

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



Maine Department of Health and Human Services
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Augusta, Maine 04333-0011
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IN THE MATTER OF:

KMC Dental/Kevin Connelly)
1065 Lisbon Street) **FINAL DECISION**
Lewiston, ME 04240)

This is the Department of Health and Human Services' Final Decision.

The Corrected Recommended Decision of Hearing Officer Benedict mailed March 13, 2023 has been reviewed.

I hereby adopt the findings of fact and I accept the Recommendation of the Hearing Officer that the Department was correct when for the review period of July 18, 2016 through November 15, 2017, it determined that Kevin Connelly, DMD, P.A. owes the Department \$8,200.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 30, 2018.

The Department was correct when for the review period of November 28, 2017 through May 22, 2018, it determined that KMC Dental, P.A. owes the Department \$1,356.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 30, 2018.

DATED: 3-20-23 SIGNED: Jeanne M. Lambrew
JEANNE M. LAMBREW, Ph.D., COMMISSIONER
DEPARTMENT OF HEALTH & HUMAN SERVICES

ANY PERSON WHO IS DISSATISFIED WITH THIS DECISION HAS THE RIGHT TO JUDICIAL REVIEW UNDER MAINE RULES OF CIVIL PROCEDURE, RULE 80C. TO PURSUE THAT RIGHT, A PETITION FOR REVIEW MUST BE FILED WITH THE APPROPRIATE SUPERIOR COURT WITHIN 30 DAYS OF THE RECEIPT OF THIS DECISION.

cc: William Logan, Esq., OMS

Janet T. Mills
Governor

Jeanne M. Lambrew, Ph.D.
Commissioner



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Jeanne M. Lambrew, Ph.D.
Commissioner
Department of Health and Human Services
11 State House Station • 109 Capitol Street
Augusta, ME 04333

Date Mailed: March 13, 2023

In the Matters of:

**Kevin Connelly
KMC Dental**

**Provider ID No. 2018112712128719
Provider ID No. 2018112712128720**

CORRECTED ADMINISTRATIVE HEARING RECOMMENDED DECISION

An administrative hearing in the above-captioned matters was held on December 15, 2022, before Hearing Officer Miranda Benedict, Esq. The Hearing Officer's jurisdiction was conferred by special appointment from the Commissioner of the Maine Department of Health and Human Services. All participants appeared by phone. A case management conference was held on October 6, 2022. A status conference was held on December 8, 2022.

The hearing record was left open until January 27, 2023, to allow submission of written closing arguments. This date was agreed upon by the parties due to pre-scheduled periods away from their respective offices. The arguments were received and the record was closed.

Although this Corrected Decision includes an Exception and Response period it is not intended to extend the period for exceptions and Responses beyond the initial period provided for in the Recommended Decision.¹

Pursuant to the two separate Orders of References, both dated June 6, 2022, the issues presented *de novo* for this hearing are:

Was the Department correct when for the review period of July 18, 2016 through November 15, 2017, it determined that Kevin Connelly, DMD, P.A. owes the Department \$8,200.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final

¹ The corrections made were of a ministerial nature, including a corrected date for an exhibit, and a corrected identification of exhibits.

Informal Decision dated April 12, 2022 and Notice of Violation dated November 29, 2018? See, HO-2.

Was the Department correct when for the review period of November 28, 2017 through May 22, 2018, it determined that KMC Dental, P.A. owes the Department \$1,356.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 30, 2018? See, HO-2.

