



Bureau of TennCare

Policy Manual

Policy No: F&A 08-001 (rev.1)	
Subject: False Claims Act Policy	
Approval: <i>D. G. Good</i>	Date: 1/29/2009

PURPOSE OF POLICY STATEMENT:

The Bureau of TennCare is committed to its role in preventing health care fraud and abuse and complying with applicable state and federal laws related to health care fraud 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 train 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:

A major purpose of the 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 False Claims Act.

The Federal False Claims Act

Actions that violate the Federal False Claims Act include the following:

1. submitting or causing to be submitted a false claim to the United States Government for payment or approval;
2. making, using or causing to be made or used, a false record or statement to get a false claim paid or approved by the Government;
3. conspiring to get a false claim allowed or paid by the Government; or
4. making, using or causing to be made or used, a false record to conceal, avoid or decrease an obligation to pay money or transmit property to the Government.

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 who report fraud and consequently suffer discrimination are entitled to all relief necessary to be made whole, including two times their back pay plus interest. They are also entitled to reinstatement at the seniority level they would have had except for the discrimination and compensation for any cost or damages they have incurred.

The Tennessee False Claims Act (TFCA) and Tennessee Medicaid False Claims Act (TMFCA)

The Tennessee False Claims Act (TFCA) is a state law that is designed to help the state government and political subdivisions combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. The Tennessee Medicaid False Claims Act (TMFCA) applies solely to false claims under the Medicaid program.

Liability and Damages

- Actions that violate both the TFCA and the TMFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed. In addition, anyone who benefits from a false claim that was mistakenly submitted also violates the TFCA if he or she

does not disclose the false claim soon after he or she discovers it. Finally, the TFCA also broadly prohibits using any false representation or practice to procure anything of value from the state government or any political subdivision. The courts can waive penalties and reduce damages for violations if the false claims are voluntarily disclosed. The TFCA does not apply to controversies of less than \$500, workers' compensation claims, or tax claims.

- Like the Federal False Claims Act, the TMFCA and TFCA may impose a civil penalty per claim plus three times the amount of damages to the state may be imposed for violations.

***Qui Tam* Actions/Whistleblower Protections**

- An individual (or *qui tam* plaintiff) can sue for violations of the TFCA or the TMFCA. Individuals who report fraud receive a percentage of the total amount recovered if the government prosecutes the case under the TFCA or 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. Under both acts, an individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- Both the TMFCA and the TFCA contain important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred, including litigation cost and reasonable attorneys' fees. Under the TFCA, the employer may also be liable for punitive damages.

PROCEDURES:

Fraud, waste and abuse detection and prevention within the Bureau

On an annual basis, the Bureau of TennCare performs a fraud risk assessment of each Division within the Bureau. Using the results of the fraud risk assessment, prior audits and general knowledge of TennCare, the Division of Internal Audit designs a plan to audit those areas of high risk. Each division is responsible for establishing internal controls to minimize fraud, waste and abuse within their 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 Internal Audit, or by using the State of Tennessee Comptroller's hot-line (1-800-232-5454), the Tennessee Department of Finance and Administration's Office of Inspector General (OIG) fraud and abuse hot-line (1-800-433-3982), or by internet access via the OIG website. From the hot-line calls, fraud and abuse allegations are investigated by TennCare's Internal Audit Division or the (OIG). Allegations are referred to the Tennessee Bureau of Investigation's Medicaid Fraud Control Unit when appropriate.

OFFICES OF PRIMARY RESPONSIBILITY:

All Divisions of the Bureau of TennCare

REFERENCES:

<http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=>
(Tennessee Code Annotated §§ 4-18-101 through 4-18-106)

<http://michie.lexisnexis.com/tennessee/lpext.dll?f=templates&fn=main-h.htm&cp=>
(Tennessee Code Annotated §§ 71-5-181 through 71-5-184)

http://www4.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00003729----000-.html
(United States Code Title 31 §§ 3729 through 3733)

http://www4.law.cornell.edu/uscode/html/uscode31/usc_sec_31_00003801----000-.html
(United States Code Title 31 §§ 3801 through 3812)

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=109_cong_public_laws&docid=f:publ171.109.pdf
(Deficit Reduction Act of 2005 § 6032)