



Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

Official Audit Report – Issued May 26, 2022

Office of Medicaid (MassHealth)—Review of Claims Submitted by Dr. Nicholas Franco

For the period July 1, 2015 through December 31, 2020





Commonwealth of Massachusetts
Office of the State Auditor
Suzanne M. Bump

Making government work better

May 26, 2022

Nicholas Franco, DMD
3 Meridian Street
East Boston, MA 02128

Dear Dr. Franco:

I am pleased to provide you with my office's performance audit of Medicaid claims you have submitted to MassHealth. This report details the audit objectives, scope, methodology, findings, and recommendations for the audit period, July 1, 2015 through December 31, 2020. My audit staff discussed the contents of this report with you, and your comments are reflected in this report.

I would also like to express my appreciation for the cooperation and assistance you provided to my staff during the audit.

Sincerely,

A handwritten signature in blue ink, appearing to read "SMBump".

Suzanne M. Bump
Auditor of the Commonwealth

cc: Joan Senatore, Director of Compliance, Executive Office of Health and Human Services

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LIST OF ABBREVIATIONS

ADA	American Dental Association
BSI	Bureau of Special Investigations
CMR	Code of Massachusetts Regulations
MMIS	Medicaid Management Information System
OSA	Office of the State Auditor

EXECUTIVE SUMMARY

The Office of the State Auditor (OSA) receives an annual appropriation for the operation of a Medicaid Audit Unit to help prevent and identify fraud, waste, and abuse in the Commonwealth's Medicaid program. This program, known as MassHealth, is administered under Chapter 118E of the Massachusetts General Laws by the Executive Office of Health and Human Services, through the Division of Medical Assistance. Medicaid is a joint federal-state program created by Congress in 1965 as Title XIX of the Social Security Act. At the federal level, the Centers for Medicare & Medicaid Services, within the United States Department of Health and Human Services, regulate Medicaid services and work with state governments to administer state Medicaid programs.

OSA has conducted an audit of MassHealth claims for dental services paid to Dr. Nicholas Franco for the period July 1, 2015 through December 31, 2020. During this period, MassHealth paid Dr. Franco \$3,464,028 for 62,426 claims for dental services provided to 1,866 MassHealth members. The purpose of this audit was to determine whether Dr. Franco properly billed MassHealth for dental services and maintained documentation in members' dental records to support the services.

The audit was initiated as the result of a referral from OSA's Bureau of Special Investigations (BSI). BSI is charged with investigating potential fraudulent claims or wrongful receipt of payment or services from public assistance programs. BSI conducted data analytics of Dr. Franco's claims that identified potential improper payments.

The audit was conducted as part of OSA's ongoing independent statutory oversight of the state's Medicaid program. Several of our previously issued audit reports disclosed weaknesses in MassHealth's claim processing system and improper billing practices by MassHealth providers, which resulted in millions of dollars in potentially improper payments. As with any government program, public confidence is essential to the success and continued support of the state's Medicaid program.

Below is a summary of our finding and recommendations, with links to each page listed.

Finding 1 Page 8	Dr. Franco had inadequate documentation to support at least \$2,528,147 in dental claims.
Recommendations Page 9	<ol style="list-style-type: none"><li data-bbox="440 388 1458 472">1. Dr. Franco should collaborate with MassHealth to determine how much of the \$2,528,147 in unallowable dental claims should be repaid.<li data-bbox="440 472 1458 609">2. Dr. Franco should establish policies and procedures to ensure that all claims are properly documented according to MassHealth regulations and American Dental Association guidelines.

OVERVIEW OF AUDITED ENTITY

Under Chapter 118E of the Massachusetts General Laws, the Executive Office of Health and Human Services, through the Division of Medical Assistance, administers the state’s Medicaid program, known as MassHealth. MassHealth provides access to healthcare services for approximately 1.8 million eligible low- and moderate-income children, families, seniors, and people with disabilities annually. In fiscal year 2020, MassHealth paid healthcare providers more than \$17 billion, of which approximately 50% was funded by the Commonwealth. Medicaid expenditures represented approximately 39% of the Commonwealth’s total fiscal year 2020 budget of approximately \$43 billion.

