

# **Criminalizing Dental Professionals: Putting All Medicaid Orthodontia Providers in the Same Basket**

## **SUMMARY**

In May of 2011, Dallas TV station WFAA started a series of stories about their investigation into Texas Medicaid spending for orthodontia and the excesses of several dental chains and their owners.

This is the other side of the story about the Texas Medicaid orthodontia scandal and the knee-jerk reaction of Medicaid authorities to put all large billers of Medicaid in the same basket.

It is about one particular case, that of Harlingen Family Dentistry, a large, successful and professional Texas dental practice, and how it has been negatively impacted by the questionable competence of Texas Health and Human Services and its Office of Inspector General as well as their contractor, Texas Medicaid Health Partnership (TMHP).

## **THE PERSONAL STORY OF DR. JUAN VILLARREAL AND HARLINGEN FAMILY DENTISTRY**

There was a time when I started my practice in 1983 in Harlingen that there were absolutely zero dentists, much less orthodontists, in the entire Rio Grande Valley who would provide orthodontic services to Medicaid-eligible children. The rates that Medicaid paid were so low that no one was interested.

I was born and raised in Harlingen, not far from where my practice now stands. I went to Harlingen High School and graduated there in 1971. I got a certificate from Valley Baptist Hospital School of Radiologic Technology in Harlingen in 1973. I then served in the Army from 1973 to 1976 as a medical specialist and continued in the Reserves until 1985. I was commissioned as a lieutenant while

in dental school which I attended at the University of Texas Health Science Center at San Antonio, completing my Doctor of Dental Surgery degree in 1983. I also attended Medical Officer Training School at Fort Sam Houston.

When I returned to Harlingen, I wanted to help my community. I knew the background of the area, its socio-economic problems and its people – both sides of the track, one might say. Consequently, I made it my goal to bring affordable, high-quality dental care to the Valley. So while other dentists did not want to provide Medicaid-related orthodontic care, in 1984, I decided I would and help those children.

Since that time, I have been blessed because my practice, Harlingen Family Dentistry, has expanded over the ensuing 28 years to now encompass a total of 132 staff including 13 other dentists. We can now proudly service up to 240 clients in a day. We have become one of the country's largest and most successful dental practices.

This success came from meeting the needs of the community – providing the services they needed, at a fee they could afford and caring about their dental health and giving back to the community.

As a matter of fact, I, myself, was appointed to the Texas State Board of Dental Examiners by Governor Perry back in 2001 and served with the Board until 2008. I served as Secretary of the Board from 2005 to 2006 and was the Chair of the Enforcement Committee.

I have also served in the following capacities:

- › President of the Hispanic Dental Association;
- › President of the Harlingen Consolidated Independent School District Trustees of which I was a member from 1992 to 1998; and
- › President of the City Of Harlingen Economic Development Board from

2000 to 2001. I was a member of the Board for six years. [TAB A]

HFD has done a number of things in the community of which I am extremely proud:

- › We probably have the largest private practice dental hygiene awareness program for youth in the country. Our “Willy the Walrus” program provides a fun 45 minute indoctrination into dental care for elementary and middle school students across the Rio Grande Valley. We even go so far as to provide complimentary tooth brushes and tooth paste to every student. And the program has reached over 50,000 students so far since its beginning.
- › We provide annual scholarships in conjunction with the Hispanic Dental Association to support meritorious work by students who seek to advance their scientific and applied clinical knowledge in dentistry to further their commitment to aiding and supporting the Hispanic community. This is given only to Texas students who will become dentists and hygienists. HFD has provided over \$60,000 since 1998.
- › We provide annual scholarships totaling \$6,000 to deserving JROTC cadets in the Harlingen area who demonstrate exemplary conduct in alignment with JROTC core values and the 21 precepts of The Way to Happiness, a modern moral code. This program started in 2008.
- › We helped establish the Narconon South Texas drug rehabilitation facility in 2003. The program provides effective, drug-free withdrawal and rehabilitation for the Rio Grande Valley. It occupies 17.5 acres on ABD road and currently has 14 staff. Narconon has provided drug lectures to over 24,000 youth so far and some 600 people have gone through its doors to regain a life free of drug dependence.

- › We are a strong supporter of the Harlingen Outreach Center which opened in 2011. At the Center, the Cameron County Juvenile Justice Department and the City of Harlingen work in partnership with other entities to provide a comprehensive range of community-based programs to provide opportunities for success to the youth and young adults of the community. Harlingen Family Dentistry helped with renovations of the building – donating \$10,000 worth of furniture. We further donated \$25,000 for programs. HFD also provides 1 1/2 FTE staff to work at the Center which costs \$50,000 per year. [TAB B]

### ORTHODONTIA

In relation to orthodontia, since 2004 I employed two dentists to provide all orthodontic care -- Dr. George Franklin, an orthodontist, and Dr. Vivian Ann Teegardin, a general dentist specializing in orthodontics. In 2009, they were joined by Dr. Cuong Van Nguyen, a board certified orthodontist.

So since 2004, my orthodontics team has submitted claims to Medicaid for children they determined needed orthodontic care based on the Medicaid guidelines without difficulty and without problems up until 2011.

We pride ourselves on our care in both treatment and billing. As an example, in early 2011, we discovered during an audit that a number of patients, about 350, had both private health care coverage and Medicaid. We had inadvertently billed both Medicaid and the private insurance companies. It was with some surprise that we discovered that the state's contractor TMHP (Texas Medicaid and Health Partnership) and Medicaid was not even aware that these individuals had dual coverage. Surely, a person with private insurance would not be qualified also for Medicaid and this would be scrutinized. Regardless and in good faith, we returned the Medicaid funds that had been billed for these patients to TMHP, some \$129,000. [TAB C]

As far as our orthodontia claims, as health care professionals, we at Harlingen Family Dentistry had our heads down working to help our patients. We

submitted our requests for pre-approval to Medicaid for each child with all appropriate paperwork and radiographs. We expected that they were reviewed and if there was a problem or concern that the child did not qualify for orthodontic care, TMHP would get back to us. The prior contractor had. However, TMHP didn't. We went along doing our job and thought they were professional and doing their due diligence. We expected them to do so. When we received their approval of the each claim, we then provided the approved service to the children we were taking care of. We trusted them.

