**4:24-cv-2018 (S.D. Tex.) *SEALED***

**UNITED STATES OF AMERICA,**
***ex rel.* DOE, Relator,**

**THE STATE OF TEXAS,**
***ex rel.* DOE, Relator,**

**Plaintiffs,**

**v.**

**TEXAS CHILDREN'S HOSPITAL; TEXAS CHILDREN'S HEALTH PLAN, INC.; DR. DAVID L. PAUL; AND DR. RICHARD OGDEN ROBERTS III**

**Defendants.**

# DISCLOSURE STATEMENT

## SUMMARY

This case concerns fraud on Medicaid. Texas Children's Hospital and doctors there provided "gender-affirming care" to patients in violation of Texas's Medicaid program requirements and by attributing treatments to false diagnoses. Those patients were primarily part of Texas Children's Health Plan, a Medicaid managed care organization, which knowingly or recklessly failed to stop the fraud. These entities and the doctors who committed the fraud violated the False Claims Act and the Texas Medicaid Fraud Prevention Act.

## THE RELATOR

Relator Vanessa Sivadge is a citizen of the United States and a resident of the State of Texas. Ms. Sivadge graduated from nursing school in August 2015, and worked at several other health care entities before beginning working at Texas Children's Hospital in June 2018. From June 2018 to June 2021, Ms. Sivadge worked as a cardiology nurse at the TCH main campus. In June 2021, Ms. Sivadge transferred to the Texas Children's Specialty Care Cy-Fair, a multi-specialty clinic. In early 2023, Ms. Sivadge began transitioning from her role as a full-time cardiology nurse to her role as a part-time triage nurse and backup cardiology nurse.

As a triage nurse, Ms. Sivadge is responsible for prioritizing and handling all requests related to patients of the clinic, including patients of the endocrinology and gynecology practices there. Her basic duties include fielding requests regarding patient care from parents, pharmacists, and physicians, and responding to requests based on priority. She is also responsible for providing the results of tests and procedures to patients. Ms. Sivadge uses MyChart, an Epic system, to receive and respond to the various requests, and she routinely reviews patient charts in that system in her triage and backup roles.

Around August 2022, Ms. Sivadge noticed that transgender patients were continuing to be seen in the Endocrine and Gynecology departments at her clinic despite TCH's public statement that it had discontinued gender-affirming care for minors.

**DEFENDANTS**

Defendant Texas Children's Hospital is a non-profit teaching hospital and the largest children's hospital in the United States. Its main campus, a level I pediatric trauma center, is located in the Texas Medical Center in Houston, Texas. Texas Children's Hospital is the primary pediatric teaching hospital affiliated with Baylor College of Medicine. It has satellite campuses and clinics throughout the Houston metropolitan area, including the Texas Children's Specialty Care Cy-Fair clinic.

Defendant Texas Children's Health Plan, Inc. is a nonprofit organization that offers health insurance to Texas Children's Hospital's patients and offers STAR and STAR Kids Medicaid managed care plans.

Defendant David L. Paul is a pediatric endocrinologist on the faculty of Texas Children's Hospital since 2012, and he has treated several hundred children and adolescents with gender dysphoria during that tenure. He regularly prescribes puberty blockers and cross-sex hormones.

Defendant Richard Ogden Roberts III is a pediatric endocrinologist on the faculty of Texas Children's Hospital since 2020, and he has treated several hundred children and adolescents with gender dysphoria during that tenure. He regularly prescribes puberty blockers and cross-sex hormones. Since 2020, he has served as the Baylor College of Medicine and TCH Division of Endocrinology Transgender Care Co-Lead. As of 2023, he also serves as co-Medical Director of the Transgender Care Program at TCH.

## APPLICABLE RULES

### The Medicaid Program

This matter concerns patients who receive care through government-funded medical care, primarily Medicaid, at TCH. Under Medicaid, each State establishes its own eligibility standards, provider qualifications, and program administration in accordance with certain minimum federal requirements. 42 U.S.C. §§ 1396, 1396a. The State pays the healthcare providers for services rendered to Medicaid recipients, with the State obtaining the federal share of the Medicaid payments from accounts that draw on the United States Treasury. *See generally* 42 C.F.R. §§ 430.0-.30.

The federal portion of each state's Medicaid payments, known as the Federal Medical Assistance Percentage ("FMAP"), is based on a State's per capita income compared to the national average. 42 U.S.C. § 1396d(b). The FMAP for all states, including Texas, must be at least 50 percent. Each state must establish an agency to administer its Medicaid program according to federal guidelines. 42 U.S.C. § 1396a. Texas administers its Medicaid program through the Texas Health and Human Services Commission (HHSC).