According to Section 420.421 of Title 130 of the Code of Massachusetts Regulations (CMR), MassHealth pays for medically necessary dental services provided to its members. Dr. Nicholas Franco is a dentist; a certified MassHealth dental service provider; and the owner of East Boston Dental Associates, which employs other dental service providers. Dr. Franco received a total of \$3,464,028 for dental services provided to MassHealth members during the audit period:

Fiscal Year	Number of Members Served	Number of Claims	MassHealth Payments
2016	939	13,049	\$ 745,717
2017	881	13,262	737,210
2018	828	11,723	655,226
2019	767	10,715	587,567
2020	625	9,174	495,062
2021*	460	4,503	243,246
Total	<u>4,500[†]</u>	<u>62,426</u>	<u>\$ 3,464,028</u>

* This row only includes the first six months of fiscal year 2021 (July 1, 2020 through December 30, 2020).

† The unduplicated number of members served is 1,866.

Dental Services

The services provided by dentists to eligible MassHealth members include diagnosing, treating, and managing tooth disorders. MassHealth instructs providers to use specific procedure codes to bill for dental services, such as radiographic, diagnostic, preventive, restorative, endodontic, periodontal, and prosthodontic services. During the audit period, Dr. Franco provided the following types of dental service to MassHealth members.

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- **Diagnostic:** These services include oral evaluations, which members may receive at least twice per calendar year. Members may also receive evaluations that are limited to specific oral health problems or complaints.
 - **Preventive:** These services include cleaning teeth, applying fluoride or sealants, and inserting space maintainers when a premature tooth loss may lead to loss of arch integrity.
 - **Restorative:** These services include tooth restorations, crowns, posts, and cores.
 - **Endodontic:** These services include pulpotomies (surgical removal of a portion of the innermost layer of the tooth) and root canals.
 - **Prosthodontic:** These services include dentures and partial plates.
 - **Radiographic:** These services include radiographs and diagnostic imaging taken as an integral part of diagnosis and treatment planning.

MassHealth pays for dental services only when there is complete documentation in the member's dental record, and dentists are required to retain documentation for each member for a minimum of four years after the last date of service. MassHealth has promulgated regulations regarding the documentation requirements for members' dental records. Specifically, 130 CMR 420.414(B) requires the following to be documented:

- 3. the date of each service;*
- 4. the name and title of the individual servicing provider furnishing each service . . .*
- 5. pertinent findings on examination and in medical history . . .*
- 8. a complete identification of treatment . . .*
- 9. dated digital or mounted radiographs, if applicable.*

The required documentation of pertinent findings on examination and medical history includes, but is not limited to, patient complaints and resolutions, progress and treatment notes, and diagnostic records.

AUDIT OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Section 12 of Chapter 11 of the Massachusetts General Laws, the Office of the State Auditor (OSA) has conducted a performance audit of certain claims by Dr. Nicholas Franco for the period July 1, 2015 through December 31, 2020.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Below is our audit objective, indicating the question we intended our audit to answer, the conclusion we reached regarding the objective, and where the objective is discussed in this report.

Objective	Conclusion
Did Dr. Franco bill MassHealth for dental services in accordance with Sections 420.414(B) and 450.205(D) of Title 130 of the Code of Massachusetts Regulations (CMR) and the “How to Write in the Record” section of the American Dental Association’s (ADA’s) publication <i>Dental Records</i> ?	No; see Finding <u>1</u>

To achieve our objective, we gained an understanding of the internal control environment related to the objective by conducting inquiries with Dr. Franco. In addition, we performed the following procedures to obtain sufficient, appropriate audit evidence to address the audit objective.