We had no idea what other dental offices were doing around the state. We had no idea of problems within Texas Health and Human Services or TMHP until it came out in the media. Even then, we were not mentioned and didn't think it had to do with us. We had no complaints. We were not mentioned.

But as the media rolled out, it surprised us, or maybe it shouldn't have, that the contractor, TMHP, was shown to be incompetent when it came to pre-authorizing orthodontic services. That they had neither the technical expertise nor the manpower to do so yet carried on for years in that condition. Per media reports, they had only one dentist and four clerks that approved all cases – some 88,000 across the state in 2011.

It came a further surprise that Texas Health and Human Services said they weren't even aware of the problem with their contractor – the people they were paying with taxpayer money to run Medicaid.

How could TMHP not only miss seeing but then approving:

- › the providing of and billing of transportation of orthodontic patients;
- › that some 24% of children treated last year were under the age of 12 and received braces;
- › that the number of billed visits per year were on the average 22 when for non-medicaid cases it was 12; and

› the “unbundling” of packaged services so that more could be charged.

Even worse, how is it that Texas Health and Human Services didn't know what was happening with their contractor -- not just for one year but for several?

How is it the contractor didn't report anything to Health and Human Services about their inability to handle the traffic?

Well, the truth of the matter is that Texas Health and Human Services did know about the situation.

They were warned about it back in 2008 when their own Office of the Inspector General did an audit of TMHP. The very deficiencies that came to light in the media in 2011 regarding orthodontia pre-authorization by TMHP – the lack of qualified staff to review cases, the rubber stamping of cases, etc. -- were discovered and reported. Nothing was done at that time. Then HHSC saw orthodontia spending escalate over the last three years and waited until the media reported on them before pretending to be cognizant of the problem. [TAB D]

The big question that wasn't asked in the media nor brought up in the Senate and House hearings this year – the 2008 OIG report was not mentioned in either by current OIG or HHSC executives – was why the contractor continued to fail in its job to properly process cases. [TAB E]

There is something fishy here.

#### HARLINGEN FAMILY DENTISTRY SITUATION

And so Harlingen Family Dentistry found ourselves, in the knee jerk reaction that followed, having a Medicaid payhold and being accused of “fraud.”

It is difficult to be a highly regarded health-care professional who is respected by his peers and has worked hard for his community and earned success over a

lifetime – only to now be accused unfairly of “fraud” without due process by a State bureaucracy that can't tie its own shoelaces. A state bureaucracy that was incompetent to monitor its own spending and its own contractor, only to be brought to light when the incompetence was so great that it became obvious even to the media.

Where is the investigation of TMHP and Health and Human Services? Who made money by looking the other way? How could they be so incompetent with the money of taxpayers? These questions haven't been answered.

I can appreciate the reaction of our elected representatives in both the Senate and the House. They were furious and outraged about the excesses and lack of accountability both with their own bureaucracy and those who apparently abused the system. They want their money back for inappropriately billed services – quite rightly.

But also in hearings of the House Public Health Committee and the Senate Committee on Health and Human Services, our elected representatives gave cautions to Texas Health and Human Services executives including Douglas Wilson, Inspector General, Office of the Inspector General, about throwing every provider in the same basket:

Senator Royce West, at the Senate hearing in March, stated: “What we don't want to see; we need to do this, don't get me wrong, but those individuals who have been providing care, Medicaid dentists, I sure don't want to see us run them out. Then we end up have a shortage of individuals that people can go to. We need to be real sensitive.”

Mr. Billy Millwee, Deputy Executive Commissioner for Health Services: “We got to watch out of having a knee-jerk reaction that really undoes all the good things that have been done over the years but corrects the problems. You're exactly right.”

And in the House hearing in January, 2012:

Representative Garnet Coleman: "... I'm just asking you to remember that these are small businesses. There are people who, I'll say, game the system and quite frankly steal and those folks should be put into jail and we do that. But in terms of those, you know, who have in good faith, moved forward to try to provide the service, I just hope as we go through this, that we are careful about separating the wheat from the chaff.

...

"But there is no retroactive, unless someone has committed fraud or abuse, retroactive penalty to a dentist who follows the policy that they were told to follow?"

Mr. Thomas M. Suehs, Executive Commissioner of Texas Health and Human Services: "That's what I am saying ... There's clearly policies, we should have had tighter policies in some areas. We believe in some areas our contractors did not follow the existing policies and in some areas people gamed the policies we did have. And those are all being looked at."

Mr. Coleman: "If somebody followed the policies that they were told, is the policy that they are not penalized financially for following the policies that the contractor said that they said they would reimburse them."

Mr. Suehs: "That's right. We make sure they are not penalized."

Representative Coleman later went further in response to Douglas Wilson who was testifying about turning over providers to the Medicaid Control Fraud Unit:

Rep. Coleman: "The only thing I say is, that in a world that is becoming somebody is considered guilty before innocent what we don't want in our program with our providers is that they be considered crooks before they are considered good providers of service to the people of the State of Texas. And when you start using a law enforcement model, unfortunately today people are

profiled.

“My father was a Medicaid provider. They put him in the newspaper because he just happened to be serving the women who were poor in the area where we lived. And because he wanted to serve them, he thought it was important that they had good OBY Gen services. He was put in the newspaper because he actually made some money out of it. But the deal was that he was actually a good doctor and they chose him. See that's the deal and I just don't want to see that we go down a road of immediately considering somebody a crook because they do a lot of the service.”

And this is exactly what is happening.

Harlingen Family Dentistry has been profiled because it was in the top 50 billers of orthodontia services in the State of Texas.

What Wilson did not testify to before either the Senate or the House was how orthodontia cases were referred to OIG.

This was made public on 19 March, one day before the Senate hearing, by Deputy Inspector General for Enforcements Jack Stick. Stick participated in a webinar sponsored by the National Conference of State Legislatures entitled “Containing Medicaid Costs: State Strategies to Fight Medicaid Fraud and Abuse.”

