Introduction

As part of its Fiscal Year 2011 Objectives, the Virginia Office for Protection and Advocacy (VOPA) investigated whether the state-operated training centers comply with the applicable standard of care in the provision of dental care for their residents. While this investigation was ongoing, the Board of Dentistry of the Department of Health Professions (DHP) found that dentists working for two of the five training centers violated the rules of professional conduct for dentists. In both cases, the DHP found that institutional conditions present in the training center environment contributed to the violations. Among the underlying factors identified by the DHP were inadequate and outdated equipment, lack of support staff for medication and records keeping, poor daily dental care, and large case loads. Our investigation concludes that, while the training centers have taken positive steps to address some of the identified problems with the provision of dental care by dentists, issues remain that should be addressed. The training centers also need to take steps to address identified issues with the provision of daily dental care.

Background

Virginia operates five training centers with a total population of approximately 1200 which are licensed to receive Medicaid funds as intermediate care facilities for individuals with mental retardation (ICF/MR). ICF/MR facilities are required under the Subchapter XIX of the Social Security Act to comply with minimum requirements established by the act and regulations. One of the conditions of participation for an ICF/MR is that those facilities must provide dental care in order to receive Medicaid funds. While states are free to create standards beyond the federal minimum standard for dental care, Virginia has not elected to do so. An ICF/MR is required to provide “comprehensive diagnostic and treatment services for each client from qualified

---

1 The five facilities are Central Virginia Training Center (CVTC) located in Madison Heights, Northern Virginia Training Center (NVTC) located in Fairfax, Southeast Virginia Training Center (SEVTC) located in Chesapeake, Southside Virginia Training Center (SVTC), located in Petersburg, and Southwest Virginia Training Center (SWVTC) located in Hillsville. http://www.dbhds.virginia.gov/SVC-StateFacilities.htm (Visited July 7, 2011).


3 42 U.S.C. §§ 1396 et. seq.

4 42 CFR § 483.460(e).
The regulations, however, only require one visit to a dentist a year, make it optional that licensed professionals be involved in daily dental care decisions, and do not require x-rays. The training centers all report that they provide daily dental care and dental services consisting of at least one examination a year and emergency dental care. Some dental services, including some emergency dental care, are provided outside the training centers by dentists under contract with the state. Four of the five training centers directly employ dentists on their staff. The fifth training center, Southside Virginia Training Center (SVTC), uses a dental clinic located in another state facility, Hiram W. Davis Medical Center (HDMC), which is located on the same campus. While the federal regulations establish minimum conditions for participation in the Medicaid program, they do not establish standards of care for dentists and daily dental care. It is therefore possible for a facility to comply with the Medicaid standards of participation, but fail to comply with the accepted standard of care.

Virginia does not have specific regulatory requirements for the provision of dental care. However, there is an accepted standard of care in the dental profession established by the DHP. For both daily dental care and dental visits, the standard of care for the provision of services for individuals with intellectual disabilities is the same as for people with no disabilities.

The accepted standard of care for daily dental care is for staff to provide training center residents with the same care which dentists recommend for the general public. Staff should perform, provide assistance with, or supervise tooth-brushing at least twice daily and flossing at least once a day. Residents without teeth should have their gums brushed at least twice a day and appropriate care should be provided for dentures. Staff should be trained and monitored in proper brushing techniques by a licensed dental hygienist. The training should incorporate adaptive equipment techniques to relieve dental anxiety, and proper techniques to avoid injury. The training should include classroom instruction, demonstrations, and in service supervision and observation of

---

5 42 C.F.R. 483.460(e).
6 Central Virginia Training Center released a request for bids for dentists to provide contract dental care to its residents. The request for proposal was dated June 24, 2011 and appears at http://www.dbhds.virginia.gov/documents/AdminBusiness/adm-RFP-707-2031.pdf
7 While SVTC and HDMC are considered separate facilities, they have the same director and administration. This report will use the abbreviation SVTC/HDMC to refer to both facilities. In cases where only one facility is being mentioned, the appropriate abbreviation will be used. HDMC also provides dental services for Central State Hospital which is also located on the Petersburg campus.
10 Id.
In the institutional setting, licensed dental professionals dentists have the professional obligation to ensure that adequate daily dental care is being provided through appropriate monitoring and record keeping.\(^{13}\)

