

Education Concerning the Detection of Fraud, Waste and Abuse and False Claims Liability Sample Policy

Important note: We've provided this example for informational purposes only. This sample policy doesn't constitute legal advice from BlueCross BlueShield of Tennessee or BlueCare Tennessee and isn't indicative of the complete regulatory framework of the Deficit Reduction Act or other applicable laws.

Scope:

BlueCareSM and TennCare*Select*

Purpose:

To ensure this organization complies with federal and state laws that detect and prevent Fraud, Waste and Abuse in federal health care programs

Policy and Procedure:

FRAUD AND ABUSE

(Name of Organization) _____ cooperates with all state and federal agencies in the investigation of fraud and abuse. Reportable fraud and abuse include suspected fraud and abuse in the administration of the TennCareSM program, Provider fraud and abuse, and Member fraud and abuse. Any suspected fraud and abuse will be reported to the Tennessee Bureau of Investigation Medicaid Fraud Control Unit and the Office of Inspector General. Any suspected fraudulent activity will be reported by:

- Calling BlueCross BlueShield of Tennessee's Fraud and Abuse Hotline at **1-888-343-4221**;
- Logging on to <http://www.bcbst.com/fraud/index.page>;
- Calling the Division of TennCare from anywhere in Tennessee at **1-800-433-3982**; or
- Visiting <https://www.tn.gov/finance/fa-oig/fa-oig-report-fraud.html> and completing the **Report TennCare Fraud** form.

In 2005, Congress passed The Deficit Reduction Act (DRA), a piece of legislation that impacted many areas of American government and commerce. The DRA included provisions that have an impact on Federal Health Care Programs. Federal Health Care Programs include: (1) Any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government; or (2) Any State health care program, as defined in section 1320a-7 (h) of this title. This organization falls under that definition.

The DRA changes that impacted Federal Health Care Programs took effect on Jan. 1, 2007. Because this organization is a provider for a Federal Health Care Program, (Name of Organization) _____ is required to be compliant with several new requirements promulgated by the legislation, including whistleblower protections. Specifically, this organization will train all staff on the provisions of the False Claims Act.

Additionally, because this organization participates in the Medicaid program, it will adhere to the provisions in the Tennessee Medicaid False Claims Act.

FALSE CLAIMS ACT (Title 31, Section 3729)

The False Claims Act provides Liability for certain acts.

Liability for Certain Acts. — Any person who —

- Knowingly presents, or causes to be presented, to an officer, employee or agent of the U.S. Government or member of the Armed Forces of the United States a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government;
- Conspires to defraud the Government by getting a false or fraudulent claim allowed or paid;
- Is 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, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Government.

Is liable to the United States Government for a civil penalty of not less than \$13,508 and no more than \$27,018, plus three times the amount of damages that the Government sustains because of the act of that person, except if the court finds —

- The person committing the violation of this subsection furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the person (the defendant) first obtained the information;
- Such person fully cooperated with any Government investigation of such violation; and at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under Title 31 of the United States Code with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

The court may assess no less than two times the amount of damages that the Government sustains because of the act of the person. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

WHISTLEBLOWER ACT

SEC.1902. [42 U.S.C. 1396a] (a) (68)] states that any entity that receives or makes annual payments under the State plan of at least \$5,000,000, as a condition of receiving such payments, shall —

A) Establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of Title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of Title 31, United States Code;²⁷ any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

(B) Include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(C) Include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

An employee must reasonably believe they're reporting a violation of the law. The employer cannot discharge, demote, suspend, harass or in any manner retaliate against the employee for making a good-faith report. If retaliation occurs, the employee may be entitled to reinstatement with the same seniority status had the retaliation not occurred, litigation costs and reasonable attorneys' fees, and two times their back pay plus interest.

TENNESSEE MEDICAID FALSE CLAIMS ACT (TMFCA)

Liability for Certain Acts. — Any person who —

- Knowingly presents, or causes to be presented, to the State a false or fraudulent claim for payment or approval under the Medicaid program;
- 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;
- Conspires to defraud the State by getting a claim allowed or paid under the Medicaid program knowing the claim is false or fraudulent; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State relative to the Medicaid program.

May face a civil penalty of no less than \$5,000 and no more than \$25,000 for each claim that violates the TMFCA, plus three times the amount of damages that the State sustains because of the act of that person.

TennCare may also initiate an administrative proceeding in accordance with the Uniformed Administrative Procedures Act against any person specified by the Attorney General and Reporter who is not a TennCare enrollee, recipient or applicant. In these administrative proceedings, each violation shall be no less than \$1,000 and no more than \$5,000 for each claim that violates the TMFCA. The actual damages shall not exceed \$10,000.

TMFCA WHISTLEBLOWER PROTECTIONS

Employers, 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 or agent or others associated 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 back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation 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.

- A. Include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A) above pertaining to the Whistleblower Act, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

An employee must reasonably believe they're reporting a violation of the law. The employer cannot discharge, demote, suspend, harass or in any manner retaliate against the employee for making a good-faith report. If retaliation occurs, the employee may be entitled to reinstatement with the same seniority status had the retaliation not occurred, litigation costs and reasonable attorneys' fees, and two times their back pay plus interest if retaliation occurs.