

## EBCI Tribal Option



*The Mission of the Cherokee Indian Hospital is to be the provider of choice for the community by providing accessible, patient and family centered quality healthcare with responsible management of the Tribes resources.*

**TITLE: Whistleblower Protection Policy**

**REVIEWED AND APPROVED BY: Executive Committee**

**EFFECTIVE DATE: 2/25/21**

### **PURPOSE**

To establish a policy of protection of whistleblower rights as required by the DHHS EBCI Tribal Option Contract. The whistleblower protections create for Cherokee Indian Hospital Authority (CIHA) and its division, the EBCI Tribal Option (referred to as the Tribal Option), an environment that aligns with its core purpose, mission, vision, and guiding principles.

### **STAFF GOVERNED BY THIS POLICY**

The Cherokee Indian Hospital staff, EBCI Tribal Option staff, internal and external Primary Care Physicians (PCPs), subcontractors, and all other agents of the EBCI Tribal Option.

### **POLICY**

CIHA, and the EBCI Tribal Option, shall protect their employees, subcontractors and network providers who report activities believed to be mismanagement, illegal, dishonest, unethical, a gross waste of funds, lack of authority, and/or a substantial and specific danger to health, safety or are otherwise improper.

#### Whistleblower Protection Policy

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*This hospital policy is applicable to the Cherokee Indian Hospital Authority and other locations where services of this hospital are provided.*

CIHA, and the EBCI Tribal Option, shall not intimidate or retaliate against individuals for exercising their whistleblowing rights. The CIHA, and the EBCI Tribal Option, shall not discharge, threaten, or discriminate against an employee, subcontractor, or network provider regarding their compensation, terms, conditions, location, or privileges, of employment or contract execution.

It is the intent of the EBCI Tribal Option, and CIHA, that the confidentiality of the whistleblower will be maintained, however identification may have to be disclosed for a thorough investigation, to comply with the law, and to provide the accused individuals their legal rights of defense.

Whistleblower protected individuals include:

- the employee, subcontractor, network provider or a person acting on behalf of the individual, who reports to a public body such as a regulatory agency or is about to report to a public body a matter of concern;
- the employee, subcontractor, network provider who participates in a court action, an investigation, a hearing, or an injury held by a public body on a matter of concern.

CIHA, and the EBCI Tribal Option, may not exclude an employee or other person who makes an allegation from receiving a benefit, bid on contracts or other rights/entitlements. Policy provisions do not:

- require the organization to compensate an employee or subcontractor for participation in a court action or in an investigation, hearing, or inquiry by a public body;
- forbid the entity from compensating an employee or subcontractor for participation in a court action or in an investigation, hearing, or inquiry by a public body;
- sanction the disclosure of information that is legally required to be confidential.

Limitation to protections:

- an individual isn't entitled to the protections under this policy unless he/she reasonably believes that the information reported is (or is about to become) a concern; the information is reported in good faith; and/or
- an individual is eligible to the protections under this policy only if the matter of concern is not the result of conduct by the individual requesting protection, unless it is the result of the person's conduct that was required by his/her employer.

The EBCI Tribal Option and CIHA shall act in accordance with the **Federal False Claims Act and Applicable State False Claims Act Provisions- 31 U.S.C. 3730 and other applicable federal, state and tribal laws and regulations**

- **Federal False Claims Act (FCA).** The federal FCA prohibits knowingly submitting (or causing to be submitted) to the federal government, false or fraudulent claims for payment or approval. It prohibits knowingly making or using (or causing to be made or used) a false record or statement to get a false or fraudulent claim paid or approved. The federal FCA also prohibits knowingly making or using (or causing to

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be made or used) a false record or statement of material to an obligation to pay or transmit money or property to the federal government, or to knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the federal government.

- Protections and Awards for Whistleblowers under FCA includes no retaliation. The FCA protects and provides relief to any Associate, Contractor, or agent from retaliatory actions taken by the Company if the individual acts as a whistleblower. These retaliatory actions include discharge, demotion, suspension, threats, harassment and any other discrimination against the Associate, Contractor, or agent resulting from following the FCA requirements and this Policy.

Additional examples of relevant laws include but not limited to:

- Anti-Kickback Statute,
- Beneficiary Inducement Law,
- Exclusion Statute,
- Whistleblower Protection Act,
- Other Relevant Federal FWA Laws **include:**
  - Physician Self-Referral Prohibition (Stark Law),
  - Civil Monetary Penalties Law (CMPL),
  - Health Insurance Portability and Accountability Act (HIPAA), **and**
  - Deficit Reduction Act of 2005 and subsequent issued guidance by the Centers of Medicaid and Medicare (CMS) or NC Medicaid.

### **Definitions**

**Abuse:** includes any practice that is inconsistent with acceptable fiscal, business, medical, or healthcare practices that unnecessarily increase costs or causes unnecessary harm.

