



TENNCARE POLICY MANUAL

Policy No: PI 08-001 (Rev. 4)	
Subject: False Claims Act Policy	
Approval: <i>D. J. Conway</i>	Date: <i>1-24-14</i>

PURPOSE OF POLICY STATEMENT:

The Bureau of TennCare is committed to its role in preventing health care fraud, waste, and abuse and complying with applicable state and federal laws related to health care fraud, waste, and abuse. The Deficit Reduction Act of 2005 requires dissemination of information about both the federal False Claims Act and other laws, including state laws, dealing with fraud, waste, and abuse and whistleblower protections for reporting those issues. To ensure compliance with such laws, the Bureau of TennCare has policies and procedures in place to educate all Bureau of TennCare employees and contractors, monitor its entities in their efforts to detect and prevent fraud, waste, and abuse, and support the efforts of federal and state authorities in identifying incidents of fraud and abuse.

POLICY:

The policy of the Bureau of TennCare is to comply with all requirements of the Deficit Reduction Act of 2005 (DRA) Section 6032 – Employee Education About False Claims Recovery, as well as State law as cited herein.

DISCUSSION:

On February 8, 2006, President George W. Bush signed the Deficit Reduction Act of 2005 (DRA) into law. Health care providers that meet the definition of a covered entity¹ under section 6032 of the DRA of 2005 are required to provide information/education to their employees, contractors, and agents about false claims recovery.

Section 6032 of the DRA requires all covered entities to provide detailed information in the form of written policies to employees, contractors, and agents about the federal False Claims Act and any state laws that pertain to civil or criminal penalties for making false claims and statements to the government or its agents.² This section of the DRA also requires such entities to provide detailed information about

¹ The Centers for Medicare and Medicaid Services (CMS) defines a covered entity, for purposes of compliance with section 6032 of the DRA, as an entity that receives or makes annual payments of at least \$5,000,000 under a Title XIX State Plan, State Plan waiver or Title XIX demonstration.

² 42 U.S.C. § 1396a(a)(68)(A).

whistleblower protection under such laws, along with the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.³ These policies must include detailed information about the entity's policies and procedures for detecting and preventing fraud, waste and abuse.⁴ In addition, the DRA requires that each entity's employee handbook, if the "covered entity" has one, include a specific discussion of false claims laws, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.⁵

A major purpose of false claims laws is to combat fraud, waste and abuse in government health care programs. False claims laws allow the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims. These laws permit *qui tam* lawsuits, which are lawsuits brought by lay people, generally employees or former employees of healthcare facilities that submitted false claims. There is a Federal False Claims Act and a State of Tennessee version of the False Claims Act. There are also criminal penalties that may be associated with violation of the federal and state False Claims Acts.

The Federal False Claims Act as clarified by Section 4 of the Fraud Enforcement and Recovery Act (FERA) of 2009

A person's actions that can be found to be a violation of the Federal False Claims Act include, but are not limited to –

1. Knowingly presenting, or causing to be presented a false or fraudulent claim for payment or approval;
2. Knowingly making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
3. Conspiring to get a false claim allowed or paid;
4. Knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the government;
5. Having possession, custody, or control of property or money used (or to be used) by the government and knowingly delivering (or causing to be delivered) less than all that money or property;
6. Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the government and, intending to defraud the government, making or delivering the receipt without completely knowing that the information on the receipt is true; and

³ *Id.*

⁴ 42 U.S.C. § 1396a(a)(68)(B).

⁵ 42 U.S.C. § 1396a(a)(68)(C).

7. Knowingly buying, or receiving as a pledge of an obligation or debt, public property from an officer or employee of the government who lawfully may not sell or pledge property.⁶

The Federal False Claims Act imposes a civil penalty per claim, plus three times the amount of damages to the government because of the violations, and the cost of the civil suit to recover penalties and/or damages.

An individual (or *qui tam* plaintiff) can sue for violations of the Federal False Claims Act under the whistleblower provisions. The purpose of the suit is to recover funds paid by the government as a result of the false claim. If the suit is successful, the whistleblower that initially brought the suit may be awarded a percentage of the funds recovered. If the United States Government decides to join the *qui tam* suit, the percentage of the recovered funds awarded to the whistleblower is lower.

The federal False Claims Act also contains protections for whistleblowers. Employees, contractors, or agents who report fraud and consequently suffer retaliation are entitled to all relief necessary to be made whole, including but not limited to two times their back pay plus interest. They are also entitled to reinstatement at the seniority level they would have had except for the retaliation and compensation for any cost or damages they have incurred.

Tennessee Medicaid False Claims Act (TMFCA)

The Tennessee Medicaid False Claims Act (TMFCA) allows civil and/or administrative actions to be brought against any person⁷ who:

1. Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval under the Medicaid program;
2. 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;
3. Knowingly 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; or
4. Conspires to commit a violation of the above subsections numbered 1-3.⁸

Civil actions. The Attorney General and Reporter or any other person may bring a civil action against a person who violates the TMFCA Act in the manner described above. The civil penalty imposed shall be not less than \$5,000 and not more than \$25,000, plus three times the amount of damages which the state sustains because of the act of that person.⁹

Administrative actions. Upon written request of the Attorney General and Reporter, the Bureau of TennCare may initiate a contested case in accordance with the Uniform Administrative Procedures Act against any person specified by the Attorney General and Reporter who is not a TennCare enrollee,

⁶ 31 U.S.C. § 3729(a)(1)(A)-(G).

