

Health Care Fraud and Abuse Laws: Tennessee

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A Q&A guide to health care-related fraud and abuse laws in Tennessee. This Q&A addresses civil and criminal actions, consequences for violation, and Medicaid program integrity provisions. Answers to questions can be compared across a number of jurisdictions (see Health Care Fraud and Abuse Laws: State Q&A Tool).

Laws and Regulations

1. Please list each state equivalent of the federal False Claims Act, Anti-Kickback Statute, and the Stark Law in your jurisdiction. For each statute or regulation, please:

- Identify the statute or regulation.
- Provide a description of the statute or regulation, including the elements to prove a violation.
- Identify each person or entity covered by the statute or regulation, including providers and payors.
- Identify the state agency or entity that administers and/or enforces the statute or regulation.

Significant Tennessee statutes or regulations that govern health care fraud and abuse are:

- The Tennessee Medicaid False Claims Act: T.C.A. §§ 71-5-181 to 71-5-185.
- The Tennessee False Claims Act: T.C.A. §§ 4-18-101 to 4-18-108.
- The Tennessee Self-Referral Law: T.C.A. §§ 63-6-601 to 63-6-608.

Tennessee Medicaid False Claims Act: T.C.A. §§ 71-5-181 to 71-5-185

Description

A party may not knowingly make a false or fraudulent claim for payment or approval under the TennCare Medicaid program. A party that violates this law may

face a civil claim from either the State of Tennessee or a private party bringing a claim in the name of the State of Tennessee. (T.C.A. § 71-5-183.)

To prove a violation of the Tennessee Medicaid False Claims Act, the State of Tennessee or the private plaintiff must show that the defendant:

- Knowingly presented or caused to be presented a false or fraudulent claim for payment or approval under the TennCare Medicaid program.
- Knowingly made, used, or caused to be made or used, a false record or statement material to a false or fraudulent claim under the TennCare Medicaid program.
- Conspired to commit a violation of the Tennessee Medicaid False Claims Act.
- Knowingly made, used, or caused to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State of Tennessee or knowingly concealed or knowingly and improperly avoided or decreased an obligation to pay or transmit money or property to the State of Tennessee relative to the TennCare Medicaid program.

(T.C.A. § 71-5-182(a)(1).)

To show that the defendant acted knowingly, the plaintiff must show that the defendant:

- Had actual knowledge of the information.
- Acted in deliberate ignorance of the truth or falsity of the information.
- Acted in reckless disregard of the truth or falsity of the information. The plaintiff need not show proof of specific intent to defraud.

(T.C.A. § 71-5-182(b).)



Covered Persons and Entities

All individuals and entities are covered under this law (T.C.A. § 71-5-182).

State Agency

The [Tennessee Office of the Attorney General and Reporter](#) (TN AG) administers this law (T.C.A. §§ 71-5-182 and 71-5-183).

Tennessee False Claims Act: T.C.A. §§ 4-18-101 to 4-18-108

Description

A party may not knowingly present to the State of Tennessee or any political subdivision a false claim for payment. A party that violates this law may face a civil claim from either the State of Tennessee or a private party on behalf of the State of Tennessee. (T.C.A. § 4-18-104.)

To prove a violation of the Tennessee False Claims Act, the State of Tennessee or the private party must show that the defendant:

- Knowingly presented or caused to be presented to the State of Tennessee or a political subdivision a false claim for payment or approval.
- Knowingly made, used, or caused to be made or used, a false record or statement to get a false claim paid or approved by the State of Tennessee or a political subdivision.
- Conspired to commit a violation of the Tennessee False Claims Act.
- Had possession, custody, or control of property or money used or to be used by the State of Tennessee or a political subdivision and knowingly delivered or caused to be delivered less than all the money or property.
- Was authorized to make or deliver a document certifying receipt of State of Tennessee property and knowingly made or delivered a receipt falsely representing the property.
- Knowingly bought or received as a pledge of an obligation or debt public property from a person who lawfully may not sell or pledge the property.
- Knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the State of Tennessee or a political subdivision.
- Was a beneficiary of an inadvertent submission of a false claim to the State of Tennessee or a political subdivision,

discovered the falsity of the claim, and failed to disclose the false claim to the State of Tennessee or political subdivision within a reasonable time.