APPEARING ON BEHALF OF THE APPELLANT

Kevin Connelly, DMD

Dale Inman

APPEARING ON BEHALF OF THE DEPARTMENT

William Logan, Esq., OMS

Valerie Hooper, Program Integrity Manager, OMS

ITEMS INTRODUCED INTO EVIDENCE

Hearing Officer Exhibits

HO-1 Scheduling Notices

HO-2 Orders of Reference

HO-3 Notice of Violation dated 11/30/2018

HO-4 Request for Informal Review dated 01/03/2019

HO-5 Final Informal Review dated 04/12/22

HO-6 Appointment of Authorized Representative dated 10/19/22

Department Exhibits

Kevin Connelly

- DHHS-1 MaineCare Provider Agreement signed by provider on 6/21/2012
- DHHS-2 MaineCare Benefits Manual, Chapter I, Section 1, effective 3/23/2016
- DHHS-3 MaineCare Benefits Manual Chapter I, Section 1, effective on 7/5/2017
- DHHS-4 MaineCare Benefits Manual, Chapter II, Section 25, effective on 7/1/ 2014
- DHHS-5 MaineCare Benefits Manual, Chapter III, Section 25, effective on 7/1/2014
- DHHS-6 Notice of Violation dated 11/29/2018 with redacted spreadsheets
- DHHS-7 Request for Informal Review dated 1/3/2019
- DHHS-8 Final Informal Review Decision letter dated 4/12/2022 with redacted spreadsheet
- DHHS-9 Request for Administrative Hearing dated 5/24/2022
- DHHS-10 Health PAS claim example for Member 16, spreadsheet page 7, DOS [REDACTED]

- DHHS-11 Health PAS claim example for Member 20, spreadsheet page 10, DOS [REDACTED]
- DHHS-12 Health PAS [REDACTED] claim example for Member 34, spreadsheet page 17, DOS [REDACTED]
- DHHS-13 Closing Argument for both cases

KMC Dental

- DHHS-1 MaineCare Provider Agreement signed by provider on 10/25/2017
- DHHS-2 MaineCare Benefits Manual, Chapter I, Section 1, effective 7/5/2017
- DHHS-3 MaineCare Benefits Manual, Chapter II, Section 25, Effective 7/1/2014
- DHHS-4 MaineCare Benefits Manual, Chapter III, Section 25, effective 7/21/2014
- DHHS-5 Notice of Violation dated 11/30/2018 with redacted spreadsheet
- DHHS-6 Request for Informal Review dated 1/03/2019
- DHHS-7 Final Informal Review Decision letter dated 4/12/2022 with redacted spreadsheet
- DHHS-8 Request for Administrative Hearing dated 5/24/2022
- DHHS-9 Health PAS claim example Member 13, spreadsheet page 5, DOS [REDACTED]
- DHHS-10 Health PAS claim example Member 4, spreadsheet page 1, DOS [REDACTED]

Appellant Exhibits

KMC/Dr. Connelly-1 Closing Argument for both cases

STANDARD OF REVIEW

The hearing officer reviews the Department’s claim for recoupment against an approved MaineCare services provider *de novo*. DHHS Administrative Hearing Regulations, 10-144 C.M.R. Ch. 1, § VII (C)(1); Provider Appeals, MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, sub-Ch. 1, § 1.21-1 (A). The Department bears the burden to persuade the Hearing Officer that, based on a preponderance of the evidence, it was correct in establishing a claim for repayment or recoupment against an approved provider of MaineCare services. 10-144 C.M.R. Ch. 1, § VII (B)(1), (2).

LEGAL FRAMEWORK

The Department administers the MaineCare program, which is designed to provide “medical or remedial care and services for medically indigent persons,” pursuant to federal Medicaid law. 22 M.R.S. § 3173. *See also* 42 U.S.C. §§ 1396a, *et seq.* To effectuate this, the Department is authorized to “enter into contracts with health care servicing entities for the provision, financing, management and oversight of the delivery of health care services in order to carry out these programs.” *Id.* Enrolled providers are authorized to bill the Department for MaineCare-covered services pursuant to the terms of its Provider Agreement, Departmental regulations, and federal Medicaid law. “Provider Participation,” MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03. *See also* 42 C.F.R. § 431.107 (b) (state Medicaid payments only allowable pursuant to a provider agreement reflecting certain documentation requirements); 42 U.S.C. § 1396a (a)(27). Enrolled providers also “must ... [c]omply with requirements of applicable Federal and State law, and with the provisions of this Manual.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03-3 (Q). Enrolled providers are also required to maintain records sufficient to “fully and

accurately document the nature, scope and details of the health care and/or related services or products provided to each individual MaineCare member.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03-3 (M). “The Division of Audit or duly Authorized Agents appointed by the Department have the authority to monitor payments to any MaineCare provider by an audit or post-payment review.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.16. Pursuant to federal law, the Department is also authorized to “safeguard against excessive payments, unnecessary or inappropriate utilization of care and services, and assessing the quality of such services available under MaineCare.” 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.17. *See also* 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.18; 22 M.R.S. § 42 (7); 42 U.S.C. § 1396a (a)(27); 42 C.F.R. § 431.960.

