

House Health & Human Services Committee  
February 16, 2015  
House Bill 2202

Chair and Committee Members,

My name is John Fales and I am a pediatric dentist with a practice in Olathe, Kansas. I am currently the Vice President of the Kansas Dental Association and the President of the Kansas Association of Pediatric Dentists and I am here representing those organizations and myself. I have practiced dentistry in Kansas since 1982 and have specialized in pediatric dentistry since 1989. I have been an active Medicaid provider since 1982 and I am here today because I support House Bill 2202.

I have long advocated participation in the Kansas Medicaid program to my peers practicing dentistry in this state. Unfortunately, due to a number of factors, it is becoming increasingly difficult for many of my peers to actively manage to do this. I could spend more time than any of us have today to talk about patient compliance with appointments, lack of reasonable reimbursement for services provided, an incredibly tedious and redundant application process to become a provider, an incredibly difficult MCO/plan structure and a number of other major issues with the Kansas Medicaid program.

We are not here today to fix any of those. We are here to discuss a bill that will remove some major fears that providers have that I believe we should not have to lose sleep over. Those fears concern audits that providers are subjected to when there is absolutely no evidence of any wrongdoing by the provider of care.

In my opinion, a great many of Kansas providers of dental care participating in the Kansas Medicaid program do so because they believe that the children covered by the program deserve the same high

quality care that private paying or privately insured children are able to receive. When the reimbursement level that the Kansas Medicaid program is below 40 percent of the level of private insurance companies, it is easy to understand that being a Kansas Medicaid provider is not driven by money.

Within the last several years, there have been reported cases of audit performed by "Recovery Audit Contractors (RAC) that seem punitive in nature. One of the very best examples of the unfairness in these audits is found not far from here. A friend of mine, Dr. Jessica Meeske, who practices pediatric dentistry in Nebraska was the subject of a RAC audit. She was not accused of fraud or any wrongdoing at the outset. The contractor sent letters to 300 Nebraska dentists and demanded copies of charts with dental billing codes. In her practice, they requested over 1,000 charts. The audit looked at a very narrow range of codes, in this case the code for a dental cleaning or prophylaxis. Even though the dentists involved in these audits had followed the Nebraska Medicaid Provider Manual guidelines and rules for these dental codes, the RAC auditor found that overpayments had been made and fines and penalties were levied.

In Maine, the Community Dental Health Center (a non-profit dental clinic in Waterville, Maine was found to have overcharged (due to a billing software error) about \$186 dollars and this was turned into a \$23,856 fine through a process called extrapolation. This process is used by auditors to do a very cursory examination of charts and if they have 1,000 charts and find an error in several charts, they will multiply the occurrence rate by the number of charts to determine the fine they will levy. Fines like this represent a very serious financial burden to many practices, especially when there is no apparent intent to defraud the government in any way shape or form.

Auditors are universally not trained in dental fields. Many times they are trained in other health professions and have absolutely no understanding of dental terminology or dental treatment methods or treatment rationale. I would never presume to know how to interpret the recommendations of a health professional in another health care field. I might know how to spell the words, but I most certainly am not qualified to interpret treatment recommendations and procedures. At the very least an auditor should be a dentist licensed in our state. Insurance companies use licensed dentists to make determinations as to whether proposed treatment for a policy owner fall within coverage guidelines. That should be the same for dentists subjected to an audit. In addition to the complete and utter lack of dental training, auditors are many times based on a commission paid based on the total penalties, fines and interest. I think it is easy to see that it is in the auditors best interest to find problems no matter how insignificant.

Another friend of mine who practices right here in Topeka was audit several years ago and was subjected to fines and penalties when the auditor found errors in record keeping and chart notes. These errors had absolutely nothing to do with fraudulent treatment provided or not provided. Rather, they were errors where, for example, a period was missing form the end of a sentence or a comma omitted after a tooth number in a list of teeth. This dentist had never been accused of fraud or previously investigated yet, she was presumed guilty before any evidence of such guilt had been discovered. In fact, no procedures were found to be incorrectly billed for.

As I mentioned at the outset, I have been a Kansas Medicaid provider for over 30 years. Amazingly, I have never been the subject of an audit, I have had reviews of charts by CMS in Washington and in every case, CMS has found that the treatment I performed was correctly and appropriately performed. However, I have a constant fear that I will be audited as my friend in Nebraska was audited. Many of my

colleagues have the same fears and many have chosen to just not participate in the Kansas Medicaid program. I have told many that if a an audit such as these happened to me, I would immediately cease being a Medicaid provider. That, by the way happened in Nebraska and in Kentucky where an oral surgeon was audited and now there are no Kentucky Medicaid oral surgeon participants.

Our Medicaid system in Kansas is broken. The fix of that brokenness is not to “pay and chase.” Our system allows payments to be made for claims and then to track down where they may have been improperly made. Sometimes as long as 3 years after the treatment was rendered. That is no different to allowing the horses to run from the corral when the fence is broken, sending the cowboys out to round them up and putting them back into the same corral only to see them run off again. Medicaid payments should be made accurately in the first place with correct coding and documentation. The provider manuals for dentistry are constantly changing, next to impossible to understand and maintain currency with. Fix this. In 34 years of practicing dentistry in Kansas, I have never received any type of compliance training through the Medicaid program. Training to help providers avoid clerical mistakes and correct dental coding errors are imperative.

The American Academy of Pediatric Dentistry along with the American Dental Association recommend that auditors should rely on policies and guidelines consistent with clinical guidelines of those organizations. In other words, consistent with the standard of care. They also recommend audits of dental providers should be performed by their peers. They also recommend the following:

- Simplifying Medicaid administration, especially with credentialing.
- Providing dentists with data on utilization patterns in an early timely manner.
- Educating dentists on appropriate utilization patterns for a given patient profile.

- Implementing consistent and statistically sound audit processes across communities and states.
- Developing a “Program Integrity Protocol Manual” for practitioners.

I believe these are all important ideas. House Bill 2202 would address some of these issues and begin, in a small way the process of fixing the Kansas Medicaid program. We all want the same thing. That is, the equal and fair access to care for all of the children in Kansas. Presently, the Kansas Medicaid program falls far short of that goal. I want to be able to do my part. Please help me to do that without the shadow of a shattering audit hanging over my every treatment recommendation and decision.

Thank you so much for the opportunity to share my thoughts, about House Bill 2202, with you today and I would be happy to answer any questions you may have.

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