In relation to orthodontia claims in Texas, Stick said the following:

“We have adopted an aggressive approach to credible allegations of fraud. We will now place a credible allegation of fraud hold on a vendor at the intake phase. Normally we would wait until we really got into a case and conducted a good chunk of a full scale investigation before making a fraud determination. We stopped doing that. Moving that allegation of credible fraud determination earlier in the process has enabled us to staunch the flow of money to a bad

provider and it increases the amount of recoveries. It also gets us a lot closer to real time fraud interdiction as opposed to the pay-and-chase method.

“So what we did, we decided that we were going to be as efficient as we possibly in conducting our investigations. And to do that we decided that we would initiate a series of really directed missions in areas where we determined that there might be a substantial likelihood of fraud.

“So in Texas, we have had a problems with orthodontists and dentists abusing the system. So we identified the top fifty utilizers. Identified about \$400 million in over-payments and conducted a series - actually we are in the middle of conducting a series of investigations on those providers.” [TAB F]

So to be investigated for Medicaid fraud, you just have to be successful. You are deemed a criminal, your money is withheld and then they do the investigation. No due process. Exactly what Senator West and Rep. Coleman did not want to see happen.

But worse, how can you identify over-payments before you have done an investigation? And \$400 million in orthodontia over-payments? Texas Medicaid spent \$484 million on orthodontia from 2008 to 2011. So the OIG predetermined that they wanted to collect back \$400 of the \$484 million from dentists and orthodontists even before they did a single investigation, if Stick is to be believed.

But it shouldn't be too hard to believe because Stick's attitude about providers of Medicaid services was shown by his comments relating to small businesses in the field of durable medical equipment.

“Durable medical equipment, I don't know how it is in other states, but in Texas, if you open a DME, it almost is a sort of a neon light saying investigate me for fraud.

“We have 5,800 durable medical equipment providers here and our investigative approach here was just to say, look, let’s take 300 investigators and do a state-wide sweep. And let’s just see, you know, is there anybody here, is this an open field? Is it a pool or it is a legitimate ongoing business concern?”

“The ACA requires that we visit, as you know, most of our providers and so we are going to have to go out to the DME’s anyway. So this is an initiative that will begin here in a couple of weeks. Initially it appears that we will probably we will be able to take out about 2,000 providers by doing that.

“Each one of those, you know, is billing the state. Some to a greater degree than others. Some very little but it is still all illegitimate billing.”

It is incredible that he is planning and expecting to close 2,000 Texas businesses without having done a single investigation because he “knows” they are fraudulent.

Stick also goes over the cozy relationship Texas Health and Human Services has with its contractors.

“What we did was rather than developing an antagonistic relationship with the MCO’s, we have tried to do everything that we can to be cooperative with them. We view their special investigative unit, really as offshoots of our unit here in the Inspector General’s Office. They give us leads, they can do a lot of the investigations. In fact the law provides them authority to investigate cases below \$100,000 unless we intervene and take them over.

“Doing the cooperative approach has really allowed us to branch out and find different ways to expedite investigations in the exchange of information. Even things like establishing an FTP site so they can upload their data to us quickly, has provided opportunities for us to cooperate with them.

“The other thing we are doing is, we are providing regular alerts to our MCO’s.

“Physician bad” in one plan is bad in all the plans. It’s not like they figure out how to cheat one and decide it is not a good idea to cheat all the others. “

So it is the professional, the doctor, that is the continuing target. No investigation of the contractor.

Just for the record, Stick is a former member of the Legislature and municipal judge in Bee Caves. Back in 2010 he was found to be improperly dismissing traffic cases in exchange for contributions to the City of Bee Caves. He did not stand for a second appointment as judge.[TAB G]

So is it any surprise then that the Inspector General Douglas Wilson testified before the Senate committee that 90% of the orthodontic cases that they reviewed that had been submitted to, approved and paid by TMHP should not have qualified.

How could they come to this conclusion?

Very simply. By creating a difference of opinion on the severity of malocclusion of patient's teeth as diagnosed by our dentists and orthodontists.

In Harlingen Family Dentistry's particular case, last September after OIG placed a payhold on our Medicaid billings, we launched a complaint with the Office of Administrative Hearings as we have complied with all facets of Medicaid procedure and are deserving of payment. While that complaint is still moving forward, we have learned a couple of very interesting things.

When the Office of the Inspector General reviewed our cases – they found:

- › no money billed for transportation of patients;
- › no inappropriate treatment of children under the age of 12;
- › no excess visits; and
- › no “unbundling” of services.

What did they find?

They disagreed with our diagnosis of the severity of the child's problem with their teeth. The whole difference was based on the interpretation and application of an orthodontic term “ectopic eruption” in relation to Medicaid pre-authorizations on something called an HLD score – a point system that when totalled shows the cumulative orthodontic problems for a patient. A score of 26 indicates problems sufficient of medical necessity to receive Medicaid funding.

They found an orthodontist who had never taken a Medicaid patient in his entire 40-year career in private practice. He had never done any HLD scoring. Never. And he had never before been an expert witness. Yet he unbelievably said that 84 out of 85 of our cases he reviewed did not qualify for Medicaid.

He was not a board certified orthodontist. And we had one board certified orthodontist and two experienced dentists, one an orthodontist, who had together almost 20 years of cumulative experience making out these HLD forms.

This questioning of professional competence and the ensuing debacle has caused Dr. George Franklin to decide to retire rather than continue to practice with such accusations being made about his professionalism. So Texas has lost a competent professional who will no longer practice in his field. Exactly what our elected representatives didn't want to see.

We hired our own expert, Dr. Jim Orr. Dr. Orr was the former director of the Medicaid dental program under contractor National Heritage Insurance Corporation, the forerunner to TMHP. He was the final authority in that position of approving or disapproving pre-authorizations for child-related Medicaid orthodontic treatment. Dr. Orr had also worked with Health and Human Services for over ten years on investigation of dental fraud.

Dr. Orr disagreed with the scoring in about 10 of our cases. He scored those 10 cases as having less than the 26 required points for pre-approval for Medicaid. But that being said, he scored a number of our cases higher than our doctors did. This shows the subjective nature of the scoring process.

