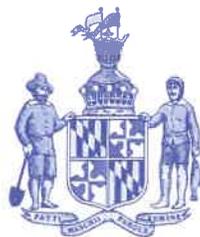


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STATE OF MARYLAND
OFFICE OF THE ATTORNEY GENERAL
CONSUMER PROTECTION DIVISION

Writer's Direct Dial No.
410-576-6557

June 12, 2020

VIA EMAIL AND REGULAR MAIL

James P. Goldsmith, D.M.D., President
Frank McLaughlin, Executive Director
Maryland State Board of Dental Examiners
Spring Grove Hospital Center
Benjamin Rush Building
55 Wade Avenue/Tulip Drive
Catonsville, MD 21228

Marlene Shevenell, D.D.S., President
Greg Buckler, Executive Director
Maryland State Dental Association
8901 Herrmann Drive
Columbia, MD 21045

Re: Reopened Dental Practices Could be Violating the Consumer Protection Act
by Charging Consumers for Enhanced Infection Controls

Dear Dr. Goldsmith, Mr. McLaughlin, Dr. Shevenell and Mr. Buckler:

As you are aware, the Secretary of Health has allowed Maryland dentists to resume the delivery of elective and non-urgent care as long as they comply with enhanced infection control recommendations from the Centers for Disease Control and Prevention and other requirements.¹ Unfortunately, the Office's Health Education and Advocacy Unit (HEAU) is receiving complaints that some reopened dental practices are

¹ See Secretary of Health's Amended Directive and Order Regarding Various Healthcare Matters issued May 6, 2020, <https://governor.maryland.gov/wp-content/uploads/2020/05/05.06.2020-MDH-Sec-Order-Amended-Various-Healthcare-Matters.pdf> (accessed May 28, 2020).



charging consumers increased fees by collecting additional, upfront amounts for the costs of enhanced infection controls, including personal protective equipment.²

As part of its standard mediation efforts, the HEAU is informing consumers and dentists of the Office's position that the imposition of additional fees, particularly those charged upfront to all patients, may violate the Consumer Protection Act's prohibition against unfair or deceptive trade practices because typical provider-carrier contracts,³ as well as public and private insurance laws, prohibit participating providers from charging such fees to insured consumers.⁴

I am asking for your assistance in alerting Maryland's dental provider community to the Office's position in order to protect consumers from these fees. Maryland's unemployment rate officially reached 9.9% at the end of April due to the COVID-19 emergency,⁵ and consumers are contending with losses of income and benefits that are devastating to them. Our office has little doubt that the dental provider community is also facing financial challenges, but we trust you will work with us to protect consumers as our laws intend so they may be able to afford the dental care they need. Your outreach

² Price increases by service retailers during the public health emergency are potentially subject to application of the Governor's Order prohibiting price gouging, depending on the facts involved. *See* Governor's Order Prohibiting Excess Profits on Certain Goods and Services issued on March 23, 2020.

<https://governor.maryland.gov/wp-content/uploads/2020/03/Price-Gouging-3.23.20.pdf> (accessed May 28, 2020)

³ The HEAU has conferred with the major dental carriers in Maryland about the additional fees. Many carriers have confirmed that overhead expenses such as enhanced infection controls are clinically integral to the delivery of covered services and may not, under provider-carrier agreements, be passed on by participating providers to beneficiaries as additional fees.

⁴ Md. Code Ann., Com. Law §13-101 *et seq.* (Consumer Protection Act); Md. Code Ann., Health-General §19-701 *et seq.* (state HMO law, where applicable); 42 C.F.R. § 447.15 (Medicaid provider must accept State payment as payment in full), COMAR 10.09.36.03.A(10)(Medicaid provider must accept payment by the Program as payment in full for covered services rendered and make no additional charge to any person for covered services), and the Maryland Medicaid Program's PPE Guidance issued June 1, 2020, <https://mmcp.health.maryland.gov/Medicaid%20COVID19/PPE%20Guidance%20Signed%206-1-20.pdf> (accessed June 4, 2020). Medicare has a similar prohibition, 42 C.F.R. § 424.55, but few dental services are covered by the Program.

