

## Tennessee

Tn. Code § 4-18-101

§ 4-18-101. Short title

This chapter shall be known and may be cited as the “False Claims Act.”

Tn. Code § 4-18-102

§ 4-18-102. Definitions

For purposes of this chapter:

(1) “Claim” means any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state, referred to in this chapter as “state funds” or by any political subdivision thereof, referred to in this chapter as “political subdivision funds”;

(2)(A) “Knowing” and “knowingly” mean that a person, with respect to information, does any of the following:

- (i) Has actual knowledge of the information;
- (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
- (iii) Acts in reckless disregard of the truth or falsity of the information.

(B) Proof of specific intent to defraud is not required;

(3) “Person” means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust;

(4) “Political subdivision” means any city, town, municipality, county, including any county having a metropolitan form of government, or other legally authorized local governmental entity with jurisdictional boundaries; and

(5) “Prosecuting authority” means the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision.

Tn. Code § 4-18-103

§ 4-18-103. Liability; penalties; damages

(a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three (3) times the amount of damages that the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) for each false claim:

(1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision;

(3) Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision;

(4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;

(5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;

(7) 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 or to any political subdivision;

(8) Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim; or

(9) Knowingly makes, uses, or causes to be made or used any false or fraudulent conduct, representation, or practice in order to procure anything of value directly or indirectly from the state or any political subdivision.

(b) Notwithstanding subsection (a), the court may assess not less than two (2) times nor more than three (3) times the amount of damages that the state or the political subdivision sustains because of the act of the person described in that subsection, and no civil penalty, if the court finds all of the following:

(1) The person committing the violation furnished officials of the state or of the political subdivision responsible for investigating false claims violations with all information known to that person about the violation within thirty (30) days after the date on which the person first obtained the information;

(2) The person fully cooperated with any investigation by the state or a political subdivision of the violation; and

(3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars (\$500) in value, unless the controversy arose from a violation of chapter 58 of this title. For purposes of this subsection (d), “controversy” means any one (1) or more false claims submitted by the same person in violation of this chapter.

(e) This section does not apply to claims, records, or statements made pursuant to workers’ compensation claims.

(f) This section does not apply to claims, records, or statements made under any statute applicable to any tax administered by the department of revenue.

Tn. Code § 4-18-104

§ 4-18-104. Investigation; civil actions; intervention; complaint and response; extensions; jurisdiction; qui tam plaintiff; distribution of proceeds; discovery; False Claims Act Fund

(a)(1) The attorney general and reporter shall diligently investigate violations under § 4-18-103 involving state funds. If the attorney general and reporter finds that a person has violated or is violating § 4-18-103, the attorney general and reporter may bring a civil action under this section against that person.

(2) If the attorney general and reporter brings a civil action under this subsection (a) on a claim involving political subdivision funds as well as state funds, the attorney general and reporter shall, on the same date that the complaint is filed in this action, serve by mail with return receipt requested a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the attorney general and reporter under this subsection (a) within sixty (60) days after receipt of the complaint pursuant to subdivision (a)(2). The court may permit intervention thereafter.

(b)(1) The prosecuting authority of a political subdivision shall diligently investigate violations under § 4-18-103 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating § 4-18-103, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the attorney general and reporter.

(3) Within sixty (60) days after receiving the complaint pursuant to subdivision (b)(2), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the attorney general and reporter shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party; or

(B) Notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

(c)(1) A person may bring a civil action for a violation of this chapter for the person and either for the state in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are involved, or for both the state and political subdivision if state and political subdivision funds are involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this chapter.

(2) A complaint filed by a private person under this subsection (c) shall be filed in circuit or chancery court in camera and may remain under seal for up to sixty (60) days. No service shall be made on the defendant until after the complaint is unsealed. This subsection (c) shall not be construed as prohibiting an action being brought in federal court that involves claims from several states or claims involving federal funds.

(3) On the same day as the complaint is filed pursuant to subdivision (c)(2), the qui tam plaintiff shall serve by mail with return receipt requested the attorney general and reporter with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the attorney general and reporter may elect to intervene and proceed with the action.

