



WHISTLEBLOWER POLICY

REPORTING AND INVESTIGATING ALLEGATIONS OF SUSPECTED IMPROPER OR ILLEGAL ACTIVITIES

I. INTRODUCTION

The Children's Center Utah (TCCU) has a responsibility for stewardship of its resources and accountability to its donors. TCCU is committed to compliance with Board-approved policies and procedures and to federal and state laws and regulations.

TCCU's internal controls and operating procedures are intended to detect and prevent or deter improper activities. TCCU has the responsibility to investigate and report allegations of suspected improper or illegal activities. However, even the best systems of control cannot provide absolute safeguards against irregularities.

Employees and other whistleblowers are encouraged to utilize the guidelines in this policy for reporting all allegations of suspected, improper, or illegal activities. This policy does not apply to individual employee grievances and complaints regarding terms and conditions of employment. These will continue to be reviewed by management as stated in TCCU's personnel policies.

The Board of Directors (Board), or its designated representative, establishes which circumstances warrant an investigation and the appropriate investigative process to be employed, as set forth herein.

It is important to note that the professional leadership of TCCU, (including the CEO, the CFO and the Executive Leadership Team), sets the standards and must be held by the Board and stakeholders to the highest levels of professional integrity and competency, as may be required by law.

II. DEFINITIONS

For the purposes of this policy, the definition of "***improper or illegal activities***" is:

Any **activity** by an employee, officer, director, agent, or volunteer of TCCU that is undertaken in the performance of official TCCU duties, and that:

- Is in violation of any state or federal law or regulations, including, but not limited to, corruption, malfeasance, bribery, theft of TCCU assets, fraudulent claims, fraud, coercion, conversion, malicious prosecution, misuse of TCCU property, or willful omission to perform duty.
- Is economically wasteful, or involves gross misconduct.

For the purposes of this policy, the definition of "**protected disclosure**" is:

- Any good faith communication that demonstrates an intention to disclose improper or illegal activities.

For the purposes of this policy the definition of "**whistleblower**" is:

- A person or entity making a protected disclosure. Whistleblowers may be TCCU employees, applicants for employment, Board members, vendors, donors, or the general public. The whistleblower's role is as a reporting party. They are not an investigator or finder of fact, nor do they determine the appropriate corrective or remedial action that may be warranted.

For the purposes of this policy the definition of "**Designated Board Member (DBM)**" is:

- That member of the Board who serves as the chair of the Governance/Ethics Committee.

III. REPORTING ALLEGATIONS OF SUSPECTED IMPROPER OR ILLEGAL ACTIVITIES

Any person may report allegations of suspected improper or illegal activities. Allegations may be reported anonymously. The Governance/Ethics Committee may determine that an independent third party will take on the role of Designated Board Member to accept reports of allegations from whistleblowers. If such decision is made, the policy will be updated to reflect such change. The policy will be available for public access.

Reports of allegations of suspected or illegal activities shall may be made in writing so as to assure a clear understanding of the issues involved. Oral reports will also be accepted initially, but must then be documented in writing. Such reports should present facts which the person making the report reasonably believes are evidence of illegal or improper activities, and contain as much specific information as possible to allow for proper evaluation of the report.

A report originated by an employee of TCCU should be made to the employee's immediate supervisor, CEO, and to the DBM. If the supervisor is part of the immediate allegation, the report can be made to the DBM only. Supervisors also will report allegations to the CEO, unless the CEO is part of the immediate allegation.

Supervisors will report any allegations of suspected illegal activities to the DBM, whether received as a protected disclosure, reported by their subordinates, or discovered in the course

of performing their duties, when any of the following conditions are met. If the matter:

- Is the result of a significant internal control or policy deficiency;
- Is likely to receive media or other public attention;
- Involves the misuse of TCCU assets or creates exposure to a liability in potentially significant amounts;
- Involves allegations or events that have a significant possibility of being the result of a criminal act (e.g., disappearance of cash);
- Involves a significant threat to the health and safety of employees and/or the public;
- Is judged to be significant or sensitive for other reasons.

The DBM shall report any allegations of suspected improper or illegal activities that fall within the matters described above to the Governance/Ethics Committee.

This policy does not preclude TCCU executive leadership from investigating or taking action with regards to any allegations of illegal or improper activities of which they are made aware. In all cases, TCCU executive leadership will inform the DBM of any illegal or improper activities that they are investigating.

III (a). False Claims Detection and Reporting

The Children's Center Utah takes all forms of fraud and abuse seriously and is committed to following all applicable laws and regulations related to fraud, in particular those that address health care fraud, waste, and abuse. This includes the Federal False Claims Act (FCA) and the Utah False Claims Act (UFCA), as well as other related enforcement policies. Employees of The Children's Center Utah must understand their responsibilities under these regulations to help assure the funds available to deliver services to children and their families are spent in a responsible manner.

Employees who violate the FCA or UFCA may be liable for penalties and damages.

Federal False Claims Act

The FCA (located at U.S.C. Title 31, Section 3729) is a federal statute that, in part, imposes civil liability on any person who knowingly presents or causes to be presented a false or fraudulent claim or who knowingly makes or causes to be made a false record or statement in order to get a false claim paid. A person who conspires to defraud the government through either of these actions is also liable under the FCA. The term "claim" includes any request or demand for money or property to which the United States government provides any portion of the money or property requested.