The majority of health care provided through Medicaid, including in Texas, comes through Medicaid managed care organizations (MCOs). MCOs are contracted by the State—in Texas, HHSC—to provide services to Medicaid managed care clients. The client chooses a Medicaid managed care health plan and primary care provider. Generally, fixed capitation rates are paid to an MCO per member per month with the expectation that the MCO will manage payments for services to providers on behalf of their enrolled clients through contractual arrangements with providers. HHSC establishes managed care capitation rates and biennially reevaluates them using a mathematical analysis that considers past experience, risk, and fee-for-service rate modifications.

Although MCOs are not paid on a fee-for-service model, they too must submit encounter data for each service delivered to a Medicaid beneficiary enrolled in the MCOs' plans and the payments the MCOs make to providers for those services to the State—for Texas, HHSC—and to HHS. This is required both under the Texas Medicaid program and federal regulations. 42 CFR §§ 438.5, 438.6, 438.604, 438.818.

Federal regulations require that MCOs submit accurate and complete encounter data to the State and that the State submit accurate and complete encounter data as a condition of receiving federal funds, *i.e.*, Federal Financial Participation. 42 CFR § 438.818. Data that is not accurate and complete can result in loss of federal funds. *Id.* Federal regulations require that, concurrently with the encounter data that MCOs submit, a certification must be made by a high-level corporate official of the MCO that, based on the best information, knowledge, and belief, the data, documentation, and information in the encounter data is accurate, complete, and truthful. 42 C.F.R. § 438.606. States, including Texas, use the encounter data submitted to them to set the capitation rates. Texas specifically uses encounter data, along with changes to its Medicaid fee-for-service rates and other adjustments, to biennially revise the capitation rate. Federal regulations also generally require that this data be used to set capitation rates. 42 CFR §§ 438.5, 438.6. Accordingly, additional encounters in one period lead to higher capitation rates in future periods, meaning that they result in higher payments by Texas and the federal government to the MCO through higher capitation rates.

Additionally, by federal regulation, a State must require the data on the basis of which the State certifies the actuarial soundness of capitation rates, and the MCO must also concurrently make the same certification as the encounter data. 42 C.F.R. § 438.604, .606.

By federal regulation, a State must also require by contract an MCO to have a program for identifying and self-reporting any overpayments (payments that do not qualify for Medicaid coverage) to health care providers and any fraud. 42 CFR § 438.608.

**Texas's Administration of Medicaid**

Texas requires Medicaid providers to comply with federal and state laws and regulations and to ensure that its employees and agents provide services in compliance with accepted medical and ethical standards as a condition of receiving Medicaid reimbursements.

Texas has several types of Medicaid programs. Most people who receive health care through Medicaid (Medicaid clients) in Texas participate in the STAR program, which covers primary care services for low-income women and children. STAR Kids is a Texas Medicaid managed care program that provides Medicaid benefits to children and adults 20 and younger who have disabilities.

Texas also imposes additional requirements on MCOs. One such requirement is that MCOs share significant profits with the State. The experience rebate is a tiered gain-sharing system where positive net income thresholds are shared with Texas. Following the COVID-19 pandemic, many MCOs in Texas generated significant net incomes and shared the profits with Texas. Texas Children's Health Plan, for both its STAR and STAR Kids Programs, shared profits with the State in at least fiscal year 2022.

Medical providers who desire to be eligible for Medicaid payments must complete a Texas Medicaid Provider Enrollment Application and enter into a written provider agreement with HHSC. Federal Medicaid regulations likewise require such an agreement and mandate that all Texas providers must revalidate their enrollment in the Texas Medicaid Program every three or five years based on provider type. Thus, Texas Medical Center and Texas Children's Health Plan

were required, as a condition of enrollment and participation in the Texas Medicaid Program, to enter into written HHSC Medicaid Provider Agreements ("Texas Provider Agreement"), and to periodically revalidate its enrollment.

