

## **Tennessee False Claims Act**

(Tenn. Code §§ 4-18-101–108)<sup>i</sup>

### **§ 4-18-101. Short title**

This chapter shall be known and may be cited as the “False Claims Act.”

### **§ 4-18-102. Definitions**

For purposes of this chapter:

- (1) “Claim” means any request or demand for money, property, or services made to any employee, officer, or agent of the state or of any political subdivision, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the state, referred to in this chapter as “state funds” or by any political subdivision thereof, referred to in this chapter as “political subdivision funds”;
- (2)
  - (A) “Knowing” and “knowingly” mean that a person, with respect to information, does any of the following:
    - (i) Has actual knowledge of the information;
    - (ii) Acts in deliberate ignorance of the truth or falsity of the information; or
    - (iii) Acts in reckless disregard of the truth or falsity of the information.
  - (B) Proof of specific intent to defraud is not required;
- (3) “Person” means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust;
- (4) “Political subdivision” means any city, town, municipality, county, including any county having a metropolitan form of government, or other legally authorized local governmental entity with jurisdictional boundaries; and
- (5) “Prosecuting authority” means 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 particular political subdivision.

### **§ 4-18-103. Liability; penalties; damages**

- (a) Any person who commits any of the following acts shall be liable to the state or to the political subdivision for three (3) times the amount of damages that the state or the political subdivision sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the state or to the political subdivision for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the state or political subdivision for a civil penalty of not less than two thousand five hundred dollars (\$2,500) and not more than ten thousand dollars (\$10,000) for each false claim:
  - (1) Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval;
  - (2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision;

- (3) Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision;
- (4) Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- (5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the state or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
- (6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- (7) Knowingly makes, uses, or causes 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 or to any political subdivision;
- (8) Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim; or
- (9) Knowingly makes, uses, or causes to be made or used any false or fraudulent conduct, representation, or practice in order to procure anything of value directly or indirectly from the state or any political subdivision.

(b) Notwithstanding subsection (a), the court may assess not less than two (2) times nor more than three (3) times the amount of damages that the state or the political subdivision sustains because of the act of the person described in that subsection, and no civil penalty, if the court finds all of the following:

- (1) The person committing the violation furnished officials of the state or of the political subdivision responsible for investigating false claims violations with all information known to that person about the violation within thirty (30) days after the date on which the person first obtained the information;
- (2) The person fully cooperated with any investigation by the state or a political subdivision of the violation; and
- (3) At the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) Liability under this section shall be joint and several for any act committed by two (2) or more persons.

(d) This section does not apply to any controversy involving an amount of less than five hundred dollars (\$500) in value, unless the controversy arose from a violation of chapter 58 of this title. For purposes of this subsection (d), "controversy" means any one (1) or more false claims submitted by the same person in violation of this chapter.

(e) This section does not apply to claims, records, or statements made pursuant to workers' compensation claims.

(f) This section does not apply to claims, records, or statements made under any statute applicable to any tax administered by the department of revenue.

**§ 4-18-104. Investigation; civil actions; intervention; complaint and response; extensions; jurisdiction; qui tam plaintiff; distribution of proceeds; discovery; False Claims Act Fund**

(a)

(1) The attorney general and reporter shall diligently investigate violations under § 4-18-103 involving state funds. If the attorney general and reporter finds that a person has violated or is violating § 4-18-103, the attorney general and reporter may bring a civil action under this section against that person.

(2) If the attorney general and reporter brings a civil action under this subsection (a) on a claim involving political subdivision funds as well as state funds, the attorney general and reporter shall, on the same date that the complaint is filed in this action, serve by mail with return receipt requested a copy of the complaint on the appropriate prosecuting authority.

(3) The prosecuting authority shall have the right to intervene in an action brought by the attorney general and reporter under this subsection (a) within sixty (60) days after receipt of the complaint pursuant to subdivision (a)(2). The court may permit intervention thereafter.

(b)

(1) The prosecuting authority of a political subdivision shall diligently investigate violations under § 4-18-103 involving political subdivision funds. If the prosecuting authority finds that a person has violated or is violating § 4-18-103, the prosecuting authority may bring a civil action under this section against that person.

(2) If the prosecuting authority brings a civil action under this section on a claim involving state funds as well as political subdivision funds, the prosecuting authority shall, on the same date that the complaint is filed in this action, serve a copy of the complaint on the attorney general and reporter.

