



# TENNCARE POLICY MANUAL

<b>Policy No:</b>	PI 11-004		
<b>Subject:</b>	Prohibition of Payments to Institutions or Entities Outside the United States (Rev. 3)		
<b>Approval:</b>	<i>Floyd A. Trice</i>	<b>Date:</b>	2/1/2019

## PURPOSE:

The Affordable Care Act (ACA) of 2010 prohibits Medicaid programs from making payments for covered items or services to financial institutions or entities located outside the United States.<sup>1</sup> This policy outlines TennCare's compliance with this provision of ACA.

## BACKGROUND:

Section 6505 of ACA requires that a state's Medicaid program "shall not provide any payments for items or services provided under the State plan or under a waiver to any financial institution or entity located outside of the United States." This prohibition is further addressed in federal regulation at 42 C.F.R. § 438.602(i), which applies to Medicaid managed care programs like TennCare.

The Centers for Medicare and Medicaid Services (CMS) offered interpretive guidance of this portion of ACA in State Medicaid Director Letter (SMDL) #10-026 dated December 30, 2010. Two points expressed within this document are especially noteworthy. First, the phrase "items or services provided under the State plan or under a waiver" from Section 6505 refers to medical assistance<sup>2</sup> and not to tasks that support the administration of the Medicaid State plan. Tasks that support administration are not prohibited.

Also in SMDL #10-026, CMS explained that the phrase "financial institutions or entities" encompasses not only the organizations that process payments on behalf of providers but also the providers themselves. CMS cited provider bank accounts and business agents as examples of the former, and telemedicine providers and pharmacies located outside the United States as examples of the latter.

<sup>1</sup> See Section 6505 of ACA, "Prohibition on Payments to Institutions or Entities Located Outside of the United States," as well as its codification in Section 1902(a)(80) of the Social Security Act and in 42 U.S.C. § 1396a(80).

<sup>2</sup> TennCare's "Prohibition of Payments to Institutions or Entities Outside the United States" policy is applicable to all covered benefits, including but not limited to services such as Home and Community Based Services (HCBS) and transportation services.

**POLICY:**

It is the policy of TennCare that payments for medical assistance shall not be made by TennCare or its Managed Care Contractors (MCCs) to entities—whether providers<sup>3</sup> or financial institutions—located outside the United States.

TennCare retains the right to make payments to entities outside the United States for the purpose of program administration. MCCs wishing to make payments to out-of-country entities for the purpose of program administration must obtain advance written permission from TennCare.

Payments made in violation of this policy shall be recovered, and—where appropriate—the federal portion shall be returned to CMS.<sup>4</sup>

**MEANS OF PROGRAM SAFEGUARD:**

- 1) No Medicaid billing numbers should be issued to institutions and/or entities with out-of-country business and/or bank account addresses;
- 2) MCCs shall not contract with or make payment to institutions and/or entities with out-of-country business and/or bank account addresses; MCCs shall require provider attestations regarding the in-state and in-country status upon credentialing, enrollment, and contracting;
- 3) Pre-payment edits: Claims shall be denied payment when billing or pay-to entities are associated with out-of-country addresses or bank accounts;
- 4) Post-payment audits: Payments made to billing or pay-to entities associated with out-of-country addresses or bank accounts shall be recouped.

**DIVISION OF RESPONSIBILITIES:**

Implementation of this policy requires the participation of several TennCare offices and contractors. Primary assignments are as follows:

TennCare’s **Information Systems Division** provides “front door” security by rejecting electronic claims submitted directly to TennCare<sup>5</sup> for providers located and/or rendering services outside the United States. This approach prevents such claims from even entering the payment system,

<sup>3</sup> The restriction concerning providers applies not only to health care professionals who treat TennCare enrollees in a geographic location other than the United States, but also to out-of-country providers who use communications and/or information technology to treat TennCare enrollees located inside the United States.

<sup>4</sup> TennCare will return payments to CMS in accord with 42 C.F.R. Part 433 (especially Subpart F, “Refunding of Federal Share of Medicaid Overpayments to Providers”).

<sup>5</sup> Claims paid directly by TennCare and not by MCCs include those submitted by Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) and the Department of Children’s Services (DCS), as well as Medicare crossover claims.

thereby reducing the risk of erroneous disbursement of funds.

TennCare's **Managed Care Contractors (including DBM and PBM)** should have their own "front door" security in place by which they reject claims they receive that would result in a payment being made to an entity outside of the United States.

TennCare's **Office of Program Integrity (OPI)** and the MCCs conduct routine data mining and audits of claims paid using Medicaid funds. In the event that it is found a payment has been issued to an entity outside the United States, it should be reported as follows:

- TennCare OPI shall report any payment(s) identified as being made in violation of this policy to the Fiscal Division and the Office of Provider Services.
- MCCs shall report any payment(s) identified as being made in violation of this policy to OPI, the Fiscal Division, and the Office of Provider Services.

TennCare's **Fiscal Division** shall review any reports of payment(s) being made in violation of this policy and recover the associated funds. The Fiscal Division shall also calculate and refund the appropriate amounts to CMS through a credit on TennCare's Quarterly Statement of Expenditures (Form CMS-64).

TennCare's **Office of Provider Services** shall review and rescind the Medicaid identification numbers of any providers determined by TennCare or its MCCs to be located outside the United States.

**MCCs** must comply with this policy through all of the following measures:

- Rejecting claims submitted for—or requiring payment to—providers or financial institutions or entities located outside the United States;
- Recovering payments issued in violation of this policy through the voiding of provider claims;
- Reporting violations of this policy, as well as the appropriate recovery of funds, to TennCare's Office of Program Integrity on a quarterly basis; and
- Excluding and/or removing providers located outside the United States from their provider networks.

**MCCs not operating at risk** must adhere to the same requirements imposed on MCCs operating at risk, but must also return any payment issued in violation of this policy to TennCare.<sup>6</sup> TennCare's Fiscal Division, in turn, refunds the appropriate amount of the returned payment to CMS.

The **Information Systems Management Contractor** implements systems edits necessary for TennCare's compliance with this policy.

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<sup>6</sup> Funds may be returned to TennCare by reducing the amount the MCC bills TennCare for claims reimbursement.

**DEFINITION:**

In the context of this policy, and as defined in Sections 1101(a)(1) and 1101(a)(2) of the Social Security Act and SMDL #10-026, “United States” refers to all of the following when used under Title XIX:

- The 50 states
- Washington, D.C. (also known as “the District of Columbia”)
- Puerto Rico
- The U.S. Virgin Islands
- Guam
- The Northern Mariana Islands
- American Samoa

Payments to providers or financial institutions or entities in any of these locations are not prohibited by this policy.

**OFFICES OF PRIMARY RESPONSIBILITY:**

Information Systems  
Fiscal Division  
Office of Program Integrity  
Office of Provider Services  
Information Systems Management Contractor

**REFERENCES:**

<https://www.gpo.gov/fdsys/pkg/PLAW-111publ148/html/PLAW-111publ148.htm>  
Affordable Care Act of 2010

[http://www.ssa.gov/OP\\_Home/ssact/ssact-toc.htm](http://www.ssa.gov/OP_Home/ssact/ssact-toc.htm)  
Social Security Act

[https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title42/42cfr433\\_main\\_02.tpl](https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title42/42cfr433_main_02.tpl)  
42 C.F.R. Part 433

<https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD10026.pdf>  
State Medicaid Director Letter 10-026

Original: 07/08/11: JTR  
Revision 1: 02/20/13: CH  
Revision 2: 07/10/17: LSH  
Revision 3: 02/04/19: RH