This includes the imposition of sanctions and/or recoup(ment of) identified overpayments against a provider, individual, or entity. In relevant part, the rule provides for sanctions for provider misconduct that includes,

- G. Breaching the terms of the MaineCare Provider Agreement, and/or the Requirements of Section 1.03-8 for provider participation;
- K. Violating the applicable provision of any law governing benefits governed by this Manual, or any rule or regulation promulgated pursuant thereto;
- X. Breach of the terms of legal and binding contract(s) with contractor(s) or subcontractor(s) who provide their contractual services to MaineCare member...See, MaineCare Benefits Manual, 10-144 C.M.R. Ch. 101,sub-Ch, §1.20.

RECOMMENDED FINDINGS OF FACT:

DR. CONNELLY

1. Kevin Connelly is licensed in the State of Maine as a DMD (Doctor of Medicine in Dentistry).
2. Kevin Connelly was approved as a MaineCare Provider on June 21, 2012, pursuant to a signed MaineCare Provider Agreement.
3. The Department sent a Notice of Violation on November 29, 2018, asserting that for 110 patients, Dr. Connolly had billed twice for the same procedure on the same day or that he had split billed (billing for two single surface codes instead of a single two surface code), in violation of the MaineCare rules.
4. As a result, the Department demanded recoupment of the excess payments.
5. The Notice demanded a recoupment in the amount of \$8,255.00 for the period of violation July 18, 2016, through November 15, 2017.

6. Following a response from Dr. Connelly, the Department issued its Final Informal Review Decision (FIRD) on April 12, 2022.
7. The FIRD reduced the recoupment to \$8,200.00.

KMC DENTAL

1. Kevin Connelly is licensed in the State of Maine as a DMD (Doctor of Medicine in Dentistry).
2. Dr. Connelly was approved as a MaineCare Provider, 'KMC DENTAL P.A.' on November 25, 2017, pursuant to a signed MaineCare Provider Agreement.
3. The Department sent a Notice of Violation on November 30, 2018, asserting that, for 20 patients, KMC Dental had billed twice for the same procedure on the same day or that it had split billed (billing for two single surface codes instead of a single two surface code), in violation of the MaineCare rules.
4. As a result, the Department demanded recoupment of the excess payment.
5. The Notice demanded a recoupment in the amount of \$1,657.00 for the period of violation November 28, 2017, through May 22, 2018.
6. Following a response from KMC Dental, the Department issued its Final Informal Review Decision (FIRD) on April 12, 2022.
7. The FIRD reduced the recoupment to \$1,356.00.

KMC Dental/Dr. Connelly

1. The Current Dental Terminology (CDT) code D2331 is the billing code for Resin-Based Composite-two surfaces, Anterior.
2. The maximum amount of reimbursement at the time of the violations was \$91.00.
3. The CDT code D2393 is the billing code for Resin-Based Composite-three surfaces, posterior.
4. The maximum amount of reimbursement at the time of the violations was \$103.00.
5. The CDT code D2394 is the billing code for Resin-Based Composite-four or more surfaces, posterior.
6. The maximum amount of reimbursement at the time of the violations was \$110.00.