(5) The attorney general and reporter may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(5), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted; or

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7)(A) Within fifteen (15) days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within forty-five (45) days after the attorney general and reporter forwards the complaint and written disclosure pursuant to subdivision (c)(7)(A), the prosecuting authority may elect to intervene and proceed with the action.

(C) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the forty-five-day period or any extensions obtained under subdivision (c)(7)(C), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted; or

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8)(A) Within fifteen (15) days after receiving a complaint alleging violations that involve both state and political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the attorney general and reporter or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(C) The attorney general and reporter or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (c)(2). The motion may be

supported by affidavits or other submissions in camera.

(D) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(8)(C), the attorney general and reporter shall do one of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted;

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority; or

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(E) If the attorney general and reporter proceeds with the action pursuant to subdivision (c)(8)(D)(i) the prosecuting authority of the political subdivision shall be permitted to intervene in the action within sixty (60) days after the attorney general and reporter notifies the court of its intentions. The court may authorize intervention thereafter.

(9) The defendant shall not be required to respond to any complaint filed under this section until thirty (30) days after the complaint is unsealed and served upon the defendant.

(10) When a person brings an action under this subsection (c), no other person may bring a related action based on the facts underlying the pending action.

(d)(1) No court shall have jurisdiction over an action brought under subsection (c) against a member of the general assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body or other elected official of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

(2) A person may not bring an action under subsection (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the state or political subdivision is already a party.

(3)(A) No court shall have jurisdiction over an action under this chapter based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the general assembly, comptroller of the treasury, or governing body of a political subdivision, or by the news media, unless the action is brought by the attorney general and reporter or the prosecuting authority of a political subdivision or the person bringing the action is an original source of the information.

(B) For purposes of subdivision (d)(3)(A), “original source” means an individual, who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subdivision (d)(3)(A).

(4) No court shall have jurisdiction over an action brought under subsection (c) based upon information discovered by a present or former employee of the state or a political subdivision during the course of such person’s employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed

sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(e)(1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2)(A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f)(1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the attorney general and reporter or prosecuting authority would have had if it had chosen to proceed under subsection (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)(A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under subdivision (f)(2)(A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g)(1)(A) If the attorney general and reporter initiates an action pursuant to subsection (a) or assumes control of an action initiated by a prosecuting authority pursuant to subdivision (b)(3)(A), the office of the attorney general and reporter shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subsection (b), the office of the prosecuting authority shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(C) If a prosecuting authority intervenes in an action initiated by the attorney general and reporter pursuant to subdivision (a)(3) or remains a party to an action assumed by the attorney general and reporter pursuant to subdivision (b)(3)(A), the court may award the office of the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery under subdivision (g)(1)(A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive at least twenty-five percent (25%) but not more than thirty-three percent (33%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the attorney general and



reporter's office or the office of the prosecuting authority of the political subdivision shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the attorney general and reporter and a prosecuting authority are involved in a qui tam action pursuant to subdivision (c)(6)(C), the court at its discretion may award the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than thirty-five percent (35%) and not more than fifty percent (50%) of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) If the action is one provided for under subdivision (d)(4), the present or former employee of the state or political subdivision is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those sums from the proceeds as it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to subdivisions (g)(1)-(5), inclusive, shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in § 4-18-103.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subsection (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

(h)(1) The court may stay an act of discovery of the person initiating the action for a period of not more than sixty (60) days if the attorney general and reporter or local prosecuting authority shows that the act of discovery would interfere with an investigation or a prosecution of criminal or civil matter arising out of the same facts, regardless of whether the attorney

general and reporter or local prosecuting authority proceeds with the action. This showing shall be conducted in camera.

(2) The court may extend the sixty-day period upon a further showing in camera that the attorney general and reporter or local prosecuting authority has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the attorney general and reporter or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general and reporter's or local prosecuting authority's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

- (1) Limiting the number of witnesses the person may call;
- (2) Limiting the length of the testimony of the witnesses;
- (3) Limiting the person's cross-examination of witnesses; or
- (4) Otherwise limiting the participation by the person in the litigation.