Dentists who work for a training center are required to provide services in accordance with the same standard of care as that which is provided for patients without disabilities in the community.\(^{14}\) That standard of care includes reasonable patient caseloads, obtaining informed consent, providing treatment options and adequate record keeping. As licensed professionals they must comply with state laws\(^ {15}\) and the professional regulations from the DHP.\(^ {16}\) The Virginia dental care regulations incorporate by reference the Guidelines for Teaching the Comprehensive Control of Anxiety and Pain in Dentistry adopted by the American Dental Association (ADA)\(^ {17}\) and professional regulations governing the use of medication.\(^ {18}\) The standard of care for dentists in Virginia is more stringent than what is required by the federal ICF/MR regulations. The ICF/MR regulations do not require dentists to perform x-rays and allow for a patient to only receive one dental examination per year.\(^ {19}\)

Our investigation found that the training centers have failed to comply with the standard of care in the provision of dental care. While the discovery of numerous violations of the standards of professional conduct by Dr. Kent Stevens, a dentist working at HDMC in 2009 has focused attention on the provision of dental care by dentists at the training centers,\(^ {20}\) many of the problems that VOPA found involve inadequate daily dental care. When the DHP issued its findings at the formal disciplinary hearing for Dr. Stevens, they found that institutional factors including poor daily dental care, insufficient support staff, inadequate and outdated equipment, and excessively large caseloads were factors contributing to the violation.\(^ {21}\) While the DHP findings have resulted in corrective actions by the training centers in the provision of dental care by dentists, there

\(^{12}\) Id., at 29S Notably, some states have adopted the requirement for annual in service training as part of their ICF/MR regulations. See, Haw. Reg. § 11-99-8 (“facility care staff receive inservice training in oral hygiene and denture care at least annually.”

\(^{13}\) Stiefel, supra note 11, at 33S.

\(^{14}\) American Dental Association, supra note 8.

\(^{15}\) See, 54.1 Va. Code § 2700 et. seq.

\(^{16}\) See, 18 VAC § 60-20-10 et. seq.


\(^{19}\) 42 C.F.R. 483.460(e).


\(^{21}\) Id.; During the formal hearing Dr. Stevens compared conditions at HDMC to a MASH unit because there were so few resources and the extremely poor condition of SVTC residents’ teeth and gums. The DHP specifically found credible Dr. Stevens and his witnesses testimony that SVTC residents came into their dental appointments with teeth severely coated in plaque and tarter and that the vast majority of his time was spent having to perform basic cleanings. However, the DHP held that the poor daily dental care that SVTC residents received and lack of resources provided by the facility did not excuse failure to perform x-rays, provide treatment, and keep proper records.
has been little attention paid to the identified deficiencies in the provision of daily dental care even though the DHP specifically found that poor daily dental care contributed to the violations.

Method of Investigation

VOPA took the following steps in conducting this investigation:

1) Reviewed dental care policies from all five training centers and HDMC.
2) Reviewed the consent forms used in the training centers.
3) Attended dental care training for direct care staff at NVTC and reviewed training materials used at SVTC and CVTC.
4) Met with facility dental care staff at NVTC, HDMC, and CVTC.
5) Observed the dental clinics at CVTC and NVTC.
6) Reviewed individual records of residents at CVTC, SVTC, SEVTC, and SWVTC.
7) Reviewed abuse and neglect investigations involving dental care at SVTC including a report prepared by an expert retained by DBHDS.
8) Attended two hearings at the Board of Dentistry of the Department of Health Professions concerning dentists working at training centers.
9) Attended a continuing dental education event for dental professionals which discussed the proper standard of care for the treatment of persons with intellectual disability.

Findings

1) The training centers fail to comply with the accepted standard of care for the provision of daily dental care.

The training centers by their own admission are failing to comply with accepted standards of care for the provision of daily dental care. SVTC reports that while they train their staff in brushing techniques they do not train staff in flossing teeth. As a result, SVTC residents do not receive flossing. The dental director at HDMC believes that the direct care staff members at SVTC are incapable of properly flossing the teeth of the residents and are likely to do more harm than good if they try. She agreed that a dental hygienist would be the proper person to be in charge of training staff, creating training materials, and monitoring staff, but SVTC/HDMC only recently hired a hygienist. HDMC/SVTC reports that they are not conducting any monitoring of the provision of daily dental care. CVTC reports that their staff training and monitoring of daily dental care is done by “Dental Education Associates,” direct care staff who have reportedly received some extra dental training. The training for the provision of dental care and monitoring of daily dental care is not being provided by licensed professionals at

