysfunction.<sup>4</sup>

**Audit:** “planned and documented activity performed by qualified personnel to determine by investigation, examination, or evaluation of objective evidence, the adequacy and compliance with established procedures, or applicable documents, and the effectiveness of implementation.”<sup>5</sup> After receiving a notice of an impending audit from a third-party payor, the dentist should ascertain in writing the type and scope of audit to be conducted.<sup>6,7</sup>

**Fraud:** “an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to him or some other person.”<sup>3</sup>

**Recovery audit contractor (RAC):** one who reviews claims on a post-payment basis. The RAC detects and corrects past improper payments so that Centers for Medicare and Medicaid Services (CMS) and carriers, fiscal intermediaries, and Medicare administrative contractors can implement actions that will prevent future improper payments.<sup>8</sup>

**Third-party payor:** “an organization other than the patient (first party) or health-care provider (second party) involved in the financing of health care services.”<sup>9</sup>

## Background

External audits are increasingly common for a full range of health care providers. Dentists are no exception, as some pediatric dentists have experienced. If a provider requests payment from third-party payors, the claims may be subject to review by a RAC, a private entity that reviews paid claims and, in some cases, earns contingency fees for improper payments it retrieves. Private and public third-party payors use audits as a mechanism to recoup over-payments, inspect for potential improper behavior, and possibly guide health care providers to control utilization and costs.<sup>10</sup> Notably, there can be serious financial and even criminal penalties associated with billing errors.<sup>11</sup>

### ABBREVIATIONS

**AAPD:** American Academy Pediatric Dentistry. **CMS:** Centers for Medicare and Medicaid Services. **EPSDT:** Early and Periodic Screening, Diagnosis, and Treatment. **MNC:** Medically-necessary care. **RAC:** Recovery audit contractor. **U.S.:** United States.

In 2017, an estimated \$37 billion, or 10 percent, of the federal Medicaid funds were absorbed by improper payments, which include fraud and abuse as well as unintentional mistakes such as paper errors.<sup>12</sup> Improper payments can occur when funds go to the wrong recipient, the recipient receives the incorrect amount of funds (either an underpayment or overpayment), documentation is not available to support a payment, or the recipient uses the funds in an improper manner.<sup>12</sup>

The AAPD recognizes the concern its members have regarding these external audits. The AAPD encourages its members to develop internal self-audit programs to address these challenges. Internal audits are used in order to pre-emptively detect discrepancies before the external authorities can discover them and impose penalties.<sup>10</sup> Given the heightened concern for compliance to avoid an external audit, internal audits have taken on importance. A compliance program generally will incorporate a credible internal audit system, which means that it must be prepared to respond to an external audit by various authorities. In addition, some pediatric dentists have discovered that an internal audit system can be developed so that it not only addresses the external audit, but also serves other quality of care and performance improvement purposes.<sup>10</sup>

### Credentials of auditors

The Affordable Care Act required that each state Medicaid program use at least one RAC beginning in 2011.<sup>13</sup> Some states have started employing the RACs to aid in recovery of improper payments.<sup>14</sup> The AAPD strongly believes that, while audits are a part of third-party payment contracts and are necessary to protect the integrity of these programs, such audits must be completed by those who have credentials on par with the dental provider being audited. For example, pediatric dentists must be audited by a dentist who specializes in pediatric dentistry and who understands the clinical guidelines and standards of care which have been adopted and followed by their specialty. The AAPD is adamantly opposed to auditors receiving financial incentives for any money recuperated through these audits. This represents a conflict of interest.

### Provider profiling

The AAPD is opposed to provider profiling, a strategy that may be used by health plans to assess efficiency among providers, and believes that dentist providers selected for audits should be chosen randomly or with compelling evidence that makes them an outlier compared to peers practicing in similar geographic areas, on similar populations of patients, and within the same specialty. Claims-based data used for provider profiling are not collected exclusively for performance assessment and, as a result, may be irrelevant or inadequate for profiling.<sup>15</sup> Furthermore, the procedure codes included in claims-based data cannot fully characterize the nature of a particular episode of care and may fail to account for variations in a patient's baseline status, socioeconomic considerations, compliance with treatment, and access to care.<sup>15</sup>

### Peer review as part of audit outcomes

The AAPD supports peer review as a way to offer information and support to dentists who need to review best practices regarding chart documentation, coding, and billing practices related to third-party payors. This should be offered in lieu of financial penalties when an audit shows that no intent to fraud was present, but that the dentists need education to improve their practice systems. It provides practicing dentists a means to preserve their reputation and good standing in the community and fosters risk management, accountability, and self-regulation among dental professionals.<sup>16</sup> This model would be consistent with the peer review practices that occur when clinical decision making is in question. The intent of peer review is to resolve discrepancies between the dentists and third-party payors expeditiously, fairly, and in a confidential manner.<sup>16</sup>

### Best practices for chart documenting, coding, and billing

The AAPD supports the education of pediatric dentistry residents, pediatric dentists, and their staff to ensure good understanding of appropriate coding and billing practices. The AAPD, therefore, supports the creation of educational resources and programs that promote best practices, which may include:

- programming offered at the AAPD's Annual Session or other AAPD-sponsored continuing education course.
- programs offered by pediatric dentistry state unit and district organizations.
- the creation of a web-based tutorial for dentists and their staff, including the states' dental Medicaid provider manuals and frequently asked questions regarding Medicaid.
- partnering with other public/private organizations and agencies to distribute 'Medicaid Updates' that can be received via e-mail and augmenting *Medicaid Compliance for the Dental Professional* webinars offered jointly by AAPD and CMS.<sup>17</sup>
- the development of a third-party payor submission compliance program.