(3) Within sixty (60) days after receiving the complaint pursuant to subdivision (b)(2), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the attorney general and reporter shall assume primary responsibility for conducting the action and the prosecuting authority shall have the right to continue as a party;  
or

(B) Notify the court that it declines to proceed with the action, in which case the prosecuting authority shall have the right to conduct the action.

(c)

(1) A person may bring a civil action for a violation of this chapter for the person and either for the state in the name of the state, if any state funds are involved, or for a political subdivision in the name of the political subdivision, if political subdivision funds are involved, or for both the state and political subdivision if state and political subdivision funds are involved. The person bringing the action shall be referred to as the qui tam plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind this chapter.

(2) A complaint filed by a private person under this subsection (c) shall be filed in circuit or chancery court in camera and may remain under seal for up to sixty (60) days. No service shall be made on the defendant until after the complaint is unsealed. This

subsection (c) shall not be construed as prohibiting an action being brought in federal court that involves claims from several states or claims involving federal funds.

(3) On the same day as the complaint is filed pursuant to subdivision (c)(2), the qui tam plaintiff shall serve by mail with return receipt requested the attorney general and reporter with a copy of the complaint and a written disclosure of substantially all material evidence and information the person possesses.

(4) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve state funds but not political subdivision funds, the attorney general and reporter may elect to intervene and proceed with the action.

(5) The attorney general and reporter may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal pursuant to subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(6) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(5), the attorney general and reporter shall do either of the following:

(A) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted; or

(B) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(7)

(A) Within fifteen (15) days after receiving a complaint alleging violations that exclusively involve political subdivision funds, the attorney general and reporter shall forward copies of the complaint and written disclosure of material evidence and information to the appropriate prosecuting authority for disposition, and shall notify the qui tam plaintiff of the transfer.

(B) Within forty-five (45) days after the attorney general and reporter forwards the complaint and written disclosure pursuant to subdivision (c)(7)(A), the prosecuting authority may elect to intervene and proceed with the action.

(c) The prosecuting authority may, for good cause shown, move for extensions of the time during which the complaint remains under seal. The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the forty-five-day period or any extensions obtained under subdivision (c)(7)(c), the prosecuting authority shall do either of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the prosecuting authority and the seal shall be lifted; or

(ii) Notify the court that it declines to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(8)

(A) Within fifteen (15) days after receiving a complaint alleging violations that involve both state and political subdivision funds, the attorney general and

reporter shall forward copies of the complaint and written disclosure to the appropriate prosecuting authority, and shall coordinate its review and investigation with those of the prosecuting authority.

(B) Within sixty (60) days after receiving a complaint and written disclosure of material evidence and information alleging violations that involve both state and political subdivision funds, the attorney general and reporter or the prosecuting authority, or both, may elect to intervene and proceed with the action.

(c) The attorney general and reporter or the prosecuting authority, or both, may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (c)(2). The motion may be supported by affidavits or other submissions in camera.

(D) Before the expiration of the sixty-day period or any extensions obtained under subdivision (c)(8)(c), the attorney general and reporter shall do one of the following:

(i) Notify the court that it intends to proceed with the action, in which case the action shall be conducted by the attorney general and reporter and the seal shall be lifted;

(ii) Notify the court that it declines to proceed with the action but that the prosecuting authority of the political subdivision involved intends to proceed with the action, in which case the seal shall be lifted and the action shall be conducted by the prosecuting authority; or

(iii) Notify the court that both it and the prosecuting authority decline to proceed with the action, in which case the seal shall be lifted and the qui tam plaintiff shall have the right to conduct the action.

(c) If the attorney general and reporter proceeds with the action pursuant to subdivision (c)(8)(D)(i) the prosecuting authority of the political subdivision shall be permitted to intervene in the action within sixty (60) days after the attorney general and reporter notifies the court of its intentions. The court may authorize intervention thereafter.

(9) The defendant shall not be required to respond to any complaint filed under this section until thirty (30) days after the complaint is unsealed and served upon the defendant.

(10) When a person brings an action under this subsection (c), no other person may bring a related action based on the facts underlying the pending action.

(d)

(1) No court shall have jurisdiction over an action brought under subsection (c) against a member of the general assembly, a member of the state judiciary, an elected official in the executive branch of the state, or a member of the governing body or other elected official of any political subdivision if the action is based on evidence or information known to the state or political subdivision when the action was brought.

