

# TENNESSEE HEALTH CARE & MEDICAID FALSE CLAIMS ACTS

## Tennessee Health Care False Claims Act And Tennessee Medicaid False Claims Act

56-26-401 Short title. The title of this part is, and it may be cited as, the "Tennessee Health Care False Claims Act."

56-26-402 Definitions. As used in this part, unless the context otherwise requires:

- (1) "Health care insurer" means any insurance company, corporation, Lloyd's insurer, fraternal benefit society or any other legal entity authorized to provide health insurance in this state, or any person, partnership, association or legal entity which is self-insured and provides health care benefits to its employees;
- (2) "Health care provider" is defined as any person licensed to practice the healing arts under title 63;
- (3) "Misleading information" includes, but is not limited to, falsely representing that goods or services were medically necessary in accordance with professionally accepted standards;
- (4) "Person" means any individual, corporation, partnership, association or any other legal entity; and
- (5) "Statement" includes, but is not limited to, any notice, statement, invoice, account, bill for services, explanation of services, medical opinion, test result, computer-generated document or other evidence of loss, injury or expense.

56-26-403 Prohibited acts -- "Knowing" defined.

(a)

(1) Any person who:

- (A) Presents, or causes to be presented, to a health care insurer a claim for payment or approval knowing such claim is false or fraudulent;
- (B) Makes or uses, or causes to be made or used, a record or statement to get a false or fraudulent health insurance claim paid for or approved knowing such record or statement is false;
- (C) Conspires to defraud a health care insurer by getting a claim allowed or paid knowing such claim is false or fraudulent;
- (D) Makes or uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to a health care insurer, knowing such record or statement is false; or
- (E) Expressly or impliedly assigns such person's right to receive health insurance reimbursement on a filed claim to a health care provider in consideration for, or partial consideration for, services rendered, and who then receives and fails to remit to such health care provider, within a reasonable time, any and all health insurance payments which were due by assignment to such health care provider; is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), plus three (3) times the amount of damages which the health care insurer sustains because of the act of that person.

(2) However, if the court finds that:

- (A) The person committing the violation of this subsection furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;
- (B) Such person fully cooperated with any state investigation of such violation; and
- (C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this part 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 not less than two (2) times the amount of damages which the health care insurer sustains because of the act of the person. A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, "knowing" and "knowingly" mean 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, and no proof of specific intent to defraud is required.

56-26-404 Civil actions for violations.

(a)

- (1) A person may bring a civil action for a violation of §§ 56-26-403 for the person and for the state of Tennessee. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.
- (2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.
- (3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.
- (4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (3), the state shall:
  - (A) Proceed with the action, in which case the action shall be conducted by the state; or
  - (B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.
- (5) When a person brings an action under this subsection, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(b)

- (1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (2).
- (2)
  - (A) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.
  - (B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.
  - (C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state'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, such as:
    - (i) Limiting the number of witnesses the person may call;
    - (ii) Limiting the length of the testimony of such witnesses;
    - (iii) Limiting the person's cross-examination of witnesses; or
    - (iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the state's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state 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.

(5) Notwithstanding subsection (a), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(c)

(1) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15% ) but not more than twenty- five percent (25% ) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil or administrative hearing, report, audit, investigation or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10% ) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25% ) and not more than thirty percent (30% ) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of §§ 56-26-403 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subdivision (1) or (2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of §§ 56-26-403, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious or brought primarily for purposes of harassment.

(d)

(1) In no event may a person bring an action under subsection (a) which is based upon allegations or transactions which are the subject of a

civil suit or an administrative civil money penalty proceeding in which the state is already a party.

(2)

(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil or administrative hearing, audit, investigation or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action under this section, which is based on the information.

(e) The state is not liable for expenses which a person incurs in bringing an action under this section.

(f) Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment by an employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) 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 attorney's fees. An employee may bring an action in the appropriate court for the relief provided in this subsection.