We selected a statistical, random sample of 131 claims (totaling \$6,633) from the population of 50,101 claims (totaling \$2,857,072) for services that occurred on days we considered “impossible” (containing more than 12 hours worked). We had narrowed the population of claims to those for “impossible” days because this is a high-risk area; we determined which days were “impossible” by using durations associated with certain dental procedure codes to determine the number of hours worked per day. To select the sample, we used an expected error rate of 50%, a desired precision rate of 15%, and a confidence level of 90%. We reviewed patient records for the claims to determine whether the claims were documented in accordance with 130 CMR 420.414(B) and 450.205(D), as well as the “How to Write

in the Record” section of *Dental Records*. Specifically, we determined whether each patient record included the following, as required by 130 CMR 420.414(B):

1. *the member’s name, date of birth, and sex;*
2. *the member’s identification number;*
3. *the date of each service;*
4. *the name and title of the individual servicing provider furnishing each service, if the dental provider claiming payment is not a solo practitioner;*
5. *pertinent findings on examination and in medical history;*
6. *a description of any medications administered or prescribed and the dosage given or prescribed;*
7. *a description of any anesthetic agent administered, the dosage given, and the anesthesia flowsheet;*
8. *a complete identification of treatment including, when applicable, the arch, quadrant, tooth number, and tooth surface;*
9. *dated digital or mounted radiographs, if applicable; and*
10. *copies of all approved prior authorization requests or the prior-authorization number.*

In addition, during our review of patient records, we inspected the documentation for alterations (such as text that had been “whited out” with correction fluid or crossed out).

Data Reliability Assessment

We obtained data from the state’s Medicaid Management Information System (MMIS) for testing purposes. To test the reliability of the data, we relied on the work performed by OSA in two separate projects, completed in 2015 and 2019, that tested certain information system controls in MMIS. As part of these projects, OSA interviewed knowledgeable MassHealth officials about the data, reviewed existing information, and tested selected system controls. Additionally, we performed validity and integrity tests on all claim data from the audit period, including (1) testing for blank fields, (2) scanning for duplicate records, (3) looking for dates outside the audit period, and (4) determining that each tooth had a required associated number. We also selected a judgmental sample of 30 hardcopy supporting documents (such as patient records) and traced the information from them to MMIS data (such as member first names, member last names, and dates of service) for agreement. Additionally, we selected a judgmental sample

of 30 claims from MMIS and traced them to hardcopy supporting documents (such as patient records) for agreement. In our review of these data, we found one exception, which we discuss in [Finding 1](#). Based on these procedures, we determined that the data obtained were sufficiently reliable for the purposes of our audit.

DETAILED AUDIT FINDINGS WITH AUDITEE'S RESPONSE

1. Dr. Nicholas Franco had inadequate documentation to support at least \$2,528,147 in dental claims.

During our audit period, Dr. Nicholas Franco did not have adequate documentation to support at least \$2,528,147 in dental claims. The documentation was illegible, was altered, did not contain necessary information, or was missing from patient records. The lack of documentation and altered documentation call into question whether all of the services were necessary or delivered.

We extrapolated the test results from our sample of patient records to the population of "impossible" days. Based on this testing, we are 90% confident that the minimum amount of the overpaid dental claims (the lower limit) was \$2,528,147 and the maximum amount (the upper limit) was \$2,586,525. Our review of patient records indicated that none of the 131 sampled claims had adequate documentation. Specifically, records did not contain details of treatment; pertinent findings about dental conditions; the name and title of the individual service provider; and dated digital or mounted radiographs, when applicable. Also, 3 sampled claims did not include dates of service for procedures, and one patient record could not be located. In addition, documentation for 59 of the 131 sampled claims had been altered using correction fluid; most of these alterations were to dates of service.

Authoritative Guidance

According to Section 420.414(B) of Title 130 of the Code of Massachusetts Regulations (CMR),

Payment by the MassHealth agency for dental services listed in 130 CMR 420.000 includes payment for preparation of the member's dental record, including electronic dental records. Services for which payment is claimed must be substantiated by clear evidence of the nature, extent, and necessity of care provided to the member. For all claims under review, the member's medical and dental records determine the appropriateness of services provided to members. The written dental record corresponding to the services claimed must include, but is not limited to . . .