(2) A person may not bring an action under subsection (c) that is based upon allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the state or political subdivision is already a party.

(3)

(A) No court shall have jurisdiction over an action under this chapter based upon the public disclosure of allegations or transactions in a criminal, civil, or

administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the general assembly, comptroller of the treasury, or governing body of a political subdivision, or by the news media, unless the action is brought by the attorney general and reporter or the prosecuting authority of a political subdivision or the person bringing the action is an original source of the information.

(B) For purposes of subdivision (d)(3)(A), “original source” means an individual, who has direct and independent knowledge of the information on which the allegations are based, who voluntarily provided the information to the state or political subdivision before filing an action based on that information, and whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure as described in subdivision (d)(3)(A).

(4) No court shall have jurisdiction over an action brought under subsection (c) based upon information discovered by a present or former employee of the state or a political subdivision during the course of such person’s employment unless that employee first, in good faith, exhausted existing internal procedures for reporting and seeking recovery of the falsely claimed sums through official channels and unless the state or political subdivision failed to act on the information provided within a reasonable period of time.

(c)

(1) If the state or political subdivision proceeds with the action, it shall have the primary responsibility for prosecuting the action. The qui tam plaintiff shall have the right to continue as a full party to the action.

(2)

(A) The state or political subdivision may seek to dismiss the action for good cause notwithstanding the objections of the qui tam plaintiff if the qui tam plaintiff has been notified by the state or political subdivision of the filing of the motion and the court has provided the qui tam plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The state or political subdivision may settle the action with the defendant notwithstanding the objections of the qui tam plaintiff if the court determines, after a hearing providing the qui tam plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(f)

(1) If the state or political subdivision elects not to proceed, the qui tam plaintiff shall have the same right to conduct the action as the attorney general and reporter or prosecuting authority would have had if it had chosen to proceed under subsection (c). If the state or political subdivision so requests, and at its expense, the state or political subdivision shall be served with copies of all pleadings filed in the action and supplied with copies of all deposition transcripts.

(2)

(A) Upon timely application, the court shall permit the state or political subdivision to intervene in an action with which it had initially declined to proceed if the interest of the state or political subdivision in recovery of the property or funds involved is not being adequately represented by the qui tam plaintiff.

(B) If the state or political subdivision is allowed to intervene under subdivision (f)(2)(A), the qui tam plaintiff shall retain principal responsibility for the action and the recovery of the parties shall be determined as if the state or political subdivision had elected not to proceed.

(g)

(1)

(A) If the attorney general and reporter initiates an action pursuant to subsection (a) or assumes control of an action initiated by a prosecuting authority pursuant to subdivision (b)(3)(A), the office of the attorney general and reporter shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(B) If a prosecuting authority initiates and conducts an action pursuant to subsection (b), the office of the prosecuting authority shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims.

(c) If a prosecuting authority intervenes in an action initiated by the attorney general and reporter pursuant to subdivision (a)(3) or remains a party to an action assumed by the attorney general and reporter pursuant to subdivision (b)(3)(A), the court may award the office of the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery under subdivision (g)(1)(A), taking into account the prosecuting authority's role in investigating and conducting the action.

(2) If the state or political subdivision proceeds with an action brought by a qui tam plaintiff under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive at least twenty-five percent (25%) but not more than thirty-three percent (33%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the qui tam plaintiff substantially contributed to the prosecution of the action. When it conducts the action, the attorney general and reporter's office or the office of the prosecuting authority of the political subdivision shall receive a fixed thirty-three percent (33%) of the proceeds of the action or settlement of the claim, which shall be used to support its ongoing investigation and prosecution of false claims made against the state or political subdivision. When both the attorney general and reporter and a prosecuting authority are involved in a qui tam action pursuant to subdivision (c)(6)(c), the court at its discretion may award the prosecuting authority a portion of the attorney general and reporter's fixed thirty-three percent (33%) of the recovery, taking into account the prosecuting authority's contribution to investigating and conducting the action.

(3) If the state or political subdivision does not proceed with an action under subsection (c), the qui tam plaintiff shall, subject to subdivisions (g)(4) and (5), receive an amount that the court decides is reasonable for collecting the civil penalty and damages on behalf of the government. The amount shall be not less than thirty-five percent (35%) and not more than fifty percent (50%) of the proceeds of the action or settlement and shall be paid out of these proceeds.