(j) There is hereby created in the state treasury a fund to be known as the "False Claims Act Fund." Proceeds from the action or settlement of the claim by the attorney general and reporter pursuant to this chapter shall be deposited into this fund. Moneys in this fund, upon appropriation by the general assembly, shall be used by the attorney general and reporter to support the ongoing investigation and prosecution of false claims in furtherance of this chapter. Amounts in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in this chapter.

## Tn. Code § 4-18-105

## § 4-18-105. Whistleblowing; liability; remedies

(a) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under § 4-18-104.

(b) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under § 4-18-104.

(c) An employer who violates subsection (b) shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate chancery court of the state for the relief provided in this subsection (c).

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in terms and conditions of employment by such person's employer because of participation in conduct that directly or indirectly resulted in the submission of a false claim to the state or a political subdivision shall be entitled to the remedies under subsection (c) if, and only if, both of the following occur:

(1) The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed; and

(2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

Tn. Code § 4-18-106

§ 4-18-106. Civil actions; essential elements

(a) A civil action under § 4-18-104 may not be filed more than three (3) years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than ten (10) years after the date on which the violation of § 4-18-103 was committed.

(b) A civil action under § 4-18-104 may be brought for activity prior to July 1, 2001, if the limitations period set in subsection (a) has not lapsed.

(c) In any action brought under § 4-18-104, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) Notwithstanding any other law to the contrary, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, except for a plea of nolo contendere made prior to July 1, 2001, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under § 4-18-104(a), (b), or (c).

Tn. Code § 4-18-107

§ 4-18-107. Remedies; severability; construction

(a) This chapter is not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for by law or available under common law.

(b) If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end this chapter is declared to be severable.

(c) This chapter is declared to be remedial in nature and this chapter shall be liberally construed to effectuate its purposes.

Tn. Code § 4-18-108

§ 4-18-108. Applicability

This chapter shall not apply to any conduct, activity or claims covered by the Medicaid False Claims Act, §§ 71-5-181 -- 71-5-185, including without limitation, claims arising out of funds paid to or by TennCare managed care organizations.

## **Tennessee**

Tn. Code § 71-5-2501

§ 71-5-2501. Short title

This part shall be known and may be cited as “The TennCare Fraud and Abuse Reform Act of 2004”.

Tn. Code § 71-5-2502

§ 71-5-2502. Office of inspector general

There is created a division of state government which shall be known and designated as the office of inspector general. This division shall be located within the department of finance and administration and shall report directly to the commissioner of finance and administration. The office of inspector general shall be headed by an inspector general. The office of inspector general shall be separate and distinct from the TennCare bureau and the medicaid fraud control unit (MFCU).



Tn. Code § 71-5-2503

§ 71-5-2503. Definitions

As used in this part and part 26 unless the context otherwise requires:

(1) “Abuse” shall be given the same meaning as currently exists in federal regulations located at 42 CFR 455.2, with the following exceptions:

(A) It shall also apply to practices by vendors or other persons or entities; and

(B) It shall also apply to the TennCare program;

(2) “Applicant” means any person who has applied for benefits under part 1 of this chapter;

(3) “Benefits” means the health care package of services available to TennCare enrollees;

(4) “Claim” includes any request or demand for money, property, or services made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient of state funds, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, TennCare;

(5) “CMS” (centers for medicare and medicaid services), means the agency within the United States department of health and human services that is responsible for administering Title XVIII (42 U.S.C. §1395 et seq.), Title XIX (42 U.S.C. §1396 et seq.), and Title XXI (42 U.S.C. §1397aa), of the Social Security Act;

(6) “Commissioner” means the commissioner of finance and administration;

(7) “Department” means the department of finance and administration;

(8) “Enrollee” means an individual eligible for and enrolled in the TennCare program or in any successor medicaid program in Tennessee;