⁷ T.C.A. § 71-5-183

⁸ T.C.A. § 71-5-182

⁹ T.C.A. § 71-5-182(a).

recipient, or applicant. In these administrative proceedings, each violation shall be not less than \$1,000 and not more than \$5,000, and the actual damages shall not exceed \$25,000.¹⁰

Qui Tam Actions/Whistleblower Protections

As described in T.C.A. § 71-5-183, an individual (or *qui tam* plaintiff) may bring an action for violations of the TMFCA. Individuals who report fraud may receive a percentage of the total amount recovered if the government prosecutes the case under the TMFCA. If the *qui tam* plaintiff litigates the case on his or her own, he or she receives a larger percentage of the proceeds. Under the TMFCA the *qui tam* plaintiff may also receive reasonable costs and attorney fees. An individual cannot bring an action based on public information, unless he or she is the original source of the information.

The TMFCA contains important protections for whistleblowers. Employees, contractors, or agents are entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under the TMFCA or other efforts to stop violations of the TMFCA. The relief includes reinstatement with the same seniority status the employee, contractor, or agent would have had but for 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 attorneys' fees. An action to obtain relief from retaliation may be brought in the appropriate court, but may not be brought more than three years after the date when the retaliation occurred.¹¹

PROCEDURES:

Fraud, waste and abuse detection and prevention within the Bureau

On an annual basis, the Bureau of TennCare performs a risk assessment of each division within the Bureau that includes fraud related risks. Each division is responsible for establishing internal controls to minimize fraud, waste, and abuse within its area. Also, the Bureau of TennCare provides information related to defending against fraud, waste, and abuse via its intranet in order to enhance awareness within TennCare.

Employees are encouraged to report suspected fraud. Employees who report suspected fraud are protected by the False Claims Act whistleblowers provision, or they may remain anonymous if they choose. Employees may report suspected fraud to the Bureau of TennCare Division of Audit and Investigations, Bureau of TennCare Division of Program Integrity, or by using the State of Tennessee Comptroller's hotline (1-800-232-5454), the Tennessee Department of Finance and Administration's Office of Inspector General (OIG) fraud and abuse hotline (1-800-433-3982), or by internet via the OIG website. From the hotline calls, fraud and abuse allegations are investigated by TennCare's Audit and Investigations Division, TennCare's Program Integrity Division, or the OIG. Allegations are referred to the Tennessee Bureau of Investigation's Medicaid Fraud Control Unit when appropriate.

¹⁰ T.C.A. § 71-5-183(h).

¹¹ T.C.A. § 71-5-183(g).

TennCare’s Oversight Responsibilities to Contractors and Agents

The Division of Audit and Investigations conducts annual compliance reviews to ensure that its contractors and agents are complying with section 6032 of the Deficit Reduction Act of 2005.

The on-site visits include performing the appropriate review procedures to determine if the contractor or agent has taken steps to address the following areas of section 6032 of the DRA:

- Policies for employees, contractors, and agents that describe the Federal and State False Claims Acts including related penalties;
- Policies for employees, contractors, and agents that describe the whistleblower protections under the false claims laws;
- Policies and procedures to detect and prevent fraud, waste, and abuse;
- A description of how the DRA information related to section 6032 is disseminated to employees, contractors, and agents;
- Documentation to show that the employee handbook of the “covered entity” (if it has one) is updated with the required DRA information; and
- Documentation to support each contractor’s and agent’s plan for monitoring its contractors and agents for compliance with section 6032 of the Deficit Reduction Act of 2005.

Definitions:

“Knowing” and “knowingly” means 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.

For purposes of this definition, no proof of specific intent to defraud is required.¹²

“Medicaid program” as used in the TMFCA includes the TennCare program and any successor program to the Medicaid program.¹³

OFFICES OF PRIMARY RESPONSIBILITY:

Division of Audit and Investigations
Division of Program Integrity

¹² 31 U.S.C. § 3729(b)(1)(A)-(B); T.C.A. § 71-5-182(b)(1)-(3).

¹³ T.C.A. § 71-5-181(b).

REFERENCES:

Public Laws

- Deficit Reduction Act (DRA) of 2005 (Public Law 109-171), Section 6032
<http://www.gpo.gov/fdsys/pkg/PLAW-109publ171/pdf/PLAW-109publ171.pdf>
- Fraud Enforcement and Recovery Act (FERA) of 2009 (Public Law 111-21), Section 4
<http://www.gpo.gov/fdsys/pkg/PLAW-111publ21/pdf/PLAW-111publ21.pdf>

United States Code

- 31 U.S.C. §§ 3729 – 3733
- 31 U.S.C. §§ 3801 – 3812
- 31 U.S.C. § 1396a(a)(68)
<http://www.gpo.gov/fdsys/search/submitcitation.action?publication=USCODE>

Tennessee Code Annotated

- T.C.A. §§ 71-5-181 – 184
<http://www.lexisnexis.com/hottopics/tncode/>

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