By signing the Texas Provider Agreement, a provider certifies its understanding of and willingness to comply with the terms of the Agreement, as well as its understanding that concealment of a material fact or pertinent omissions may constitute fraud and may be prosecuted under applicable federal and state law. The provider agrees to submit encounter data and certifies that information submitted regarding claims or encounter data will be true, accurate, and complete, and that the Provider's records and documents are both accessible and validate the services and the need for services. The provider further certifies its understanding and agreement that any falsification, omission, or misrepresentation in connection with the application for enrollment or with claims filed may result in all paid services declared as an overpayment. And the provider certifies and agrees that it has an affirmative duty to refund any overpayments, duplicate payments, and erroneous payments that are paid to the provider by Medicaid as soon as such payment is discovered or reasonably should have been known.

The Texas Provider Agreement incorporates by reference the Texas Medicaid Provider Procedures Manual ("Texas Provider Manual") and mandates that providers comply with all requirements of the Provider Manual, as well as all state and federal laws governing or regulating Medicaid. Providers must further acknowledge their duties to be familiar with the Provider Manual and to ensure that employees acting on behalf of the providers also comply with the requirements set forth in the Provider Manual. Providers further agree under the Provider Agreement that they will comply with applicable state and federal laws governing and regulating Medicaid, and all state and federal laws and regulations related to waste, abuse, and fraud. By

signing the Texas Provider Agreement and enrolling in the Texas Medicaid Program, Texas Medical Center certified that it understood and would comply with all the requirements thereof.

Since at least 2015 to the present, the Texas Provider Manual has at the very beginning included a section on "Texas Medicaid Limitations and Exclusions."[1] That section provides a long list of "services, supplies, procedures, and expenses" that are excluded from coverage and "are not benefits of Texas Medicaid." "This list is not all inclusive." From at least 2015 to the present, the list of exclusions has included "sex change operations." The list has also included other exclusions that are relevant to gender transition, including "procedures and services considered experimental or investigational," "services or supplies that are not reasonable and necessary for diagnosis or treatment," "services or supplies that are not specifically provided by Texas Medicaid," and "sterilizations (including vasectomies) unless the client has given informed consent 30 days before surgery, is mentally competent, and is 21 years of age or older at the time of consent."

The defendants would and should have understood the exclusion in the Texas Provider Manual for sex change operations to exclude gender-affirming care, including hormone treatments. Texas itself said so. In a 2021 survey by KFF,[2] Texas Medicaid authorities indicated to the surveyors that Texas Medicaid does not cover gender-affirming care, including gender-affirming surgery or gender-affirming hormone therapy. And numerous sources attest to this understanding. For example, an April 25, 2023 article in the Texas Tribune stated, "In Texas, Medicaid and the Children's Health Insurance Program already don't cover transition-related surgeries and prescription drugs like hormone therapies and puberty blockers."

[1] The manuals are available at: https://www.tmhp.com/resources/provider-manuals/tmppm
[2] Information available at: https://www.kff.org/womens-health-policy/issue-brief/update-on-medicaid-coverage-of-gender-affirming-health-services/

**Federal False Claims Act**

The FCA establishes civil penalties and treble damages liability for an individual or entity that knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; that knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; conspires to do the same; or other fraudulent conduct causing harm to the government. 31 U.S.C. § 3729(a)(l).

**Texas Medicaid Fraud Prevention Act**

The TMFPA establishes a cause of action for false claims in the Texas Medicaid Program. Tex. Hum. Res. Code §§ 36.001 *et seq*. The TMFPA provides that the Texas Attorney General or a private citizen may prosecute cases under the TMFPA in the name of the State of Texas. *Id*. § 36.101. The TMFPA is broader than the federal FCA.

The TMFPA establishes civil penalties and treble damages liability for an individual or entity that knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized; knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under a health care program that is not authorized or that is greater than the benefit or payment that is authorized; knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care program; knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to this state under a health care program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or

property to this state under a health care program; or other fraudulent conduct causing harm to the government. *Id.* § 36.002. The TMFPA does not require the submission of a claim for liability to attach—many of the provisions require only a false statement, and not even necessarily a material one. The Texas Attorney General has filed numerous statements of interest to this effect in FCA litigation.

An individual or entity that violates the TMFPA is liable for three times the amount of any payment or the value of any monetary or in-kind benefit provided under a health care program, directly or indirectly, as a result of the unlawful act, including any payment made to a third party. *Id.* § 36.052. An individual or entity that violates the TMFPA is also liable for a civil penalty in the same range as provided by the federal False Claims Act for each claim or overpayment. *Id.*

**BACKGROUND ON TCH'S TRANSGENDER PROGRAM**

Texas Children's Hospital has provided "gender-affirming care" to children and adolescents with gender dysphoria—also referred to as "transgender" individuals—for years. Although it has had a Transgender Care Program since at least 2020, it did not publicly disclose this until 2023. Patients with gender dysphoria believe that their internal sense of their being male or female (their "gender identity") does not match their sex. Under the gender-affirming care model, psychiatric and medical interventions are intended to help align the patient's physical traits with the patient's gender identity rather than to psychiatrically treat the incongruence.

