

AUTHORITY

State law under § 16.59 – Medicaid Fraud Control

“The Medicaid Fraud Control Unit is created in the Department of Legal Affairs to investigate all violations of § 409.920 and any criminal violations discovered during the course of those investigations. The Medicaid Fraud Control Unit may refer any criminal violation so uncovered to the appropriate prosecuting authority.”

WHAT DOES MFCU INVESTIGATE?

State law under § 409.920 – Medicaid Provider Fraud

The Attorney General shall conduct a statewide program of Medicaid fraud control. To accomplish this purpose, the Attorney General shall:

- a) Investigate the possible criminal violation of any applicable state law pertaining to fraud in the administration of the Medicaid program, in the provision of medical assistance, or in the activities of providers of health care under the Medicaid program.
- b) Investigate the alleged abuse or neglect of patients in health care facilities receiving payments under the Medicaid program, in coordination with the agency.
- c) Investigate the alleged misappropriation of patients' private funds in health care facilities receiving payments under the Medicaid program.

FEDERAL DUTIES AND RESPONSIBILITIES

MFCU governed by federal rules under 42 CFR § 1007.11 – Duties and Responsibilities of State MFCUs

- MFCU will investigate and prosecute violations of law pertaining to fraud in the administration of the Medicaid program.
- MFCU will investigate complaints alleging abuse or neglect of patients in health care facilities receiving payments under the State Medicaid.
- MFCU may review complaints of the misappropriation of patient's private funds in facilities receiving payments under State Medicaid.

MEDICAID PROVIDER FRAUD

- A person may not:
 1. Knowingly make, cause to be made, or aid and abet in the making of any false statement or false representation of a material fact, by commission or omission, in any claim submitted to the agency or its fiscal agent or a managed care plan for payment.
 2. Knowingly make, cause to be made, or aid and abet in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program.
 3. Knowingly charge, solicit, accept, or receive anything of value, other than an authorized copayment from a Medicaid recipient, from any source in addition to the amount legally payable for an item or service provided to a Medicaid recipient under the Medicaid program or knowingly fail to credit the agency or its fiscal agent for any payment received from a third-party source.
 4. Knowingly make or in any way cause to be made any false statement or false representation of a material fact, by commission or omission, in any document containing items of income and expense that is or may be used by the agency to determine a general or specific rate of payment for an item or service provided by a provider.
 5. Knowingly solicit, offer, pay, or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under the Medicaid program, or in return for obtaining, purchasing, leasing, ordering, or arranging for or recommending, obtaining, purchasing, leasing, or ordering any goods, facility, item, or service, for which payment may be made, in whole or in part, under the Medicaid program.
 6. Knowingly submit false or misleading information or statements to the Medicaid program for the purpose of being accepted as a Medicaid provider.
 7. Knowingly use or endeavor to use a Medicaid provider's identification number or a Medicaid recipient's identification number to make, cause to be made, or aid and abet in the making of a claim for items or services that are not authorized to be reimbursed by the Medicaid program.
- F.S. 409.920 Medicaid provider fraud

MANDATORY REPORTING

Florida Abuse Hotline

- 1-800-96-ABUSE (1-800-962-2873)
- Accepts reports 24/7 of known or suspected abuse, neglect, or exploitation
- Web Reporting: <http://reportabuse.dcf.state.fl.us>

Florida Statute § 415.111 – Failure to Report

- Any person who knowingly and willfully fails to report a case of known or suspected abuse, neglect, or exploitation, or prevents another person from doing so, commits a crime.
- Punishable by up to 60 days county jail and a \$500 fine.

ABUSE

§ 825.102 Abuse, aggravated abuse, and neglect of an elderly person or disabled adult; penalties.

(1) “Abuse of an elderly person or disabled adult” means:(a) Intentional infliction of physical or psychological injury upon an elderly person or disabled adult;

(b) An intentional act that could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult; or

(c) Active encouragement of any person to commit an act that results or could reasonably be expected to result in physical or psychological injury to an elderly person or disabled adult.

A person who knowingly or willfully abuses an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

NEGLECT

§ 825.102(3)(a) “Neglect of an elderly person or disabled adult” means:

1. A caregiver’s failure or omission to provide an elderly person or disabled adult with the care, supervision, and services necessary to maintain the elderly person’s or disabled adult’s physical and mental health, including, but not limited to, food, nutrition, clothing, shelter, supervision, medicine, and medical services that a prudent person would consider essential for the well-being of the elderly person or disabled adult; or
2. A caregiver’s failure to make a reasonable effort to protect an elderly person or disabled adult from abuse, neglect, or exploitation by another person.

Neglect of an elderly person or disabled adult may be based on repeated conduct or on a single incident or omission that results in, or could reasonably be expected to result in, serious physical or psychological injury, or a substantial risk of death, to an elderly person or disabled adult.

- (b) A person who willfully or by culpable negligence neglects an elderly person or disabled adult and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the second degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).
- (c) A person who willfully or by culpable negligence neglects an elderly person or disabled adult without causing great bodily harm, permanent disability, or permanent disfigurement to the elderly person or disabled adult commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

EXPLOITATION

§ 825.103 Exploitation of an elderly person or disabled adult; penalties.