(4) If the action is one provided for under subdivision (d)(4), the present or former employee of the state or political subdivision is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff those

sums from the proceeds as it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, and the scope of, and response to, the employee's attempts to report and gain recovery of the falsely claimed funds through official channels.

(5) If the action is one that the court finds to be based primarily on information from a present or former employee who actively participated in the fraudulent activity, the employee is not entitled to any minimum guaranteed recovery from the proceeds. The court, however, may award the qui tam plaintiff any sums from the proceeds it considers appropriate, but in no case more than thirty-three percent (33%) of the proceeds if the state or political subdivision goes forth with the action or fifty percent (50%) if the state or political subdivision declines to go forth, taking into account the significance of the information, the role of the qui tam plaintiff in advancing the case to litigation, the scope of the present or past employee's involvement in the fraudulent activity, the employee's attempts to avoid or resist the activity, and all other circumstances surrounding the activity.

(6) The portion of the recovery not distributed pursuant to subdivisions (g)(1)-(5), inclusive, shall revert to the state if the underlying false claims involved state funds exclusively and to the political subdivision if the underlying false claims involved political subdivision funds exclusively. If the violation involved both state and political subdivision funds, the court shall make an apportionment between the state and political subdivision based on their relative share of the funds falsely claimed.

(7) For purposes of this section, "proceeds" include civil penalties as well as double or treble damages as provided in § 4-18-103.

(8) If the state, political subdivision, or the qui tam plaintiff prevails in or settles any action under subsection (c), the qui tam plaintiff shall receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable costs and attorney's fees. All expenses, costs, and fees shall be awarded against the defendant and under no circumstances shall they be the responsibility of the state or political subdivision.

(9) If the state, a political subdivision, or the qui tam plaintiff proceeds with the action, the court may award to the defendant its reasonable attorney's fees and expenses against the party that proceeded with the action if the defendant prevails in the action and the court finds that the claim was clearly frivolous, clearly vexatious, or brought solely for purposes of harassment.

(h)

(1) The court may stay an act of discovery of the person initiating the action for a period of not more than sixty (60) days if the attorney general and reporter or local prosecuting authority shows that the act of discovery would interfere with an investigation or a prosecution of criminal or civil matter arising out of the same facts, regardless of whether the attorney general and reporter or local prosecuting authority proceeds with the action. This showing shall be conducted in camera.

(2) The court may extend the sixty-day period upon a further showing in camera that the attorney general and reporter or local prosecuting authority has pursued the criminal or



civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(i) Upon a showing by the attorney general and reporter or local prosecuting authority that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the attorney general and reporter's or local prosecuting authority's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, including the following:

- (1) Limiting the number of witnesses the person may call;
- (2) Limiting the length of the testimony of the witnesses;
- (3) Limiting the person's cross-examination of witnesses; or
- (4) Otherwise limiting the participation by the person in the litigation.

(j) There is hereby created in the state treasury a fund to be known as the "False Claims Act Fund." Proceeds from the action or settlement of the claim by the attorney general and reporter pursuant to this chapter shall be deposited into this fund. Moneys in this fund, upon appropriation by the general assembly, shall be used by the attorney general and reporter to support the ongoing investigation and prosecution of false claims in furtherance of this chapter. Amounts in the fund at the end of any fiscal year shall not revert to the general fund, but shall remain available for the purposes set forth in this chapter.

#### **§ 4-18-105. Whistleblowing; liability; remedies**

(a) No employer shall make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a government or law enforcement agency or from acting in furtherance of a false claims action, including investigating, initiating, testifying, or assisting in an action filed or to be filed under § 4-18-104.

(b) No employer shall discharge, demote, suspend, threaten, harass, deny promotion to, or in any other manner discriminate against an employee in the terms and conditions of employment because of lawful acts done by the employee on behalf of the employee or others in disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under § 4-18-104.

(c) An employer who violates subsection (b) shall be liable for all relief necessary to make the employee whole, including reinstatement with the same seniority status that the employee would have had but for the discrimination, two (2) times the amount of back pay, interest on the back pay, compensation for any special damage sustained as a result of the discrimination, and, where appropriate, punitive damages. In addition, the defendant shall be required to pay litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate chancery court of the state for the relief provided in this subsection (c).