The gender-affirming care model began with Dutch researchers who sought to medically "transition" gender dysphoric adolescents before those adolescents reached adulthood. The motivating idea was that if medical intervention began at the beginning of puberty through puberty blockers and then cross-sex hormones, the patient could have a physical appearance more congruent with the patient's gender identity than if the patient went through puberty (and had a

sex change operation afterward), and surgery to further align physical appearance with gender identity would be more successful.

In 2021, the Chair of the Texas House of Representatives Committee on General Investigating requested an opinion from the Texas Attorney General on whether various interventions for minors with gender dysphoria could be considered child abuse under Texas law. On February 18, 2022, the Texas Attorney General responded that chemical and surgical interventions done for purposes of gender reassignment, including those that cause temporary or permanent infertility, could violate Texas criminal laws.

TCH shortly followed that with a public statement on March 4, 2022 that it had "paused hormone-related prescription therapies for gender-affirming services" in order to "safeguard" its healthcare providers from "legal ramifications." Despite TCH's statement, it and the Defendant physicians continued such procedures without any pause at all. Similar procedures continued through 2022 and into 2023, including to provide puberty blockers and hormones to new and established minor patients.

In May 2023, the Texas Legislature passed, and Governor Abbott signed, SB 14, a law that prohibits physicians and health care providers from providing gender transitioning or gender reassignment procedures and treatments to minors in Texas. It also expands the prohibition on Medicaid funds for gender transition treatments to all public funds being directly or indirectly used, granted, paid, or distributed to any health care provider, medical school, hospital, physician, or any other entity, organization, or individual that provides or facilitates the provision of a procedure or treatment to a child that is prohibited under SB 14.

Following the passage of SB 14, the Defendant physicians and a psychiatrist at TCH, as well as advocacy groups and others, filed suit in Travis County district court to enjoin the law. As

part of the complaint, Dr. Roberts provided an affidavit stating (in the content of discussing minor transgender patients of his): "a significant number of my patients are on Medicaid or the Children's Health Insurance Program, which SB 14 prohibits from covering gender-affirming medical care." He further stated that "SB 14 directly blocks Medicaid and CHIP from covering gender-affirming medical treatment" and that he has "patients who receive their health coverage through Medicaid or CHIP and this provision would bar them from obtaining the care that they need on top of the general prohibition set forth in SB 14." Dr. Paul similarly provided an affidavit stating (again in the context of treating patients with gender dysphoria): "A significant number of my patients receive coverage for their medical care through Medicaid or CHIP." While these statements imply that the Defendant physicians had already used Medicaid funds for endocrine treatments for transgender minors, they carefully avoided precisely admitting this.

**THE FRAUD**

The doctor defendants saw a large number of patients with gender dysphoria in TCH's Endocrine Clinic at its main campus and elsewhere from at least 2020 to present. Many of these patients have Medicaid. TCH, including the Defendants physicians, treated Medicaid patients under the gender-affirming care model, including prescribing puberty blockers, cross-sex hormones, and other hormone treatments to align the patients' appearance with their internal sense of sex. These procedures were intended to effect a change in sex.

**Patient 1**

Patient 1 has TCHP Star health insurance. Ex. 1. Patient 1 is a male who identifies as female, and the medical records reflect a designation of "female." *Id.* Beginning in 2022 at the latest, when Patient 1 was 16 years old, Dr. Paul treated Patient 1. *Id.* At an appointment that year, Dr. Paul diagnosed or confirmed diagnoses of male-to-female transgender person, history of

hypogonadism, estrogen deficiency, and hyperandrogenism. *Id.* Dr. Paul did not indicate that any tests confirmed any of these diagnoses. *Id.* At that appointment, Patient 1 was already prescribed and on spironolactone "as a testosterone blocker" and estradiol cypionate injections. *Id.* Dr. Paul noted that Patient 1 had noticed "increased breast tissue but would like more and would like facial hair growth to slow down." *Id.* Dr. Paul indicated that he would "stop the spironolactone and change [the testosterone] blocker to bicalutamide" and would check estradiol to see if there is "room to increase" the dose "to help with feminization further." *Id.* He noted that "bicalutamide should be more potent at blocking androgen receptor[s,] helping to reduce facial/body hair which takes months/years to diminish." *Id.* Dr. Paul ordered many tests, including a testosterone test for "Women, Child." *Id.*

