



# TENNCARE POLICY MANUAL

<b>Policy No:</b> PI 11-002	
<b>Subject:</b> Contractor and Provider Screening of Employees and Contractors	
<b>Approval:</b> <i>D. J. Harvey</i>	<b>Date:</b> 3-16-12

## BACKGROUND:

The Office of Inspector General in the federal Department of Health and Human Services (HHS-OIG) has the authority to exclude certain individuals and entities from participation not only in Medicaid, but in Medicare, CHIP, and all Federal health care programs. This authority is contained in various sections of the Social Security Act, including sections 1128, 1128a, and 1156.

TennCare is generally prohibited from paying for any items or services furnished, ordered, or prescribed by excluded individuals or entities.<sup>1</sup> This prohibition extends to all methods of reimbursement, including payment for “administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to Medicaid recipients” and “payment to cover an excluded individual’s salary, expenses or fringe benefits, regardless of whether they provide direct patient care, when those payments are . . . payable by the Medicaid program.”<sup>2</sup>

TennCare contractors and providers<sup>3</sup> have an obligation to ensure that neither they nor their subcontractors compensate excluded entities or individuals with Title XIX dollars. Excluded individuals may not receive any direct or indirect compensation in wages or benefits from Title XIX dollars. If the State makes a payment to a contractor or provider that employs or subcontracts with an excluded entity or provider, then that payment can be considered an overpayment under sections 1903(d)(2)(A) and 1903(i)(2) of the Act and therefore subject to recoupment. There is no prohibition on employing excluded individuals as long as there are no Title XIX dollars involved in any way in their compensation.

<sup>1</sup> Section 1903(i)(2) of the Social Security Act; 42 C.F.R. § 1001.1901(b).

<sup>2</sup> State Medicaid Director Letter 09-001, January 16, 2009.

<sup>3</sup> The term “contractors” applies to any entity with which TennCare has a contract—Managed Care Contractors, Fiscal Agents, etc. The term “providers” refers to entities that furnish health care services to TennCare enrollees.

***Civil money penalties may be imposed against Medicaid providers and managed care contractors (MCCs) that compensate excluded individuals or entities with Title XIX dollars. Any payments made pursuant to those contracts or subcontracts are considered overpayments and must be repaid.<sup>4</sup>***

**PROCEDURES:**

All TennCare contractors and providers must regularly check their employees and subcontractors to determine if they have been excluded by HHS-OIG. Contractors and providers can search the HHS-OIG website by names of individuals or entities. These searches must occur on at least a monthly basis to capture exclusions and reinstatements that have occurred since the last report.

When TennCare contractors and providers identify an employee or subcontractor that has been excluded by HHS-OIG, they have a duty to notify the Office of Program Integrity (OPI). If they can attest that the excluded contractor or employee is not being compensated directly or indirectly with Medicaid funds, then they need to make that attestation to OPI. Otherwise, they must treat any payments made to the contractor or provider after the date of federal exclusion as overpayments and must follow the procedures described in TennCare's policy on overpayments (Policy PI 11-001).

**OFFICES OF PRIMARY RESPONSIBILITY:**

TennCare Division of Audit and Program Integrity

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<sup>4</sup> Section 1128A(a)(6) of the Social Security Act; 42 CFR § 1003.102(a)(2).