(d) An employee who is discharged, demoted, suspended, harassed, denied promotion, or in any other manner discriminated against in terms and conditions of employment by such person's employer because of participation in conduct that directly or indirectly resulted in the submission of a false claim to the state or a political subdivision shall be entitled to the remedies under subsection (c) if, and only if, both of the following occur:

- (1) The employee voluntarily disclosed information to a government or law enforcement agency or acted in furtherance of a false claims action, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed; and
- (2) The employee had been harassed, threatened with termination or demotion, or otherwise coerced by the employer or its management into engaging in the fraudulent activity in the first place.

#### **§ 4-18-106. Civil actions; essential elements**

- (a) A civil action under § 4-18-104 may not be filed more than three (3) years after the date of discovery by the official of the state or political subdivision charged with responsibility to act in the circumstances or, in any event, no more than ten (10) years after the date on which the violation of § 4-18-103 was committed.
- (b) A civil action under § 4-18-104 may be brought for activity prior to July 1, 2001, if the limitations period set in subsection (a) has not lapsed.
- (c) In any action brought under § 4-18-104, the state, the political subdivision, or the qui tam plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.
- (d) Notwithstanding any other law to the contrary, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, except for a plea of nolo contendere made prior to July 1, 2001, shall estop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under § 4-18-104(a), (b), or (c).

#### **§ 4-18-107. Remedies; severability; construction**

- (a) This chapter is not exclusive, and the remedies provided for in this chapter shall be in addition to any other remedies provided for by law or available under common law.
- (b) If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to that end this chapter is declared to be severable.
- (c) This chapter is declared to be remedial in nature and this chapter shall be liberally construed to effectuate its purposes.

#### **§ 4-18-108. Applicability**

This chapter shall not apply to any conduct, activity or claims covered by the Medicaid False Claims Act, §§ 71-5-181 — 71-5-185, including without limitation, claims arising out of funds paid to or by TennCare managed care organizations.

## Tennessee Medicaid False Claims Act

(Tenn. Code §§ 71-5-181–185)<sup>ii</sup>

### § 71-5-181. Short title

- (a) The title of this section and §§ 71-5-182 — 71-5-185 is and may be cited as the “Tennessee Medicaid False Claims Act.”
- (b) “Medicaid program” as used in §§ 71-5-182 — 71-5-185 includes the TennCare program and any successor program to the medicaid program.

### § 71-5-182. Damages; definitions; injunctions

- (a) Subject to subdivision (a)(2), any person who:
  - (1)
    - (A) Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval under the medicaid program;
    - (B) Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the medicaid program;
    - (C) Conspires to commit a violation of subdivision (a)(1)(A), (a)(1)(B), or (a)(1)(D); or
    - (D) Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money, or property to the state, or knowingly conceals, or knowingly and improperly, avoids, or decreases an obligation to pay or transmit money or property to the state, relative to the medicaid program; is liable to the state for a civil penalty of not less than five thousand dollars (\$5,000) and not more than twenty-five thousand dollars (\$25,000), adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note); Public Law 101-410, plus three (3) times the amount of damages which the state sustains because of the act of that person.
  - (2) However, if the court finds that:
    - (A) The person committing the violation of this subsection (a) furnished officials of the state responsible for investigating false claims violations with all information known to such person about the violation within thirty (30) days after the date on which the defendant first obtained the information;
    - (B) The person fully cooperated with any state investigation of such violation; and
    - (C) At the time such person furnished the state with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under §§ 71-5-181 — 71-5-186 with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation; the court may assess not less than two (2) times the amount of damages which the state sustains because of the act of the person.
  - (3) A person violating this subsection (a) shall also be liable for the costs of a civil action brought to recover any such penalty or damages.
- (b) For purposes of this section, “knowing” and “knowingly” mean that a person, with respect to information:

- (1) Has actual knowledge of the information;
- (2) Acts in deliberate ignorance of the truth or falsity of the information; or
- (3) Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(c) "Claim" means any request or demand, whether under a contract or otherwise, for money or property and whether or not the state has title to the money or property, that is presented to any employee, officer, or agent of the state, or is made to any contractor, grantee, or other recipient, if the money or property is to be spent or used on the state's behalf or to advance a state program or interest, and if the state provides or has provided any portion of the money or property requested or demanded; or if the state will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded; and does not include requests or demands for money or property that the state has paid to an individual as compensation for state employment or as an income subsidy with no restrictions on that individual's use of the money or property.