- Knowingly made, used, or caused to be made or used any false or fraudulent conduct, representation, or practice to procure anything of value directly or indirectly from the State of Tennessee or a political subdivision.

(T.C.A. § 4-18-103(a).)

To show that the defendant acted knowingly, the plaintiff must show that the defendant either:

- Had actual knowledge of the information.
- Acted in deliberate ignorance of the truth or falsity of the information.
- Acted in reckless disregard of the truth or falsity of the information.

The plaintiff need not show proof of specific intent to defraud. (T.C.A. § 4-18-102(2).)

Covered Persons and Entities

Individuals and entities are covered under this law (T.C.A. § 4-18-102(3)).

State Agency

The TN AG administers this law (T.C.A. § 4-18-104).

Tennessee Self-Referral Law: T.C.A. §§ 63-6-601 to 63-6-608

Description

A physician having an investment interest in a health care entity may not refer patients to the entity unless either:

- The physician performs health care services at the entity.
- The investment interest satisfies the requirements in T.C.A. § 63-6-603.
- The referral is made under the circumstances set forth in T.C.A. § 63-6-602(b) or (c).

(T.C.A. § 63-6-602(a).)

This also applies to cross referral arrangements or schemes (T.C.A. § 63-6-604).

This prohibition does not apply to physicians:

- Having an ownership interest in an entity that leases premises or equipment to a health care facility.

- Referring physical therapy services where certain conditions are satisfied.

(T.C.A. § 63-6-602(b).)

Covered Persons and Entities

The law applies to physicians who have an investment interest in a health care entity (T.C.A. § 63-6-602).

State Agency

The [Tennessee Board of Medical Examiners](#) and [Tennessee Board of Osteopathic Examination](#) administer this law (T.C.A. §§ 63-6-607 and 63-9-106).

For additional information on other significant fraud and abuse laws, see Question 5.

2. For each law and regulation identified in Question 1, please list the key terms of art used and the definition of each.

Tennessee Medicaid False Claims Act: T.C.A. §§ 71-5-181 to 71-5-185

Key terms of art include:

- **Claim.** A claim is a request or demand for money or property, or services made to:
 - an officer, employee, or agent of the State of Tennessee; or
 - an contractor, grantee, or other recipient if the money or property is to be spent or used on the State of Tennessee's behalf or to advance a State of Tennessee program or interest, and if the State of Tennessee provides any portion of the money or property, or the State of Tennessee will reimburse the contractor, grantee, or other recipient for any portion of the money property.
- **Knowing or knowingly.** This means to either:
 - have actual knowledge of the information;
 - act in deliberate ignorance of the truth or falsity of the information; or
 - act in reckless disregard of the truth or falsity of the information.
- **Obligation.** This is an established duty, whether fixed, arising from:
 - an express or implied contractual, grantor-grantee, or licensor-licensee relationship;

- a fee-based or similar relationship;
- statute or regulation; or
- the retention of an overpayment.

- **Material.** This means to have a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(T.C.A. § 71-5-182(b) to (e).)

Tennessee False Claims Act: T.C.A. §§ 4-18-101 to 4-18-108

Key terms of art include:

- **Person.** A person is any:
 - natural person;
 - corporation;
 - firm;
 - association;
 - organization;
 - partnership;
 - limited liability company;
 - business; or
 - trust.
- **Claim.** A claim is a request or demand for money, property, or services made to:
 - an officer, employee, or agent of the State of Tennessee or a political subdivision; or
 - a contractor, grantee, or other recipient if the money, property, or services requested or demanded issued from or was provided by the State of Tennessee or by a political subdivision of the State of Tennessee.
- **Knowing or knowingly.** This means to:
 - have actual knowledge of the information;
 - act in deliberate ignorance of the truth or falsity of the information; or
 - act in reckless disregard of the truth or falsity of the information.
- **Political subdivision.** This is a city, town, municipality, county, or other legally authorized local government entity with jurisdictional boundaries.
- **Prosecuting authority.** This is the county counsel, city attorney, or other local government official charged

with investigating, filing, and conducting civil legal proceedings on behalf of or in the name of a political subdivision.