- 3. the date of each service;*
- 4. the name and title of the individual servicing provider furnishing each service, if the dental provider claiming payment is not a solo practitioner;*
- 5. pertinent findings on examination and in medical history . . .*
- 8. a complete identification of treatment, including, when applicable, the arch, quadrant, tooth number, and tooth surface;*

9. *dated digital or mounted radiographs, if applicable.*

MassHealth also requires providers to fulfill the recordkeeping and disclosure requirements in 130 CMR 450.205(D):

All records including, but not limited to, those containing signatures of medical professionals authorizing services, such as prescriptions, must, at a minimum, be legible and comply with generally accepted standards for recordkeeping within the applicable provider type as they may be found in laws, rules, and regulations of the relevant board of registration, professional treatises, and guidelines and other information published, adopted, or promulgated by state or national professional organizations and societies.

In 2010, the American Dental Association's (ADA's) Council on Dental Practice and Division of Legal Affairs published *Dental Records*, which was intended to provide useful information about such records. The "How to Write in the Record" section of the document states,

*There are times when it is necessary to make a correction. There is nothing wrong with a correction if handled properly. Some state laws may allow you to simply cross out the wrong entry with a thin line, and make the appropriate change. Date and initial . . . each change or addition. **Never obliterate an entry.** Do not use markers or white-out. The important factor is that you must be able to read the wrong entry.*

Reason for Issue

Dr. Franco did not have policies and procedures to ensure that all claims were properly documented according to MassHealth regulations and ADA guidelines.

Recommendations

1. Dr. Franco should collaborate with MassHealth to determine how much of the \$2,528,147 in unallowable dental claims should be repaid.
2. Dr. Franco should establish policies and procedures to ensure that all claims are properly documented according to MassHealth regulations and ADA guidelines.

Auditee's Response

1. *As stated in your draft . . . dentists are required to retain documentation for each member for a minimum of four years after the last date of service. But you audited me back to July 1, 2015; almost seven years ago. Surely, a great number of the patients, in the early part of the audit, have not been seen for at least four years since their last visit. I would imagine a lot of them haven't been seen since their last appointment in the first two and a half to three years of the audit. Also, some of them may have only been seen once or twice in that two and a half to three year gap and are no longer patients of our office or even passed away.*

2. *Looking at the graph . . . under "Overview of Audited Entity" you can see that the "Number of Members Served", the "Number of Claims" and the "MassHealth Payments" has gone down dramatically since 2015 (Almost seven years ago). So by going back almost seven years in claims has made what you have determined what our overpayment was to be a lot larger than it would have been going back only the four years as you initially stated that I was required to maintain the records for.*

3. *After reading Sections 420.414(B) and 450.205(D) of Title 130 of the Code of Massachusetts Regulations and "How to Write in the Record" section of the American Dental Association's publication Dental Records. I was surprised to learn all that was required to comply with those standards of information that needed to be included when filling out a record. We were never taught about this forty-five years ago. Forty-five years ago we were mainly concerned with treatment and quality of dental care we afforded our patients and, sorry to say, not all the now needed record documentation after the treatment was performed. At that time, we were instructed to address only services that were performed on the date of treatment and not such a complete narrative of everything done at the visit. Also, when we were involved in an audit by DentaQuest in the summer of 2012 concerning the dental services provided to MassHealth members there was no concern or problem with our record keeping at that time so what has changed since that time? When did the regulations or need of further notations change?*

4. *I need to question what is considered an "impossible" day. [An audit team member] sent me a source of "the duration associated with certain dental procedure codes" provided by Cigna Dental Care from 2016. In my opinion, most of the times stated to perform certain procedures is very over generous with maybe a few of the estimates being vastly overstated. I also have a problem with the fact that there were no parameters stated as to how the estimates were obtained. Were they estimated by work done as a solo dentist on his own or with a fully trained dental assistant by his/her side. Allowing 120 minutes for any type of a crown is in my opinion is an hour to an hour and fifteen minutes too long. Just to give you some insight into my pre pandemic dental operations I will offer you this:*

I have a total of six dental operatories in my office.

Three of the operatories are fully stocked with instruments and supplies that enable me to perform any services that any General Dentist is able to perform with one Dental assistant assigned for each room.