### Medicaid policies that conflict with AAPD clinical practice guidelines

The AAPD is opposed to Medicaid programs that have policies which are in direct conflict with AAPD clinical practice recommendations and are of detriment to patient care. For example, in several states, children are not receiving appropriate dental treatment covered by EPSDT because there is a refusal to reimburse providers for EPSDT-covered dental services.<sup>18</sup> According to CMS, "federal law also requires that states inform all families about EPSDT coverage"<sup>19</sup>; the AAPD supports this requirement to enable caregivers to seek necessary dental treatment for their children.

## Policy statement

Dental care is medically necessary to prevent and eliminate orofacial disease, infection, and pain, to restore the form and function of the dentition, and to correct facial disfigurement or dysfunction. MNC is based upon current preventive and therapeutic practice guidelines formulated by professional organizations with recognized clinical expertise. Expected benefits of MNC outweigh potential risks of treatment or no treatment. Early detection and management of oral conditions can improve a child's oral health, general health and well-being, school readiness, and self-esteem. Early recognition, prevention, and intervention could result in savings of health care dollars for individuals, community health care programs, and third-party payors. Because a child's risk for developing dental disease can change over time, continual professional reevaluation and preventive maintenance are essential for good oral health. Value of services is an important consideration, and all stakeholders should recognize that cost-effective care is not necessarily the least expensive treatment.<sup>4</sup>

The AAPD:

- encourages its members and all third-party payors to support efforts to eliminate Medicaid abuse.
- opposes any of its dentist members committing abuse and fraud as it relates to their relationship with third-party payors.
- recognizes the concern its members have regarding these external audits.
- encourages its members to develop internal self-audit programs to address these challenges.
- cautions against ill-informed or misguided investigations that may discourage dental provider participation in Medicaid.<sup>20</sup>
- strongly believes that, while audits are a part of third-party payment contracts and are necessary to protect the integrity of these programs, such audits must be completed by those who have credentials on par with the dental provider being audited.
- adamantly opposes auditors receiving financial incentives for any money recuperated through audits.
- opposes provider profiling and believes that dentist providers selected for audits should be chosen randomly or with compelling evidence that makes them an outlier as compared to their peers who practice in similar geographic areas, on similar populations of patients, and within the same specialty.
- supports peer review in lieu of financial penalties when an audit shows that no intent to fraud was present, to offer information and support to dentists who need to re-acquaint themselves on best practices regarding chart documentation, coding, and billing practices relating to third-party payors.
- supports the education of pediatric dentistry residents, pediatric dentists, and their staff to ensure a good understanding of appropriate coding and billing practices.
- supports the creation of educational resources and programs that promote appropriate coding and billing practices.
- opposes Medicaid programs that have policies in direct conflict with AAPD clinical practice recommendations and are of detriment to patient care.
- endorses the enforcement of the "federal law that requires that states inform all families about EPSDT coverage"<sup>18</sup> to enable caregivers to seek necessary dental treatment for their children.