(T.C.A. § 4-18-102.)

Tennessee Self-Referral Law: T.C.A. §§ 63-6-601 to 63-6-608

Key terms of art include:

- **Entity or health care entity.** This is a health care facility and an agency, company, or health care professional, other than the referring physician, providing health care services.
- **Health care facility.** This is a health care institution's (as defined in Tenn. Code Ann. § 68-11-1602) real property or equipment.
- **Health care service.** This means and includes a diagnostic, treatment, therapy, or rehabilitation service.
- **Investment interest.** Tennessee law does not define investment interest but specifies that the definition does not include a publicly traded entity in which a physician has an investment interest if the requirements in T.C.A. § 63-6-608 are met (T.C.A. § 63-6-608).

(T.C.A. § 63-6-601.)

3. For each law or regulation identified in Question 1, please specify the possible consequences for violating the statute or regulation.

In addition to the consequences listed, a provider may be terminated from participating in the TennCare Medicaid Program for conduct involving fraud. For more information, see Question 4: Termination or Exclusion of a Provider from TennCare Medicaid Program Participation: Tenn. Comp. R. & Regs. 1200-13-18-.07.

A party may also be in violation of unprofessional conduct laws and subject to disciplinary actions including license revocation, suspension, or non-renewal. For more information, see Question 5: Provisions for Specific Professions and Entities Regarding Unprofessional Conduct.

Tennessee Medicaid False Claims Act: T.C.A. §§ 71-5-181 to 71-5-185

A defendant may be required to pay:

- A civil penalty between \$5,000 and \$25,000.
- Treble damages.
- Court costs.

(T.C.A. § 71-5-182(a).)

A defendant may only have to pay at least double damages instead of treble damages if:

- The defendant provided the State of Tennessee all information that the defendant knew about the violation within 30 days after the date the defendant obtained the information.
- The defendant fully cooperated with the investigation of the violation.
- There was no criminal prosecution, civil action, or administrative action regarding the violation when the defendant provided the State of Tennessee with information about the violation, and the defendant did not have actual knowledge of the existence of an investigation regarding the violation.

(T.C.A. § 71-5-182(a)(2).)

Tennessee False Claims Act: T.C.A. §§ 4-18-101 to 4-18-108

A defendant may be required to pay:

- A civil penalty between \$2,500 and \$10,000.
- Double or treble damages.
- Costs of a civil action brought to recover penalties or damages.

(T.C.A. § 4-18-103(a), (b).)

A defendant may only have to pay between double and treble damages if:

- The defendant provided the State of Tennessee all information that the defendant knew about the violation within 30 days after the date the defendant obtained the information.
- The defendant fully cooperated with the investigation of the violation.
- There was no criminal prosecution, civil action, or administrative action regarding the violation when the defendant provided the State of Tennessee with information about the violation, and the defendant did not have actual knowledge of the existence of an investigation regarding the violation.

(T.C.A. § 4-18-103(b).)

Tennessee Self-Referral Law: Tenn. Code Ann. § 63-6-601 to 63-6-608

A physician who violates the Tennessee Self-Referral Law may face the following penalties from the [Tennessee Board of Medical Examiners](#):

- For willful violations, licensure sanction, which may include suspension, revocation, or other restrictions.
- Civil penalties of up to \$5,000 per referral.

(T.C.A. § 63-6-607.)

