



# TENNCARE POLICY MANUAL

<b>Policy No:</b> PI 10-001 (Rev. 3)	
<b>Subject:</b> Disclosure of Ownership or Control; Changes in Ownership; and Program Integrity Reporting Responsibilities	
<b>Approved by:</b> <i>Steven A. Dunde</i>	<b>Date:</b> 6/17/2019
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## PURPOSE OF POLICY STATEMENT:

The purpose of this policy is twofold:

1. To ensure compliance with 42 C.F.R. Part 455, Subpart B, which states that federal financial participation will be denied for services furnished by providers, fiscal agents, or managed care contractors (MCCs) who fail to comply with disclosure requirements, and
2. To ensure compliance with 42 C.F.R. § 1002.4(b), which requires the Division of TennCare to report the following to the Office of the Inspector General of the Department of Health and Human Services (HHS-OIG):
  - (a) Any information from a provider's application related to excluded individuals and entities, and
  - (b) Adverse actions taken against providers and contractors. These adverse actions include, but are not limited to, suspensions and settlements, as well as instances when a provider may have withdrawn from TennCare voluntarily in order to avoid a formal sanction.

## POLICY:

The Division of TennCare requires that all providers, fiscal agents, and MCCs (as defined herein) wishing to participate in the TennCare program disclose certain information in the provider registration process and update that information whenever it changes. As a condition of contracting with the Division of TennCare, all MCCs, the Department of Intellectual and Developmental Disabilities (DIDD), and the Department of Children's Services (DCS) must require that all providers and subcontractors comply with the requirements outlined in this policy. TennCare must then report certain disclosures, such as

information about any person affiliated with a provider who has been convicted of a criminal offense against any federally funded healthcare program, to HHS-OIG.

The specific items that must be furnished and the methods for furnishing them to the Division of TennCare are described below.

### **Ownership and Disclosure for Providers of Healthcare Services**

Providers of healthcare services must disclose ownership and control information, as well as other relevant information, to TennCare. This requirement applies both to provider persons and to provider entities, as defined herein. Required information must be submitted in accordance with the requirements, including timeframes, specified at 42 C.F.R. Part 455, Subpart B. The timeframes for disclosure include at a minimum:

- (a) At the time of initial provider registration for participation in TennCare,
- (b) Initial contracting with an MCC,
- (c) Contract renewal,
- (d) Any time there is a change in the information provided,
- (e) At least once every three years, and
- (f) At any time upon request from TennCare or its contractors.

Providers submit new or updated information regarding ownership and other disclosure requirements via the TennCare Provider Registration Portal. The TennCare Provider Registration Portal is accessible from TennCare's webpage for new and existing provider registration (<https://www.tn.gov/tenncare/providers/provider-registration.html>). TennCare's provider registration page provides a link to a registration portal for each provider type.

TennCare may refuse to register a provider, or suspend a provider's registration, if the provider fails to provide all required information during the registration process, or if TennCare determines that the information submitted by the provider was inaccurate or incomplete.

### **Ownership and Disclosure for Fiscal Agents and MCCs**

As entities that receive federal funds, the disclosure requirements outlined in this policy apply to all TennCare-contracted fiscal agents and MCCs. Upon initial contracting with TennCare, fiscal agents and MCCs must complete the approved TennCare Ownership and Disclosure Form. This form must be included with each entity's response to a request for proposals as well as with the final contract submitted prior to execution. This form must be updated when there is a significant change to the information originally reported.

**NOTE:** MCCs are required to file disclosure information with the Division of TennCare as outlined in their Contractor Risk Agreements, and to report to the Tennessee Department of Commerce and Insurance (TDCI) and other state agencies as required in state law.

**Handling of Provider Ownership and Disclosure Information by TennCare, MCCs, DIDD, and DCS**

In order for the Division of TennCare to comply with 42 C.F.R. § 1002.4(b), all MCCs, DIDD, and DCS are required to report the disclosures or actions listed below to TennCare's Office of Program Integrity.

- (a) Information about criminal convictions, civil penalties and assessments, or exclusions from participation in Medicare or state health care programs. This information should be obtained for all entities and individuals who are identified in the ownership and disclosure information submitted by providers, including, but not limited to, officers, directors, managing employees, entities/individuals of significant business transactions, and subcontractors.
- (b) Adverse action taken on a provider's application for participation in Medicaid.
- (c) Any action that would limit a provider's ability to participate in Medicaid, regardless of what the action is called. This includes instances in which a provider voluntarily withdraws from the Medicaid program to avoid a formal sanction.

TennCare **must** then report this information to HHS-OIG. In the first instance, TennCare must report the information within 20 working days of discovery. In the second and third instances, TennCare is required to report said information "promptly." In order to meet these timeframes, the fiscal agents and MCCs should review application documents carefully to determine whether any information disclosed is covered under 42 C.F.R. § 1001.1001(a).140498 They should then report any disclosures about entities that should be excluded from the TennCare program to TennCare's Office of Program Integrity within five business days of discovery.