(1) “Exploitation of an elderly person or disabled adult” means:

(a) Knowingly obtaining or using, or endeavoring to obtain or use, an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who: 1. Stands in a position of trust and confidence with the elderly person or disabled adult; or

2. Has a business relationship with the elderly person or disabled adult;

(b) Obtaining or using, endeavoring to obtain or use, or conspiring with another to obtain or use an elderly person’s or disabled adult’s funds, assets, or property with the intent to temporarily or permanently deprive the elderly person or disabled adult of the use, benefit, or possession of the funds, assets, or property, or to benefit someone other than the elderly person or disabled adult, by a person who knows or reasonably should know that the elderly person or disabled adult lacks the capacity to consent;

(c) Breach of a fiduciary duty to an elderly person or disabled adult by the person’s guardian, trustee who is an individual, or agent under a power of attorney which results in an unauthorized appropriation, sale, or transfer of property. An unauthorized appropriation under this paragraph occurs when the elderly person or disabled adult does not receive the reasonably equivalent financial value in goods or services, or when the fiduciary violates any of these duties:

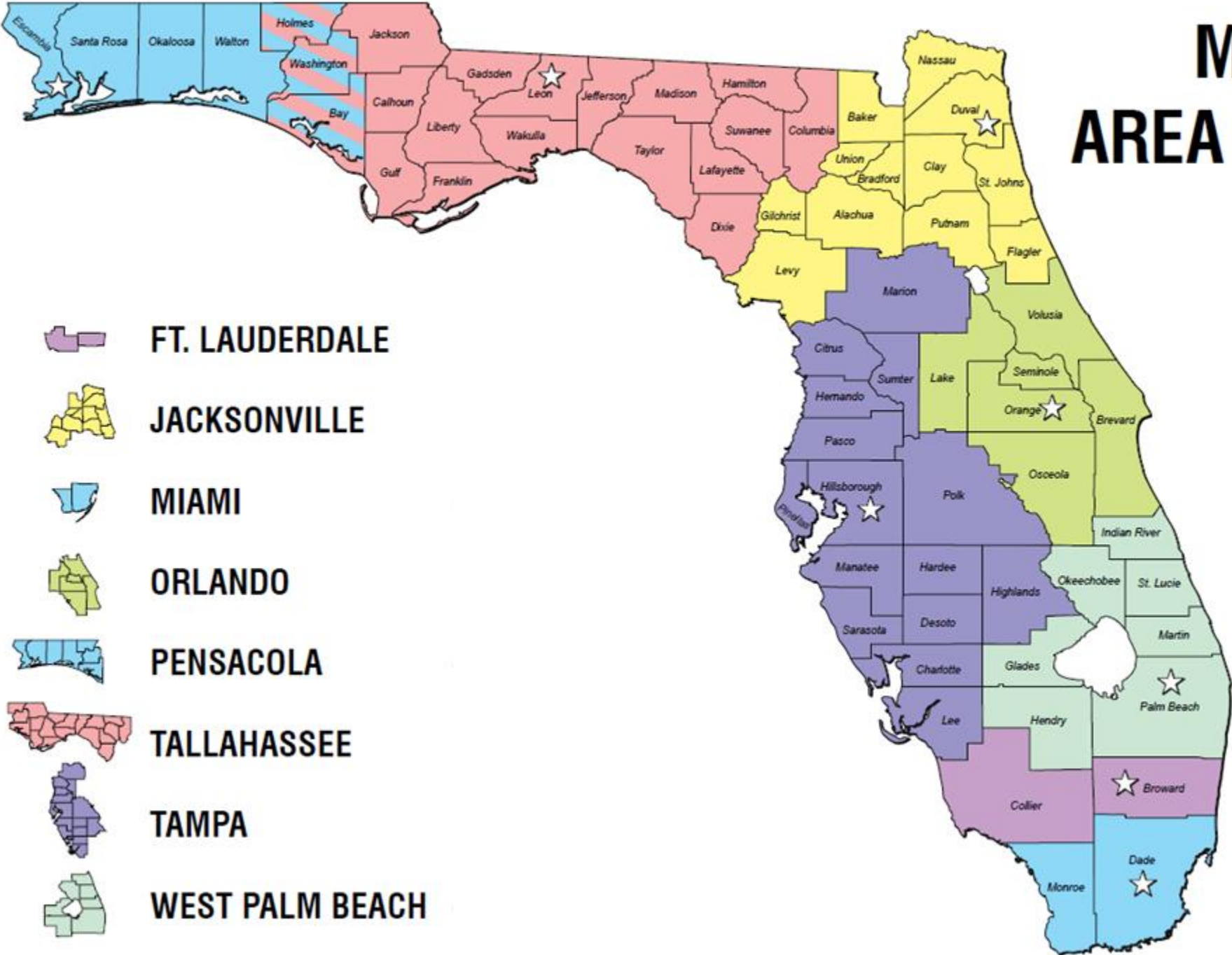
FLORIDA FALSE CLAIMS ACT

- The Florida False Claims Act (“FCA”), is a civil remedy for pursuing instances of Medicaid provider fraud. It is modeled after, and tracks the language of, the federal False Claims Act. Accordingly, claims under the federal and Florida Acts are analyzed under the same general standards.
 - *U.S. v. Space Coast Med. Assocs., L.L.P.*, 94 F. Supp. 3d 1250, 1252 (M.D. Fla. 2015) (citing *U.S. ex rel. Heater v. Holy Cross Hosp., Inc.*, 510 F. Supp. 2d 1027, 1036 (S.D. Fla. 2007)).
- Like its federal counterpart, it provides for treble damages and civil penalties for each false claim submitted. The relevant portions of the Florida FCA are Fla. Stat. §§ 68.081-60.091.

FALSE CLAIMS ACT LIABILITY

- The FCA is violated if a person knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval. § 68.082(2)(a), Fla. Stat.
- Alternatively, a person can violate the FCA if he knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim. § 68.082(2)(b), Fla. Stat.
- If a person knowingly conceals or improperly avoids or decreases an obligation to pay or transmit money to the government, they will also violate the FCA. § 68.082(2)(g), Fla. Stat. (“Reverse False Claim”)

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