7. The CDT (Current Dental Technology) code D2335 is the billing code for Resin-Based Composite-four or more surfaces or involving incisal angle anterior.
8. The maximum amount of reimbursement at the time of the violations was \$110.00.
9. At the time of the violations, MaineCare rules prohibited any combination of restorations on a single tooth during the same period of treatment that was billed in excess of the fee for a four (4) surface restoration (\$110.00).
10. At the time of the violation, MaineCare rules required that two single-surface restorations performed on different surfaces on the same tooth, (such as occlusal and buccal on a mandibular molar), that are accomplished during the same period of treatment, must be coded as a two (2) surface restoration (\$91.00).
11. At the time of the violation, MaineCare rules required that for anterior teeth, cuspids, lateral, and central incisors, only a one (1) surface restoration for a mesial or a distal lesion is reimbursable, even though a facial or a lingual approach is used when the decay extends onto the facial or labial surface.
12. Kevin Connelly billed MaineCare in excess of the allowable fee 110 times, either by duplicate billing or billing for two 1 surface codes instead of one 2 surface code, resulting in various recoupment amounts, totaling \$8,200.00 in excess payments.
13. KMC Dental billed MaineCare in excess of the allowable fee 20 times, either by duplicate billing or billing for two 1 surface codes instead of one 2 surface code, resulting in various recoupment amounts, totaling \$1,356.00 in excess payments.

RECOMMENDED DECISIONS

The Department was correct when for the review period of July 18, 2016, through November 15, 2017, it determined that Kevin Connelly, DMD, P.A. owes the Department \$8,200.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 30, 2018.

The Department was correct when for the review period of November 28, 2017, through May 22, 2018, it determined that KMC Dental, P.A. owes the Department \$1,356.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 30, 2018.

REASONS FOR RECOMMENDATIONS

According to both Notices of Violation from the Department, Dr. Connelly and KMC Dental had violated the rules by billing for repeated procedures in two months or less, duplicate billing for the same procedure on the same day, or split billing. See, Connelly-DHHS-6 and KMC-DHHS-5.

At the time of both violations, the same version of 10-144 Ch. 101 §25 (Dental Services) was in effect. According to §25-03-3, billing for multiple surface areas on the same day on the same tooth was prohibited, where the cost would be in excess of the maximum fee.

According to the pertinent portion of the rule,

A. Amalgam and Composite Restorations

- 2. No combination of restorations on a single tooth during the same period of treatment is reimbursable in excess of the fee for a four (4) surface restoration.**
- 3. Two single-surface restorations performed on different surfaces on the same tooth, (such as occlusal and buccal on a mandibular molar), that are accomplished during the same period of treatment, must be coded as a two (2) surface restoration.**
- 4. For anterior teeth, cuspids, lateral, and central incisors, only a one (1) surface restoration for a mesial or a distal lesion is reimbursable, even though a facial or a lingual approach is used when the decay extends onto the facial or labial surface. price paid to a dental laboratory by an eligible provider for a custom laboratory fabricated appliance, excluding all associated costs such as, but not limited to, postage, shipping, handling, and insurance costs.**

According to the Department, there were no factual disputes in either case regarding the dental restorations at issue. According to the Department, the rules governing MaineCare Dental Services prohibit providers from separately billing for multiple surface restorations for the same tooth on the same date of service. The Department argued that all the versions of the MaineCare Benefit Manual that were effective at the time of the violations, were clear as to provider obligations to follow the MaineCare rules, and the obligation of the Department to enforce the rules, both federal and state,

In summary, there are no disputes of material fact involved in these two hearings. The Department presented testimony and documentary evidence establishing that both providers separately billed for multiple surface restorations for the same tooth on the same date of service. The Department also presented evidence establishing that the MaineCare Benefits Manual(MBM) required providers to bill in certain manners for multiple surface restorations performed on the same tooth on the same day and limited the reimbursement for those services. The providers billings did not meet the requirements in the MBM and resulted in both providers receiving greater reimbursement than they were entitled to. Therefore, the Department sought to recoup the difference. The providers did (sic) produce any

evidence disputing this. Instead, the providers argue that guidance from the American Dental Association in its CDT coding standards should “trump” the Department’s rule. For a variety of reasons, the providers’ arguments must fail.