Later that year, Dr. Paul had another visit with Patient 1 at the Endocrine Clinic. Ex. 2; Ex. 3. At that visit, Dr. Paul noted that Patient 1 had been unable to get refills for several months, which had increased the need for shaving facial hair, and although breast development was "full," Patient 1 "wish[ed] they were more uplifted and together and notice[d] areolar/nipple complex to be smaller than desired." Ex. 2. Dr. Paul indicated the visit diagnoses as male-to-female transgender person and hyperandrogenism. *Id.* Dr. Paul changed the prescription to an estradiol patch with added progestin in the form of norethindrone "to see if this will slowly increase [Patient 1's] nipple/areolar complex size." Ex. 3. He also continued bicalutamide as a testosterone blocker. *Id.* In 2023, Patient 1 had another visit with Dr. Paul at the Endocrine Clinic. Dr. Paul noted that Patient 1 had stopped using the transdermal patches and wanted to return to estradiol injections, so Dr. Paul prescribed estradiol valerate injections. Ex. 4; Ex. 5. The only visit diagnosis was male-to-female transgender person. *Id.* Dr. Paul indicated that he would discuss with gynecology

"options for progesterone therapy for breast/nipple-areolar development" and that Patient 1 wanted breast augmentation surgery and to have Patient 1's gender marker and name changed legally. *Id.*

The medical records do not support diagnoses of hypogonadism, estrogen deficiency, and hyperandrogenism. Indeed, the first and last diagnosis are essentially irreconcilable for a person with testes because hypogonadism means that the gonads produce insufficient androgens while hyperandrogenism means they produce too much. These diagnoses appear to be false and intended by Dr. Paul to attempt to cover up or justify gender-affirming hormone therapy. Far from being otherwise necessary, Dr. Paul indicated significant medical risks of placing Patient 1 on estrogen therapy given Patient 1's uncontrolled diabetes. Similarly, the only basis for classifying Patient 1 as a female in medical records, for having appointments with the endocrine clinic, and for prescribing the medicines described above was to change Patient 1's sex in violation of Texas Medicaid policy. Dr. Paul made clear that the purpose of all of this was to conform Patient 1's appearance to that of the opposite sex. On information and belief, Dr. Paul and TCH submitted all of this medical care for reimbursement to TCHP, which in turn included it all in encounter data provided to Texas and the federal government.

**Patient 2**

Patient 2 has Superior HealthPlan Texas Star insurance. Ex. 6. Patient 2 is a female who identifies as male, and the medical records reflect a designation of "male." Ex. 7. Beginning in 2022 at the latest, when Patient 2 was 17 years old, Dr. Paul treated Patient 2. Ex. 8. To increase testosterone levels to effect the desired sex change, in 2022, Dr. Paul prescribed Androgel, a testosterone gel. *Id.* Dr. Paul sent a patient message to Patient 2 stating that, in order to prescribe the gel, he "had to change the diagnosis from testosterone deficiency to transgender male as [the

patient's] insurance would not accept the testosterone deficiency diagnosis." *Id.* Dr. Paul indicated that this was the "first time" he was aware of insurance denying a patient testosterone injections under that diagnosis, suggesting that he had used it before. *Id.*

Dr. Paul continued to prescribe Patient 2 testosterone into 2023 in the form of testosterone cypionate for intramuscular injection with associated diagnoses of "testosterone deficiency" and "history of hypogonadism." Ex. 9. In an office visit at the Endocrine Clinic shortly thereafter, Dr. Paul noted that Patient 2 was "happy with physical changes on testosterone including voice drop and of course discontinuation of menses." Ex. 7. Dr. Paul again prescribed testosterone cypionate with associated diagnoses of female-to-male transgender person, testosterone deficiency, and history of hypogonadism. Ex. 10.

