



# TENNCARE POLICY MANUAL

<b>Policy No:</b> PI 11-001 (Rev. 4)	
<b>Subject:</b> Overpayments and Section 6402 of the Affordable Care Act	
<b>Approval:</b>	<b>Date:</b> 12/19/2017

## PURPOSE:

The purpose of this policy is to describe the procedures to be followed by TennCare contractors and providers in implementing the requirements of Section 6402 of the Affordable Care Act with respect to "Reporting and Returning of Overpayments."

## BACKGROUND:

Section 6402 of the Affordable Care Act contains obligations for health care providers regarding reporting and returning overpayments from the Division of TennCare or one of its contractors. **Overpayments that are not returned within 60 days from the date the overpayment was identified can trigger a liability under the False Claims Act.** The overpayment will be considered an "obligation," as this term is defined at 31 US Code § 3729(b)(3). The False Claims Act subjects a provider to a fine and treble damages if he knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay money to the federal government.

## POLICY:

Overpayments to providers and to TennCare Managed Care Contractors (MCCs) must be returned within 60 days from the date the overpayment is identified.

For purposes of this policy, the following definitions are used:

- 1. Contract provider.** A provider that delivers TennCare services under contract to one of the Managed Care Contractors or State agencies (as defined below). Contract providers are paid by the entity with which they are contracted, rather than being paid directly by TennCare.

**2. Fee-for-service provider.** A provider that delivers services outside the managed care program and that is reimbursed directly by TennCare. Providers in this category include, but are not necessarily limited to, the following:

- Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID)
- Providers of Medicare crossover services

This category also includes providers (usually specialists) who are not contracted with TennCare Managed Care Organizations but who are rendering services to specific members on a “case-by-case” basis.

**3. Knowing and knowingly.** Descriptive words meaning that a person, with respect to information, has actual knowledge of the information; acts in deliberate ignorance of the truth or falsity of the information; or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.<sup>1</sup>

**4. Managed Care Contractor (MCC).** An entity that contracts with TennCare for the delivery of certain services to TennCare enrollees. The entities included in this category are as follows:

- Managed Care Organizations
- Pharmacy Benefits Manager
- Dental Benefits Manager

**5. Obligation.** “An established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment.”<sup>2</sup>

**6. Overpayment.** Any funds that a person receives or retains under TennCare to which the person, after applicable reconciliation, is not entitled under TennCare. (A “person” means a provider of services, supplier, or TennCare MCC. It does not include a beneficiary.)<sup>3</sup>

**7. State agency.** A State agency that is under contract with TennCare to provide certain services to certain TennCare enrollees. The entities included in this category are as follows:

- Department of Children’s Services (DCS)
- Department of Intellectual and Developmental Disabilities (DIDD)

The procedures for returning overpayments vary depending on what entity made the overpayment and what entity received the overpayment. These procedures are outlined below.

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<sup>1</sup> 31 U.S. Code § 3729(b)(1).

<sup>2</sup> 31 U.S. Code § 3729(b)(3).

<sup>3</sup> Affordable Care Act, § 6402.

**Group 1: MCCs and State Agencies Paid by TennCare**

If an MCC or a State agency (as defined above) identifies an overpayment made to that entity by TennCare, the MCC or State agency may retain the overpayment but must send a letter to TennCare containing the following information:

- An explanation of how and when the overpayment was identified
- Evidence that the next invoice to TennCare has been reduced by the amount of the overpayment

The letter must be sent to the following address:

Chief Financial Officer  
Division of TennCare  
310 Great Circle Road  
Nashville, TN 37243

**Group 2: Contract Providers Paid by Contract Agencies**

If a contract provider (as defined above) identifies an overpayment made to him by an MCC or a State agency, the provider must report the overpayment via telephone, letter, or designated form, as directed by the contract agency, using the contact information below. Reports of overpayments via letter or an MCC's designated form must include the following information:

- A check to the MCC or State agency for the amount of the overpayment, **or** a request that the amount of the overpayment be withheld from future remittances;
- Relevant claims data so that the MCC or State agency can identify the point at which the error occurred; and
- An explanation of how and when the overpayment was identified.

<b>MCC or State Agency</b>	<b>Address and/or Phone Number for Reporting Overpayments</b>
Amerigroup	Amerigroup Community Care P.O. Box 933657 Atlanta, GA 31139-3657 Phone: (844) 227-8346, ext. 36302
BlueCare and TennCare Select	BlueCare Tennessee Attn: Claim Refunds Department 1 Cameron Hill Circle, Suite 0040

MCC or State Agency	Address and/or Phone Number for Reporting Overpayments
	Chattanooga, TN 37402-0040 Phone (BlueCare): (800) 468-9698 Phone (TennCare Select): (800) 263-5479
DentaQuest	DentaQuest P.O. Box 2906 Milwaukee, WI 53201-2906 Phone: (855) 418-1623
Department of Children’s Services (DCS)	Department of Children’s Services Attn: Fiscal Division UBS Tower, 8 <sup>th</sup> Floor 315 Deaderick Street Nashville, TN 37243
Department of Intellectual and Developmental Disabilities (DIDD)	Department of Intellectual and Developmental Disabilities Attn: Controller Citizens Plaza, 9 <sup>th</sup> Floor 400 Deaderick Street Nashville, TN 37243
OptumRx	OptumRx Attn: Monica Curiel 2300 Main Street Irvine, CA 92614 Phone: (949) 442-8011
UnitedHealthcare	UnitedHealthgroup P.O. Box 5220 Kingston, NY 12404-5220 Phone: (800) 690-1606

The MCC or State agency may retain the overpayment returned by the provider. The MCC or State agency is responsible for notifying TennCare of all overpayments using reporting mechanisms outlined in the TennCare contract. This responsibility includes reporting program integrity-related overpayments to the TennCare Office of Program Integrity (OPI). Examples of program integrity-related overpayments include, but are not limited to: 1) an overpayment determined by the MCC or State agency to be the result of potential or confirmed provider fraud or abuse, or 2) an overpayment returned by a provider who is currently under investigation by TennCare OPI for suspected fraud or abuse.

### **Group 3: Fee-for-Service Providers Paid by TennCare**

If a fee-for-service provider, as that term is defined above, has received an overpayment from TennCare, the provider must report the overpayment to TennCare in a letter containing the following information:

- A check to the Division of TennCare for the overpayment
- An explanation of how and when the overpayment was identified

The check and letter must be sent to the following address:

Chief Financial Officer  
Division of TennCare  
310 Great Circle Road  
Nashville, TN 37243

#### **OFFICES OF PRIMARY RESPONSIBILITY:**

Office of Program Integrity  
Fiscal Office  
Managed Care Operations

#### **REFERENCES:**

Affordable Care Act, Section 6402

<https://www.gpo.gov/fdsys/pkg/PLAW-111publ148/pdf/PLAW-111publ148.pdf>

Social Security Act, Section 1128J(d)

[https://www.ssa.gov/OP\\_Home/ssact/title11/1128J.htm](https://www.ssa.gov/OP_Home/ssact/title11/1128J.htm)

Fraud Enforcement Recovery Act of 2009

<https://www.congress.gov/111/plaws/publ21/PLAW-111publ21.pdf>

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Rev. 3: 10/22/12: CH

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DBM contact information updated: 07/17/20: JTR