The State Rules Required the Providers to Bill in a Specific Fashion

The Department is the single state agency authorized to operate the MaineCare program. The Department is authorized by state law to “administer programs of aid, medical or remedial care and services for medically indigent persons” 22 MRS § 3173. The Department is further authorized to “make all necessary rules and regulations” for such programs. *Id.* The Department is further authorized to “establish fee schedules governing reimbursement for services provided under this chapter.” *Id.* Maine’s Administrative Procedures Act (APA) provides that an agency rule “is not judicially enforceable unless it is adopted in a manner consistent with [the APA].” 5 MRS § 8002(9). “Rules adopted in a manner other than that prescribed (sic) by [the APA] are void and of no legal effect...” 5 M.R.S. § 8057(1). The Department provided documentary evidence and testimony that the MBM is the set of rules governing the MaineCare program. Those rules require dental providers to bill for multiple surface restoration in a specific manner. See MBM Ch. II, Sec. 25.03-3(A) (Exhibit 4 at DHHS 203). There was no evidence produced to contradict the Department’s findings. Because the clear language of the rule requires dental providers to bill in a certain manner, and because the rule also limits the reimbursement that providers can receive for multiple surface restorations, the Hearing Officer should affirm the Department’s findings. See, DHHS-13.

According to Dr. Connelly/KMC Dental, both entities were following the industry standard and professional licensure standards in their billing protocol. Dr. Connelly/KMC Dental argued that MaineCare rules are in conflict with the CDT (Current Dental Terminology). According to Dr. Connolly/ KMC Dental, he is obligated to adhere to the CDT,

The procedures indicated in the notice of violation were billed to Maine Care exactly as they were performed. When billing and charting procedures my practice complies with national standards set forth by the American Dental Association and specifically their CDT (current dental terminology) which is used as the industry standard. They accurately reflect the services provided. To submit to Maine Care Services in any other way would be inaccurate, deceptive, and fraudulent. See Dr. Connelly/KMC Dental-1.

Dr. Connelly/KMC Dental also argued that the MaineCare Benefits manual itself requires that payments be processed in compliance with the National Correct Coding Initiative,

The Maine Benefits Manual (MBM) states that payments will be processed in compliance with the National Correct Coding Initiative (Section 1.11-2)². Also, as an

² National Correct Coding Initiative Edits

industly(sic) professional; procedure diagnosis, treatment, and billing must be consistent with the treatment of a patient Maine Care billing requirements break this chain of process by requiring different codes for reimbursement from the actual treatment. These Maine Care billing requirements cause dentists to deviate from industry practices and ethical standards. Also, there is a conflict in the manual by requiring consistency with NCCI but billing according to different procedures. In this instance, it is not possible to comply with the rules as stated by the Maine Care Benefits Manual and still provide an accurate record of dental restorations. It is my responsibility to accurately submit for the exact services we provide. If Maine Care guidelines require reimbursement for less than what we have diagnosed and provided to the patient, the adjustment needs to be made and explained by Maine Care within a reasonable amount of time. The Notice of Violation begs the question, if Maine Care has a history of, and current capability to, adjust the reimbursement regarding procedures they deem ineligible, why have they not done so in this case? See, Dr. Connelly/KMC Dental-1.

Dr. Connolly did not dispute the amounts of recoupment in either case. Dr. Connolly argued that he is unable to follow the MaineCare rules because the rules contradict the CDT billing codes and protocol.

Dr. Connolly/KMC's reliance on the CDT guidelines is misplaced. Unlike the MaineCare rules, the CDT guidelines are not judicially enforceable. The hearing officer agrees with the Department that this argument has no legal merit,

Notwithstanding the foregoing, the entirety of the providers' argument at hearing was that the state rule in the MBM should yield to guidance issued by the American Dental Association in its CDT coding guidance. There is simply no legal support for this contention. First, as noted above, the Department is statutorily empowered to issues rules governing the MaineCare program. See 22 MRS § 3173. Only rules adopted in accordance with the APA are judicially enforceable and legally valid. See 5 MRS § 8002(9) and 5 M.R.S. § 8057(1).

