

COPY

**IN THE CIRCUIT COURT FOR WILSON
COUNTY, TENNESSEE**

STATE OF TENNESSEE,

Plaintiff,

v.

KARYN KURTH AND MICHELLE HILL,

Defendants.

No. *25CV664*

FILED

A.M. SEP 05 2025

PM 12:14

DEBBIE MOSS, CIRCUIT COURT CLERK
WILSON COUNTY, TN

COMPLAINT

1. This action is brought by the State of Tennessee, by and through Jonathan Skrmetti, the Attorney General and Reporter for the State of Tennessee (State), against the Defendants Karyn Kurth and Michelle Hill (Defendants). By this action, Plaintiff seeks restitution, treble damages, and civil penalties against Defendants for violating the Tennessee Medicaid False Claims Act, Tenn. Code Ann. §§ 71-5-181 to -185 (the "TMFCA"), and under the common law theories of unjust enrichment and payment by mistake of fact.

2. Tennessee seeks to recover more than \$300,000.00, plus treble damages and civil penalties pursuant to the TMFCA, for thousands of fraudulent claims that Defendants caused Tennessee's Medicaid program, TennCare, to pay for physical therapy, speech therapy, and occupational therapy. The conduct alleged in this Complaint took place from 2020 to 2023. The claims Defendants submitted to TennCare for these services were false because Defendants billed TennCare for individual therapy when group therapy—which TennCare reimburses at a lower rate—was actually rendered.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to Tenn. Code Ann. § 71-5-183.

4. Venue lies in this judicial district pursuant to Tenn. Code Ann. § 20-4-101 because Defendants reside in Wilson County and the relevant conduct occurred in Wilson County.

5. This Court may exercise personal jurisdiction over the Defendants pursuant to Tenn. Code Ann. § 20-2-222 because the Defendants reside in Tennessee.

THE PARTIES PLAINTIFF

6. The State of Tennessee brings this action through the Tennessee Attorney General and Reporter on behalf of TennCare, Tennessee's Medicaid program. The Attorney General and Reporter has standing to bring this action pursuant to Tenn. Code Ann. § 71-5-183(a).

DEFENDANTS

7. Defendant Karyn Kurth, a physical therapist, resides at 526 Chelsea Lane, Lebanon, TN 37090.

8. Defendant Michelle Hill, an occupational therapist, resides at 223 Bluegrass Circle, Lebanon, Tennessee 37090.

9. At all times relevant to this action, Defendants, either personally or through Dynamic Therapy Center, LLC ("DTC"), provided therapy services to, among others, TennCare beneficiaries. Defendants were co-owners of DTC, which is no longer an active business, but was based in Mount Juliet, Tennessee.

LEGAL AND REGULATORY BACKGROUND

The Medicaid/TennCare Program

10. The Medicaid Program, enacted under Title XIX of the Social Security Act of 1965,

42 U.S.C. § 1396 *et seq.*, provides funding for medical and health-related services for certain individuals and families with low incomes and virtually no financial resources. Those eligible for Medicaid include pregnant women, children, and persons who are blind or suffer from other disabilities and who cannot afford the cost of healthcare. 42 U.S.C. § 1396d. The Medicaid program is a joint federal–state program. 42 U.S.C. § 1396b. If a state elects to participate in the program, the costs of Medicaid are shared between the state and the federal government. 42 U.S.C. § 1396a(a)(2). To receive federal funding, a participating state must comply with requirements imposed by the Social Security Act and regulations promulgated thereunder.

11. The State of Tennessee participates in the Medicaid program pursuant to Tenn. Code Ann. §§ 71-5-101 to -199. Through the Centers for Medicare & Medicaid Services (CMS), the federal government provides approximately 65 percent of the funds used by the TennCare program to provide medical assistance to people enrolled in TennCare.

12. In return for receipt of federal subsidies, the State of Tennessee must administer TennCare in conformity with a state plan that satisfies the requirements of the Social Security Act and accompanying regulations. 42 U.S.C. §§ 1396–1396v; Tenn. Code Ann. § 71-5-102. In Tennessee, the Department of Finance & Administration (F&A) administers the state Medicaid program through the Division of TennCare. Tenn. Code Ann. § 71-5-104. TennCare operates as a special demonstration project authorized by the Secretary of the Department of Health and Human Services under the waiver authority conferred by 42 U.S.C. § 1315. F&A supervises TennCare’s administration of medical assistance for eligible recipients. Tenn. Code Ann. §§ 71-5-105 to -107. F&A is authorized to promulgate rules and regulations to carry out the purposes of TennCare. Tenn. Code Ann. §§ 71-5-124 to -134.