22 Statement before Local Human Rights Committee at Southside Virginia Training Center and Hiram W. Davis Medical Center, Date.
23 Id.
CVTC and there is no assurance that the Dental Education Associates have proper training in administering dental care. The dental director at CVTC admitted to having no involvement at all with daily dental care training or monitoring because it was the job of a dental hygienist. However, CVTC has had no dental hygienist on staff for an extended period of time. CVTC therefore has no properly trained and licensed professional on staff to provide direct care staff training and the dental department is not conducting any monitoring of daily dental care. By contrast, NVTC has a dental educator who provides staff training and monitoring. Of the five training centers, only NVTC and SWVTC report that they keep records to monitor whether their direct care staff adequately perform daily dental care and to assist in identifying training needs. When Dr. Stevens testified before the Board of Dentistry, he reported that one of the reasons why he did not take x-rays and keep adequate records was that the residents had extreme amounts of plaque on their teeth and all the allocated time for dental care was required to perform a simple cleaning. However, despite this history, SVTC and CVTC report that they are providing staff training in daily dental care using unqualified people and conduct no systemic monitoring of the quality of daily dental care. SVTC and CVTC are therefore in violation of the accepted standard of care for the provision of daily dental care. The other training centers should also take steps to ensure compliance with the accepted standard of care.

2) The training centers fail to comply with the accepted standard of care applying to the practice of dentistry.

There is one standard of care that all dentists treating any patients in Virginia are required to follow under state law and the training centers have failed to comply with that standard. During the course of this investigation, a major dental care failure was identified at HDMC/SVTC involving, at first, three patients. One of the patients received no dental care for a decade and two had unnecessary extractions of teeth. These violations resulted in a finding of abuse by the designated investigator at SVTC based on an investigation by Dr. Henry Hood, an outside expert. That investigation led to an inquiry by the Office of the Inspector General of the Department of Behavioral Health and Developmental Services and a DHP investigation. The DHP investigation resulted in charges against Dr. Kent Stevens for violating several rules of professional conduct in

---

24 Meeting between VOPA and CVTC. CVTC reported that they were in the process of hiring a dental hygienist at the meeting.

25 Dr. Kent Stevens, Testimony before the Board of Dentistry, Virginia Board of Health Professions, Hearing Date; Dr. Witness, Testimony before the Board of Dentistry, Virginia Board of Health Professions, Hearing Date.

26 In re Stevens, supra note 17.

27 Two of the patients were residents of SVTC, the third patient was a resident of HDMC.

28 Internal abuse/neglect investigations conducted against Dr. Kent Stevens by SVTC dated [,]. Dr. Hood, is a Clinical Assistant Professor of Dentistry at the University of Louisville School of Dentistry and at the time was the President of the American Academy of Developmental Medicine and Dentistry. See, http://aadmd.org/page/henry-hood-dmd (visited August 5, 2011).

29 VOPA requested a copy of this investigation, but the Office of Inspector General (OIG) refused to provide it claiming it was privileged. Because HDMC has failed to correct some of the violations which the DHP has identified and other facilities are displaying similar problems, VOPA must conclude that the OIG investigation did not result in adequate corrective actions.
the treatment of 19 patients.\textsuperscript{30} The formal hearing for Dr. Stevens took place on February 14, 2011 and he was found in violation on all counts. These violations of state law included failure to obtain x-rays, extracting teeth without proper justification, failure to obtain proper informed consent, and failure to properly document treatment.\textsuperscript{31} The Assistant Attorney General who prosecuted the case called it the ultimate failure to provide care and keep records case because of the large number of patients and violations. Because Dr. Stevens had failed to renew his registration, the DHP gave him the harshest possible sanction - an indefinite suspension of his right to renew his dental license.\textsuperscript{32}

In addition to the proceedings against Dr. Stevens, a dentist at NVTC was found to have violated the rules of professional conduct for dentists by performing dental care on the wrong patient.\textsuperscript{33} The DHP found that the rules of professional conduct for dentists were violated due to institutional mistakes by NVTC. Treatment of the wrong patient and use of the wrong chart took place because there was a scheduling error by the NVTC dental clinic and NVTC direct care staff brought in the wrong patient for treatment. No sanction was imposed because NVTC had implemented new procedures to avoid future instances of treating the wrong patient prior to the hearing.\textsuperscript{34}

It is a mistake to see the numerous violations of the rules of professional conduct and poor dental care provided at SVTC as isolated events. In finding that dentists working at HDMC/SVTC and NVTC were in violation of accepted rules of professional conduct, the DHP found that institutional factors present in the training centers contributed to the violations. Among the institutional problems noted by the Board of Dentistry:

a. Dentists at NVTC and HDMC handled a much higher caseload than is recommended for general dental practices.

b. The facility administration failed to supervise the provision of dental care and the handling of the dental clinic.

c. Inadequate levels of support staff at HDMC to ensure adequate record keeping.

d. HDMC had inadequate support staff to provide proper medication and sedation.

e. HDMC lacked a dental hygienist to clean teeth requiring the dentist to clean teeth and take x-rays and perform examinations.

f. The blanket consent forms for medical and dental care used by SVTC and HDMC violated accepted professional standards of care.