(9) “Fraud” means an intentional deception or misrepresentation made by a person including, but not limited to, a vendor, recipient, provider, or enrollee, with the knowledge that the deception or misrepresentation could result in some unauthorized benefit or payment to oneself or some other person. It includes any act that constitutes fraud under applicable federal or state law including, but not limited to, the Tennessee Medicaid False Claims Act, compiled in §§ 71-5-181 -- 71-5-185;

(10) “Inspector general” means the person who directs the office of inspector general, who shall report directly to the commissioner of finance and administration;

(11) “Medical assistance” means payment of the cost of care, services and supplies necessary to prevent, diagnose, correct or cure conditions in the person that cause acute suffering, endanger life, result in illness or infirmity, interfere with the person’s capacity for normal activity, or threaten some significant disability and which are furnished an eligible person in accordance with the rules, regulations, and statutes governing TennCare. Such care, services and supplies includes services of qualified practitioners licensed under the laws of this state;

(12) “MFCU” means the medicaid fraud control unit;

(13) “Provider” means an institution, facility, agency, person, corporation, partnership, unincorporated organization, nonprofit organization or any person or entity directly or indirectly providing benefits, goods or services to a TennCare enrollee. Provider also means a provider’s agent, contractor or subcontractor, such as a billing agent;

(14) “Recipient” means any person who has been determined eligible to receive benefits under part 1 of this chapter, and who has received such benefits;

(15) “TennCare” means the program administered by the single state agency, as designated by the state and CMS, pursuant to Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.), and the Section 1115 research and demonstration waiver granted to the state of Tennessee and any successor programs; and

(16) “Vendor” means any person, institution, agency, other entity or business concern providing services or goods authorized under chapter 5, part 1 of this title, and includes, but is not limited to, any health maintenance organization, managed care organization, managed care contractor, administrative services organization, pharmacy benefit manager, prepaid limited health service organization, contractor or subcontractor.

Tn. Code § 71-5-2504

§ 71-5-2504. Rules and regulations

The commissioner is authorized to promulgate rules and regulations, including emergency rules pursuant to § 4-5-208, to effectuate the purposes of this part. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

Tn. Code § 71-5-2505

§ 71-5-2505. Authority of office of inspector general

The office of inspector general shall have the authority to:

- (1) Investigate civil and criminal fraud and abuse of the TennCare program, or any other violations of state criminal law related to the operation of TennCare;
- (2) Cooperate with the MFCU, and where a preliminary investigation of fraud and abuse by a provider establishes a sufficient basis to warrant a full investigation, refer such matters to the MFCU;
- (3) Refer matters to the appropriate enforcement authority for criminal prosecution;
- (4) Refer matters to the appropriate enforcement authorities for civil proceedings, and assist in the recovery of funds which have been inappropriately paid by the TennCare program, including, but not limited to, referral to the attorney general and reporter for civil recovery;
- (5) Cooperate with the appropriate federal departments in any reasonable manner as may be necessary to qualify for federal aid in connection with TennCare;
- (6) Cooperate with the federal government and other state governments to investigate TennCare and medicaid fraud and abuse;
- (7) Cooperate with other state agencies to investigate TennCare and medicaid fraud and abuse;
- (8) Within sixty (60) days after the close of each fiscal year, prepare and print a summary report, which shall be submitted to the governor, members of the general assembly, the committee of the house of representatives having oversight over TennCare, the TennCare advisory commission, and the commissioner. This report shall include a summary of all activities of the office of inspector general during that fiscal year;
- (9) Furnish information to acquaint the public with the fraud and abuse laws pertaining to TennCare;
- (10) Contract with necessary entities to carry out the required duties of this part. All such contracts shall be procured in accordance with the requirements of title 12, chapter 4, part 1; and
- (11) Exercise any additional powers necessary to carry out the purposes and provisions of this part.