The MCCs, DIDD, and DCS also must report to TennCare's Office of Program Integrity any adverse actions taken on a provider's application, and any actions that limit a provider's participation in the program. Limiting actions include, but are not limited to, suspensions, settlements, and voluntary withdrawal to avoid a formal sanction. These actions must be reported to the Office of Program Integrity within ten business days of the action date.

The MCCs, DIDD, and DCS should post all reporting related to adverse actions on their respective OUT directories on TennCare's sftp server. This electronic storage site will ensure the integrity of protected information. They then should follow up with an e-mail notice to [Contract.Compliance@tn.gov](mailto:Contract.Compliance@tn.gov) and [ProgramIntegrity.TennCare@tn.gov](mailto:ProgramIntegrity.TennCare@tn.gov) at TennCare. The Office of Program Integrity will report all information to HHS-OIG in Region IV, Atlanta.

Failure to comply with the requirements described in this policy and applicable federal and state law may result in actions against providers including, but not limited to, exclusion from the TennCare program. See TennCare Rules 1200-13-13-.08(3) and 1200-13-14-.08(3). Such adverse actions taken by the State may be appealed by the provider under the TennCare provider appeal rules located in Rule Chapter 1200-13-18.

#### **DEFINITIONS:**

For purposes of this policy, the terms below have the following meanings (see also 42 C.F.R. § 455.101):

1. **Agent** means any person who has been delegated the authority to obligate or act on behalf of a provider.
2. **Convicted or Conviction** means that a judgment of conviction has been entered by a federal, state, or local court, regardless of whether an appeal from that judgment is pending.
3. **Convicted of a Criminal Offense** means
  - (a) A judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;
  - (b) There has been a finding of guilt against the individual or entity by a federal, state, or local court;
  - (c) A plea of guilty or *nolo contendere* by the individual or entity has been accepted by a federal, state, or local court; or
  - (d) The individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. 42 U.S.C.A. § 1320a-7(i).
4. **Disclosing Entity** means a provider entity (other than an individual practitioner or group of practitioners), or a fiscal agent.
5. **Fiscal Agent** means a contractor that processes or pays vendor claims on behalf of the Medicaid agency. (This includes, but is not limited to, the state's facility manager, the managed care organizations, pharmacy benefits manager, dental benefits manager, PACE, the fiscal employer agent, and DCS.)
6. **Group of Practitioners** means two or more health practitioners who practice their profession at a common location (whether or not they share common facilities, common supporting staff, or

common equipment). Common location means providers share physical office space, for example, 101 Main Street, Suite A.

7. **Indirect Ownership Interest** means an ownership interest in an entity that has an ownership interest in the disclosing entity. This term includes an ownership interest in any entity that has an indirect ownership interest in the disclosing entity.

The amount of indirect ownership in the disclosing entity that is held by another entity is determined by multiplying the percentage of ownership interest at each entity. For example, if A owns 10 percent of the stock in a corporation which owns 80 percent of the stock of the disclosing entity, A's interest equates to an 8 percent indirect ownership interest in the disclosing entity and must be reported. Conversely, if B owns 80 percent of the stock of a corporation which owns 5 percent of the stock of the disclosing entity, B's interest equates to a 4 percent indirect ownership interest in the disclosing entity and need not be reported.

8. **Individual Practitioner** means a solo physician or non-physician practitioner who has not reassigned Medicare/Medicaid payments to a group practice or disclosing entity.
9. **Managed Care Contractor** means TennCare's managed care organizations (MCOs), pharmacy benefits manager (PBM), and dental benefits manager (DBM). PACE is considered an MCC for purposes of this policy.
10. **Managing Employee** means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency. TennCare requires that the following persons be listed as "Managing Employees": the heads of an entity's operating units or divisions (e.g., inpatient care, finance/billing department, personnel department, ambulatory care center, etc.). The list of employees may be small even for large institutions.
11. **Other Disclosing Entity** means any other Medicaid disclosing entity and any entity that does not participate in Medicaid, but is required to disclose certain ownership and control information because of participation in any of the programs established under title V, XVIII, or XX of the Social Security Act. This includes:
  - (a) Any hospital, skilled nursing facility, home health agency, independent clinical laboratory, renal disease facility, rural health clinic, or health maintenance organization that participates in Medicare (title XVIII of the Social Security Act);
  - (b) Any Medicare intermediary or carrier; and

- (c) Any entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health-related services for which it claims payment under any plan or program established under title V or title XX of the Social Security Act.

**12. *Ownership Interest*** means the possession of equity in the capital, the stock, or the profits of the disclosing entity.