The medical records do not support diagnoses of hypogonadism or testosterone deficiency. These diagnoses appear to be false and intended by Dr. Paul to attempt to justify or cover up gender-affirming hormone therapy. It is also apparent that Dr. Paul attempted to obtain a prescription using a false diagnosis that was rejected by the insurer, demonstrating the materiality of the false diagnosis—Dr. Paul understood the diagnosis would control whether the insurer would fund the desired treatment for Patient 2. Similarly, the only basis for classifying Patient 2 as a female in medical records, for having appointments with the endocrine clinic, and for prescribing the medicines described above was to change Patient 2's sex in violation of Texas Medicaid policy. Dr. Paul made clear that the purpose of all of this was to conform Patient 2's appearance to that of the opposite sex. On information and belief, Dr. Paul and TCH submitted all of this medical care for reimbursement to Superior HealthPlan Texas Star, which in turn included it all in encounter data provided to Texas and the federal government.

**Patient 3**

Patient 3 has TCHP Star Kids health insurance. Ex. 11. Patient 3 was seen by TCH doctors for gender dysphoria from at least 2021 to 2023. Patient 3 is a male who identifies as female, and the medical records reflect a designation of "female." Ex. 12. In March 2021, Patient 3, who was 17 years old at the time, had an initial visit with the endocrinology clinic to discuss gender dysphoria. *Id.* Patient 3 expressed interest in hormone therapy because male puberty was "very difficult," including voice deepening and chest hair. *Id.* At this visit, or shortly thereafter, Patient 3 was prescribed bicalutamide to block testosterone and an estradiol patch to effect the desired change in sex. Ex. 13.

Patient 3 had a follow-up telemedicine appointment later that year with Dr. Roberts at the TCH Endocrine Clinic (Main Campus). *Id.* In the notes for that appointment, Dr. Roberts characterized the bicalutamide and estradiol as "GAHT" (gender-affirming hormone therapy) that had resulted in "feminizing effects as desired." *Id.* Dr. Roberts noted that Patient 3 wished to continue estradiol therapy. *Id.*

Throughout 2022, Dr. Roberts continued to prescribe estradiol patches and bicalutamide as a testosterone blocker to facilitate Patient 3's sex change. Ex. 14; Ex. 15. In 2023, Dr. Roberts noted that Patient 3 had done "well" on bicalutamide and transdermal estradiol therapy and reported "feminizing effects as desired." Ex. 16. Dr. Roberts switched Patient 3 to estradiol cypionate injections because the estradiol patches had come off too easily (and because Patient 3's history of migraines made it inadvisable to administer oral preparations). *Id.* Dr. Roberts also noted that previous labs had shown a "subtherapeutic estradiol concentration," meaning that estradiol were lower than desired and intended for GAHT. *Id.* Patient 3 expressed a desire to continue the medications, and Dr. Roberts recommended that Patient 3 continue both. The

appointment at which the change was noted was for the purpose of a discussion of "gender identity and gender-affirming medical care." Ex. 12.

Patient 3 has no diagnosed medical condition or any condition reflected in the medical records, including any endocrine disorder, that would require the administration of bicalutamide or estradiol. Indeed, Patient 3 suffered from migraines from the beginning, and GAHT, especially with additional estrogen, would tend to make that condition worse. The only basis for classifying Patient 3 as a female in medical records, for having appointments with the endocrine clinic, and for prescribing the medicines described above was to change Patient 3's sex in violation of Texas Medicaid policy. On information and belief, Dr. Roberts and TCH submitted all of this medical care for reimbursement to TCHP, which in turn included it all in encounter data provided to Texas and the federal government.

**Patient 4**

Patient 4 has TCHP Star health insurance. Ex. 17. Patient 4 is a female who identifies as "nonbinary" and the medical records reflect a designation of "male." Ex. 18. Patient 4 visited the TCH Endocrine Clinic at least as early as September 1, 2022, at age 16. *Id.* At that time, Patient 4 had already been on and then discontinued norethindrone to suppress menstruation. *Id.* Patient 4 was already prescribed and taking testosterone, which was now suppressing menstruation, and the TCM doctor noted that Patient 4 desired to continue on it. *Id.* The TCH doctor discussed the effects of testosterone therapy with Patient 4, including masculinizing effects and a reduction in female fertility, and then continued the testosterone subcutaneous injections. *Id.*

In 2023, Dr. Roberts had a follow-up appointment with Patient 4 at the TCH Endocrine Clinic to discuss "gender identity" and "gender-affirming medical care." Ex. 19. Dr. Roberts noted that Patient 4 was tolerating the testosterone well and that Patient 4 had experienced "voice

deepening, abdominal hair, facial hair growth, [and] leg hair," and that Patient 4 was "[p]leased with these changes." *Id.* Dr. Roberts continued to prescribe testosterone cypionate at even higher levels later in the year with an associated diagnosis of "gender dysphoria in pediatric patient." Ex. 20.