(d) "Obligation" means 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.

(e) "Material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(f) Any person who engages, has engaged or proposes to engage in any act described by subsection (a) may be enjoined in any court of competent jurisdiction in an action brought by the attorney general and reporter. The action shall be brought in the name of the state and shall be granted if it is clearly shown that the state's rights are being violated by such person or entity and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent any act described by subsection (a) by any person or entity, or as may be necessary to restore to the medicaid program any money or property, real or personal, which may have been acquired by means of such act.

### **§ 71-5-183. Actions and proceedings**

(a) If the attorney general and reporter finds that a person has violated or is violating § 71-5-182, the attorney general and reporter may bring a civil action under this section against the person.

(b)

(1) A person may bring a civil action for a violation of § 71-5-182 for the person and for the state. The action shall be brought in the name of the state of Tennessee. The action may be dismissed only if the court and the attorney general and reporter or district attorney general give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state. The complaint shall be filed in camera, shall remain under seal for at least sixty (60) days, and shall not be served on the defendant until the court so orders. The state may elect to intervene and proceed with the action within sixty (60) days after it receives both the complaint and the material evidence and information.

(3) The state may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under subdivision (b)(2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until twenty (20) days after the complaint is unsealed and served upon the defendant.

(4) Before the expiration of the sixty-day period or any extensions obtained under subdivision (b)(3), the state shall:

(A) Proceed with the action, in which case the action shall be conducted by the state; or

(B) Notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection (b), no person other than the state may intervene or bring a related action based on the facts underlying the pending action.

(c)

(1) If the state proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in subdivision (c)(2).

(2)

(A) The state may dismiss the action notwithstanding the objections of the person initiating the action, if the person has been notified by the state of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The state may settle the action with the defendant notwithstanding the objections of the person initiating the action, if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the state that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the state's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

(i) Limiting the number of witnesses the person may call;

(ii) Limiting the length of the testimony of such witnesses;

(iii) Limiting the person's cross-examination of witnesses; or

(iv) Otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the state elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the state so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts, at the state's expense. When a person proceeds with the action, the

court, without limiting the status and rights of the person initiating the action, may nevertheless permit the state to intervene at a later date upon a showing of good cause.

(4) Whether or not the state proceeds with the action, upon a showing by the state that certain actions of discovery by the person initiating the action would interfere with the state's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty (60) days. Such a showing shall be conducted in camera. The court may extend the sixty-day period upon a further showing in camera that the state has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the state may elect to pursue its claim through any alternate remedy available to the state, including any administrative proceeding to determine a civil monetary penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceedings as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of this subdivision (c)(5), a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of jurisdiction, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d)

(1)

(A) If the state proceeds with an action brought by a person under subsection (a), a person shall, subject to subdivision (d)(1)(B), receive at least fifteen percent (15%) but not more than twenty-five percent (25%) of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action.

(B) Where the action is one that the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action, relating to allegations or transactions in a criminal, civil, or administrative hearing, report, audit, investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent (10%) of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation.

(C) Any payment to a person under subdivisions (d)(1)(A) and (d)(1)(B) shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses that the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the state does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than twenty-five percent (25%) and not more than thirty percent (30%) of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an

amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the state proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of § 71-5-182 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action that the person would otherwise receive under subdivision (d)(1) or (d)(2), taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from such person's role in the violation of § 71-5-181, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the state to continue the action.

(4) If the state does not proceed with the action and the person bringing the action conducts the action, the court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e)

(1) In no event may a person bring an action under subsection (b) that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil monetary penalty proceeding in which the state is already a party.

(2)

(A) The court shall dismiss an action or claim under this section, unless opposed by the state, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed in a criminal, civil, or administrative hearing in which the state or its agent is a party; in a state legislative, state comptroller, or other state report, hearing, audit, or investigation; or from the news media, unless the action is brought by the attorney general and reporter or district attorney general or the person bringing the action is an original source of the information.

(B) For purpose of this subdivision (e)(2), "original source" means an individual who either prior to a public disclosure under subdivision (e)(2)(A) has voluntarily disclosed to the state the information on which allegations or transactions in a claim are based; or who has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the state before filing an action under this section.

