

Services in the Health Care Delivery Management Administration of the District of Columbia Department of Health, explains the reasons that led to an investigation of the original data reported, the process utilized to determine the updated data, and the reasons that the original data reported were inaccurate. ECF No. 2172-2.

On August 9, 2016, after plaintiffs filed a reply brief in support of their Motion to Enforce the Dental Order, defendants filed a Revised Opposition to Plaintiffs' Motion to Enforce the Dental Order of October 18, 2004 ("Revised Opposition") in order "to correct the dental utilization percentages in light of the District's revised CMS-416 for the 2015 Fiscal year, submitted to the Court on August 9, 2016." ECF No. 2173. Defendants also filed a Revised Declaration of Colleen Sonosky in Support of the District of Columbia's Opposition to Plaintiffs' Motion to Enforce Dental Order of October 18, 2004. ECF No. 2173-1. In her revised declaration, Ms. Sonosky provides updated data directly relevant to three performance goals in the Dental Order.¹

First, Ms. Sonosky states that in fiscal year 2015, the percentage of children between the ages of 3 and 20 receiving preventive dental services was 57.38%. *Id.*, para. 28. In her original declaration, Ms. Sonosky stated that 52% of children in this age group received preventive dental services in fiscal year 2015. ECF No. 2142-1, para. 28. Thus, rather than a four percent decrease in performance from the previous fiscal year, in which 56.32% of children ages 3 to 20 years

¹ Paragraph 2(e)(iv) of the Dental Order requires that no later than September 30, 2007, "[a]t least **70 percent** of all EPSDT-eligible 8-14 year olds receive protective sealants on their permanent teeth" (emphasis in original). ECF No. 1033. Paragraph 2(e)(v) of the Dental Order requires that no later than September 30, 2007, "[a]t least **80 percent** of EPSDT-eligible 3 years of age and older receive 'any dental services' as reported in line 12a of the CMS Form 416" (emphasis in original). *Id.* Paragraph 2(e)(vi) of the Dental Order requires that no later than September 30, 2007, "[a]t least **80 percent** of EPSDT-eligible 3 years old and older receive 'preventive dental services' as reported in line 12b of the CMS Form 416" (emphasis in original). *Id.*

received preventive dental services, defendants made an almost one percentage point improvement in the provision of preventive dental services in fiscal year 2015. *Id.*

Second, Ms. Sonosky states that in fiscal year 2015, the percentage of children ages 6 to 14 years receiving at least one sealant was 22.67%. ECF No. 2173-1, para. 28. In her original declaration, Ms. Sonosky stated that 19.58% of children in this age group received at least one sealant in fiscal year 2015. ECF No. 2142-1, para. 28. Here again, rather than a decrease in performance from the previous fiscal year, in which 20.54% of children ages 6 to 14 years received a dental sealant, defendants made a two-percentage point improvement in the provision of sealants in fiscal year 2015. *Id.*

Third, Ms. Sonosky states that in fiscal year 2015, the percentage of children ages 3 to 20 years receiving any dental services was 61.38%. ECF No. 2173-1, para. 28. In her original declaration, Ms. Sonosky stated that 56.50% of children in this age group received “any dental services,” as reported in Line 12(a) of the CMS Form 416. Once again, rather than a four percent decrease in performance from the previous fiscal year, in which 60.51% of children ages 3 to 20 years received any dental service, defendants made an almost one percentage point improvement in the provision of any dental services in fiscal year 2015. *Id.*

In their Revised Opposition, as in their original opposition, defendants argue that the goals proposed by plaintiffs for preventive and other dental services are not attainable. Def. Revised Opp. 15; Def. Opp. 15. However, the revised FY 2015 data show that the District is no longer regressing and has the capacity to continue making improvements. It also demonstrates that defendants are closer than previously thought to attaining both the interim and the long-term goals in the Dental Order by September 30, 2017, and September 30, 2020, respectively, as plaintiffs propose. *See Modified Proposed Order*, ECF No. 2165-1, paras. 2, 5.

However, as we show in our reply brief (ECF No.2165, pp. 5-23), Court intervention is needed to enforce the 2004 Dental Order and compel all necessary actions to be taken to reach the goals in the Dental Order by plaintiffs' proposed date of September 30, 2020 (the Dental Order requires compliance with the goals by September 30, 2007). Ms. Sonosky's recent declaration accompanying defendants' revised FY 2015 CMS Form 416 supports this position. In her declaration, Ms. Sonosky explains that the District undertook an internal inquiry into the reasons for the decline in performance and that "CMS too inquired about the reasons for the decline and set up a conference call with DHCF on June 6, 2016." ECF No. 2172-2, para. 6. Ms. Sonosky further states that "for DHCF's own internal review and to prepare for the CMS call" the District of Columbia "analyzed and compared dental data from the MCO-specific CMS-416s with the MCO-specific dental data contained in MMIS [Medicaid Management Information System]." Thus, although the District had begun its own inquiry, it was the conference call with the federal government that appears to have prompted a detailed investigation into the reliability of the data reported by the MCO's. Therefore, the District is more likely to promptly take the necessary actions to obtain reliable data and reach the goals in the Dental Order when it is held accountable by outside entities, such as the federal government and this Court.

For these reasons and for those set forth in Plaintiffs' Motion to Enforce the Dental Order of October 18, 2004, plaintiffs submit that the Court should enter an order enforcing the Dental Order.

Respectfully submitted,

/s/ Zenia Sanchez Fuentes

BRUCE J. TERRIS, Bar #47126
KATHLEEN L. MILLIAN, Bar #412350
LYNN E. CUNNINGHAM, Bar #221598
ZENIA SANCHEZ FUENTES, Bar #500036
Terris, Pravlik & Millian, LLP
1121 12th Street, N.W.
Washington, DC 20005-4632
(202) 682-2100, ext. 8484

Counsel for Plaintiffs

August 16, 2016