Patient 4 has no diagnosed medical condition or any condition reflected in the medical records, including any endocrine disorder, that would require the administration of testosterone. Indeed, a TCH doctor apprised Patient 4 of a long list of potential deleterious side effects and the loss of ordinary reproductive capacity. The only basis for classifying Patient 4 as a male in medical records, for having appointments with the endocrine clinic, and for prescribing the medicines described above was to change Patient 4's sex in violation of Texas Medicaid policy. On information and belief, Dr. Roberts and TCH submitted all of this medical care for reimbursement to TCHP, which in turn included it all in encounter data provided to Texas and the federal government.

**Patient 5**

Patient 5 has TCHP Star health insurance. Ex. 21. Patient 5 is a female who identifies as male, and the medical records reflect a designation of "non-binary." Ex. 22. Patient 5 was treated at TCH from at least 2020 to 2023.

For a TCH appointment in 2020 when Patient 5 was 14 years old, the medical records indicate that Patient 5 was on Lupron "for estrogen blocker" and testosterone cypionate as a subcutaneous injection for two years, which had caused menstruation to cease, but that Patient 5 was "frustrated over [the] lack of [a] masculinizing effect so far" and that Patient 5's "voice has changed only slightly." *Id.* Patient 5 had already had "top surgery" and the outcome was described

by Patient 5 as "excellent." *Id.* The TCH doctor recommended that the testosterone dose be increased. *Id.*

In 2021, Patient 5 had an office visit at which Patient 5 expressed gratitude for the medications suppressing Patient 5's menstrual cycle and for "ongoing masculinization." Ex. 23. Patient 5 also expressed being happy with a "lower voice pitch and increased hair on legs/arms." *Id.*

Throughout 2022 and 2023, Dr. Paul continued to prescribe Patient 5 with testosterone cypionate. In 2022, Patient 5 had an office visit with Dr. Paul in which Patient 5 indicated being "happy with [the] effects of discontinuation of menses and masculinizing effects." Ex. 24. Later that year, Patient 5 sent a message to Dr. Paul indicating the return of menstruation, and Dr. Paul asked questions about Patient 5's testosterone administration and offered progesterone if necessary. Ex. 25.

In 2023, Dr. Paul had a long discussion with Patient 5 about testosterone options, and Patient 5 decided to stay on injections rather than switching to transdermal patches. Ex. 26. They also discussed the effects of stopping testosterone and Patient 5 "did not like the prospects of menstrual return and possible regrowth of breast remnant"; Patient 5 was "happy with [the] effects and wants to continue testosterone until more facial hair is present." *Id.*; Ex. 27. Later that year, Dr. Paul approved testosterone cypionate refills. Ex. 28; Ex. 29; Ex. 30.

Patient 5 has no diagnosed medical condition or any condition reflected in the medical records, including any endocrine disorder, that would require the administration of Lupron or testosterone. The only basis for classifying Patient 5 as non-binary in medical records, for having appointments with the endocrine clinic, and for prescribing the medicines described above was to change Patient 5's sex in violation of Texas Medicaid policy. On information and belief, Dr. Paul

and TCH submitted all of this medical care for reimbursement to TCHP, which in turn included it all in encounter data provided to Texas and the federal government.

**FCA VIOLATIONS**

Through their conduct, TCH and Drs. Paul and Roberts knowingly caused to be submitted false claims for payment in violation of 31 U.S.C. § 3729(a)(l)(B). By knowingly causing to be submitted fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules, those defendants rendered TCHP's and other Medicaid MCOs' submissions materially false, causing the federal government to pay its portion of the FMAP when it would not have had it known of the fraud.

Additionally, those same defendants caused the federal government to pay additional money by their fraudulent submissions through Texas paying higher capitation rates (funded in part by a higher FMAP) based on past experience data with additional encounters than it otherwise would have paid had it known of the fraud.

TCHP knowingly submitted false claims for payment (or those to which it was reckless as to falsity), as set forth above, in violation of 31 U.S.C. § 3729(a)(l)(A). TCHP had sufficient scienter because it failed to investigate obviously false diagnoses or reconsider submissions after TCH and its doctors made clear that they were funding gender-affirming care procedures through Medicaid. The encounters with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules that TCHP submitted and the false certifications that accompanied that data rendered TCHP ineligible to participate in Medicaid and receive any reimbursement.