All three of the assistants were able to go over medical histories, take radiographs, perform four-handed dentistry, suction, perform gingival retraction, take impressions, make temporaries, pour models, process and sterilize instruments etc. just to mention some of their daily duties to make my day easier and provide me with additional time to provide more patient treatment.

The other three chairs were used primarily for emergency appointments, follow up appointments and for an occasional Dental Hygienist to use every now and again.

In summing up, when using the duration associated with certain procedure codes provided I have calculated a few theoretical days. The number of patient procedures performed during what is considered an "impossible" day, twelve hours, equates to approximately twelve patients visits per day if we did not perform multiple procedures on any one of them. Divide twelve patients by three assistants it comes to four patients being seen by each assistant per day. So it's very feasible to perform more procedures per day and in no way "impossible" to do.

5. *The statement that "1 patient record that could not be located" was incorrect, sorry to say, was due to a clerical error by your audit team. There was no missing record; the unlocated record in question did not even exist. One of our [patients'] names was listed twice on the one hundred records requested list by mistake . . . [and] was in fact the same person seen on the two dates of service in question. Thus basically driving us crazy looking for a record that didn't exist until we realized their mistake that in fact the patient had been listed twice under two different names. We also notified the audit team of this oversight in a letter dated November 1, 2021 [and] they concurred with our assessment of the situation and told us that they would take care of it. . . . We even offered to supply another patient record to replace it and they told us that it wasn't necessary and it wouldn't be a problem. . . .*
7. *We have just concluded a retrospective utilization and peer review audit performed by DentaQuest, LLC (Case Number: 05258417) that was initiated on March 16, 2021 . . . for the dates of service 08/01/2019 to 01/31/2021 which overlapped your audit period for five months (08/01/2019 to 12/31/20). They also concurred with your assessment of our record keeping and we have already taken steps to ensure that all claims are properly documented according to MassHealth regulations and American Dental Association guidelines which you also have addressed in your audit. Furthermore, MassHealth has already been paid back . . . in full the monies that they deemed appropriate that we owed after the audit of that time period, (08/01/2019 to 01/31/2021), in question.*

Auditor's Reply

Dr. Franco states that some of the claims we reviewed were more than four years old, which exceeds the record retention period cited in our report, and suggests that this may be the reason there is some missing documentation. However, Dr. Franco did not indicate that he had determined that any of the sampled claims the Office of the State Auditor (OSA) reviewed fell outside this record retention period. Although our report does cite one regulation that requires dentists to retain documentation for each member for a minimum of four years after the last date of service, another regulation, 130 CMR 450.205(G), establishes a longer (six-year) retention period:

Notwithstanding any regulatory or contractual provisions that may provide for a shorter retention period, all records described in 130 CMR 450.204 and 450.205 must be kept for at least six years after the date of medical services for which claims are made or the date services were prescribed,

or for such length of time as may be dictated by the generally accepted standards for recordkeeping within the applicable provider type, whichever period is longer.

Further, these regulations establish the minimum record retention period for MassHealth providers and are not meant to relieve a provider of the responsibility of maintaining adequate documentation to support all billing to MassHealth, which MassHealth regulations require regardless of the length of time involved. In addition, as noted above, Dr. Franco was able to provide OSA with all but one of the patient records requested. The claim associated with the missing patient record had a date of service in 2018, well within the cited record retention period, and therefore should have been available for OSA's review. Also as noted above, the patient records Dr. Franco did provide were missing information, such as details of treatment; pertinent findings about dental conditions; the name and title of the individual service provider; and dated digital or mounted radiographs, when applicable. Given that Dr. Franco retained all the patient files and that the missing documentation varied from file to file, it was obvious to us that this was not an issue related to record retention, but rather an issue with Dr. Franco and his staff not properly documenting various types of required information in each patient's record.

