

TennCare Policy Manual	Section: Program Integrity
Policy No: PI 11-002 (Rev. 3)	Date: August 28, 2023

Contractor and Provider Screening of Employees and Contractors

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 also in Medicare, CHIP, and all federal health care programs. This authority is contained in various sections of the Social Security Act, including sections 1128 and 1156.

TennCare is generally prohibited from paying for any items or services furnished, ordered, or prescribed by excluded individuals or entities.¹ 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.”²

TennCare contractors and providers³ 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 may be considered an overpayment under sections 1903(d)(2)(A) and 1903(i)(2) of the Social Security Act and therefore subject to recoupment.

Civil money penalties may be imposed against Medicaid providers and managed care contractors (MCCs) that compensate excluded individuals or entities with federal health care program funds, including Title XIX dollars. Any payments made pursuant to those contracts or subcontracts are considered overpayments and must be repaid.⁴

Procedures

All TennCare contractors, subcontractors, and providers are required to screen their owners, employees, and subcontractors both initially and on an ongoing monthly basis, against the HHS-OIG List of Excluded Individuals/Entities (LEIE), General Services Administration (GSA) System for Award Management (SAM), and the TennCare Terminated Provider List⁵ to identify individuals and entities excluded or debarred from participating in federal health care programs. According to the terms of TennCare’s managed care contracts, MCCs are prohibited from executing provider agreements with providers who have been

¹ Section 1903(i)(2) of the Social Security Act; 42 CFR § 1001.1901(b).

² State Medicaid Director Letter 09-001, January 16, 2009.

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

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

⁵This list may be accessed at <https://www.tn.gov/tenncare/fraud-and-abuse/program-integrity.html>.

TennCare Policy Manual	Section: Program Integrity
Policy No: PI 11-002 (Rev. 3)	Date: August 28, 2023

excluded from participation in federal health care programs pursuant to sections 1128 and 1156 of the Social Security Act. Furthermore, the MCCs' provider agreements require that providers do not employ or contract with any individual or entity that has been excluded or debarred.

Contractors are required to submit the results of their monthly screenings to TennCare's Office of Program Integrity (OPI) on a monthly basis via the Program Integrity Exception Report. Additionally, providers are required to immediately report to the MCC any information regarding employees identified as excluded or debarred as a result of the monthly screenings. Any payments made to a contractor, subcontractor, or provider after the date of federal exclusion are considered overpayments and are subject to recoupment in accordance with the procedures outlined in TennCare Policy No. PI 11-001 ("Overpayments and Section 6402 of the Affordable Care Act").

Offices of Primary Responsibility

Office of Program Integrity

References

Social Security Act – Sections 1128A(a)(6) and 1903(i)(2)
http://www.socialsecurity.gov/OP_Home/ssact/ssact-toc.htm

42 CFR § 1001.1901(b)
 42 CFR § 1003.102(a)(2)
<https://www.ecfr.gov/>

State Medicaid Director Letter 09-001 (January 16, 2009)
<http://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD011609.pdf>

MCO Contractor Risk Agreement (CRA)
 Section A.2.11.1.3.1
 Section A.2.12.5
 Section A.2.12.9.39
 Section A.2.20.1.6
 Section A.2.21.9.2
 Section A.2.22.14.1
 Section A.2.30.15.5
<https://www.tn.gov/content/dam/tn/tenncare/documents/MCOStatewideContract.pdf>

TennCare Policy No. PI 11-001 – Overpayments and Section 6402 of the Affordable Care Act
<https://www.tn.gov/content/dam/tn/tenncare/documents2/pi11001.pdf>

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Policy No: PI 11-002 (Rev. 3)	Date: August 28, 2023

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