I have included some pictures of children's teeth so that one can look at them and see what these children would have had to live with probably for the rest of their lives. To find that these cases are not handicapping dental problems and a medical necessity to handle is also unbelievable. [SEPARATE PDF FILE ON Texas Medicaid Handicapping Labio-lingual Deviation (HLD) scoring comparison ]

But while Texas Health and Human Services and Medicaid have abandoned these children (wasn't that what the Frew settlement was all about – access to medical and dental services), we will not abandon them.

HFD is taking responsibility for these children. There were good and ethical reasons why we submitted these children for orthodontia claims to Medicaid. And although the state has abandoned them based on its own spurious scoring so it can avoid paying for them, we can't stop treatment as that would be unprofessional and outside our code of ethics.

## CONCLUSION

It appears to me that we are dealing with a State health bureaucracy that has continually shown it can't manage itself and is so innately inept that it relies on the media to bring catastrophic oversights to their attention, even after their own people reported it to them years before. Then in typical knee-jerk fashion, they try to appease their political masters and not appear as incompetent as they really are by going after and extorting without due process the providers of the service they contracted with.

It is almost like a bait-and-switch itself. They say treat Medicaid-eligible children, they approve the cases, and then once the service is given, they say they

shouldn't have approved it and grab their money back, putting some dentists out of business and making others, like Dr. Franklin, decide it is time to retire.

One can only come to this conclusion because there is no evidence that Health and Human Services has cleaned up their house in supervision. They didn't do anything in 2008 even though they were informed about the problem. Where is the public investigation today? Where are the heads rolling? It is just another day at the office for them.

I have a number of suggestions that can be made to improve the system. There needs to be due process for providers which provides fairness in the system. There also needs to be a set of checks and balances that prevents such knee-jerk reactions. Needless to say, I could elaborate.

But with the hardship that this Medicaid debacle places on dentists, honest and ethical like myself being thrown in with uncaring dental chains and crooks, it actually begs the question of why should HFD continue to provide Medicaid-covered dental care. We have been put in a very bad financial position and our reputation and good name is at stake.

It has been said that no one died from crooked teeth.

This is not true. The careers and public respect of successful dental professionals who treat Medicaid patients are being mauled to death.

It is not fair nor just.

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**TAB A**  
**Dr. Villarreal CV**

1214 Dixieland Rd., Suite #4  
Harlingen, TX 78552

Phone (956) 428-5322  
Fax (956) 428-7986  
E-mail Jvillal3@AOL.com

## **Dr. Juan D. Villarreal**

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### **Summary of qualifications**

**Harlingen Family Dentistry**      Harlingen, TX 78552  
1983 – Present  
President / Dentist  
140 Employees  
27,500 sq. ft. state of the art office space

### **Education**

**Harlingen High School**      Harlingen, TX 78552  
1968 – 1971  
High School Diploma

**Valley Baptist Hospital School Of Radiologic Technology**  
Harlingen, TX 78552  
1971 – 1973  
Certificate

**U.S. Army Fort Sam Houston**  
San Antonio, Texas  
Radiation Dosimetry  
1973-1976

**Corpus Christi State University**  
1976 –1978  
B. S. Biology / minor in chemistry

**University of Texas Health Science Center at San Antonio**  
Dental School  
1979—1983  
Doctor of Dental Surgery

**U. S. Army Fort Sam Houston**  
San Antonio, Texas  
Medical Officer Training School  
October 1983

**Continuing Education in Dentistry and Practice Management**  
1983—Present / over 800 hours of CE courses.

**Leadership Harlingen**      1990

**Leadership Valley**      1992

**Hubbard College of Administration International**  
Los Angeles, California  
Management Consultant  
1999—Present

**Professional  
memberships**

**Western Regional Examining Board**  
Examiner

**Northeastern Examining Regional Board**  
Examiner

**Rio Grande Valley Dental Society**

**Texas Dental Association**

**Texas State Board of Dental Examiners**  
Examiner 2001-2008 (Appointed by Governor Perry)  
Secretary of Board 2005-2006

**TSBDE Ad Hoc Committee on Examinations**  
Chair 2003-2004

**TSBDE Enforcement Committee**  
Chair

**TSBDE Legislative Committee**  
Member 2004

**Western Regional Examining Board**  
Examiner 2005-2009

**Northeastern Regional Examining Board**  
Calibration, General Session 2004-2005  
Examiner 2004-2009

**American Dental Association**

**Hispanic Dental Association**  
Member 1990-Present  
President 2002-2003  
Immediate Past President 2003-2004

**Hispanic Dental Association**  
(President ) as of July 2002

**Academy of General Dentistry**

**Harlingen Chamber of Commerce**

**Hispanic Chamber of Commerce**

**Concerned Businessman Association**

**United States Army Specialist 5 1973-1976**

**United States Army Reserves Captain 1976-1984**

**Association For Better Living & Education**  
Founding Member

**Concerned Businessmen Association of America**  
National Chairman Sponsor

**Community  
activities**

**Narconon South Texas**  
Founder  
Benefactor  
Chairman of the Board 2004-Present

**Harlingen Outreach Center**  
Sponsor 2009-Present

**Boy Scouts of America-Friends of Scouting**  
Sponsor 2004-Present

**Harlingen CISD School Trustee**  
Board Member 1992-1998  
Vice-President 1994-1996  
President 1996-1997

**Dawnbreakers Lions Club**  
Member 1984—Present  
Vice-President  
President

**RGV JROTC Scholarships**  
Sponsor 2008-Present

**Leo Club**  
Sponsor

**TSTC Dental Hygiene Advisory Committee**  
Co-Chair

**TSTC Dental Hygiene Scholarship**  
Sponsor 1997- Present

**Harlingen Area Set a Good Example "Mayor's Showcase"**  
Sponsor

**Harlingen Proud**  
Participant

**Gloria Canales School Of Dance**  
Sponsor

**Harlingen High School Scholarships**  
Sponsor 1992- Present

**Harlingen South High School Scholarships**  
Sponsor 1992-Present

**Hispanic Dental Association Dental Scholarship  
For The State Of Texas**  
Sponsor 1994- Present

**Children's Freedom Crusade**  
Past Chairman

**City Of Harlingen Economic Development Board**  
President -2000  
Vice-President 1999  
Secretary -1998, 2003-2004  
Treasure-1998, 2001-2002