Medicaid Program Integrity

4. If your jurisdiction has a law or regulation governing Medicaid program integrity requirements, please identify the law or regulation and provide a brief description.

Tennessee Medicaid False Claims Act: T.C.A. §§ 71-5-181 to 71-5-18

The Tennessee Medicaid False Claims Act (T.C.A. §§ 71-5-181 to 71-5-18) governs Medicaid program integrity in Tennessee. For more information, see Question 1: Tennessee Medicaid False Claims Act: T.C.A. §§ 71-5-181 to 71-5-18.

Termination or Exclusion of a Provider from TennCare Medicaid Program Participation: Tenn. Comp. R. & Regs. 1200-13-18-.07

A provider must be excluded from the program if they have, among other things, a felony conviction relating to health care fraud (Tenn. Comp. R. & Regs. 1200-13-18-.07(2)).

A provider may be excluded from the program under circumstances that include, but are not limited to:

- A conviction related to fraud.
- Exclusion or suspension under federal or state health care program.
- A claim for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services.
- Fraud, kickbacks, and other prohibited activities.
- Making false statements or misrepresentation of material facts.

(T.C.A. § 1200-13-18-.07(3).)

Other Significant State Laws

5. Please briefly describe any other significant laws used by your jurisdiction to prevent, address, or prosecute health care fraud and abuse.

Provisions for Specific Professions and Entities Regarding Unprofessional Conduct

Tennessee has laws that prohibit specific health care professions from engaging in unprofessional conduct, which includes offering or receiving for example, remuneration or compensation to obtain the referral of patients. Professions include, but are not limited to:

- Chiropractors (T.C.A. § 63-4-114). Unprofessional conduct includes:
 - dividing fees or agreeing to split or divide fees received for professional services with a person for bringing or referring a patient; and
 - submitting to a third-party payor a claim for a service or treatment at an inflated fee or charge, or a greater fee or charge than the chiropractor's usual amount for that service or treatment, when the service or treatment is rendered without third-party reimbursement.

(T.C.A. § 63-4-114(a).)

- Dentists (T.C.A. § 63-5-124). Unprofessional conduct includes dividing fees or agreeing to split or divide fees received for professional services with a person for bringing or referring a patient (T.C.A. § 63-5-124(a)(11)).
- Physicians (T.C.A. § 63-6-214). Unprofessional conduct includes giving or receiving, or aiding or abetting the giving or receiving, of rebates (T.C.A. § 63-6-214).
- Podiatrists (T.C.A. § 63-3-119). Unprofessional conduct includes:
 - dividing fees or agreeing to split or divide fees received for professional services with a person for bringing or referring a patient; or
 - making false statements or representations or being guilty of fraud or deceit in the practice of podiatry.

(T.C.A. § 63-3-119(a)(6), (11).)

- Optometrists (T.C.A. § 63-8-120(a)). Unprofessional conduct includes dividing fees or agreeing to split or divide fees received for professional services with a person for bringing or referring a patient (T.C.A. § 63-8-120(a)(14)).

Violators are subject to:

- Disciplinary actions including license non-renewal, license revocation or suspension, issuance of a public reprimand, or probation (T.C.A. §§ 63-4-114(a) (chiropractors), 63-5-124(a) (dentists), 63-8-120(a) (optometrists), 63-6-214(a) (physicians), 63-3-119 (podiatrists)).
- A civil penalty (T.C.A. § 63-8-120(a) (optometrists)).
- A requirement to complete courses and pass examinations (T.C.A. § 63-8-120(d) (optometrists)).
- Class B misdemeanor charges (T.C.A. § 63-8-122 (optometrists)).

TennCare Anti-Kickback and Anti-Solicitation Prohibitions: Tenn. Comp. R. & Regs. 1200-13-13-.08 and 1200-13-14-.08

A provider cannot offer or receive remuneration related to the volume or value of referrals made, received from, or to another provider (Tenn. Comp. R. & Regs. 1200-13-13-.08(4)(d) and 1200-13-14-.08(4)(d)).

