



Administrative Policies and Procedures: 1.8

Subject:	Guidelines for Reporting False Claims
Authority:	TCA 4-18-105; 37-5-105(3); 37-5-106; 71-5-182; Civil False Claims Act (31 U.S.C. §3729 et seq.)
Standards:	None
Application:	To All Department of Children's Services Employees, Private Provider Employees, Contractors and Sub Contractors
Policy Statement:	
<p>The Department of Children's Services (DCS) takes health care fraud and abuse very seriously. It is our policy to provide information to all employees, contractors and agents about the federal and state false claims acts, remedies available under these provisions and how employees and others can use them, and about whistleblower protections available to anyone who claims a violation of the federal or state false claims acts. We also advise our employees, contractors and agents of the steps DCS has in place to detect health care fraud and abuse.</p>	
Purpose:	
<p>DCS is committed to its role in preventing health care fraud and abuse and complying with applicable state and federal law related to health care fraud and abuse. The Deficit Reduction Act of 2005 requires 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, DCS has policies and procedures in place to detect and prevent fraud, waste, and abuse, and also supports the efforts of federal and state authorities in identifying incidents of fraud and abuse.</p> <p>This policy outlines established DCS policies and procedures for detecting and preventing fraud, waste, and abuse and an overview of the Federal Civil False Claims and Program Fraud Civil Remedies Acts and applicable state laws.</p>	
Procedures:	
A. Federal and state false claims law overview	<p>The Role of Federal and State Laws in Preventing Fraud, Waste, and Abuse: The Federal Government and the State of Tennessee have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment or approval to the federal and state governments and to private payers. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and also provide anti-retaliation provisions for individuals who make good faith reports of waste, fraud, and abuse.</p>

<p>B. Established DCS policies and procedures for detecting and preventing fraud, waste and abuse</p>	<p>In an ongoing effort to detect and prevent fraud, waste and abuse <u>including</u> fraud, waste, and abuse in the Federal and State health care programs, DCS policies and procedures, Laws and Rules established to detect and prevent fraud, waste and abuse include, but are not limited to, the policies listed below:</p> <ul style="list-style-type: none"> ◆ <u>1.5 Internal Audit</u> ◆ <u>1.7 Risk Management</u> ◆ <u>1.16 Internal Affairs Investigations</u> ◆ <u>3.32 Prohibition of Fundraising</u> ◆ <u>4.10 Conflicts of Interest</u> ◆ <u>1.27 Fraud, Waste, and Abuse Prevention, Reporting, and Investigation</u> ◆ <u>1.28 Reporting Suspected TennCare Fraud or Fiscal Abuse</u> ◆ <u>Whistleblower Protections Statute – TN Code Annotated 4-18-105</u>
<p>C. Federal Civil False Claims Act</p>	<p>The Civil False Claims Act (31 U.S.C. §3729 et seq.) is a statute that imposes civil liability on any person who knowingly:</p> <ol style="list-style-type: none"> 1. Presents, or causes to be presented, a false or fraudulent claim, record or statement for payment or approval; 2. Conspires to defraud the government by getting a false or fraudulent claim allowed or paid; 3. Uses a false record or statement to avoid or decrease an obligation to pay the Government; and 4. Other fraudulent acts enumerated in the statute.
<p>D. Tennessee False Claims Act (TFCA) and Tennessee Medicaid False Claims Act (TMFCA)</p>	<p>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.</p> <ol style="list-style-type: none"> 1. Liability and Damages <ol style="list-style-type: none"> a) Actions that violate both the TFCA and the TMFCA include knowingly: <ul style="list-style-type: none"> ◆ Submitting a false claim for payment; ◆ Making or using a false record to get a false claim paid; ◆ Conspiring to make a false claim or get one paid; or ◆ 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