**Wells Fargo Advisory Board Committee**  
Board Member - 2005

## **References**

**Vivian Ann Teegardin, D.D.S.**  
**Partner/Associate Dentist**  
1214 Dixieland Road, Suite 4  
Harlingen, TX 7855  
(956) 343-6600

**Joe D. Zayas, D.D.S.**  
555 Boca Chica Blvd.  
Brownsville, TX 78520  
(956) 546-7788

**Tommy Ramirez**  
**CEO Cameron County Juvenile Justice Dept.**  
2310 W. Business Hwy 77  
San Benito, Texas 78586  
(956) 455-8431

## TAB B

Proclamations recognizing  
the community contribution  
of  
Harlingen Family Dentistry

# Proclamation



## Office of the Mayor

WHEREAS, the future is, to a large measure, dependent on the good health of our families, and the children of Cameron County, Texas, and America; and

WHEREAS, according to the Surgeon General's Oral Health Report, dental caries is the most common bacterial infection and childhood disease, 5 times more common than asthma and 7 times more common than hay fever; and

WHEREAS, over 50 percent of 5-9-year-old children have at least one cavity or filling, and that proportion increases to 78 percent by age 17; and

WHEREAS, dental caries results in the loss of 3.6 school days per child per year in the US alone. More than 51 million school hours are lost each year to dental-related illness; and school nurses report a range of oral health problems such as dental caries, gingival disease, malocclusion, loose teeth, and oral trauma in children; and

WHEREAS, oral health is integral to general health; oral health means more than healthy teeth and that you cannot be healthy without healthy teeth; when children's oral health suffers, so does their ability to learn; and

WHEREAS, good dental habits are learned at an early age and reinforced by parents and health care providers throughout childhood help many people maintain good dental health throughout their lives. Harlingen Family Dentistry and the Children's Dental Clinic are advocates for good dental health and preventive oral health education for our families; and

WHEREAS, Harlingen Family Dentistry and the Children's Dental Clinic is dedicated to fulfilling the dental needs of our children and their families and continues to offer to the community the Willy Dental Education Program as a community service. Willy has provided dental health awareness to over 30,000 children through his dental education for schools, day cares, private schools, head starts, and various other organizations.

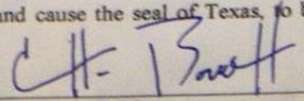
BE IT RESOLVED, that I, Joey Trevino, City Commissioner of the City of Harlingen, Texas, in recognition of Harlingen Family Dentistry and the Children's Dental Clinic's contributions to the health and well-being of our youth by providing dental health awareness and education to our children, do hereby proclaim the month of February 2012, as

## Children's Dental Health Month

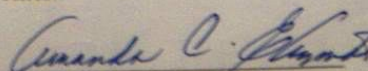
and urge that all citizens and community organizations join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand and cause the seal of Texas, to be affixed the 23<sup>rd</sup> day of February, 2012.



  
Chris Boswell, Mayor

Attest:

  
Amanda C. Elizondo, City Secretary



## PROCLAMATION

### A PROCLAMATION OF THE CITY COMMISSION OF BROWNSVILLE, TEXAS, PROCLAIMING BROWNSVILLE A "SET A GOOD EXAMPLE CITY"

**WHEREAS,** children are this nation's most precious resource and through time our society has cherished values that we recognize as being key to empowering and encouraging our children to be successful adults in their homes, workplaces and communities; and

**WHEREAS,** in order for young Texans to grow up to be healthy and productive adults, they must be provided with proper guidelines for living and support, must be focused and sufficiently grounded with a strong value system, embracing such principles as honor, truth, responsibility, compassion, perseverance, and integrity if they are to successfully meet and excel in life's challenges; and

**WHEREAS,** Concerned Businessman's Association of America (CBAA) recognizes the need for awareness on this issue and, to this end, the CBAA is designating the month of October for a national campaign focused on the importance of common sense moral development; and

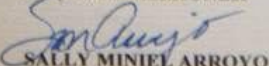
**WHEREAS,** out of concern for our youth in Brownsville, Texas, the CBAA has created the American Set A Good Example contest to help youth educate themselves and their peers in common sense values contained in the book *The Way To Happiness* written by high acclaimed author and humanitarian L. Ron Hubbard; and

**WHEREAS,** sponsored entirely by concerned business people located in every state including Texas, this children's campaign is based on 21 totally secular, common-sense guidelines for living.

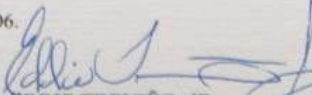
**NOW, THEREFORE, WE THE MEMBERS OF THE CITY COMMISSION** of the City of Brownsville, Texas, by virtue of the authority vested by the Charter of said City, and on behalf of all our citizens, do hereby proclaim Brownsville, Texas, as a "SET A GOOD EXAMPLE" city.

**DONE** this, the 12<sup>th</sup> day of October, 2006.

  
ERNIE L. HERNANDEZ  
CITY COMMISSIONER

  
SALLY MINIEL ARROYO  
CITY COMMISSIONER

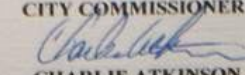
  
CARLOS A. CISNEROS  
CITY COMMISSIONER

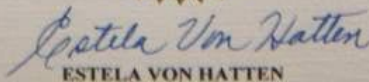
  
EDDIE TREVIÑO, JR.  
MAYOR



  
RICARDO LONGORIA, JR.  
CITY COMMISSIONER

  
EDWARD C. CAMARILLO  
CITY COMMISSIONER

  
CHARLIE ATKINSON  
CITY COMMISSIONER

  
ESTELA VON HATTEN  
CITY SECRETARY



# Proclamation

**WHEREAS,** the children of Harlingen, Texas, and America are the hope of our future, but a silent epidemic of dental and oral diseases is affecting some population groups. When Children's oral health suffers, so does their ability to learn. An estimated 51 million school hours per year are lost because of dental related illness. Poor oral health has been related to decreased school performance, poor social relationships, and less success later in life. School nurses report a range of oral health problems such as dental caries, gingival disease, malocclusion, loose teeth, and oral trauma in children; and