Tn. Code § 71-5-2506

§ 71-5-2506. TennCare fraud and abuse cases; legal assistance; venue

(a) The office of inspector general shall have the authority to provide legal assistance to the attorney general and reporter and the state district attorneys general for the purpose of initiating and handling proceedings in appropriate TennCare fraud and abuse cases. Such assistance may include but not be limited to, the authority to fund assistant attorney general or assistant district attorney general positions in those respective offices, subject to the appropriations made to the office of inspector general and the agreement of the offices concerned. The office of inspector general shall also have the authority to fund public defender positions, subject to the appropriations made to the office of inspector general and the agreement of the officers concerned. The office of inspector general may, with reasonable notice, terminate the funding of any attorney positions which the inspector general has funded in either of these offices.

(b) Venue for civil actions involving fraud and abuse shall be in the county where the offense was committed or in Davidson County. Venue for criminal actions involving fraud and abuse shall be to the full extent permitted by the constitution of the state.

Tn. Code § 71-5-2507

§ 71-5-2507. Office of inspector general staff; law enforcement officers

(a) The staff of the office of inspector general may include law enforcement officers, as defined in § 39-11-106(a) and qualified as defined in § 38-8-106, who have successfully completed a training course approved by the Tennessee peace officer standards and training commission, including surveillance training.

(b) Any duly authorized law enforcement officer who has been specifically designated by the inspector general to enforce this part is authorized and empowered to go armed while on active duty engaged in enforcing this part; and is authorized to make arrests for offenses involving criminal fraud and abuse of the TennCare program and any other violations of state criminal law related to the operation of TennCare. Any such person is also authorized and empowered to execute search warrants and do all acts incident thereto in the same manner as search warrants may be executed by sheriffs and other peace officers.

Tn. Code § 71-5-2508

§ 71-5-2508. Medicaid fraud control unit

There is established a medicaid fraud control unit, which is separate and distinct from the state medicaid agency, within the criminal investigation division of the Tennessee bureau of investigation or within another appropriate agency at the discretion of the governor. As regulated by federal law, the unit is authorized to investigate and refer for prosecution violations of all applicable laws pertaining to provider or vendor fraud and abuse in the administration of the medicaid program, the provision of goods or services or the activities of providers of goods or services under the state medicaid plan; medicare fraud; and abuse or neglect in healthcare facilities receiving payments under the state medicaid plan, such as board and care facilities as allowed by federal law. A summary of the unit's work shall be included in a report which shall be submitted annually to the governor, judiciary committee of the senate, and committee of the house of representatives having oversight over TennCare.

## Tn. Code § 71-5-2509

## § 71-5-2509. Subpoenas and discovery

(a)(1) The office of inspector general, when conducting any investigation relating to TennCare fraud or abuse, shall have the power to issue subpoenas, and compel the attendance of witnesses, the examination of such witnesses under oath, and the production of books, accounts, papers, records, and documents relating to such investigation.

(2) In the case of a failure of any person, firm, or corporation so subpoenaed to attend or to produce the specified records, and after reasonable notice to such person, firm, or corporation, the office of inspector general may seek judicial enforcement of the subpoena by filing, through the attorney general and reporter, a petition with the circuit or chancery court of Davidson County or of the judicial district in which such person, firm, or corporation resides. Such petition shall incorporate or be accompanied by a certification regarding the notice given and the failure of such person, firm or corporation to attend or produce the records.

(3) Upon the filing of such a petition in proper form, the court shall order the person, firm, or corporation named in the petition to appear and show cause why they should not comply with the subpoena or be held in contempt for failure to comply. The court shall have authority to employ all judicial power as provided by law to compel compliance with the subpoena, including those powers granted in §§ 29-9-103 -- 29-9-106. The court shall be authorized to impose costs and sanctions against any such person, firm, or corporation, in the same manner and on the same bases as may be imposed for failure to comply with judicially issued subpoenas under the Tennessee Rules of Civil Procedure.

(4) The court may order the person, firm, or corporation to comply, and shall have the authority to punish each day of failure to comply with such order as a separate contempt of court.

(5) The subpoena enforcement remedies set forth in this subsection (a) shall be cumulative, and not exclusive, of any other remedies provided by law for the enforcement of such subpoenas.