Dr. Franco states that after reading 130 CMR 420.414(B) and 450.205(D), "I was surprised to learn all that was required to comply with those standards of information that needed to be included when filling out a record. We were never taught about this forty-five years ago." We are concerned about this statement because it appears that this may be the first time Dr. Franco has read this regulation; every MassHealth service provider is required to be aware of, and comply with, all current MassHealth regulations and other applicable authoritative guidance. Further, the requirement of maintaining complete and accurate patient documentation is a longstanding integral part of dental patient care. For example, the ADA publication *Dental Records* provides the following points about complete recordkeeping:

*First, it can contribute to providing the best possible **care for the patient**. Patient records document the course of treatment and may provide data that can be used in evaluating the quality of care that is provided to the patient.*

*Records also provide a **means of communication** between the treating dentist and any other doctor who will care for that patient. Complete and accurate records contain enough information to allow another provider who has no prior knowledge of the patient to know the patient's dental experience in your office.*

Dr. Franco also asks in his response when MassHealth's regulations changed to require this type of documentation. The regulations have remained essentially unchanged since 2010, well before the audit

period; therefore, Dr. Franco should have been aware of, and complied with, all the documentation requirements therein.

Dr. Franco also states that his last audit, by DentaQuest in summer 2012, did not identify any problems with his recordkeeping. Since we were not provided with a copy of this audit, we cannot comment on the scope of the work DentaQuest conducted or any conclusions DentaQuest may have reached based on its audit work. Our concern is that, during our audit period, Dr. Franco and his staff did not maintain all the required documentation to support his bills to MassHealth; we have made recommendations to address this problem. Dr. Franco states that in 2021, DentaQuest completed an audit of his business that found similar recordkeeping problems to the ones OSA identified; this substantiates our findings.

Dr. Franco questions what is considered an “impossible” day. We did not use the definition of “impossible days” to determine whether the claims Dr. Franco submitted for such days were questionable. Rather, as stated in the “Audit Objectives, Scope and Methodology” section of this report, we deemed “impossible” days a high-risk area and therefore used them as the population of days from which to select our statistical sample. As noted above, for claims to be reimbursable, providers such as Dr. Franco must properly document the services provided in accordance with MassHealth regulations. This was the requirement we used to test the claims in our sample and find issues with all 131 claims tested. In addition, with regard to Dr. Franco’s discussion of dental assistants, the entire population of claims from which we drew our sample had Dr. Franco listed as the sole service provider.

Regarding one record, Dr. Franco states, “There was no missing record; the unlocated record in question did not even exist. One of our [patients’] names was listed twice on the one hundred records requested list by mistake.” This is incorrect. The patient with the missing record is separate from the patient who was listed twice. Dr. Franco was paid for dental services provided to the patient whose record was missing, and no supporting documentation was provided. There was another patient who was listed twice, under slightly different names and different member identification numbers, in our sample of 131 claims. OSA acknowledged in an email to Dr. Franco dated October 26, 2021 that the names belonged to the same person and the difference in names was a middle initial. However, this patient received dental services on two different dates of service and represented two different claims in our sample.

MassHealth Response

- 1. MassHealth agrees with the OSA's first recommendation that Dr. Franco should collaborate with MassHealth as it determines the amount of overpayments due. Specifically, MassHealth will review the 131-claim sample that the OSA reviewed for this audit. Assuming MassHealth agrees with the OSA that these claims constitute overpayments based on violations of MassHealth regulations, MassHealth will recoup the overpayments which resulted from these claims and will also impose appropriate sanctions. However, while MassHealth is very concerned by the findings of the [OSA's] report, MassHealth does not believe it would be appropriate at this time to extrapolate an overpayment determination based on the OSA's 131-claim sample to every claim submitted by the provider over a five-year period and therefore does not presently agree with the OSA's finding that the provider had "inadequate documentation to support at least \$2,528,147 in dental claims" or that such amount currently constitutes an overpayment. Therefore, MassHealth will complete a broader review of the provider's claims. At that point, MassHealth will recoup additional overpayments, impose sanctions, and take other action against Dr. Franco as appropriate.*
- 2. MassHealth agrees with the OSA's second recommendation that Dr. Franco should establish policies and procedures to ensure that all claims are properly documented according to MassHealth regulations and ADA guidelines.*