\textsuperscript{30} In re Stevens, supra note 17. (Before coming to work for HDMC, Dr. Stevens was employed by Eastern State Hospital and was found in violation of rules of professional conduct by the DHP twice.)

\textsuperscript{31} In re Stevens, supra note 17.

\textsuperscript{32} In re Stevens, supra note 17.


\textsuperscript{34} Id.
g. The equipment used at HDMC was outdated and did not provide adequate x-ray readings.

h. Daily dental care at SVTC/HDMC was so poor that the dentists would have to spend most of their time on basic cleanings rather than diagnostic work or treatment.

i. General consent forms used for medical care do not provide for adequate informed consent and violate the state law.

j. NVTC lacked adequate support staff and procedural safeguards to ensure that direct care staff brought the correct patient and that the dentist had the correct chart before beginning treatment.

The training centers have addressed some of these issues, but some remain. The consent forms used at the training centers still violate state law and the accepted standard of care because they do not require a patient or substitute decision maker to indicate that they are providing specific informed consent to every dental procedure that will be performed. While SVTC and HDMC have stopped using the blanket consent for medical care/dental care form that they previously used, they still use a blanket consent form for dental procedures. Particularly disturbing is that the HDMC consent form requires a patient to consent to the automatic extraction of any tooth without an opportunity for a second opinion in order to receive any dental treatment. The HDMC/SVTC consent form also does not provide for treatment options and simply provides for blanket consent for dental care. Patients who receive dental care at HDMC are not informed that they have the right to receive dental care from the dentist of their choice and that they have the right to obtain a second opinion. The other training centers use forms that have similar deficiencies. Only the consent forms at SWVTC inform patients of the right to get a second opinion. The SWVTC form also is the only one in use in the training centers that informs patients that they have the right to seek outside dental care and to receive treatment such as root canals that cannot be performed at the on-campus dental clinic if they choose. 35 CVTC uses the same type of blanket consent forms that HDMC previously used which were specifically found to violate state law and regulations governing dentists by the DHP. The dental director at CVTC was not aware that the DHP had found that the HDMC consent forms violate state law and that CVTC might have the same issue. 36 The forms used by HDMC and CVTC for record keeping also continue to have the same deficiencies found to violate rules of professional conduct for dentists in In re Stevens. While Virginia is in the process of obtaining more modern equipment for the training center dental clinics, 37 by focusing on the big picture, they are missing the details that are leading to continued violations of the standard of care.

35 While training center residents have the right to seek an outside dental consultation or to choose to receive a root canal, they would have to provide payment for the outside consultation or other procedure which is not covered by Medicaid.

36 This provides further evidence that the OIG dental care investigation into the provision of dental care at the training centers was ineffective.

37 NVTC is receiving a totally new dental clinic which will have four examination rooms and state of the art x-ray equipment. HDMC has received new dental x-ray equipment. CVTC has a request for proposals for outside dentists to provide dental care for CVTC residents.
3) Improved practices adopted by one facility are not adopted system-wide even following outside investigations identifying deficiencies.