(b) The office of inspector general shall have the power to compel the production of current and former employment records during an investigation. Employment records include, but are not limited to, employment details, wages, and insurance information of TennCare applicants and enrollees. Employment records shall be open to inspection and be subject to being copied by an office of inspector general representative at any reasonable time and as often as may be necessary. The office of inspector general shall also have the right to compare information reported to TennCare by applicants or enrollees with data maintained by the credit bureaus.

(c) The complete patient record of an enrollee or recipient generated during the TennCare enrollment period shall be made available to the office of inspector general upon request. This includes any and all services, goods and pharmaceuticals dispensed regardless of payment source. Access to these records under this section may occur during and after enrollment in the TennCare program. Records accessed during an investigation shall be protected in accordance with state and federal privacy laws.



Tn. Code § 71-5-2510

§ 71-5-2510. Investigation of fraud and abuse allegations

Notwithstanding any other provision of this chapter or of title 38, the Tennessee bureau of investigation and the office of inspector general are authorized to investigate allegations of fraud or abuse involving TennCare managed care organizations.

Tn. Code § 71-5-2511

§ 71-5-2511. Annual reports

(a) The inspector general shall annually report by October 1 of each year for the prior fiscal year to the governor and the general assembly on the activities of the inspector general's office. The report shall include actual numbers of complaints, investigation, charges, prosecutions, convictions and appeals.

(b) The director of the Tennessee bureau of investigation shall annually report to the governor and the general assembly on the activities of the medicaid fraud control unit within the criminal investigation division. The report shall include actual numbers of complaints, investigation, charges, prosecutions, convictions and appeals.

Tn. Code § 71-5-2512

§ 71-5-2512. Incentives for reporting fraud and abuse

- (a) The office of inspector general shall establish an incentive program to provide a cash reward to citizens who notify the office of inspector general of criminal fraud by recipients of the TennCare program. The cash reward shall be paid if the information provided by the citizen results in a criminal conviction. Such cash awards shall be set at a meaningful amount through a schedule to be established by the office of inspector general.
  
- (b) The office of inspector general shall furnish information to acquaint the public with the existence of the program and the means by which citizens may participate.
  
- (c) The commissioner of finance and administration shall use the commissioner's rule-making authority under this chapter to promulgate rules establishing the program mandated by subsection (a).
  
- (d) The office of inspector general shall file with the commerce and labor committee of the senate, and the committee of the house of representatives having oversight over TennCare, by February 15 of each year, an annual report of all moneys paid to citizens pursuant to the program established by this section.

Tn. Code § 71-5-2513

§ 71-5-2513. Data mining; legislative intent

The general assembly recognizes that data mining is an important tool that should be used for the detection of fraud and abuse in the TennCare program; therefore, it is the intention of the general assembly that:

(1) The office of inspector general shall engage in data mining relating to the receipt of medical assistance and any assistance paid for by TennCare on behalf of recipients, for the purpose of detecting fraud or abuse by recipients;

(2) The inspector general shall have prompt, continuing, and effective access to all such data in a manner that will permit effective data mining for these purposes without imposing unduly burdensome or oppressive requirements on persons or entities that provide medical assistance or any assistance paid for by TennCare; and

(3) Data mining by the office of the inspector general is not intended to alter the requirements under Title XIX of the federal Social Security Act (42 U.S.C. §1395 et seq.), including, but not limited to, the requirements that the single state agency designated to administer the medicaid program must have methods and criteria for identifying suspected fraud cases, must have a method for verifying whether services billed were received, and must cooperate with the state's medicaid fraud control unit.

