

# **CORRECTIONAL DENTAL ASSOCIATES**

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August 14, 2008

**Review of the only released NJDOC CMS Contract Audit dated June 10, 2008 indicates \$17,900, \$5,050, and \$10,950 in CMS penalties for 23 days of Non Compliant Medication Administration from April 1, 2007 through April 23, 2007. This NJDOC audit reviewed only 23 days of a 1,278 day contract, 14 months after the period in question. It appears that the NJDOC only intends to penalize CMS for this small 23 day sample period. It is our understanding that Federal Audits, conducted by the Department of Health and Human Services Office of the Inspector General make a genuine effort to review the entire field or to appropriately extrapolate their sample audits to the entire field. Extrapolation of this 23 day total of \$33,900 in assessed penalties to the entire contract period of 1,278 days would estimate a total of \$1,883,661 in penalties or \$1,849,761 in uncollected penalties associated with only 4 of the 23 listed Objective Performance Criteria. This is an unsatisfactory level of accountability for tens of millions of State tax payer dollars. The NJDOC required its contractually compliant minority dental provider to submit Comprehensive Compliance Reports on a monthly basis for the last 5 years of the previous contract. This clearly documented discriminatory double standard and selective enforcement of the contract requirements is unacceptable, supports the June 13, 2005 Disparity Report's findings of racial bias, discrimination and tremendous disparity in the State procurement process and should be immediately addressed.**

Dear Ms. Cooper:

The State's citizens and tax payers deserve serious assurances that the comprehensive penalties associated with each aspect of this outgoing Correctional Medical Services ("CMS") contract be enforced and that the oversight of this new University of Medicine and Dentistry of New Jersey ("UMDNJ") contract, valued yearly at well over \$100,000,000, be conducted in a more consistent, objective, comprehensive and accountable manner. To date, based on your Office of the Inspector General Report and the available audit information, the New Jersey Department of Corrections ("NJDOC") Health Services Unit ("HSU") has not demonstrated the ability to handle this level of fiscal responsibility. These deficiencies in oversight have been concerns since the initial contract in 1996. We believe this contractual situation can best be directed with consistent involvement and objective ongoing oversight from credible outside monitors and the Offices of the Comptroller, Inspector General, Treasurer and Governor.

Correctional Dental Associates ("CDA"), the previous minority dental provider, was required to submit Comprehensive Compliance Reports for 100% of its treatment criteria covering 100% of its contract period equaling an overall audit coverage of 100% for the last 5 years of its contract. Conversely, CMS, a majority owned provider, was not required to submit comprehensive compliance reports and to date audits have only been released on 17.3% of the criteria for approximately 1.7% of the contract period equaling an overall audit coverage of 0.3% for the last 3 years of the CMS contract. We wonder why this comprehensive self reporting requirement was abandoned when CMS, a large, majority owned company, with what we believe were influential departmental and political connections, took over dental services in 2005. We wonder why this comprehensive self reporting was never required by the NJDOC HSU for the CMS medical services component of the contract. We wonder why comprehensive audits were not performed on an ongoing monthly basis for a longstanding contract of this magnitude.

We believe that this blatant and well documented discriminatory double standard and selective enforcement of contract guidelines created an unfair, discriminatory and hostile bidding and working environment for CDA, the contractually compliant minority dental subcontractor, and supports the findings of racial bias, discrimination and tremendous disparity in the State procurement process described so clearly in the New Jersey Disparity Study Final Report dated June 13, 2005.

We believe the bundled contract structure and the selective enforcement of contract guidelines made it impossible for the minority owned CDA, the only qualified dental provider, to compete with the larger, majority owned CMS. Additionally, when CMS took over dental services in 2005, the 20 year N.J.A.C. 10A Reporting Standard of measuring the basic dental amount data of total patient visits, fillings and extractions was suddenly no longer required by the NJDOC HSU. CMS, as the record indicates, was not held to the same requirements or assessed any of the required liquidated damages by the NJDOC until your Office of the Inspector General became involved.

In addition to the unfair contract oversight, to assist CMS in its take over of dental services, its unsuccessful attempt to hire CDA's employees and its attempt to profit from an internal delivery of dental services, the NJDOC and the Division of Purchase and Property, in direct violation of the contract guidelines, approved a totally inexperienced CMS dental subcontractor, with no experienced staff, which was supposed to be independent but was controlled by CMS, which was owned by a full time CMS employee and his wife, which falsely claimed to be a certified minority and women owned business, which did not file reports as required, which did not self report as previously required for CDA, and which ultimately provided the unsatisfactory non compliant level of service documented by your Office of the Inspector General.

