

United States Senate

WASHINGTON, DC 20510

November 18, 2011

Via Electronic Transmission

Michael G. Lindley
Chairman and Chief Executive Officer
Church Street Health Management
618 Church Street
Suite 520
Nashville, TN 37219
contact@smallsmiles.com

Dear Mr. Lindley:

We are writing to you regarding allegations of abuse and the fraudulent use of Medicaid tax dollars at Small Smiles dentistry businesses owned by Church Street Health Management. We have received information that these businesses may be providing unnecessary health care services to Medicaid patients and therefore grossly overcharging the United States government in Medicaid reimbursement claims.

Dentistry Ownership and Certifications

Many states prohibit the corporate practice of medicine and require an individual with an ownership interest in a medical facility to be a licensed care provider in the state in which the facility is located. In some cases that individual must practice his or her trade at that facility. It appears that the ownership of Small Smiles has changed hands and names several times over the past few years. According to its website, the Carlyle Group acquired Church Street Health Management in its portfolio in September 2006,¹ and Arcapita took an ownership interest that same month.²

In order to gain further insight into these matters, please provide the following information to the Committees by December 12, 2011:

- 1) A detailed description of ownership of all Small Smiles facilities from January 1, 2007 to present.
- 2) Dentistry certifications and names for any person with a partial or full ownership interest in Small Smiles businesses and affiliates.
 - a. For each person with a partial or full ownership interest, the total number of procedures they have performed since 2007, including subtotals of each type

¹ The Carlyle Group portfolio holding of Church street Health Management, available at <http://www.carlyle.com/Portfolio/item7490.html>

² The Arcapita portfolio holding of Church Street Health Management, available at http://www.arcapita.com/private_equity/current/current-date.html

- of procedure.
- b. For each person with a partial or full ownership interest, please provide their employment contract with Small Smiles.
 - c. All purchase agreements, professional services agreements, and attachments by and between FORBA, LLC., Church Street Health Management, or Small Smiles businesses and affiliates.

Patient Abuse and Medicaid Fraud

In November 2007, news reports revealed a manager of a Small Smiles clinic admitting to daily quotas and production goals for services performed on patients. This manager goes on to reveal that there are monetary bonuses given when these production goals are met. He responded to the allegations by claiming:

We aggressively treat these children to eliminate disease in their mouth. Small Smiles makes no apologies for that. I'm not going apologize for being aggressive.³

We have recently received complaints that Small Smiles' aggressiveness is focused more on achieving self-imposed quotas via assembly-line service than on proper patient care. We are concerned that these allegations of profit at the expense of taxpayer dollars and proper patient treatment may be occurring again or may even have never ceased since 2007.

As you are aware, a class action lawsuit against the owners of Small Smiles and affiliates has been filed in Colorado and Texas pursuant to these claims of patient abuse. While settlements may have occurred in civil lawsuits, there are still questions that must be answered.⁴ If proven true, the actions of the dentists involved may constitute a violation of multiple state laws governing patient care. According to the Small Smiles compliance statement posted on its website smallsmiles.com:

Small Smiles Dental Centers is subject to a detailed Corporate Integrity Agreement with the Department of Health and Human Services, and our compliance, quality of care, and training efforts are reviewed by an independent review organization and monitor.⁵

In order to ensure that all 70 Small Smiles businesses and affiliates located in 22 states and the District of Columbia are holding up their end of the agreement in its patient care and use of Medicaid tax dollars, please provide the following information to the Committees by December 12, 2011:

- 1) All documents related to production goals set out by Church Street Health Management or Small Smiles.

³ ABC News article and video, November 7, 2007, available at <http://abcnews.go.com/GMA/Consumer/story?id=3830854&page=1>

⁴ See generally Complaint, *FORBA Holdings, LLC v. LICSA, LLC*, No. 09-02305 (D. Co. Sept. 29, 2009).

⁵ Small Smiles Compliance Statement, available at <http://smallsmiles.com/compliance.php>

cc: The Honorable Daniel R. Levinson
Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

cc: Dr. Donald Berwick, M.D.
Administrator
Centers for Medicare and Medicaid Services
7500 Security Boulevard
Baltimore, Maryland 21244-1850

cc: William E. Conway, Jr.
Co-founder and Managing Director
The Carlyle Group
1001 Pennsylvania Avenue, NW
Washington, DC 20004-2505
United States

cc: Atif Abdulmalik
Chief Executive Officer
Arcapita Inc.
75 Fourteenth Street, 24th Floor
Atlanta, GA 30309

- 2) All policies and documents, including emails, regarding any contests or other bonus incentive structure for each dental procedure since 2007.
- 3) The number of baby root canals and crowns each of your Small Smiles facilities has performed on all Medicaid and non-Medicaid patients since 2007.
- 4) All policies, procedures, and documents regarding parental or guardian observation of dental procedures.
- 5) All policies, procedures, and documents regarding the use of the "papoose board" or other restraint devices during dental procedures.
- 6) All policies, training manuals, informational booklets, other classroom materials, and any other related documents provided to dentists or used during the training of any dentists employed by FORBA, Church Street Health Management or Small Smiles.
- 7) The amount of revenue by FORBA, Church Street Health Management, or Small Smiles on Medicaid patients and reimbursement, by clinic, in each year since 2007.
- 8) Who is the independent monitor for Small Smiles? Please provide all documentation between Small Smiles and the independent monitor from January 1, 2007 to present.
- 9) All documents related to your implementation of the Disclosure Program in the Corporate Agreement with the government.
- 10) All policies related to non-retaliation policies.
- 11) All emails and other documents used to promote the existence of the Disclosure Program to employees of Church Street Health Management or Small Smiles clinics.

In cooperating with the Committees' review, no documents, records, data, or other information related to these matters, either directly or indirectly, shall be destroyed, modified, removed, or otherwise made inaccessible to the Committees.

Thank you for your attention to this important matter. If you have questions regarding this request, please contact Erika Smith with the Judiciary Committee at (202) 224-5225 and Christopher Law with the Finance Committee at (202) 224-4515.

Sincerely,



Max Baucus
Chairman
Committee on Finance



Charles E. Grassley
Ranking Member
Committee on the Judiciary

cc: The Honorable Kathleen Sebelius
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, DC 20201