Examples of a false claim include, but are not limited to, the following:

- Falsifying information in the medical record
- Billing for services not rendered or goods not provided
- Duplicating billing to obtain double compensation
- Billing, certifying, or prescribing services that are medically unnecessary

Liability, Penalties, and Damages Under the FCA

Liability attaches under the FCA when a person “knowingly” violates the FCA’s provisions. No proof of specific intent to defraud the government is required under the FCA. A violation of the FCA may result in a civil penalty of not less than \$5,000 but not more than \$10,000, plus three times the amount of damages sustained by the federal government. Private individuals who are aware of fraud against the government are allowed to bring suit on behalf of the federal government under the FCA.

Utah False Claims Act

Utah also has a false claims act. The UFCA (located at Utah Code, Title 26, Chapter 20) provides for the imposition of both civil and criminal liability for filing of a false claim for medical benefits in the State, which includes claims under the Utah Medicaid program. Liability under the UFCA extends to individuals and business organizations. Civil penalties under the UFCA can include enforcement costs, a fine of not less than \$5,000 but not more than \$10,000, plus three times the amount of damages sustained by the state.

Whistleblower Protection

The FCA provides an employee protection against retaliation by the employer or other employees for coming forward to report suspected fraud, waste, or abuse. A whistleblower who is harassed or discriminated in any way in the terms or conditions of their employment because of their lawful acts in an FCA action has the right to be made whole. The relief available to whistleblowers under the FCA includes reinstatement of their job, two times the amount of back pay to which they may be entitled plus interest, and compensation for any special damages sustained including litigation costs and reasonable attorneys’ fees.

Reporting Medicaid Fraud, Waste and Abuse

Employees are expected to report any known or suspected violation of either the FCA or UFCA. Employees may report the violation to the employee's immediate supervisor, CEO, and to the DBM. Employees may also report a possible FCA or UFCA violation directly to the federal Department of Justice, the State Attorney General, or other relevant agency, including the following:

Utah Medicaid Fraud Hotline 1-855-403-7283 or (801) 538-6155
Division of Child and Family Services (801) 538-4100
Utah Attorney General (801) 538-9600

IV. INVESTIGATING ALLEGED IMPROPER OR ILLEGAL ACTIVITIES

The DBM shall initially evaluate any reports he/she receives from whistleblowers. The DBM may use members of the Governance/Ethics Committee, TCCU staff or outside professionals to assist in conducting an initial evaluation. If this evaluation discloses evidence that the allegations may have a reasonable basis in fact, the information obtained shall be turned over to the Executive Committee of the Board for further action. If the initial evaluation does not find any evidence to support the allegations, the DBM will inform the Executive Committee and may recommend that the matter be concluded with no action taken.

The Executive Committee shall investigate any matters of illegal or improper activities that are reported to it by the DBM or as deemed necessary. The Executive Committee may conduct its own investigation or may form an Investigation Committee, drawn from members of the Board. The investigation may range from informal inquiries of members of the TCCU staff or other parties to the hiring of professional investigators. If the investigation leads the Executive Committee to conclude that a crime may have been committed, the results of the investigation shall be reported to local law enforcement officials.

Members of the Executive Committee and/or the Investigation Committee will not discuss the investigation with anyone not connected to the investigation. Employees who are interviewed by the Governance/Ethics Committee, Executive Committee and/or Investigation Committee will not discuss the investigation with anyone not connected to the investigation. The investigation will be documented in writing.

The Executive Committee will keep the Board informed of the reported allegations and of any investigations being conducted.

V. ROLES, RIGHTS AND RESPONSIBILITIES OF WHISTLEBLOWERS

Whistleblowers provide protected disclosures of information related to a reasonable belief that an improper or illegal activity has occurred. The motivation of the whistleblower is irrelevant to the consideration of the validity of the allegations. However, the intentional filing of a false report by any employee is considered an improper or illegal act upon which TCCU has the right to act.

Anonymous whistleblowers must provide sufficient corroborating evidence to justify the commencement of an investigation. An investigation of unspecified wrongdoing or broad allegations will not be undertaken without verifiable evidence.

Whistleblowers who are employees of TCCU shall be protected from retaliation such as termination, wage decrease, demotion or lack of promotion on the basis of reporting reasonably suspected allegations of improper or illegal activities. This protection extends to the whistleblower regardless of whether the allegations are verified by an investigation. A whistleblower's right to protection from retaliation does not extend immunity for any complicity in the matters that are the subject of the allegations or an ensuing investigation.

VI. EXECUTIVE COMMITTEE'S AND BOARD OF DIRECTORS' RESPONSIBILITIES UPON COMPLETION OF INVESTIGATION

Upon the completion of any investigation, the Executive Committee will present the results of its investigation to the Board and offer recommendations of actions to be voted on by the Board. These actions may include but are not limited to:

- Take no action based upon the conclusion that no improper or illegal activity occurred.
- Refer the results of the investigation to law enforcement authorities.

- Direct that an employee be terminated, that an employee be placed on administrative probation or that other sanctions be imposed upon an employee who, as a result of the investigation, has been determined to have acted improperly or illegally.
- Take other actions it deems necessary to protect the interests of TCCU.
- Direct that further investigations be conducted.

Reviewed and approved by the Governance/Ethics Committee and adopted by The Children's Center Utah Board of Directors on April 19, 2023.

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Kathleen Pitcher Tobey
Chair, Board of Directors