13. TennCare contracts with managed care organizations (MCOs) through contracts

known as Contractor Risk Agreements (CRAs), which must conform to 42 U.S.C. § 1395mm requirements, along with any related federal rules and regulations. Tenn. Code Ann. § 71-5-128. The MCOs contract directly with healthcare providers who offer services to eligible TennCare beneficiaries. Providers who have entered such a contract with an MCO are called Participating Providers. Tenn. Comp. R. & Regs. § 1200-13-13-.01(91). Pursuant to the CRAs, TennCare distributes the combined state and federal Medicaid funding to the MCOs, which then pay Participating Providers for treatment of TennCare beneficiaries. TennCare-eligible persons seeking medical assistance enroll with an MCO to receive healthcare services from a Participating Provider.

14. To obtain TennCare reimbursement for certain healthcare items or services, providers and suppliers submit claims to the TennCare beneficiaries' MCOs using specific five-digit codes, known as Current Procedural Terminology (CPT) codes.¹ TennCare and the MCOs have adopted the CPT Manual, a reference guide published by the American Medical Association that lists the identifying codes and describes the corresponding services. MCOs assign reimbursement amounts to CPT codes in their contracts with Participating Providers.

15. The CPT codes for individual therapy that are at issue in this matter are:

- 92507 – Treatment of speech, language, voice, communication, and/or auditory processing disorder; individual.
- 97110 – Therapeutic procedure, one or more areas, each 15 minutes; therapeutic exercises to develop strength and endurance, range of motion, and flexibility. This code can be used for physical or occupational therapy.
- 97530 – Therapeutic activities, direct (one-on-one) patient contact (use of dynamic activities to improve functional performance), each 15 minutes. This code can be used for physical or occupational therapy.

16. The CPT codes for group therapy that are at issue in this matter are:

¹ CPT® is a registered trademark of the American Medical Association.

- 92508 - Treatment of speech, language, voice, communication, and/or auditory processing disorder; group, two or more individuals.
- 97150 – Therapeutic procedure(s), group (2 or more individuals)

17. CPT code modifiers at issue in this matter are:

- Modifier GN – Services delivered under an outpatient speech-language pathology plan of care.
- Modifier 59 – Distinct procedural service.
- Modifier GO – Services delivered under an outpatient occupational therapy care plan.
- Modifier GP – Services provided by a qualified physical therapist.

18. Claims submitted to TennCare by providers also include codes identifying one or more diagnoses made during a patient encounter. Those codes are based on a classification system developed by the National Center for Health Statistics as a modification of the International Classification of Diseases (ICD) system (the latest version is ICD-10) that the World Health Organization created. For ease of reference, in this Complaint, diagnosis codes will be called “ICD-10 codes.” An MCO’s decision to pay a provider’s claim depends in part on whether a particular CPT code is consistent with an ICD-10 code.

TennCare Reimbursement Requirements

19. TennCare supervises the administration of medical assistance for eligible recipients. Tenn. Code Ann. § 71-5-105(a)(1). The term “medical assistance,” defined at 42 U.S.C. § 1396d and Tenn. Code Ann. § 71-5-103(7), includes payment for the cost of provision of medical services by qualified, licensed practitioners to an eligible person.

20. TennCare will only pay for services that are within the scope of the TennCare program and that are medically necessary. Tenn. Code Ann. § 71-5-144(a). Thus, TennCare regulations and the CRAs include requirements that authorize participating providers to bill only

for medically necessary services. Adherence to medical necessity requirements is a central tenet of the TennCare program and goes to the essence of the bargain between TennCare and Participating Providers.

21. A service is not medically necessary under the TennCare program unless it is "required in order to diagnose or treat an enrollee's medical condition." Tenn. Code Ann. § 71-5-144(b)(1).

