

The Tennessee Attorney General's Office Civil Medicaid Fraud Section



HCAA 2023 Compliance Conference

1

1

Healthcare Division

THO

Senior Deputy

Deputy

Civil Medicaid Fraud

Enforces Tennessee Medicaid False Claims Act (TMFCA)

5 Attorneys

2 Investigators

Paralegal; Data Analyst; Secretary

Health

Defends the Bureau of TennCare; The Department of Health and health-related boards; Office of Vital Statistics

2

2

Slide 2

THO Lets delete the empty boxes bottom right

Tony Hullender, 2023-11-06T20:16:13.302

TMFCA

Elements for liability under the TMFCA:

1. Creation of a false claim/statement;
2. With knowledge of its falsity;
3. The false statement was material to the State;
4. Submission of the false claim to the State or its contractor.

3

3

TMFCA Damages and Penalties

“...a civil penalty of not less than \$5,000 and not more than \$25,000, adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus 3 times the amount of damages which the state sustains...”

Tenn. Code Ann. § 71-5-182(a)(1)(D).

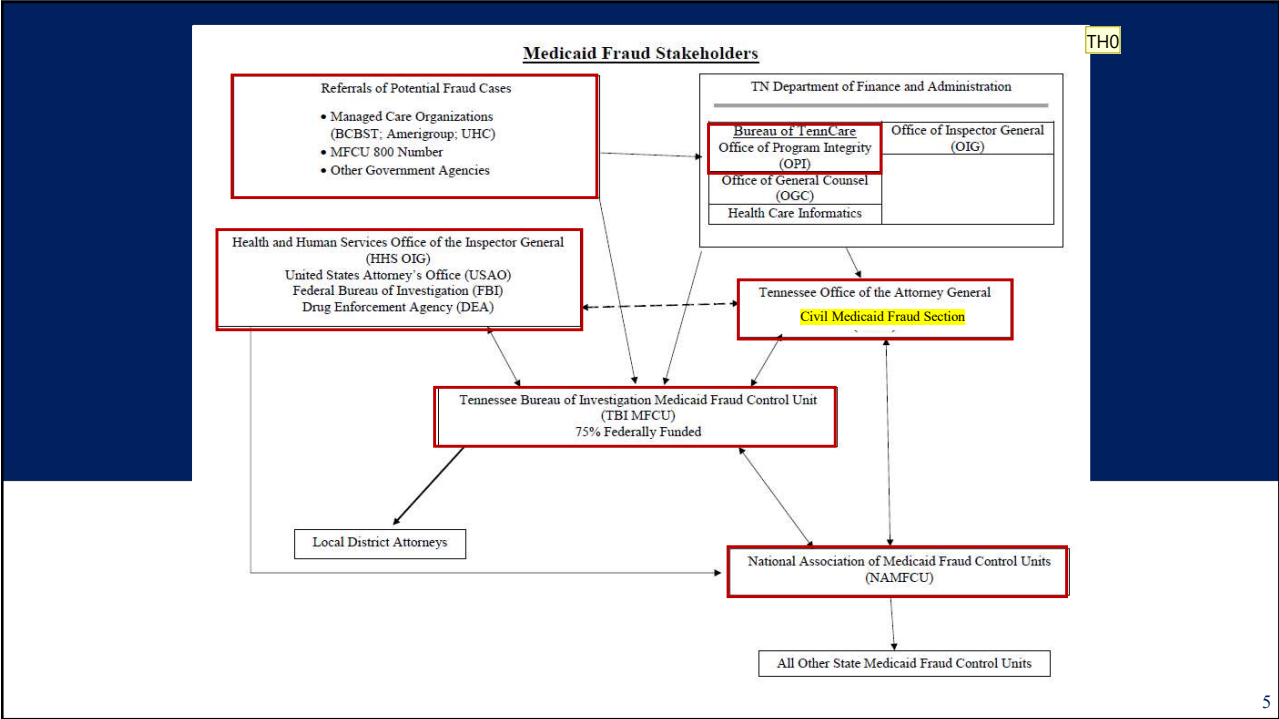
Current penalty range:

\$13,508 - \$25,076 per claim as of January 2023.



4

4



5

Our Cases

- *Qui Tam* Lawsuits
- Referrals from TennCare
- ~ 330 open litigation matters
- ~ 50 open investigations
- 56% of recoveries go to the U.S.

6

6

Slide 5

THO Can we change MFID to Civil Medicaid Fraud Section?

Tony Hullender, 2023-11-06T20:17:12.744

Fraudulent Billing of Tests

1. Urinary drug screens



7

7

DOJ Announces \$1 Million Urine Drug Testing Fraud Settlement

September 23, 2021

- Two types of tests at issue:
 - Presumptive
 - Confirmatory
- Results of presumptive test not reviewed before administering confirmatory test



8

8

Slide 7

THO Is there a way to make the types of tests roll up and the picture changes as each new type appears?