⁵ <https://www.bls.gov/news.release/laus.nr0.htm> (May 22, 2020 report of the U.S. Bureau of Labor Statistics)

could also help to mitigate the potential need for investigatory and enforcement action by the Consumer Protection Division.

The dental provider community may not be aware of past enforcement actions taken by the Division against physician practices that charged additional fees during a period when medical malpractice insurance premiums were escalating in Maryland. In 2007 and 2008, separate enforcement actions were taken by the Division against two physician practices that charged consumers “office surcharges” and “administrative fees” related to increased medical malpractice insurance premiums. The Division alleged that the physician practices engaged in unfair or deceptive practices in violation of the Consumer Protection Act by billing and collecting the fees from Medicare, HMO and other insured patients, because the fees are prohibited by federal law, the state HMO law and provider-carrier agreements. The physician practices agreed to stop imposing the surcharges and fees on patients in public and private insurance plans; to make restitution; and to pay costs to the Division.⁶

Enclosed is a related press release the Attorney General is issuing to increase consumer awareness of these important issues. Please feel free to contact Kimberly Cammarata, Assistant Attorney General, Director, Health Education and Advocacy Unit or Patricia O’Connor, Assistant Attorney General, Deputy Director, Health Education and Advocacy Unit, with any questions or concerns you may have. Kim can be reached at kcammarata@oag.state.md.us; Pat can be reached at poconnor@oag.state.md.us.

Sincerely,



William D. Gruhn

Chief, Consumer Protection Division

⁶ An Opinion of the Attorney General also concluded that a physician’s “malpractice insurance surcharge” of \$25 violated Maryland’s law that protects enrollees in health maintenance organizations from balance billing (the state HMO law). 90 Op. Att’y Gen. 29, 34 (2005); *see* Md. Code Ann., Health-General §19-701(g) and §19-710(i)(2)-(3) and (p).



PRESS RELEASE

Consumer Advisory: Reopened Dental Practices Could be Violating the Consumer Protection Act by Charging Consumers for Enhanced Infection Controls

BALTIMORE, MD (June 12, 2020) - Maryland Attorney General Brian E. Frosh is alerting consumers to surcharges by some dental providers that could violate the Consumer Protection Act. Dentists may once again provide elective and non-urgent care if they comply with the Secretary of Health's May 6, 2020 Order requiring enhanced infection controls, but some providers may be improperly imposing additional fees.

"Consumers have notified us that some reopened practices are collecting additional, upfront amounts for the costs of enhanced infection controls, including personal protective equipment," said Attorney General Frosh. "Many dental insurance agreements prohibit certain upfront fees and consumers should be aware that this practice may violate the Consumer Protection Act."

Complaints have generally referenced fees in the range of \$10 - \$20 per visit, but the Office has also heard anecdotally about charges as high as \$172.

Attorney General Frosh's Consumer Protection Division also sent a [letter](#) today to the Maryland State Board of Dental Examiners and the Maryland State Dental Association alerting the dental provider community to the Office's position that imposing additional fees, particularly those charged upfront to all patients, may violate the Consumer Protection Act's prohibition against unfair or deceptive trade practices. Provider-carrier contracts, as well as public and private insurance laws, typically prohibit participating providers from charging such fees to insured consumers.

In the letter, the Division acknowledged that during this emergency, many consumers and dental providers are facing financial challenges, stating, "Maryland's unemployment rate officially reached 9.9% at the end of April due to the COVID-19 emergency, and consumers are contending with losses of income and benefits that are devastating to them. Our office has little doubt that the dental provider community is also facing financial challenges but trust you will work with us to protect consumers as our laws intend so they may be able to afford the dental care they need."

Consumers may contact the Attorney General's Health Education and Advocacy Unit (HEAU) with questions or complaints. The HEAU will investigate the complaint and mediate a billing dispute with the dental provider. Complaints may be filed at

www.MarylandCares.org. Consumers may also call the HEAU hotline at 410-528-1840, 410-230-1712 (en Español), or email HEAU@oag.state.md.us.