**Contract:** The Indian Managed Care Entity Contract #30-2020-014-DHB between the North Carolina Department of Health and Human Services, Division of Health Benefits and Cherokee Indian Hospital Authority. Subsequent revisions and amendments are also included in this definition. This contract is also referred to as the DHHS Tribal Option Contract.

**Employee:** An individual hired by CIHA, or a member of the Tribal Option PCP network.

**Fraud:** The wrongful or criminal deception intended to result in financial or personal gain.

**Matter of Concern** is:

- a violation of a state, federal, or tribal law, regulation or ordinance;
- a danger to public health or safety; and/or
- inappropriate management, substantial waste of funds, or an apparent abuse of authority.

**Subcontractor:** An entity having an arrangement with the Cherokee Indian Hospital Authority (CIHA) and the EBCI Tribal Option, where the CIHA/EBCI Tribal Option uses the products and/or services of that entity to fulfill some of its obligations under the DHHS EBCI Tribal Option Contract. Use of a Subcontractor does not create a contractual relationship between the Subcontractor and the NC DHHS, only the CIHA. Network PCPs are not considered Subcontractors for purposes of this policy or the DHHS EBCI Tribal Option Contract.

**Waste:** The inappropriate use of resources.

**Whistleblower:** An employee, internal and external PCPs, subcontractors, and all other agents of the EBCI Tribal Option who report(s) to one or more of the parties specified in this policy, an activity that he/she considers to be mismanagement, illegal, dishonest, unethical, a gross waste of funds, an absence of authority, or a substantial and specific danger to public health and safety or otherwise improper.

**PROCEDURE:**

Employees, internal and external PCPs, subcontractors and all other agents of the EBCI Tribal Option, as defined shall have the right to file a Whistleblower complaint with:

- CIHA or the EBCI Tribal Option
- The NC Department of Health and Human Services, Office of the Secretary
- The Office of the State Auditor
- The Office of the Attorney General
- Tribal Option Hotline: 1-800-455-9014
- NC Medicaid Hotline: 1-877-362-8471

In the instance that an employee has a concern or knowledge of an illegal or dishonest activity, the CIHA/EBCI Tribal Option employee is encouraged to report the allegation to his/her immediate supervisor. In the event that the concern is in regards to their immediate supervisor, the employee may report to the next in the chain of command or report to the EBCI Tribal Option or the CIHA Compliance Officer.

Subcontractors, network PCPs or other agents of the EBCI Tribal Option/CIHA should report to their EBCI Tribal Option point of contact or the CIHA Compliance Officer.

Examples of Illegal or dishonest activities include violations of federal, state or local laws; billing for services not performed or for goods not delivered; and other fraudulent financial reporting. The employee, subcontractor, or PCP network members should exercise good judgement to avoid a baseless allegation. An employee, PCP network member and/or subcontractor may be subject to disciplinary action if he/she should intentionally file a false report of wrongdoing.

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The report of a concern of an illegal or dishonest activity by a EBCI Tribal Option/CIHA employee will be forwarded by the receiving supervisor or contact person to the CIHA Human Resources Manager, who is responsible for facilitating the investigation and coordinating any required corrective action.

Any concerns applicable to the CIHA Human Resources Manager should be reported to the CIHA/EBCI Tribal Option Compliance Officer.

The whistleblower isn't responsible for investigating the alleged illegal or dishonest activity, or for determining if fault or corrective measures are needed. The CIHA Human Resources Manager and/or EBCI Tribal Option Director are the responsible party(ies), with applicable consultation from subject experts.

The responsible party shall initiate an investigation within 21 CIHA business days of receipt of concern. The investigation may include but not limited to:

- Interviews;
- Research and analysis of materials or data;
- Consultation with or review by subject matter experts;
- Referral to federal, state regulatory agency to conduct the investigation and/or handle disposition of the allegation; and
- Referral to federal, state, or tribal law enforcement or other legal entity to conduct the investigation and/or handle the disposition of the allegation.

Disposition or rendering decision of the allegation of concern will be completed as reasonably possible given the nature of the allegation. In the event of Medicaid Fraud or Abuse, including credible allegations of fraud, referrals shall be made to NC Medicaid Program Integrity Office. At no point in the review of the allegation, shall the review or investigation infringe on the referral or create obstacle for any action to be taken by a regulatory or enforcing agency.

In all aspects of the "Whistleblower" Policy, it is expected that privacy protections and compliance will be maintained. This policy and procedures will compliment and work in tantum with the EBCI Tribal Option Fraud Prevention Policy Program Integrity Plan. In addition, the EBCI Tribal Option, and CIHA, shall train all their employees, subcontractors and the PCP Network on the *EBCI Tribal Option Fraud Prevention Policy and Plan*. This referenced policy and plan includes reporting requirements and processes and definitions.

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