Tony Hullender, 2023-11-06T20:18:20.416

Fraudulent Billing of Tests

1. Urinary drug screens
2. Genetic Testing



9

Florida nurse convicted for fraudulent orders for \$200 Million

September 22, 2023

- NP signed thousands of orders for orthotic braces and genetic testing that were medically *unnecessary*
- NP signed off on orders without every having met with patients
- NP ordered more cancer genetic tests for Medicare beneficiaries than any provider in the nation



10

10

Fraudulent Billing of Tests

1. **Urinary drug screens:**
 2. **Genetic Testing**
 3. **Covid Tests**
-



11

11

Silicon Valley Executive Defrauds Investors and Participates in COVID-19 Testing Scheme

October 10, 2023

- Submitted over **\$77 million** worth of fraudulent claims to
- President of medical technology company sentenced to **8-years in prison** and ordered to pay **\$24 million** in restitution.



12

12

Fraudulent Billing of Tests

1. Urinary drug screens
 2. Genetic Testing
 3. Covid Tests
 4. Nerve Conduction Studies
-



13

13

Prominent Physician of Dunn, North Carolina, Agrees to Pay Up to \$8.8 Million to Resolve Allegedly Fraudulent Medicare and Medicaid Claims

April 28, 2020

- Physicians found liable for more than 40k false claims
- Physicians obtained ~ \$1.9 million for 37,000 diagnostic tests
- Physicians received \$640,000 for 4,300 **nerve-conduction studies** but were not qualified to interpret the results

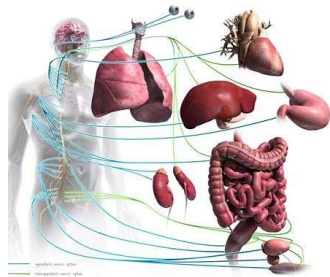


14

14

Case Study: ANS Testing

Autonomic nervous system controls involuntary functions:



1. Breathing
2. Heartbeat
3. Body temperature
4. Sexual arousal

15

15

Fraudulent Billing of Tests

5. Autonomic Nervous System Testing:

Monitors blood pressure, blood flow, heart rate, skin temperature, etc., using an electrocardiogram and other devices.

These tests are conducted to analyze a disease or condition's affect on the autonomic nervous system.



16

16

Case Study: ANS Testing

Genesis: MCO audit showed inordinate number of ANS codes billed by non – specialists.

Investigative Actions:

1. Look at claims data
 - Peer comparison
 - Suspicious patterns
2. Review coverage criteria
3. Obtain and review medical records
4. Consult expert

17

17

Case Study: ANS Testing CPT codes

95921 – Cardiovagal innervation, including two or more of the following: (1) Heart rate response to deep breathing with recorded R-R interval, (2) Valsalva ratio, and (3) 30:15 ratio.

95922 – Vasomotor adrenergic innervation, including beat-to-beat blood pressure and R-R interval changes during Valsalva maneuver and at least five-minutes of passive tilt.

95923 – Sudomotor, including one or more of the following: (1) quantitative sudomotor axon reflex test (QSART), (2) silastic sweat imprint, (3) thermoregulatory sweat test, and (4) changes in sympathetic skin potential.

18

18

ANS Disorder Diagnoses

THO

G90.0 – Idiopathic peripheral autonomic neuropathy

Carotid sinus syncope

G90.1 – Familia dysautonomia [Riley-Day]

G90.2 – Horner syndrome

Bernard(-Horner) syndrome

G90.4 – Autonomic Dysreflexia

G90.8 – Other disorders of autonomic nervous system

G90.9 – Disorder of autonomic nervous system, unspecified

19

19

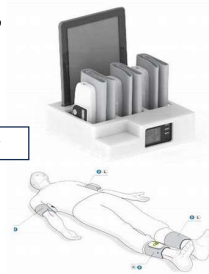
Case Study: ANS Testing – MCO Policies

1. Three different MCOs with three different policies:

- a) Some identify the use of specific devices
- b) All prohibit “automated devices”



TM-Flow



Sudopath



20

20

Slide 19

THO Insert the diagnoses that Lisa came up with

Tony Hullender, 2023-11-06T20:22:34.932

Potential Legal Theories

1. Devices were experimental
2. Devices were excluded by MCO medial policies
3. ANS testing was not medically necessary

21

21

Medical Necessity

A service is medically necessary if it is “required in order to diagnose or treat an enrollee’s medical condition.” Tenn. Code Ann. § 71 5 144(b)(1).

22

22

Slide 21

THO We need to make the last three slides prettier 😊

Tony Hullender, 2023-11-06T20:25:25.405

Symptoms of ANS Disorder

1. Heat intolerance
2. Excessive sweating or not being able to sweat
3. Bowel, bladder, or digestive problems
4. Drop in blood pressure, causing dizziness or lightheadedness

23

23

Treatment for ANS Disorders

1. Corticosteroids
2. Immune globulin injected intravenously
3. Plasma exchange (removes toxins from blood)

24

24

Results

- Over \$1,662,000 in settlement monies to be paid to the State of Tennessee as the result of ANS-testing fraud
- 8 Settlements
- 4 On-going investigations of ANS-testing

25

25

HCAA 2023 Compliance Conference

Questions?

Tony Hullender
Senior Assistant Attorney General
Civil Medicaid Fraud
tony.hullender@ag.tn.gov
423-634-6025



26

26