The CDT coding guidance that the providers rely upon is not a state rule. It is therefore not judicially enforceable. The American Dental Association is not a state agency and cannot promulgate rules. The APA does permit an agency to incorporate by reference standards issued by a nationally recognized organization or association. 5 M.R.S. § 8056(1)(B)(1).

A. MaineCare will perform National Correct Coding Initiative (NCCI) Edits on all outpatient UB-04 and 1500 claims forms. There are two (2) types of NCCI edits:

1. Procedure-to-Procedure (PTP) Edits define pairs of HCPCS and CPT codes that should not be reported together.

2. Medically Unlikely Edits (MUEs) define the maximum units of service for each HCPCS and CPT code that a provider would generally report for a single patient on a single date of service.

However, to incorporate by reference, “the reference in the agency rules must fully identify the incorporated matter by exact title, edition or version and the date of publication.” 5 M.R.S. §8056(1)(B)(2). The rules must also “state where copies of the incorporated matter are available...” 5 M.R.S. § 8056(1)(B)(3). Finally, an agency is required to submit a copy of the incorporated matter to the Secretary of State. 5 M.R.S. § 8056(1)(B)(4). None of these requirements are met, and therefore the CDT guidance the providers seek to rely upon are not judicially enforceable or legally valid.

Because the CDT guidance is not a state rule and is not incorporated into the MaineCare Benefits Manual, the Department cannot follow that guidance contrary to its own duly promulgated rules. “It is a fundamental tenet of administrative law that agencies must follow their own rules and regulation.” *Palian v. DHHS*, 2020 ME 131, ¶45. Simply put, there is no legal basis for the Department to ignore the requirements in the MaineCare Benefits Manual and to substitute guidance from the American Dental Association which isn’t judicially enforceable or of legal effect. Therefore, the Hearing Officer should affirm the Department’s decision. See, DHHS-13.

The evidence shows that at the time of the violations, MaineCare rules prohibited any combination of restorations on a single tooth during the same period of treatment that was billed in excess of the fee for a four (4) surface restoration (\$110.00). At the time of the violation, MaineCare rules required that two single-surface restorations performed on different surfaces on the same tooth, (such as occlusal and buccal on a mandibular molar), that are accomplished during the same period of treatment, must be coded as a two (2) surface restoration (\$91.00). At the time of the violation, MaineCare rules required that for anterior teeth, cuspids, lateral, and central incisors, only a one (1) surface restoration for a mesial or a distal lesion is reimbursable, even though a facial or a lingual approach is used when the decay extends onto the facial or labial surface. The evidence shows that both entities failed to follow the rules and received excess reimbursement.

In this regard, the hearing officer agrees with the Department that both entities signed a MaineCare provider contract that obligated them to follow the regulations,

the providers were contractually obligated to bill in the manner prescribed by the MBM. “Reimbursement is contingent on the Provider’s, its agents’ and employees’ compliance with applicable Federal and State Medicaid laws and regulation, the MBM, and the terms and conditions of this Agreement...” MaineCare Provider Agreement (MCPA), Section D(1). “The Provider must submit bills in accordance with the methods and procedures contained in the MBM and billing instructions issued by the Department.” Id. at Section D(1)(e), DHHS Exhibit 1, Bates #0072. See, DHHS-13.

In addition, MaineCare rules require that providers only bill for covered services and to comply with all requirements of state and federal law. See, 10-144 C.M.R. Ch. 101, sub-Ch. I, § 1.03-3 and 1.03-8. When those rules are broken, as they were in these cases, the Department is

authorized to impose sanctions. Sanctions may include the “Forfeiture of any payment for services, supplies or goods, associated with grounds for sanctioned providers”. See, 10-144 C.M.R. Ch. 101, sub-Ch. 1, § 1.20.

In this case, that meant a forfeiture of the reimbursement that both entities received as a result of their faulty billing. The Department determined that Dr. Connelly had been overpaid \$8,200.00. The Department determined that KMC Dental was overpaid \$1,356.00. The hearing officer has reviewed the Department’s calculations and have determined that the forfeiture figures are correct.