## References

1. U.S. Congress. Deficit Reduction Act of 2005. Pub. No. 109-171, 120 Stat. 119, Feb 8, 2006. U.S. Government Printing Office. Available at: "<http://www.gpo.gov/fdsys/pkg/BILLS-109s1932enr/pdf/BILLS-109s1932enr.pdf>". Accessed March 25, 2019.
2. American Academy of Pediatric Dentistry. Constitution and Bylaws of the American Academy of Pediatric Dentistry. Available at: "[https://www.aapd.org/assets/1/7/2018-19\\_Constitution\\_and\\_Bylaws.pdf](https://www.aapd.org/assets/1/7/2018-19_Constitution_and_Bylaws.pdf)". Accessed March 25, 2019.
3. U.S. Government. Code of Federal Regulations, Title 42: Public Health Part 455, Program Integrity: Medicaid. Centers for Medicare & Medicaid Services. 2018. Available at: "<https://www.govinfo.gov/app/details/CFR-2018-title42-vol4/CFR-2018-title42-vol4-sec455-2>". Accessed July 13, 2019.
4. American Academy of Pediatric Dentistry. Definition of medically-necessary care. *Pediatr Dent* 2018;40(6):15.
5. Project Auditors, LLC. Auditor Dictionary: Audit. Available at: "[https://www.projectauditors.com/Auditor\\_Dictionary/AuditorDictionary.php](https://www.projectauditors.com/Auditor_Dictionary/AuditorDictionary.php)". Accessed July 12, 2019.
6. Oberman SJ. Dental practice audits. *Dental Tribune International*. November 12, 2010. Available at: "<https://www.dental-tribune.com>". Accessed July 12, 2019.
7. Manchie M. Dentists facing compliance audits have ADA resources in their reach. *ADA News*. April 16, 2018. Available at: "<https://www.ada.org/en/publications/ada-news/2018-archive/april/dentists-facing-compliance-audits-have-ada-resources-in-their-reach>". Accessed July 13, 2019.
8. Centers for Medicare and Medicaid Services. Medicare fee for service recovery audit program. Available at: "<https://www.cms.gov/Research-Statistics-Data-and-Systems/Monitoring-Programs/Medicare-FFS-Compliance-Programs/Recovery-Audit-Program/>". Accessed March 25, 2019.
9. American Dental Association. Glossary of Dental Clinical and Administrative Terms. American Dental Association, Chicago, Ill. Available at: "<https://www.ada.org/en/publications/cdt/glossary-of-dental-clinical-and-administrative-terms>". Accessed July 13, 2019.

*References continued on the next page.*

10. Jose DE. Payor audits: Preparation, response, and opportunities. July 2010. Krieg DevaultSM. Available at: "<http://www.kriegdevault.com/userfiles/file/DEJ%20Presentation%20-%20Payor%20Audits.ppt>". Accessed July 12, 2019.
11. U.S. Department of Justice. The Federal False Claims Act, A Primer. Available at: "[https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS\\_FCA\\_Primer.pdf](https://www.justice.gov/sites/default/files/civil/legacy/2011/04/22/C-FRAUDS_FCA_Primer.pdf)". Accessed July 12, 2019.
12. U.S. Department of Health and Human Services. Payment Accuracy Report. Available at: "<https://paymentaccuracy.gov/resources/>". Accessed July 12, 2019.
13. U.S. Congress. The Patient Protection and the Affordable Care Act. Pub. L. No. 111-148, 124 Stat. 119, Mar 23, 2010. U.S. Government Printing Office. Available at: "<http://www.gpo.gov/fdsys/pkg/BILLS-111hr3590enr/pdf/BILLS-111hr3590enr.pdf>". Accessed July 12, 2019.
14. U.S. Department for Health and Human Services Centers for Medicare and Medicaid Services. Medicaid Integrity Program, New Jersey Comprehensive Program Integrity Review, June 2012. Available at: "<https://www.cms.gov/Medicare-Medicaid-Coordination/Fraud-Prevention/FraudAbuseforProfs/Downloads/NJfy12.pdf>". Accessed July 12, 2019.
15. Charvet H. The problem with physician profiling: What have we learned? *Quill and Scope* 2009;2(1):43-7. Available at: "[https://touro scholar.touro.edu/cgi/viewcontent.cgi?article=1057&context=quill\\_and\\_scope](https://touro scholar.touro.edu/cgi/viewcontent.cgi?article=1057&context=quill_and_scope)". Accessed July 13, 2019.
16. American Dental Association. How the dental peer review system works and what you expect from it. American Dental Association, Chicago, Ill. Available at: "[https://www.ada.org/-/media/ADA/Member%20Center/Files/peer\\_review\\_overview.pdf?la=en](https://www.ada.org/-/media/ADA/Member%20Center/Files/peer_review_overview.pdf?la=en)". Accessed July 12, 2019.
17. Mouden LD, U.S. Department for Health and Human Services Centers for Medicare and Medicaid Services, American Academy of Pediatric Dentistry. Medical Compliance for the Dental Professional. Webinar offered by American Academy of Pediatric Dentistry and Centers for Medicare and Medicaid Services, 2013. American Academy of Pediatric Dentistry, Chicago, Ill. Available at: "<http://www.aapd.org/assets/1/7/MedicaidComplianceWebinar2013.pdf>". Accessed July 12, 2019.
18. Hom JM, Lee JY, Silverman J, Casamassimo PS. State Medicaid early and periodic screening, diagnosis, and treatment guidelines adherence to professionally recommended best oral health practices. *J Am Dent Assoc* 2013;144(3):297-305.
19. U.S. Department for Health and Human Services, Centers for Medicare and Medicaid Services. Guide to children's dental health care in Medicaid; 2004. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, Washington, D.C. Available at: "<https://www.medicaid.gov/medicaid/benefits/downloads/child-dental-guide.pdf>". Accessed July 13, 2019.
20. Litch CS. The government's Medicaid fraud tools: Good reason to stay out of trouble and strategies to preempt trouble. American Academy of Pediatric Dentistry. Chicago, Ill.; 2007. Available at: "<http://www.aapd.org/assets/1/7/2935.pdf>". Accessed March 25, 2019.