Tn. Code § 71-5-2514

§ 71-5-2514. Data mining; definitions

As used in §§ 71-5-2513 -- 71-5-2521, unless the context otherwise requires:

- (1) “Access” means the ability to extract intelligible information through automated means, and to store, retrieve, use, and otherwise manipulate that information in a way that may lead to meaningful analysis with the aid of commonly available computer software and hardware;
- (2) “Data” means representations of information, knowledge, facts, concepts, or instructions that are being prepared or have been prepared in a formalized manner, and are intended to be stored or processed, or are being stored or processed, or have been stored or processed in a computer, computer system, computer network or other electronic medium;
- (3) “Data mining” means the automated extraction of predictive information from data for the purpose of finding patterns of behavior and trends or anomalies that may otherwise escape detection, the advanced statistical analysis and modeling of the data to find useful patterns and relationships, and the use of computational techniques involving statistics, machine learning and pattern recognition to analyze the data;
- (4) “Single state agency” means the agency of the state of Tennessee that is designated, pursuant to 42 CFR 431.10(b), to administer or supervise the administration of the medicaid program under Title XIX of the Social Security Act (42 U.S.C. §1395 et seq.); and
- (5) “TennCare related data” means all data that relates to medical assistance or any assistance to TennCare recipients, applicants, or enrollees as defined in this part. The data includes data evidencing identity and eligibility of recipients and the receipt by recipients of medical assistance or any assistance paid for by TennCare.

Tn. Code § 71-5-2515

§ 71-5-2515. Data mining; requests for data or records

All persons and entities under contract with the TennCare bureau or its agent or designee, including, but not limited to, all managed care organizations, benefit managers, and other managed care contractors, shall promptly provide to the office of inspector general, on request:

(1) A copy of, or access to, the same data regularly provided to the bureau in the normal course of business, and in the same format, unless otherwise agreed by the inspector general in writing; and

(2) Access to additional TennCare related data or records that may be requested by the inspector general; provided, that, if the data is not easily separated from non-TennCare related data, then all the data shall be provided as necessary to provide meaningful access to the TennCare related data.

Tn. Code § 71-5-2516

§ 71-5-2516. Data mining; confidential investigative records; liability for providing access to data; creation or destruction of records

(a) All records obtained pursuant to this chapter shall be treated as confidential investigative records of the office of inspector general and shall not be open to public inspection; provided, however, that nothing in this part shall be construed to affect the obligation of the single state agency under federal law to provide the medicaid fraud control unit with access to, and free copies of, all records or information or computerized data kept or stored by the agency pursuant to 42 CFR 455.21(a).

(b) Notwithstanding any other law to the contrary, no person shall be subject to any civil or criminal liability for providing the office of inspector general with access to data as required by this chapter.

(c) Nothing in this chapter shall be construed to require any person or entity to create new records or data that did not exist at the time of the request; provided, that no person or entity may destroy existing data after having been put on notice that access to the data is required pursuant to this section.

Tn. Code § 71-5-2517

§ 71-5-2517. Data mining; periodic provision of data; compliance; electronic data; storage

- (a) The office of inspector general is authorized to require periodic provision of specific categories, types, or collations of data without the necessity of issuing a new request at the commencement of each period.
- (b) Compliance with a request by the office of inspector general is not dependent on approval by the bureau of TennCare, and it shall not be a defense to an action for enforcement or sanctions under this part that the bureau of TennCare does not require copies of or access to the requested data.
- (c) Data kept in the regular course of business in electronic format shall on request be provided to the office of inspector general in the same electronic format. The data shall be provided in a manner that permits meaningful analysis with the aid of commonly available computer software and hardware. To this end, access to data shall be accompanied by access to any existing record layout, field definitions, or other guides or directions associated with the data.
- (d) Notwithstanding any law to the contrary, access to data required pursuant to §§ 71-5-2513 -- 71-5-2521 shall be provided to the office of inspector general without charge.
- (e) The division of strategic technology solutions shall assist the office of inspector general by providing sufficient dedicated storage space and access to software on the state's computer network to permit the office of inspector general to accomplish the data mining contemplated by §§ 71-5-2513 -- 71-5-2521.
- (f) Nothing in this part shall be construed to prevent the bureau of TennCare or any other subdivision of the single state agency from conducting data mining, identifying suspected fraud cases, and referring suspected provider fraud to the medicaid fraud control unit pursuant to 42 CFR, Part 455. Nothing in this part shall be construed to affect the obligation of the single state medicaid agency or any of its subdivisions to refer to the medicaid fraud control unit, pursuant to 42 CFR 455, all cases in which the agency has reason to believe, after a preliminary investigation, that an incident of provider fraud or abuse has occurred in the TennCare program.



