

False Claims Act

TennCare requires its providers and affiliates to abide by federal and state law and regulations governing the administration/operations of managed care organizations (MCOs) within the health care program.

This includes compliance with the federal *False Claims Act (Deficit Reduction Act 6032)* that establishes liability for the following activities:

- Knowingly presenting or causing the presentation of a false/fraudulent claim for payment or approval to an officer/employee of the United States and/or applicable state government
- Knowingly making, using or causing the make/use of a false record/statement to receive payment or government approval of a false/fraudulent claim
- Conspiring to submit a false claim or to defraud the government by getting a false/fraudulent claim allowed or paid
- Possessing, having custody of or controlling property/money used or with intended use by the government - intending to defraud the government or willfully concealing property by delivering (or causing the delivery of) less property than the amount the person receives on the certificate or receipt
- Making/delivering the receipt (with intention to defraud the government after authorization to make/deliver a document certifying receipt) of property used or with intended use by the government without completely knowing that the information on the receipt is true
- Knowingly buying/receiving public property as a pledge, obligation or debt from an officer/employee of the government or any person who lawfully may not sell or pledge the property
- Knowingly making, using or causing the make/use of a false record/statement to conceal, avoid or decrease an obligation to pay or transmit money/property to the government
- Knowingly making, using or causing the make/use of any false or fraudulent conduct, representation or practice in order to procure anything of value directly or indirectly from the government

If there is a violation of the *False Claims Act*, the federal government may impose penalties of not less than \$10,781 and not more than \$21,563 plus three times the amount of damages sustained by the government. The government may reduce the damages if the person committing the violation reports it within 30 days of discovering the violation; the person cooperates fully with the federal government's investigation; and there are no criminal prosecutions, civil actions or administrative actions commenced at the time of the report - The person reporting cannot have any knowledge of such investigations.

The federal government via the Department of Health and Human Services Office of the Inspector General (OIG) may also utilize administrative remedies for the submission of false statements and/or claims, which include administrative penalties of not more than \$5,000 per false claim - The government may determine whether suspension or debarment from the health care program is warranted.

The government or an individual may bring a civil action for a violation of the applicable *False Claims Act*. If a person brings an action on behalf of the government, then that person may be entitled to a portion of any recovery under the applicable *False Claims Act*. The recovery is governed by the person's involvement in the claim and/or litigation as well as whether the government intervened in the litigation.

Whistleblower Protections

Protections against retaliation exist under federal and state law for anyone providing a good faith report

- includes filing and/or participating in litigation or other investigations under the various False Claims Acts. Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by his or

her employer because of lawful acts (on behalf of the employee or others in furtherance of an action under *Tennessee Code Annotated [TCA] § 71-5-183*) shall be entitled to all relief necessary to make the employee whole

- including investigation for, initiation of, testimony for or assistance in an action filed or to be filed under *TCA § 71-5-183*. Such relief shall include reinstatement with the same seniority status the employee would have despite the discrimination, two times the amount of back pay, interest on the back pay and compensation for any special damages sustained as a result of the discrimination
- including litigation costs and reasonable attorney fees. An employee may bring an action in the appropriate court for the relief provided in subsection (g) of *TCA § 71-5-183*.

Tennessee Medicaid *False Claims Act*

In addition, TennCare also requires its providers and affiliates to abide by state law and regulation governing the administration/operation of MCOs within the health care program. This includes compliance with the Tennessee Medicaid *False Claims Act* (*TCA § 71-5-181* and what follows) establishing liability for the following activities:

- Presenting or causing presentation of a claim for payment to the state under the Medicaid program knowing that such claim is false or fraudulent
- Presenting or causing presentation of a claim for payment to the state under the Medicaid program knowing that the person receiving the Medicaid benefit/payment is not authorized or is ineligible for a benefit under the Medicaid program
- Making, using or causing the make/use of a record or statement to obtain a false/fraudulent claim under the Medicaid program and paid or approved by the state (while knowing that such a record or statement is false)
- Conspiring to defraud the state by getting a claim allowed or paid under the Medicaid program while knowing that such claim is false/fraudulent
- Making, using or causing the make/use of a record or statement to conceal, avoid or decrease an obligation to pay/transmit money or property to the state (relative to the Medicaid program) knowing that such record/statement is false
- Knowingly applying for and receiving a benefit/payment on behalf of another person and converting that benefit/payment to his or her own personal use - except pursuant to the lawful assignment of benefits under the Medicaid program
- Knowingly making a false statement or misrepresentation of material fact concerning the conditions or operation of a health care facility so the facility may qualify for certification/recertification required by the Medicaid program
- Knowingly making a claim under the Medicaid program for a service/product that was not provided

The state may impose three times the amount of damages sustained by the government if there is a violation of the Medicaid *False Claims Act*. In Tennessee, the state may impose a civil penalty between \$5,000-\$25,000. Any suspected fraud and/or abuse may be reported to the following:

- Amerigroup Compliance Hotline phone: 1-877-725-2702
- BlueCare/TennCare Select Fraud Hotline phone: 1-888-343-4221
- United Healthcare Fraud Hotline phone: 1-844-359-7736
- OIG phone: 1-800-433-3982 - for member fraud
- OIG website: www.tn.gov/finance/topic/fa-oig
- Tennessee Bureau of Investigation (TBI) phone: 1-800-433-5454 - for provider fraud
- TBI Medicaid Fraud Control Unit email: TBI.MFCU@tn.gov
- TennCare Office of Program Integrity email: ProgramIntegrity.TennCare@tn.gov

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