In order to determine percentage of ownership, mortgage, deed of trust, note, or other obligation, the percentage of interest owned in the obligation is multiplied by the percentage of the disclosing entity's assets used to secure the obligation. For example, if Dr. Smith owns 10 percent of a mortgage secured by 60 percent of Dr. Murray's assets, Dr. Smith's interest in Dr. Murray's assets equates to 6 percent and must be reported. Conversely, if Dr. Jones owns 40 percent of a mortgage secured by 10 percent of Dr. Wilson's assets, Dr. Jones's interest in Dr. Wilson's assets equates to 4 percent and need not be reported.

**13. *Person with an Ownership or Control Interest*** means a person or corporation that

- (a) Has an ownership interest totaling five percent or more in a disclosing entity;
- (b) Has an indirect ownership interest equal to five percent or more in a disclosing entity;
- (c) Has a combination of direct and indirect ownership interests equal to five percent or more in a disclosing entity;
- (d) Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent of the value of the property or assets of the disclosing entity;
- (e) Is an officer or director of a disclosing entity that is organized as a corporation; or
- (f) Is a partner in a disclosing entity that is organized as a partnership.

**14. *Provider*** means either a provider person or provider entity as defined below.

- (a) ***Provider Entity*** means a *business entity*, such as a solo practice, group of practitioners, or disclosing entity.
- (b) ***Provider Person*** means a person who will be billing TennCare for the provision of services to TennCare enrollees.

**15. *Responsible Party*** means an individual with legal authority to bind the provider if the provider is a provider entity. For example, a managing partner or corporate president.

16. **Significant Business Transaction** means any business transaction or series of transactions that, during any one fiscal year, exceed the lesser of \$25,000 or 5 percent of a provider's total operating expenses.
17. **Subcontractor** means
- (a) an individual, agency, or organization to which a provider entity has contracted or delegated some of its management functions or responsibilities of providing medical care to its patients (e.g., billing, case management, utilization review, etc.); or
  - (b) an individual, agency, or organization with which a fiscal agent or MCC has entered into a contract, agreement, purchase order, or lease (or leases of real property) to obtain space, supplies, equipment, or services provided under the Medicaid agreement that is paid partially or in full by Medicaid funds.
18. **Supplier** means an individual, agency, or organization from which an organization purchases goods and services with Medicaid funds used in carrying out its responsibilities under Medicaid (e.g., a commercial laundry, a manufacturer of hospital beds, or a pharmaceutical firm).
19. **Wholly Owned Supplier** means a supplier whose total ownership interest is held by a provider or by a person, persons, or other entity with an ownership or control interest in a provider.

**OFFICES OF PRIMARY RESPONSIBILITY:**

TennCare Office of Provider Services  
TennCare Office of Program Integrity  
TennCare Office of Managed Care Operations  
TennCare Office of Internal Audit

**REFERENCES:**

**TennCare Provider Registration Page**

<https://www.tn.gov/tenncare/providers/provider-registration.html>

**Code of Federal Regulations (C.F.R.)**

42 C.F.R. §§ 455.100-106

<http://www.ecfr.gov/cgi-bin/text-idx?SID=9ad56145df6dd96ef3dccab807cb7ec0&mc=true&node=sp42.4.455.b&rgn=div6>

42 C.F.R. § 1002.4(b)

[https://www.ecfr.gov/cgi-bin/text-idx?SID=48357b697e6cc4ed837fa0a0ddd340dd&mc=true&node=se42.5.1002\\_14&rgn=div8](https://www.ecfr.gov/cgi-bin/text-idx?SID=48357b697e6cc4ed837fa0a0ddd340dd&mc=true&node=se42.5.1002_14&rgn=div8)

#### **Tennessee Code Annotated (T.C.A.)**

T.C.A. § 71-5-132; T.C.A. § 56-32-134; and T.C.A. § 71-5-137

<https://www.lexisnexis.com/hottopics/tncode/>

#### **State Medicaid Director Letters (SMDLs)**

SMDL dated March 17, 1999

<http://www.cms.gov/smdl/downloads/SMD031799.pdf>

SMDL dated May 16, 2000

<http://www.cms.gov/smdl/downloads/smd051600a.pdf>

SMDL #08-003, dated June 12, 2008

<http://www.cms.gov/smdl/downloads/SMD061208.pdf>

#### **Tennessee Medicaid State Plan**

Section 4.31 Disclosure of Information by Providers and Fiscal Agents

<https://www.tn.gov/content/dam/tn/tenncare/documents2/section4.pdf>

#### **TennCare Rules**

TennCare Rules 1200-13-13-.08(3), 1200-13-14-.08(3), and 1200-13-18.

<https://publications.tnsosfiles.com/rules/1200/1200-13/1200-13.htm>

#### **MCO Contractor Risk Agreements**

MCO Statewide Contract, Section A.2.21.9

<https://www.tn.gov/content/dam/tn/tenncare/documents/MCOStatewideContract.pdf>

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Reviewed / No changes: 07/20/12: AB

Revision 2: 2/11/2016: AB

Revision 3: 06/18/19: JTR