56-26-405 Subpoenas -- Limitation of actions -- Burden of proof -- Estoppel.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under §§ 56- 26-404 may be served at any place in the United States.

(b) A civil action under §§ 56-26-404 may not be brought:

(1) More than six (6) years after the date on which the violation of §§ 56- 26-402 is committed, or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the health care insurer with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under §§ 56-26-404, the state 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 provision of law, the Rules of Criminal Procedure or the Rules of Evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) or §§ 56-26-403. 56-26-406 Venue -- Summons. Any action under §§ 56-26-404 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides or transacts business, or in which any act proscribed by §§ 56-26-403 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

71-5-181 Tennessee Medicaid False Claims Act -- Short title.

(a) The title of this section and §§§§ 71-5-182 -- 71-5-186 is and may be cited as the "Tennessee Medicaid False Claims Act."

(b) "Medicaid program" as used in §§§§ 71-5-182 -- 71-5-186 includes the TennCare program and any successor program to the medicaid program. 71-5-182 Violations -- Damages -- Definitions.

(a)

(1) Any person who:

(A) Presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing such claim is false or fraudulent;

(B) Makes, uses, or causes to be made or used, a record or statement to get a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false;

(C) Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing such claim is false or fraudulent; or

(D) Makes, uses, or causes to be made or used, a 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, knowing such record or statement is false; is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), plus three (3) times the amount of damages which the state sustains because of the act of that person.

(2) However, if the court finds that:

(A) The person committing the violation of this subsection furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;

(B) Such person fully cooperated with any state investigation of such violation; and

(C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under §§§§ 71-5-181 -- 71-5-186 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 not less than two (2) times the amount of damages which the state sustains because of the act of the person. A person violating this subsection shall also be liable for the costs of a civil action brought to recover any such penalty or damages.

(b) For purposes of this section, "knowing" and "knowingly" mean 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, and no proof of specific intent to defraud is required.

71-5-183 Civil actions -- Employee remedies.

(a)

(1) A person may bring a civil action for a violation of §§ 71-5-182 for the person and for the state. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (a) (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty 60-day period or any extensions obtained under subdivision (a)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(b)

(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in

subdivision (b) (2).

(2)

(A) The state may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state'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 such as:

- (i) Limiting the number of witnesses the person may call;
- (ii) Limiting the length of the testimony of such witnesses;
- (iii) Limiting the person's cross-examination of witnesses; or
- (iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the state's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state 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.

(5) Notwithstanding subsection (a), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(c)

(1) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to the second sentence of this paragraph, receive at least fifteen percent (15% ) but not more than twenty- five percent (25% ) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10% ) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this subdivision shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25% ) and not more than thirty percent (30% ) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of §§ 71-5-182 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under subdivision (c) (1) or (2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of §§ 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(d)

(1) In no event may a person bring an action under subsection (a) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil monetary penalty proceeding in which the state is already a party.

(2)

(A) No court shall have jurisdiction over an action under this section based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, audit, investigation, or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (2), "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the state before filing an action under this section which is based on the information.

(e) The state is not liable for expenses which a person incurs in bringing an action under this section.

(f) Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by such employee's employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two (2) 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 employee may bring an action in the appropriate court for the relief provided in this subsection.

71-5-184 Service -- Limitations.

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under §§ 71- 5-183 may be served at any place in the United States.

(b) A civil action under §§ 71-5-183 may not be brought:

(1) More than six (6) years after the date on which the violation of §§ 71- 5-182 is committed, or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) In any action brought under §§ 71-5-183, the state 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 provision of law, the Rules of Criminal Procedure, or the Rules of Evidence, a final judgment rendered in favor of the state

in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subsection (a) or (b) or §§ 71-5-183. 71-5-185 Venue. Any action under §§ 71-5-183 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one (1) defendant can be found, resides, transacts business, or in which any act proscribed by §§ 71-5-182 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.