While the DHP investigation into the conduct of Dr. Stevens revealed many systemic problems with the provision of dental care in the state operated training centers, dentists at NVTC and CVTC reported that they were not aware of the findings of violation and corrective actions present at SVTC. For example, CVTC was unaware of the DHP finding that the HDMC consent forms were inadequate to provide for informed consent and continued to use forms that were virtually identical to the ones used at CVTC. Following the investigation of dental care at HDMC, corrective action taken there did not take place at other facilities. HDMC received new dental equipment and x-ray equipment in response to the findings from the internal abuse and neglect investigation. While they are in the process of updating their dental equipment, NVTC and CVTC are continuing to use outdated x-ray equipment. That is despite HDMC having an internal investigation including an outside expert who found abuse and neglect based upon not taking x-rays. Even following the finding of abuse and neglect against Dr. Stevens, CVTC dental charts that VOPA reviewed show that CVTC residents often do not receive x-rays due to lack of cooperation. Some of these charts reflect treatment provided following the DHP bringing charges against Dr. Stevens. The failure by CVTC to obtain x-rays is especially remarkable given that the dental director at CVTC helped review patient charts following the discovery of the problems with dental care at SVTC. CVTC charts reviewed after the dental care investigation at HDMC even showed a resident receiving a full mouth extraction due to the treating dentist believing that it was too difficult to perform dental care without sedation due to lack of cooperation. A further indication that CVTC residents are receiving no meaningful dental care is that, while HDMC and NVTC report that almost all of their patients in their dental clinics receive treatment using sedation and restraint, CVTC reports that they do not currently use any sedation in their dental clinic. While the use of sedation and restraint is not the most desirable way to provide dental care for persons with intellectual disability, use of sedation and protective restraints are recognized as within the proper standard of care “when absolutely necessary to protect the patient and staff.” Dentists recognize that while it is preferable to provide dental care using behavioral management techniques, the use of sedation and restraint is a lesser evil for some patients than providing no dental care at all. However, a CVTC resident who does not cooperate with the dentist only receives dental care including x-rays and a comprehensive examination if the patient is sent to an outside dentist who can perform sedation dentistry.

38 While CVTC reports using no medication currently, VOPA review of CVTC dental charts show that CVTC did practice sedation dentistry on campus in the past.
40 Id.
41 Lecture by Dr. Harvey Levy, Treating Patients with Special Needs, at NVTC, February 19, 2010.
42 CVTC dental records on file with VOPA.
The pattern of failure to adopt corrective action across all training centers following a successful new program at one facility or an investigation of a violation at one facility is also present with daily dental care. NVTC reports that, in an attempt to improve overall oral health of their residents, they created a monitoring program because many of their residents had poor oral health and gum disease. The NVTC monitoring program measures general oral health in each living area in order to assess whether the direct care staff in those areas are properly following daily dental care protocols. A representative from the dental department monitors the oral health of all individuals and engages in spot observations of direct care staff. SWVTC adopted a similar monitoring program. NVTC reports that their monitoring program has resulted in improved oral health and reduced gum disease. NVTC also improved dental training including more observation by their dental educator and additional in-service training for direct care staff as part of that program. While NVTC and SWVTC have adopted comprehensive monitoring programs operated by their dental departments, CVTC and SVTC report that they do not have any such monitoring program. While the training of direct care staff at NVTC includes flossing, SVTC reports that their staff do not perform flossing because the dental director at HDMC believes that they are not capable of performing proper flossing which could result in harm to the patients. SVTC and CVTC report that their dental departments have no involvement in staff training and monitoring whether direct care staff are properly requiring dental care. NVTC, by contrast does have involvement by the dental department in providing training for direct care staff. While NVTC reports that they have had dramatic increases in overall oral health from increased monitoring of daily dental care, CVTC and SVTC completely fail to have any monitoring program at all.

Recommended Corrective Actions

VOPA recommends that the Department of Behavioral Health and Developmental Services take the following corrective actions:

1) Adopt state ICF/MR regulations that comply with the accepted standard of care in Virginia for the provision of dental care.
2) Ensure that record keeping, consent forms, and equipment comply with all applicable standards.
3) Ensure that dental patients or their substitute decision makers are informed of the right to seek treatment by an outside source or to receive a second opinion and treatment options.
4) Ensure that all dental patients or their substitute decision makers provide proper informed consent for each specific procedure that will be performed.
5) Ensure that the training centers comply with all standards of professional conduct applicable to dentists for the use of sedation and other forms of medication, and restraints.
6) Training center dental staff should use accepted standards to create dental desensitization programs to with the goal of minimizing the use of restraints and sedation for dental care.
7) The training centers should all adopt a monitoring system through which a systemic view is taken to determine whether they are providing proper training to direct care staff.

8) The training centers should adopt a monitoring system to ensure that direct care staff properly provide daily dental care and are following the direct care staff.

9) The training centers should ensure that all monitoring, training, and retraining of staff in the provision of daily dental care is conducted by professionally trained and licensed dental hygienists or dentists using materials which comply with accepted standards of care.

10) The training center dental departments should become more involved in the provision of daily dental care.

11) The training centers should conduct spot inspections using professional dental hygienists to observe direct care staff to ensure that they are providing proper daily dental care and to provide retraining if necessary.

12) The training centers should ensure that they have an adequate number of dentists and support staff available to provide dental care in accordance with accepted professional standards.