**WHEREAS,** good health can be achieved in part through good dental habits learned early and reinforced throughout life; and

**WHEREAS,** Harlingen Family Dentistry, out of concern for the health of our children and their future, provides dental education and awareness to the Harlingen area public and private schools, head start programs, day care facilities, clubs and church groups; and

**BE IT RESOLVED THAT,** I, Mayor Chris Boswell of the City of Harlingen, Texas, in recognition of Harlingen Family Dentistry's contributions to the health and well-being of our youth by providing dental health awareness and education to our children, do hereby proclaim the month of February, as,

## Children's Dental Health Month

and urge that all citizens and community organizations join in this observance.

**IN WITNESS WHEREOF,** I have hereunto set my hand and cause the seal of HARLINGEN to be affixed on the 1st day of February, 2010.



Chris Boswell, Mayor

Attest:

  
Sylvia R. Trevino, City Secretary

# Proclamation



## Office of the Mayor

- WHEREAS, the future is, to a large measure, dependent on the good health of our families, and the children of Cameron County, Texas, and America; and
- WHEREAS, according to the Surgeon General's Oral Health Report, dental caries is the most common bacterial infection and childhood disease, 5 times more common than asthma and 7 times more common than hay fever; and
- WHEREAS, over 50 percent of 5-9-year-old children have at least one cavity or filling, and that proportion increases to 78 percent by age 17; and
- WHEREAS, dental caries results in the loss of 3.6 school days per child per year in the US alone. More than 51 million school hours are lost each year to dental-related illness; and school nurses report a range of oral health problems such as dental caries, gingival disease, malocclusion, loose teeth, and oral trauma in children; and
- WHEREAS, oral health is integral to general health; oral health means more than healthy teeth and that you cannot be healthy without healthy teeth; when children's oral health suffers, so does their ability to learn; and
- WHEREAS, good dental habits are learned at an early age and reinforced by parents and health care providers throughout childhood help many people maintain good dental health throughout their lives. Harlingen Family Dentistry and the Children's Dental Clinic are advocates for good dental health and preventive oral health education for our families; and
- WHEREAS, Harlingen Family Dentistry and the Children's Dental Clinic is dedicated to fulfilling the dental needs of our children and their families and continues to offer to the community the Willy Dental Education Program as a community service. Willy has provided dental health awareness to over 30,000 children through his dental education for schools, day cares, private schools, head starts, and various other organizations.

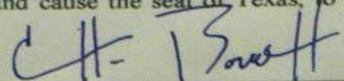
BE IT RESOLVED, that I, Joey Trevino, City Commissioner of the City of Harlingen, Texas, in recognition of Harlingen Family Dentistry and the Children's Dental Clinic's contributions to the health and well-being of our youth by providing dental health awareness and education to our children, do hereby proclaim the month of February 2012, as

## Children's Dental Health Month

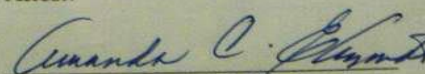
and urge that all citizens and community organizations join in this observance.

IN WITNESS WHEREOF, I hereunto set my hand and cause the seal of Texas, to be affixed the 23<sup>rd</sup> day of February, 2012.



  
Chris Boswell, Mayor

Attest:

  
Amanda C. Elizondo, City Secretary

TAB C

Excerpt of letter  
showing HFD return  
of funds to TMHP

## FILE COPY

MARK D. CHOUTEAU  
512.703.5768 direct  
512.480.5008 direct fax  
[mchouteau@brownmccarroll.com](mailto:mchouteau@brownmccarroll.com)

April 18, 2011

Via Federal Express

Texas Medicaid & Healthcare Partnership  
Financial Department  
12357-B Riata Trace Parkway, Suite 150  
Austin, Texas 78727

RE: Harlingen Family Dentistry  
TPI No. 0096471-01  
NPI No. 1518057488

Dear Financial Department:

Our firm has been retained by Harlingen Family Dentistry ("HFD") to assist it with refunding money back to the Texas Medicaid Program, as a result of newly-discovered overpayments. Specifically, HFD determined that, in some limited situations where a child patient was entitled to both Medicaid benefits and private insurance coverage, HFD inadvertently billed and received payment from both Medicaid and commercial third-party payors. Accordingly, pursuant to Texas Administrative Code, Tit. 1 §354.2321, HFD is refunding \$129,808.11 in duplicate payments received by HFD from commercial health plans, which refund is enclosed herewith by way of an HFD check made payable to TMHP in like amount. The check in the amount of \$129,808.11 was the result of an error in our original spreadsheet, which has been corrected. The correct refund amount is \$129,174.08. We are tendering the check for \$129,808.11 in order to expedite this refund (since it was prepared prior to identifying the error), and we anticipate that TMHP will credit HFD the difference after reconciliation of the claims being refunded. The facts and circumstances regarding this refund are described below.

Austin

• • • •

Dallas

• • • •

Houston

HFD was recently in the process of obtaining a bank loan. As part of the contemplated loan, the bank was to receive a lien on its accounts receivable. As the bank reviewed the accounts receivable as part of its due diligence, the bank had several queries on the accounts. In response to the bank's queries, HFD began the process of auditing its accounts to see if any accounts needed to be written off as losses. It was during the review of these accounts that HFD discovered the duplicate billing mistakes because it identified a number of accounts with otherwise unexplained credit balances. HFD's Quality Control Manager discovered the mistakes on February 18, 2011.