By submitting fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules to the State, TCHP received capitation

payments (partly funded by the FMAP) when it would not have had the federal government known of the fraud. Additionally, TCHP caused the federal government to pay additional money by their fraudulent submissions through Texas paying higher capitation rates (funded in part by a higher FMAP) based on past experience data with additional encounters than it otherwise would have paid had it known of the fraud.

These undisclosed violations were material to the federal government's decisions to allow Defendants to participate in Medicaid and to fund its portion of the capitation rate. Defendants knew or reasonably should have known that the federal government could deny any capitation payment (including its FMAP) and prevent their participation in Medicaid if the violations had been known by the government.

**TMFPA VIOLATIONS**

Through their conduct, TCH and Drs. Paul and Roberts knowingly made or caused to be made false statements or misrepresentations of material facts to permit persons to receive benefits or payments under Medicaid that were not authorized under the Texas Medicaid programs in violation of the TMFPA. By prescribing medicines and treating patients with procedures for the purpose of effecting sex changes, those defendants submitted or caused to be submitted on behalf of patients claims for reimbursement to TCHP and other Medicaid MCOs and false information to permit the patients to receive those medicines and procedures that were not allowed under the Texas Medicaid programs.

By knowingly causing to be submitted fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules, those defendants also caused Texas to pay higher capitation rates based on past experience data with additional encounters than it otherwise would have paid had it known of the fraud, in violation of the TMFPA.

By knowingly causing to be submitted fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules, those defendants also caused to be made false statements or misrepresentations of material fact concerning information (in the form of encounter data) required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care program, in violation of the TMFPA.

By knowingly causing to be submitted fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules during times when TCHP had a significant profit, those defendants knowingly caused the making or use of false records or statements material to TCHP's obligations to pay or transmit money or property to Texas under a health care program and caused TCHP to unlawfully reduce the amount of profits it shared with Texas as part of experience rebates.

TCHP knowingly made false statements or misrepresentations of material facts to permit persons to receive benefits or payments under Medicaid that were not authorized under the Texas Medicaid programs, in violation of the TMFPA. TCHP had sufficient scienter because it failed to investigate obviously false diagnoses or reconsider submissions after TCH and its doctors made clear that they were funding gender-affirming care procedures through Medicaid. By knowingly submitting fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules to Texas, TCHP also received higher capitation rates that were funded in part by Texas than it otherwise would have been paid.

By knowingly submitting fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules, TCHP also made false statements or misrepresentations of material fact concerning information (in the form of encounter

data) required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to a health care program, in violation of the TMFPA.

By knowingly submitting fraudulent encounter data with fraudulent diagnoses and encounter data with procedures not allowed under Texas Medicaid rules during times when TCHP had a significant profit, TCHP knowingly made or used false records or statements material to TCHP's obligations to pay or transmit money or property to Texas under a health care program and unlawfully reduced the amount of profits it shared with Texas as part of experience rebates. Similarly, TCHP knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to Texas under a health care program.

These undisclosed violations were material to Texas's decision to allow Defendants to participate in Medicaid and funding its portion of the capitation rate. Defendants knew or reasonably should have known that Texas could deny any capitation payment and prevent their participation in Medicaid if the violations had been known by Texas.

## DAMAGES METHODOLOGY & ESTIMATE

Defendants' fraud rendered Defendants ineligible to receive Medicaid payments during the pendency of the fraud. If not liable for the entire volume of Medicaid submissions, Defendants are still reasonably liable for the entire value of the capitation rate paid due to the fraud, which is at minimum the capitation payments for all patients receiving any treatment that qualifies as a sex change operation. Alternatively, because failure to submit accurate encounter data results in higher capitation payments, Defendants are responsible for the higher capitation payments resulting from the fraud causing the inclusion of ineligible procedures in the encounter data used to set the capitation payments. Additionally, under the TMFPA, Defendants are also responsible for the full amount charged for all ineligible visits, treatments, or other charges and for any profits not returned

to Texas through an experience rebate because of the fraud. Though further investigation will reveal a more accurate estimate, the reimbursement will be thousands to hundreds of thousands of dollars per patient. Single Lupron treatments, for instance, are reimbursed in a fee-for-service model at over $40,000.

**DEFENDANTS' ABILITY TO PAY**

Although Defendants TCH and TCHP are nonprofit entities, they have the ability to pay any damages for which they are liable. TCH is the largest children's hospital in the United States with over $3 billion in annual revenue. TCHP has had several hundred million dollars in annual revenue.

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