22. A service is not medically necessary under the TennCare program if it is "experimental or investigational." A service is experimental or investigational if there is inadequate empirically based, objective clinical scientific evidence of its safety and effectiveness for the particular use in question. A provider's subjective clinical judgment on the safety and effectiveness of a service does not satisfy this standard, nor does a reasonable medical or clinical hypothesis based on extrapolation from use in another setting or from use in diagnosing or treating another condition. Tenn. Code Ann. § 71-5-144(b)(4)(A).

23. To be reimbursed for services provided to TennCare beneficiaries, a Participating Provider must submit claims to TennCare using a standardized process that includes standard claims forms and standardized coding to identify diagnoses and services provided. Tenn. Code Ann. § 71-5-191.

24. To be eligible to bill and receive reimbursement for services provided to TennCare enrollees, a Participating Provider must possess a unique provider identification number. All claims for reimbursement must be submitted using a valid provider identification number for the identified provider. 42 C.F.R. § 455.440.

25. Participating Providers submit claims for reimbursement for services to MCOs through either paper or electronic forms. The provider identifies the services for which

reimbursement is sought using CPT codes on these forms.

26. A Participating Provider must properly document the service in the patient's medical record. 42 C.F.R. § 431.107(b)(1).

27. Typically, a Participating Provider does not include medical records when submitting a claim to an MCO. TennCare, through the MCOs, processes approximately five million claims for payment per month, totaling over \$12 billion in payments per year to approximately 45,000 Participating Providers. Because most Participating Providers are honest, and because of the enormous volume of claims being processed every day, TennCare's reimbursement of providers has historically focused on prompt payment. In fact, MCOs are required by contract and statute to pay claims quickly. Tenn. Code Ann. § 56-32-126. In return, providers are required by law to file true and correct claims. Tenn. Code Ann. § 71-5-182. While prompt pay requirements benefit honest providers, they make it difficult for TennCare and the MCOs to identify fraudulent billing before making payment. Thus, fraud detection and recovery efforts generally arise after payment.

Tennessee Medicaid False Claims Act

28. The TMFCA creates a cause of action for the State of Tennessee against any person who:

- (A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the Medicaid program;
- (B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the Medicaid program;
- (C) Conspires to commit a violation of subdivision (a)(1)(A), (a)(1)(B), or (a)(1)(D); or
- (D) Knowing makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or

property to the state, or knowingly conceals, or knowingly and improperly, avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the Medicaid program.

Tenn. Code Ann. § 71-5-182(a). Any such person is liable to the State of Tennessee for restitution, treble damages, and civil penalties of not less than \$14,308.00 and not more than \$28,619.00 per violation. *Id.*²

29. The TMFCA defines “knowingly” to mean that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information;
or
- (3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Tenn. Code Ann. § 71-5-182(b). Accordingly, an individual who did not have contemporaneous knowledge of the falsity of claims or statements may nevertheless be liable under the TMFCA if the individual acted either in deliberate ignorance of or with reckless disregard to the claims’ or statements’ truth or falsity.

30. In this Complaint, whenever Plaintiff alleges that Defendants “knowingly” presented or caused to be presented a false claim, Plaintiff also alleges, in the alternative, that Defendants acted with “deliberate ignorance” or “reckless disregard” as those terms are used in the TMFCA.

² The penalty range stated in Tenn. Code Ann. § 71-5-182(a) is \$5,000.00 to \$25,000.00, but the statute requires those amounts to be “... adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990,” and those adjustments result in a current range of \$14,308.00 to \$28,619.00.

ALLEGATIONS

31. From 2020 to 2023, DTC operated in Mount Juliet, Tennessee, and its employees provided children with physical, occupational, and speech therapy.

32. On certain days of the week, DTC therapists would conduct what they called “camps” for very young children. During the camps, therapy was provided in a group setting.

33. Defendants were the primary managing owners of DTC, and Defendant Kurth had overall responsibility for billing. On many occasions, DTC submitted requests for payment to TennCare for individual therapy when the therapists had performed group therapy in the camps.

34. The filing of these false claims for payment by Defendants caused TennCare to pay more money than it should have because it reimbursed individual therapy at a higher rate than group therapy.

SPECIFIC EXAMPLES

Example One

35. On May 4, 2022, Client A³ attended a group therapy session at DTC.

36. DTC billed that session as though it were three individual therapy sessions, using CPT codes 92507/Modifier GN (speech/hearing therapy), 97530/Modifier GO-59 (occupational therapy), and 97110/Modifier GP-59 (physical therapy).