Managed care contractors and providers also violate this regulation if they solicit TennCare enrollees by offering as enticements other goods and services (free or otherwise) for the opportunity of providing the enrollee with TennCare covered services that are not medically necessary or overuse the TennCare Medicaid program (Tenn. Comp. R. & Regs. 1200-13-13-.08(4)(a) and 1200-13-14-.08(4)(a)).

The regulations do not specify the consequences for a violation.

Offenses, Penalties, Prosecution, and Remedies for False Statements or Representations: T.C.A. § 71-5-2601

A person may not obtain or attempt to obtain medical assistance benefits from the TennCare Medicaid program by means of a willfully false statement, representation, or impersonation, or by concealment of any material fact, or by any other fraudulent means (T.C.A. § 71-5-2601(a)(1)(A)).

A person who violates this law faces felony charges (T.C.A. §§ 71-5-2601(a)(2)(B), (a)(3)(B), and 39-14-105(a)).

Division of Fees Among Physicians: T.C.A. § 63-6-225

A licensed physician or surgeon may not divide or agree to divide a fee or compensation received or charged in the practice of medicine or surgery with a person without the

knowledge or consent of the person being charged for or paying the fee (T.C.A. § 63-6-225(a)).

This law does not prohibit a physician from compensating an independent contractor who provides goods or services to the physician based on a percentage of the physician's fees generated in the practice of medicine. The percentage paid must be reasonably related to the value of the goods or services provided. (T.C.A. § 63-6-225(b).)

A physician or surgeon who violates this law may:

- Face Class B misdemeanor charges (T.C.A. § 63-6-225(c)).
- Be excluded from participating in the TennCare Medicaid program (Tenn. Comp. R. & Regs. 1200-13-18-.07(3)).

Tennessee Medical Laboratory Act Anti-Kickback and Fee-Splitting Provision: T.C.A. § 68-29-129(7)

A person may not do the following in a manner that offers or implies an offer of rebates to a person submitting specimens, other fee-splitting inducements, participation in fee-splitting arrangements, or other unearned remuneration:

- Solicit the referral of specimens to that person's or another medical laboratory.
- Contract to perform medical laboratory examinations of specimens.

(T.C.A. § 68-29-129(7).)

A person who violates this law faces Class B misdemeanor charges (T.C.A. § 68-29-130).

Tennessee Medical Practice Act Rebate Prohibition: T.C.A. § 63-6-214(b)(16)

Under the Tennessee Medical Practice Act, a physician may not give or receive (or aid or abet in the giving or receiving) rebates, either directly or indirectly (T.C.A. § 63-6-214(b)(16)). The law does not define rebate.

A physician who violates this law may face disciplinary action (T.C.A. § 63-6-214(a)).

Tennessee Board of Medical Examiners Anti-Kickback Provision in Advertising: Tenn. Comp. R. & Regs. 0880-02-.13(4)(t)

A Tennessee-licensed physician, partnership, or corporation may not directly or indirectly offer, give, receive, or agree to receive consideration to or from a third party to refer a

patient in connection with the performance of professional services (Tenn. Comp. R. & Regs. 0880-02-.13(4)(t)).

A physician, corporation, or partnership that violates this regulation commits unethical and unprofessional conduct and may face disciplinary action under T.C.A. § 63-6-214. (Tenn. Comp. R. & Regs. 0880-02-.13(4)).

Tennessee Consumer Protection Act: T.C.A. §§ 47-18-101 to 47-18-132

The Tennessee Consumer Protection Act prohibits specified unfair or deceptive acts or practices and “any other act or

practice which is deceptive to the consumer or to any other person” (T.C.A. § 47-18-104(b)(27)).

The violating party may face a civil action by an aggrieved person or the [Tennessee Attorney General and Reporter](#) and among other things may face an injunction and an order to pay damages (T.C.A. § 47-18-109(a)(1), (a)(3), (b), (d), and (e)).

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