Tn. Code § 71-5-2518

§ 71-5-2518. Data mining; rules and regulations

The inspector general shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as are necessary to implement §§ 71-5-2513 -- 71-5-2521. The rules shall be promulgated as emergency rules. The inspector general is designated as the agency person to review initial orders and issue final agency orders pursuant to the Uniform Administrative Procedures Act.

## Tn. Code § 71-5-2519

## § 71-5-2519. Data mining; objections to data access; petition; failure to provide data; penalties

(a) A person or entity requested to provide access to data pursuant to §§ 71-5-2513 -- 71-5-2521 may object to providing all or part of such access by filing a written petition with the inspector general within thirty (30) days of receipt of notice of the request to which objection is made. The petition shall be treated as a contested case pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b)(1) In the event a person or entity requested to provide data pursuant to §§ 71-5-2513 -- 71-5-2521 fails to do so or to file a timely petition objecting to provision of the data, the office of inspector general has the authority to petition the chancery court of Davidson County through the attorney general and reporter, or by special appointment or delegation from the attorney general and reporter as provided by law, for enforcement of the obligations imposed by this chapter, and for recovery of costs, attorney's fees, and any applicable civil penalties.

(2) Upon filing of a petition for enforcement by the inspector general, the court shall order the person or entity named in the petition to show cause why they should not be held in contempt for failure to comply with the request.

(3) In ruling on the petition, the court shall be authorized to:

(A) Order the person or entity, on pain of contempt, to comply with the request, and to punish each day of failure to comply with the order as a separate contempt of court; and

(B) Award to the attorney general and reporter and, if applicable, the office of inspector general, reasonable costs and attorney's fees incurred in enforcing the requirement, if the state prevails.

(c)(1) Willful failure to provide data, or access to data, as required by this chapter, shall be subject to the same civil penalty established by law for willful failure to report recipient fraud to the inspector general.

(2) A person or entity that has been assessed a civil penalty by the office of inspector general may object to the penalty by filing a written petition with the inspector general within thirty (30) days of receipt of notice of the assessment. The petition shall be treated as a contested case pursuant to the Uniform Administrative Procedures Act.

(3) In the event that a person or entity that has been assessed a civil penalty by the office of inspector general has failed to pay the penalty or file a timely objection, the office of inspector general has the authority to file a petition in the chancery court of Davidson County through the attorney general and reporter, or by delegation from the attorney general and reporter as provided by law, for the collection of the penalty, and for enforcement of the request to provide access to data.

Tn. Code § 71-5-2520

§ 71-5-2520. Penalty, fee, and cost funds; separate account; use; expenses

(a) All funds collected as civil penalties, attorney's fees, costs, or costs of investigation by the inspector general, pursuant to this part or part 26, shall be deposited by the state treasurer in a separate account exclusively for the use of that office to defray the expenses of continued operations involving recipient fraud and abuse, including, but not limited to, data mining, litigation, criminal investigation and prosecution, civil and administrative recovery, undercover operations involving recipient fraud, and training and equipment for employees; provided, that no part of the funds shall be used to supplement salaries of any public employee or law enforcement officer.

(b) Funds collected pursuant to §§ 71-5-2513 -- 71-5-2521 may not supplant other state funds or appropriations. Any fund balance remaining unexpended at the end of a fiscal year in the account shall be carried forward into the subsequent fiscal year. No part of the fund shall be diverted to the general fund or any other public fund.

Tn. Code § 71-5-2521

§ 71-5-2521. Data mining progress reports

The office of inspector general shall include in its annual report information on the progress of its data mining efforts, including any difficulties encountered in obtaining access to data from either private or government entities, and suggestions for legislative or other solutions.