37. As a result of DTC’s submission of these false claims to TennCare, TennCare paid DTC \$105.00. If DTC had billed TennCare honestly – for group therapy instead of individual therapy - TennCare would have paid DTC \$44.33. This resulted in an overpayment of \$60.67.

³ Client names will be provided to defendant’s counsel. Letters are used here to protect patient privacy.

Example Two

38. On May 10, 2021, Client B attended a group therapy session at DTC.

39. DTC billed that session as though it were two individual therapy sessions, using CPT codes 92507/Modifier GN (speech/hearing therapy) and 97530/Modifier GO-59 (occupational therapy).

40. DTC submitted these false claims to TennCare, which paid DTC \$102.15. If DTC had billed TennCare honestly—for group therapy instead of individual therapy—TennCare would have paid DTC \$31.87. This resulted in an overpayment of \$70.28.

LEGAL CLAIMS

Count One

Defendants knowingly presented false or fraudulent claims under the TennCare program.

41. The State of Tennessee re-alleges by incorporating herein by reference the allegations in ¶¶ 1-40.

42. By and through the acts described above, from 2020 to 2023, Defendants, directly or through their employees and representatives, knowingly presented false or fraudulent claims for payment or approval under the TennCare program in violation of the TMFCA. Tenn. Code Ann. § 71-5-182(a)(1)(A).

43. The State has suffered damages in an amount to be determined at trial because the Defendants knowingly presented false claims for payment under the TennCare program.

Count Two

Defendants knowingly made or used false records or statements material to false claims under the TennCare program.

44. The State of Tennessee re-alleges by incorporating herein by reference the allegations in ¶¶ 1- 40.

45. By and through the acts described above, from 2020 to 2023, Defendants, directly, or through their employees and representatives, knowingly made or used false records or statements material to false or fraudulent claims under the TennCare program in violation of the TMFCA. Tenn. Code Ann. § 71-5-182(a)(1)(B).

46. Due to the false records or statements Defendants made or used, the State has suffered damages, in an amount to be determined at trial.

Count Three

Defendants conspired to cause false claims to be presented under the TennCare program.

47. The State of Tennessee re-alleges by incorporating herein by reference the allegations in ¶¶ 1- 40.

48. By and through the acts described above, Defendants Kurth and Hill conspired to cause false claims to be presented for payment or approval under the TennCare program in violation of the TMFCA. Tenn. Code Ann. § 71-5-182(a)(1)(C). Specifically, by agreeing to submit claims for payment of individual therapy when group therapy was provided, Defendants conspired to submit or cause false claims to be submitted for payment or approval under the TennCare program.

49. As a result of this conspiracy, the State has suffered damages, in an amount to be determined at trial, and is entitled to a civil penalty of \$5,000 to \$25,000 for each violation plus treble damages.

Count Four

Unjust Enrichment

50. The State of Tennessee re-alleges by incorporating herein by reference the allegations in ¶¶ 1 - 40.

51. By and through the acts described above, from 2020 to 2023, Defendants wrongfully received and retained the benefit of government monies paid by TennCare for ABA therapy services.

52. The money received by Defendants was a benefit from the State.

53. Defendants were unjustly enriched with those government monies, which Defendants should not, in equity and good conscience, be permitted to retain, and which Defendants should account for and disgorge to Tennessee, in an amount to be determined at trial.

Count Five

Payment by Mistake

54. The State of Tennessee re-alleges by incorporating herein by reference the allegations in ¶¶ 1 – 40.

55. By and through the acts described above, from 2020 to 2023, TennCare paid the false ABA therapy service claims based upon mistaken or erroneous understandings of material facts.

56. TennCare, without knowledge of the falsity of Defendants' invoices, mistakenly paid Defendants certain sums of money to which Defendants were not entitled.

PRAYER FOR RELIEF

WHEREFORE, the State of Tennessee respectfully requests this Court grant the following relief against the Defendants:

- a) Damages to be proved at trial and trebled pursuant to Tenn. Code Ann. § 71-5-182(a).
- b) Civil penalties up to the statutory amount as provided by Tenn. Code Ann. § 71-5-182(a) for each violation.
- c) Disgorgement of State monies obtained by unjust enrichment;
- d) Pre-judgment and post-judgment interest and costs; and
- e) Any additional remedies the Court finds fair and just.

Respectfully submitted,



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