(f) The state is not liable for expenses that a person incurs in bringing an action under this section.

(g) Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or associated others in furtherance of an action under this section or other efforts to stop one (1) or more violations of §§ 71-5-181 — 71-5-185. The relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the

discrimination, two (2) 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. An action under this subsection (g) may be brought in the appropriate court for the relief provided in this subsection (g), but may not be brought more than three (3) years after the date when the retaliation occurred.

(h)

(1) Upon written request of the attorney general and reporter, the bureau of TennCare may bring an action as an administrative proceeding on behalf of the state for recovery under § 71-5-182 against any person specified by the attorney general and reporter other than an enrollee, recipient or applicant, subject to the conditions set forth in this subsection (h).

(2) The amount of actual damages that the state may seek in such administrative proceeding shall not exceed twenty-five thousand dollars (\$25,000). This limit shall not apply to any civil penalties or costs that the state is eligible to recover under § 71-5-182 or to § 71-5-182 related to double or treble damages.

(3) Notwithstanding § 71-5-182, the civil penalty for each violation of § 71-5-182 in such administrative proceeding shall be not less than one thousand dollars (\$1,000) and not more than five thousand dollars (\$5,000).

(4) Any administrative action brought pursuant to this subsection (h) shall be subject to § 71-5-184.

(5) Any administrative action brought pursuant to this subsection (h) shall be initiated as a contested case in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(6) The bureau of TennCare shall have authority to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, as are necessary to implement this subsection (h). For purposes of rendering a final order pursuant to the Uniform Administrative Procedures Act, the bureau of TennCare is designated as the agency to review initial orders and issue final agency decisions. Orders issued by the bureau of TennCare shall have the effect of a final order pursuant to the Uniform Administrative Procedures Act.

(7)

(A) Whenever an order issued by the bureau of TennCare pursuant to this part has become final, a notarized copy of the order may be filed in the office of the clerk of the chancery court of Davidson County.

(B) When filed in accordance with this subsection (h), a final order shall be considered as a judgment by consent of the parties on the same terms and conditions as those recited in the order. The judgment shall be promptly entered by the court. Except as otherwise provided in this subsection (h), the procedure for entry of judgment and the effect of the judgment shall be the same as provided in title 26, chapter 6.

(C) A judgment entered pursuant to this subsection (h) shall become final on the date of entry.

(D) A final judgment under this subsection (h) has the same effect, is subject to the same procedures and may be enforced or satisfied in the same manner as any other judgment of a court of record of this state.



(8) Any recovery under this subsection (h) in excess of the amounts paid to reimburse the bureau of TennCare for damages and costs and to other interested parties shall be paid to the attorney general and reporter to be used to investigate and prosecute health care fraud in the TennCare program.

(9) This subsection (h) is declared to be remedial in nature and shall be liberally construed to effectuate its purposes.

#### **§ 71-5-184. Subpoenas; limitation of action; standard of proof; effect of judgment on criminal proceedings**

(a) A subpoena requiring the attendance of a witness at a trial or hearing conducted under § 71-5-183 may be served at any place in the United States.

(b) A civil action under § 71-5-183 may not be brought:

(1) More than six (6) years after the date on which the violation of § 71-5-182 is committed; or

(2) More than three (3) years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in no event more than ten (10) years after the date on which the violation is committed, whichever occurs last.

(c) If the state elects to intervene and proceed with an action brought under § 71-5-183(b), the state may file its own complaint or amend the complaint of a person who has brought an action under § 71-5-183(b) to clarify or add detail to the claims in which the state is intervening and to add any additional claims with respect to which the state contends it is entitled to relief. For statute of limitations purposes, any such state pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the state arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under § 71-5-183, the state shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other law, the Tennessee Rules of Criminal Procedure, or the Tennessee Rules of Evidence, a final judgment rendered in favor of the state in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall stop the defendant from denying the essential elements of the offense in any action that involves the same transaction as in the criminal proceeding and that is brought under subsection (a) or (b) or § 71-5-183.

#### **§ 71-5-185. Venue; summons**

Any action under § 71-5-183 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one (1) defendant can be found, resides, transacts business, or in which any act proscribed by § 71-5-182 occurred. A summons as required by the Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

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i Last updated August 2023.  
ii Last updated August 2023.