4551605.1  
60071.1

111 Congress Avenue • Suite 1400 • Austin, Texas 78701-4093 • 512.472.5456 • [www.brownmccarroll.com](http://www.brownmccarroll.com)

TAB D  
Except of 2008  
OIG investigation  
into TMHP



# TEXAS

Health and Human  
Services Commission

**Albert Hawkins, Executive Commissioner**

**Office of Inspector General**

**Performance Audit Report  
Texas Medicaid Healthcare Partnership  
Prior Authorization Audit**

**August 29, 2008**

**Bart Bevers, Inspector General**

OIG Report No 08-70-52903191-MA-03J

## DETAILED FINDINGS AND RECOMMENDATIONS

### Finding 1 – Opportunity for Improvement in the Orthodontic Prior Authorization Requests Process

An opportunity for improvement was noted in the documentation review process for orthodontic prior authorization (PA) requests. Currently, not all documentation that supports the Texas Medicaid Program benefits for orthodontic PA requests, approved by the PA dental team, is reviewed. Rules and Regulations governing the orthodontic PA requests include:

- Section 19.18, Orthodontic Services, of the Texas Medicaid Providers Procedures Manual, states “Orthodontic services for cosmetic purposes only are not a benefit of the Texas Medicaid Program. Orthodontic services are limited to the treatment of severe handicapping malocclusion and other special medically necessary circumstances as outlined in Benefits and Limitations...”
- Section 19.18.2, Mandatory Prior Authorization, of the Texas Medicaid Providers Procedures Manual, states “Requests for orthodontic services must be accompanied by all the following documentation:
  - An orthodontic treatment plan...
  - Cephalometric radiograph with tracing models
  - Completed and scored HLD sheet...
  - Facial photographs
  - Full series of radiographs or a panoramic radiograph;...
  - Any additional pertinent information as determined by the dentist or requested by TMHP’s Dental Director...”
- In section 8.9.5, Vendor Responsibilities, of the Request for Proposal, it is stated in PAC-6 that the Vendor must “Research, analyze, and evaluate all PA decisions and ensure all medical facts are considered and documented prior to determination.”
- Additionally, PAC-17 states that the Vendor must “Provide sufficient and adequate professional medical staff for staffing and managing the PA function, including medically knowledgeable PA analysts for processing requests and availability of licensed medical professionals to provide consultative services regarding all Medicaid and CSHCN covered service types...”

To approve an orthodontic PA request the PA dental team members verify the mathematical accuracy of, and ensure that, the Handicapping Labiolingual Deviation (HLD) index score is at least 26. The PA dental team members do not review the additional documentation required per the Texas Medicaid Providers Procedures Manual (TMPPM) and do not have the dental licenses necessary to determine if the additional documentation supports the HLD index score.

TMHP staff did state that under predefined circumstances, approximately 10%<sup>2</sup> of the orthodontic PA requests are referred to, and the documentation reviewed by, the Dental Director. This means

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<sup>2</sup> This percentage has not been audited by OIG. The audit client provided the statistic.

approximately 90% of the documentation for orthodontic PA requests is not being reviewed. Zero of the 18 orthodontic sample items tested were referred to the Dental Director.

The PA dental team members could be approving a portion of orthodontic PA requests that are **not** for the treatment of severe handicapping malocclusion and other special medically necessary circumstances. Dollars paid for orthodontic treatment, for the months of September 2007 through February 2008, were at least \$52.6 million.

**Recommendation:**

TMHP should sample the orthodontic PA requests approved by the PA dental team members. The sample and its documentation should be reviewed by a licensed dental professional to ensure that the orthodontic PA requests meet the criteria for Texas Medicaid Program benefits.

**Management Response:**

TMHP reviews orthodontic prior authorization requests in accordance with the Medicaid administration contract, policies and rules. The contract does not require orthodontic PA requests to be reviewed by a licensed dental professional. **Therefore, the absence of PA reviews by a licensed dental professional does not mean that payments for orthodontic treatment during the audit period of September 2007 through February 2008 were inappropriate.**

PAC-6 and PAC-17 require consideration of documentation to determine medical necessity and adequate management and staffing of the PA function, including medically knowledgeable analysts and *"the availability of licensed medical professionals to provide consultative services."* When a provider submits a PA request according to Section 19.18.2, the request includes a score sheet with preset scoring criteria. According to the currently approved medical policy, a score of 26 or more meets medical necessity for approval. Scores below 26 require the review of a licensed medical professional. In addition, certain high cost items are referred to a licensed medical professional for approval. As noted by the auditors, approximately 10% of the orthodontic PA requests were referred to the Dental Director for consultative services in accordance with the contract. All of the orthodontic PA requests sampled by the auditors that were not referred to the Dental Director achieved a score of 26 or higher in accordance with the policy.

TMHP is willing to add a sample step to this process; however, it may require a change order. TMHP PA will discuss the audit recommendation to sample the orthodontic PA requests approved by the PA dental team members with HHSC. The sample could be added to the current PA process once the scope, resources, methodology and reporting are agreed to by TMHP and HHSC.

**Finding 2 – Prior Authorization Staff Approved Prior Authorization Requests That Were Not in Compliance With the Texas Providers Procedures Manual**

Incorrect Signatures on the HLD Index

PA staff approved two orthodontic PA requests, out of the nine sample items tested (22.2%), with incorrect signatures for the Handicapping Labiolingual Deviation (HLD) Index for the Comprehensive Orthodontic Treatment procedure code D8080. Section 19.18.2, Mandatory Prior Authorization, in the TMPPM states that "Requests for orthodontic services must be accompanied by all the following documentation: ... Completed and scored HLD sheet with diagnosis of Angle class (26 points required

TAB E

Relevant sections of  
written presentation points given to  
the Texas Senate Committee  
on Health and Human Services



## **Presentation to the Senate Health and Human Services Committee**

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**Thomas M. Suehs, Executive Commissioner**

**Billy Millwee, Deputy Executive Commissioner  
for Health Services Operations**

**Douglas Wilson, Inspector General**

**March 20, 2012**



## **Medicaid Orthodontia Claims: Background**

- Concerns have been raised about the high utilization of Texas Medicaid orthodontia services.
- Allegations have been about both Medicaid policies and management of the prior authorization process by TMHP.

## Medicaid Orthodontia Claims: Prior Authorization Management

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- HHSC contracts with TMHP for Medicaid claims administration activities (including processing claims, enrolling providers, etc.)
- HHSC reviewed TMHP's prior authorization evaluation process and identified areas where improvement was necessary:
  - Review and retention of clinical information.
  - Collection of additional clinical information.
  - Employment of sufficient and qualified staff.