The hearing officer rejects Dr. Connolly/KMC Dental’s argument that MaineCare rules require that the Department follow the National Correct Coding Initiative (Section 1.11-2). At hearing, the Department itself rejected this argument as irrelevant to the issues at hearing. Ms. Hooper testified that she did not consult or utilize this rule provision in her audit process. The hearing officer agrees with the Department that this provision is not relevant to the issues at hearing because it is not relevant to MaineCare/Medicaid. According to the Center for Medicare and Medicaid, the NCCI program is aimed specifically at coding for Medicare Part B reimbursed procedures. According to their website,

CMS developed the NCCI program to promote national correct coding of Medicare Part B claims. CMS owns the NCCI program and is responsible for all decisions regarding its contents.

CMS develops its coding policies based on coding conventions defined in the American Medical Association’s Current Procedural Terminology (CPT) Manual, national and local policies and edits, coding guidelines developed by national societies, analysis of standard medical and surgical practices, and a review of current coding practices. See, <https://www.cms.gov/medicare-medicaid-coordination/national-correct-coding-initiative-ncci/ncci-medicare>

In conclusion the hearing officer recommends to the Commissioner that the Department was correct when for the review period of July 18, 2016 through November 15, 2017, it determined that Kevin Connelly, DMD, P.A. owes the Department \$8,200.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 29, 2018.

In conclusion the hearing officer recommends to the Commissioner that the Department was correct when for the review period of November 28, 2017 through May 22, 2018, it determined that KMC Dental, P.A. owes the Department \$1,356.00 in recoupment due to: 1) non-compliance with the MaineCare Benefits Manual; 2) breach of the Mainecare Provider/Supplier Agreement; and/or 3) failure to repay overpayments or payments made in error as found in a Final Informal Decision dated April 12, 2022 and Notice of Violation dated November 30, 2018.

DHHS Administrative Hearing Regulations, 10-144 C.M.R. Ch. 1, § VII (2014)

RIGHT TO FILE RESPONSES AND EXCEPTIONS

THE PARTIES MAY FILE WRITTEN RESPONSES AND EXCEPTIONS TO THE ABOVE RECOMMENDATIONS. ANY WRITTEN RESPONSES AND EXCEPTIONS MUST BE RECEIVED BY THE DIVISION OF ADMINISTRATIVE HEARINGS WITHIN FIFTEEN (15) CALENDAR DAYS OF THE DATE OF MAILING OF THIS RECOMMENDED DECISION.

A REASONABLE EXTENSION OF TIME TO FILE EXCEPTIONS AND RESPONSES MAY BE GRANTED BY THE CHIEF ADMINISTRATIVE HEARING OFFICER FOR GOOD CAUSE SHOWN OR IF ALL PARTIES ARE IN AGREEMENT. RESPONSES AND EXCEPTIONS SHOULD BE FILED WITH THE DIVISION OF ADMINISTRATIVE HEARINGS, 11 STATE HOUSE STATION, AUGUSTA, ME 04333-0011. COPIES OF WRITTEN RESPONSES AND EXCEPTIONS MUST BE PROVIDED TO ALL PARTIES. THE COMMISSIONER WILL MAKE THE FINAL DECISION IN THIS MATTER.

CONFIDENTIALITY

THE INFORMATION CONTAINED IN THIS DECISION IS CONFIDENTIAL. *See* 42 U.S.C. § 1396a (a)(7); 22 M.R.S. § 42 (2); 22 M.R.S. § 1828 (1)(A); 42 C.F.R. § 431.304; 10-144 C.M.R. Ch. 101 (I), § 1.03-5. ANY UNAUTHORIZED DISCLOSURE OR DISTRIBUTION IS PROHIBITED.

Dated: March 13, 2023

/S/ Miranda Benedict
Miranda Benedict, Esq.
Hearing Officer

Cc: William Logan, OMS
Dr. Kevin Connolly/KMC Dental, 1065 Lisbon Street, Lewiston, ME 04240