	<p>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.</p> <p>b) 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.</p> <p>2. Actions by Private Persons (<i>Qui Tam</i> Action)/Whistleblower Protections</p> <p>a) An individual (or <i>qui tam</i> 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 <i>qui tam</i> plaintiff litigates the case on his or her own, he or she receives a larger percentage of the proceeds. Under the TMFCA, the <i>qui tam</i> 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.</p> <p>b) Both the TMFCA and the TFCA contain important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination shall be awarded:</p> <ul style="list-style-type: none"> ◆ Two times their back pay plus interest. ◆ Reinstatement at the seniority level they would have had except for the discrimination, and ◆ 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.
<p>E. Examples of a possible false claim</p>	<p>Examples of possible false claims are listed below:</p> <ol style="list-style-type: none"> 1. Making false statements regarding a claim for payment; 2. Falsifying information in the medical record; 3. Billing twice for the same items or services provided; or 4. Billing for services or items not performed or never furnished.
<p>F. Responsibilities for reporting false claims</p>	<ol style="list-style-type: none"> 1. If an employee discovers an event that is similar to one of the examples of a false claim above, an employee is encouraged to: <ol style="list-style-type: none"> a) Report the event to the Division of Internal Affairs or the Division of Internal Audit for further investigation. If the employee is not comfortable doing this; b) Employees may also report the suspected fraud to external agencies such as: <ul style="list-style-type: none"> ◆ State of Tennessee Comptroller's Office - Hot-line (1-800-232-5454); ◆ Tennessee Department of Finance and Administration's Office of

	<p>Inspector General (OIG) - Fraud and abuse hot-line (1-800-433-3982); or</p> <p>◆ Tennessee Bureau of Investigation (TBI) - Medicaid fraud hot-line (1-800-433-5454).</p> <p>2. An employee is not required to report a possible FCA violation to DCS first. A report may be made directly to the applicable state authorities listed in item (b) above. However, in many instances DCS believes that the use of its internal reporting process is a better option because it allows DCS to quickly address potential issues. DCS encourages employees to consider first reporting suspected false claims to DCS but the choice is up to the employee.</p> <p>3. DCS will not retaliate against any employee for informing DCS management or the federal or state government of a possible FCA violation.</p>
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Forms:	<i>None</i>
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Collateral documents:	<i>None</i>
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Glossary:	
<i>Term</i>	<i>Definition</i>
Abuse:	Centers for Medicare & Medicaid Services (CMS) defines "abuse" as incidents or practices of providers that are inconsistent with sound medical practice and may result in unnecessary costs, improper payment, or the payment for services that either fail to meet professionally recognized standards of care or are medically unnecessary.

Actions by Private Persons:	<p>The FCA also provides for Actions by Private Persons (<i>qui tam</i> lawsuits) who can bring a civil action in the name of the government for a violation of the Act. Generally, the action may not be brought more than six years after the violation, but in no event more than ten. When the action is filed it remains under seal for at least sixty days.</p> <p>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 <i>qui tam</i> suit, the percentage of the recovered funds awarded to the whistleblower is decreased.</p> <p>If the civil action is frivolous or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the share of proceeds may be reduced and, if found guilty of a crime associated with the</p>
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	violation, no share is awarded the plaintiff.
Claim:	Includes any request or demand for money or property if the United States Government provides any portion of the money requested or demanded.
Fraud:	The Centers for Medicare & Medicaid Services (CMS) defines “ <i>fraud</i> ” as the intentional deception or misrepresentation that an individual knows to be false (or does not believe to be true) and makes, knowing that the deception could result in an unauthorized benefit to himself or another person.
Knowingly:	As defined in the Civil False Claims Act ("FCA") includes a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.
Potential civil liability:	<p>The Federal False Claims Act includes 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.</p> <p>The Attorney General of the United States is required to diligently investigate violations of the FCA, and may bring a civil action against a person. Before filing suit the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.</p>

Glossary:	
Term	Definition
Whistleblower Protection:	The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in Federal District Court. Employees who suffer discrimination may seek all relief necessary to be made whole, including two times their back pay plus interest, reinstatement at the seniority level they would have had, except for the discrimination, and compensation for any cost or damages they have incurred.