

**SUMMARY OF THE TENNESSEE MEDICAID FALSE CLAIMS ACT:**  
*(Tennessee Code Annotated §§ 71-5-182 – 71-5-186)*

The Tennessee Medicaid False Claims Act (“MFCA”), T.C.A. §§ 71-5-182 – 71-5-186, is a set of state statutes that address fraud involving the TennCare program or its successor.<sup>1</sup> The summary below sets forth the basic provisions of the MFCA.

**I. CLAIMS**

In basic terms, the MFCA establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim for payment to TennCare, its agents or contractors for payment. “[K]now” and “knowingly” mean any one of the following: (1) the person has actual knowledge of the information; (2) the person acts in deliberate ignorance of the truth or falsity of the information; or (3) the person acts in reckless disregard of the truth or falsity of the information.

The MFCA does not require proof that a person specifically intended to defraud the state. Instead, persons can be prosecuted for conduct that leads to the submission of fraudulent claims. Specifically, these items include the following:

(A) Presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing such claim is false or fraudulent;

(B) Makes, uses, or causes to be made or used, a record or statement to get a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false;

(C) Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing such claim is false or fraudulent; or

(D) Makes, uses, or causes to be made or used, a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the Medicaid program, knowing such record or statement is false.

**II. REMEDIES**

Anyone who violates the MFCA is liable for a civil penalty of not less than \$5,000 and not more than \$10,000 per claim, plus three times the amount of the damages TennCare sustains as a result of the violation(s). The MFCA contains a provision that can reduce the recovery to two times the amount of damages if the violator fully cooperates with the investigation. A violator can also be liable to the state for costs associated with any civil action which seeks to recover penalties or damages. Moreover, there can be criminal consequences for intentional participation in the submission of a false claim.

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<sup>1</sup> In addition to the MFCA, Tennessee has a more general False Claims Act, set forth in T.C.A. §§ 4-18-101 *et seq.* This Act, however, expressly does not apply to “any conduct, activity or claims covered by the [MFCA].” T.C.A. § 4-18-108.

The MFCA also permits employees and other knowledgeable persons to bring suits on behalf of the state – legally these are referred to as *qui tam* actions. These provisions allow those with evidence of fraud against TennCare to sue the alleged wrongdoer on behalf of the state. A *qui tam* relator (also known as a “whistleblower”) is the one who originally brings the information to the court as a plaintiff. In return, the relator may receive a percentage of any recovery. If the state believes the case brought by the *qui tam* relator has merit, it will then pursue the matter by investigating and prosecuting the violator and recovering damages under the MFCA. In such instances, the *qui tam* relator can be entitled to anywhere between 10 percent and 25 percent of any final recovery. Even if the state decides not to get involved in the case, however, the relator can still choose to privately pursue the action and, if successful, will receive from 25 percent to 30 percent of any recovery.

There is a provision under MFCA designed to protect employees who report violations from retaliation or other illegal treatment. Any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in any manner by his or employer as a result of filing an action under the MFCA or committing other permissible activities, such as investigating a false claim or providing testimony for, or assistance in, an action under the MFCA is entitled to all relief necessary to make the employee whole. The employee is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys’ fees.

### **LIMITATIONS**

Actions under the MFCA must be brought within six years of the violation or within three years from the time the facts supporting the claim were known or should have been known by the official of the state charged with responsibility to act. In no event may an action be brought after the expiration of six years from the time of violation.