Page 20

## Medicaid Orthodontia Claims: Prior Authorization Management

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- TMHP has already made staffing changes.
  - In September 2011, TMHP terminated the former dental director.
  - TMHP hired a new dental director, four orthodontists, and additional staff within the dental prior authorization unit.
- HHSC is addressing performance issues through contract requirements.

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## TAB F

Relevant sections of webinar  
presentation by Deputy  
Inspector General showing  
targeting of top income earners  
for investigation



### CAF Holds

- Now identified at Intake phase as well as full scale investigation
- Result: fewer non-recoupable dollars



## Model T Investigations

- Identify top 25 or top 50 utilizers in problem areas
- Assign teams of investigators to handle all cases in an initiative area
  - Same investigators, same type of case
- Results: increasing speed and accuracy



## DME

- Statewide sweep of 5,800 DMEs
- Goal: Identify clearly fraudulent providers while complying early with ACA requirements



TAB G  
2010 article regarding  
Jack Stick, current Deputy  
Inspector General for Enforcements  
OIG, HHSC

## Tickets dismissed - for the right price

### State shorted money by unusual Bee Cave practice

Updated: Thursday, 20 May 2010, 6:28 PM CDT  
Published: Thursday, 20 May 2010, 5:52 PM CDT

BEE CAVE (KXAN) - The following are not words usually used to describe traffic court:

"Weird."

"Odd."

"Crazy."

But that's what several defendants said about their experience appearing before Bee Cave Municipal Court Judge Jack Stick.

One driver cited for Disobeying a Warning Sign said the prosecutor offered a plea agreement of a \$50 fine plus \$97 court costs, but said it would be up to the judge to make the final decision.

As the driver approached the bench, he recognized the bailiff as the same officer who had written his ticket. The events that followed, he found strange:

After he explained what happened, the judge leaned back and had a conversation with the bailiff. He says Stick turned back to him and asked, "What do you think is a fair fine?"

After the two discussed various amounts, he says the judge responded: "Here's an option. Go make a \$40 donation to the city, and I'll dismiss the whole thing." That sounded like a better deal than what the prosecutor was offering, so he complied. And \$40 later, his case was dismissed.

In another case, motorist Alex Masri said that after listening to his wife's case, Stick asked if he had \$100. He says the judge told them, "Well, go make a donation to the city, and come back in and sit down." That's what they did. He says that shortly after returning to the courtroom, the judge called them back to the bench and told them he'd decided to dismiss the case.

Attempts to get city officials on record for this story were unsuccessful - and Stick, a former state representative, declined to be interviewed. But records show that officials believe something is amiss.

Court files show that the city has refunded at least some of those donations made by court defendants. And city officials have hired a municipal court consultant to conduct an investigation in Stick's actions. A judge in the Houston area has been reprimanded for similar conduct, and a complaint against Stick is pending in connection to this activity.

Donald Schulick was pulled over and cited for an obscured license plate. Court files show the prosecutor offered him a plea agreement of a \$30 fine plus \$64 in court costs. Instead, Schulick made a \$30 donation to the City of Bee Cave and his case was dismissed.

Municipal judges have the power to dismiss a ticket for an obscured license plate, if the problem is corrected before the court date. But according to the Texas Transportation Code, the fee assessed cannot exceed \$10.

Which means that Schulick paid three times what he may have been able to pay for the same dismissal.

A state official says that in at least one case - that of a commercial driver - his actions may be outside the law.

Advertisement



For John Jordan, making a donation allowed him to get a deal that kept his speeding ticket off his record. He made a \$200 donation to Bee Cave and was told if he submitted an affidavit that he hadn't committed any new violations, his case would be dismissed.

Under normal circumstances, that would be called a deferred disposition. However, because Jordan holds a commercial drivers license, that is not an option - basically because dismissing tickets means that violation doesn't go on his CDL record.

"Federal regulations prohibit commercial drivers license holders from getting deferred dispositions or taking defensive driving to dismiss a ticket, whether they are in their personal owned vehicle or whether they are in their 18 wheelers," said Tela Mange, DPS spokesperson.

When deferred disposition is granted, the defendant is still assessed a fine and court costs. But in situations like Jordan's, court costs are not collected and forwarded to the Texas State Comptrollers Office - and the state loses money, at a time when Texas faces an \$11 billion budget shortfall.

Six months after making the deal with the City of Bee Cave court, Jordan submitted a sworn affidavit saying he had not received any moving violations during that time. In his letter accompanying the affidavit, he does admit he was cited for a log book violation at a check point in Refugio. He wrote to the court that he was required to park his trailer for eight hours before returning to duty.

Even so, the court dismissed his speeding ticket - and refunded his \$200.

TAB G-1  
2012 Texas Tribune  
article regarding the  
arrest for DWI of  
Jack Stick, current Deputy  
Inspector General for Enforcements  
OIG, HHSC

## HHSC Deputy Inspector General Arrested on DWI Charge

by [Emily Ramshaw](#) | October 18, 2012



photo by: Erich Schlegel

Jack Stick, a former Austin state representative, past municipal judge and current deputy inspector general for the [Texas Health and Human Services Commission](#), was arrested Sept. 11 and charged with driving while intoxicated, according to incident reports obtained from the Austin Police Department.

HHSC spokeswoman Stephanie Goodman confirmed the arrest.

"He notified his boss of the situation immediately and that he had taken a blood test," Goodman said. "At this time, we're still awaiting those test results. Once we get

the results, we'll decide if any personnel action is necessary."

The APD incident report says Stick was arrested in downtown Austin at 10:44 p.m. after leaving a steakhouse.

Stick, who has been with HHSC's Office of Inspector General since last year, has helped oversee a spike in [Medicaid fraud cases](#) that has won glowing reviews from state lawmakers and cast Texas' innovative enforcement team into the national spotlight.

But the strategies he has helped employ, including increased reliance on a rule that allows investigators to freeze financing for any health care provider accused of overbilling, have angered doctors, dentists and other providers who treat Medicaid patients.