In 2002, based on 20 years of minimal dental involvement by the NJDOC HSU, the 3 year vacancy in the NJDOC Director of Dental Services Position and the lack of experienced professional input in the 2002 RFP, CDA was forced to submit an open and honest evaluation of the poorly researched, ill conceived, wasteful and fiscally irresponsible dental staffing design proposed in the 2002 RFP by the NJDOC HSU. As opposed to acknowledging the mistake, the NJDOC HSU attempted to place the blame on a mysterious dental consultant, who was never identified, whose correctional experience was never produced, who never interviewed a single dental staff member, who never visited an institution and whose reports and recommendations were not available in the RFP reading room as required by the bidding guidelines. As a result of the serious flaws in the 2002 RFP and scores of valid vendor complaints and questions, the embarrassing RFP was withdrawn and an extension was negotiated.

In contrast to New Jersey, New York City monitors each of the 40 enclosed Inmate Health Services Performance Indicators on a monthly basis for all of its providers equally and assesses any penalties the following month. New York City does not allow unlicensed corporations, like CMS, to illegally provide medical and dental services directly or through shell corporations. Furthermore, New York City has made a commendable effort to include all qualified providers, regardless of their size, gender or race. The result in New York City's Rikers Island is an inclusive County Jail Medical and Dental Services Contract that is far superior in accountability, cost effectiveness and performance to the NJDOC Contract.

New Jersey tax-payers have spent close to a billion dollars on the provision of inmate medical and dental services since 1996. We continue to believe, that the NJDOC HSU has never demonstrated the ability to comprehensively monitor this contract as indicated in your 10/15/2007 Report. We believe this dismal level of NJDOC HSU contractual oversight has created an unacceptable waste of tens of millions of State dollars that could have been diverted to better use. We believe that without the involvement of your Office of the Inspector General, this systematic abuse of tax dollars would not have been exposed.

As required under the provisions of the State's contract, and as we urged the State in our first complaint in 2005 calling into question CMS's deficient delivery of dental services, the NJDOC HSU should have been comprehensively monitoring CMS's performance on a consistent basis. The State should ensure that all of the 23 Criteria listed on Page 113 of the RFP, have been audited for the entire 1,278 day contract term. If audits have not been conducted for the entire term of the contract, the Inspector General should inquire as to the reasons for the inaction and mandate comprehensive audits, imposition and collection of the substantial monies that may be owed to the State. Otherwise, New Jersey tax payers have subsidized a non-compliant vendor with tens of millions of tax dollars.

We believe that any reasonable private or public sector administration, based on the substantial uncollected liquidated damages involved, the unsatisfactory contract oversight, and the unsatisfactory performance of the CMS delivery would evaluate the performance, accountability and credibility of the NJDOC HSU staff very carefully. In spite of your OIG Report and these insufficient audits, it appears that the NJDOC HSU will be intimately and directly involved in the delivery design and contractual oversight of the new \$100,000,000 UMDNJ contract.

We have reviewed the enclosed NJDOC Audits of the medical services provided by CMS pursuant to its contract with the State of New Jersey. The audits were conducted by the NJDOC. We obtained these records in response to Open Public Records Act requests made to the NJDOC and the New Jersey Department of Treasury after considerable and ongoing efforts made on our behalf. Unfortunately, we have experienced significant difficulty and delay in gaining access to these documents, despite persistent attempts and a public records access law that is supposed to simplify and expedite the process. We believe the enclosed Audit demonstrates why this audit information has been so difficult to obtain.

We have attached the audit documents referred to in this letter for your own review. As you can see, the June 10, 2008 audit only assesses liquidated damages in the amounts of \$17,900, \$5,050, and \$10,950, respectively, for non-compliant Medication Administration services during a 23 day period spanning from April 1, 2007 to April 23, 2007. It is our understanding that Federal Audits, conducted by the Department of Health and Human Services Office of the Inspector General make a genuine effort to review the entire field or to appropriately extrapolate their sample audits to the entire field. We note, that the audits were produced over 14 months after the services were provided. We reiterate, that CDA was required to submit Comprehensive Compliance Reports on a monthly basis for the last 5 years of its contract.

Although the audit is for a 23 day period, the contract lasted for approximately 1,278 days. We assume, therefore, that liquidated damages would have or will be assessed for the entire contract term. In the absence of actual audits for the entire term of the contract and extrapolating the 23 day penalty assessment for the entire 1,278-day contract term, we estimate that the State should have or will be assessing additional penalties in the amount of \$1,849,761. This figure represents liquidated damages associated with only 4 of the 23 Objective Performance Criteria. We believe that comprehensive audits of the remaining Objective Performance Criteria that have not yet been reviewed would yield an even greater and appropriate liquidated damage assessment.

Respectfully,



Leslie A. Hayling, Jr., D.D.S.  
President  
Correctional Dental Associates

Cc: Bradley Abelow, Chief of Staff, Office of the Governor  
David Rousseau, State Treasurer  
Bonnie Watson Coleman, Assembly Majority Leader  
Ronald L. Rice, State Senator  
Matthew Boxer, Comptroller  
James Harris, President, New Jersey Conference of the NAACP