

EBCI Tribal Option
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Together We Heal



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: EBCI Tribal Option Fraud Prevention Policy and Plan

REVIEWED AND APPROVED BY: CIHA Executive Committee

EFFECTIVE DATE: 4/15/2021

LAST REVIEWED: 11/3/2022

PURPOSE:

To establish a robust Fraud Prevention Policy that aligns with applicable federal, state, and tribal laws and regulations and demonstrates compliance with the North Carolina Department of Health and Human Services (NCDHHS)/Eastern Band of Cherokee Indians (EBCI) Tribal Option Contract. The Cherokee Indian Hospital Authority (CIHA) and its division the EBCI Tribal Option believe that fraud and abuse prevention align with the philosophy of **Guiding Principle Three – ᏞᏗᏞᏗᏍᏔᏅ** [ni hi tsa tse li (English phonetics: nee hee zah zay lee or nee hee jah jay lee)] *“It Belongs to You”* and that all healthcare services belong to the people. CIHA and EBCI Tribal Option serve as stewards of this healthcare, safeguarding it and providing it to patients/Members when and how they need it. This *EBCI Tribal Option Fraud Prevention Policy and Plan* addresses not only fraud as defined by the Medicaid program but also practices that are due to mismanagement, illegal, dishonest, and unethical actions, a gross waste of funds, lack of authority, and/or a substantial and specific danger to health, safety or otherwise improper activities.

STAFF GOVERNED BY THIS POLICY:

This Policy applies to:

- All CIHA staff;
- CIHA Executive staff;

EBCI Tribal Option Fraud Prevention Policy and Plan

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- EBCI Tribal Option staff;
- EBCI Tribal Option Member Services staff;
- EBCI Tribal Option Provider Network;
- EBCI Tribal Option Subcontractors;
- Care Managers;
- Behavioral Health Care Managers [Behavioral Health Consultants (BHCs)];
- Other Primary Care (Nutritionists, Pharmacists, and Providers in the Integrated Care Team);
- Care Manager Extenders [Licensed Practical Nurses (LPNs)/Certified Medical Assistants (CMAs)/Other].

POLICY:

CIHA/EBCI Tribal Option shall develop, maintain, and update a Fraud Prevention Policy and Plan on an annual basis or more frequently due to changes in federal, state, or tribal laws and trending alerts. The *EBCI Tribal Option Fraud Prevention Policy and Plan* shall be submitted to NC Medicaid upon request by NCDHHS. This *Plan* focuses on prevention, detection, recovery, and reporting through collaboration with NC Medicaid. All four (4) of these components are applied to financial, programmatic, and operational functions of the EBCI Tribal Option.

Prevention

Prevention components of the *Plan* include:

- Engaging Members, Providers, and subcontractors;
- Educating Members on potential trends of fraud, waste, and/or abuse/misuse and personal responsibilities;
- Educating Providers on billing or reporting mistakes and reminders of improved guidance on evidence-based practices, efficiencies, and internal Provider quality improvement activities;
- Monitoring subcontractors on their adherence to fraud, waste, and/or abuse/misuse policies and procedures;
- Providing reminders or outreach to the EBCI Tribal Option Providers on issued NC Medicaid Clinical Coverage Policies, Bulletin Articles, state plan changes, or other administrative changes or modifications that impact compliance;
- Adhering to robust stakeholder communications;
- Exploring public and private partnerships through data sharing to detect patterns of claims/billing irregularities;
- Exploring technology to detect fraud schemes or improper utilization of monies;
- Identifying trends that may indicate fraud, waste, and/or abuse/misuse;
- Collaborating with NC Medicaid, NC Medicaid Office of Compliance & Program Integrity (OCPI), and the Medicaid Investigation Division (MID) on suspension of payments for credible allegations; and
- Attending applicable meetings, seminars, and training opportunities on Medicaid Program Integrity.

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Detection

Detection components of the *Plan* include:

- Leveraging and sharing of best practices in detecting fraud, waste, and/or abuse/misuse;
- Providing ongoing compliance training;
- Utilizing available data and business intelligence tools to detect patterns and trends;
- Collaborating with NC Medicaid and NC Medicaid OCPI on the sharing of data mining tools;
- Conducting record audits; and
- Training staff on detection and data informed decision-making.

Recovery

The Recovery component of the *Plan* must be in collaboration with NC Medicaid, as the EBCI Tribal Option does not pay Medicaid Claims or have the delegated authority to recoup or issue notices of overpayment. The recovery data and findings may be used to annually review and evaluate the EBCI Tribal Option Provider Network or subcontractor monitoring. However, EBCI Tribal Option and CIHA may institute recovery of funds paid to contractors or vendors in the event the billing or reimbursement was based upon fraudulent, abusive practices, and/or inflation of invoicing.

Reporting

The last component of the *Plan* is Reporting. The Reporting aspects include the training and education of staff, Members, Providers, and subcontractors on their obligations to report, including an explanation about their protections if they do report. In addition, Reporting includes working collaboratively with NC Medicaid and other regulatory agencies in reporting the suspected incidents or activities of fraud, waste, and/or abuse/misuse. The EBCI Tribal Option also certifies the accuracy and compliance of any reports submitted to NC Medicaid.

CIHA and EBCI Tribal Option acknowledge and accept that failure to adhere to the applicable federal or state laws and regulations regarding Program Integrity, disclosures, hiring, procurement, or taking actions to rectify known issues may result in termination of the EBCI Tribal Option Contract.

This *EBCI Tribal Option Fraud Prevention Policy and Plan* works in tandem with the *EBCI Tribal Option Whistleblower Protection Policy*, *EBCI Tribal Option Subcontractor Monitoring Policy*, the *EBCI Primary Care Provider Contracting and Monitoring Policy*, and the *EBCI Tribal Option Conflict of Interest Policy*. CIHA and EBCI Tribal Option assure that the identities of any Member, Provider, employee, subcontractor, or delegated entity reporting violations by CIHA and/or EBCI Tribal Option are protected and that there is no retaliation against such persons. In addition, all identified entities shall adhere to full compliance with the components outlined in the policies and procedures. Subcontractors may supply their Fraud Prevention plans or policies to EBCI Tribal Option for determination of equivalency to the *EBCI Tribal Option Fraud Prevention Plan*.

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DEFINITIONS:

For purposes of this *Policy*, the definitions of fraud and abuse, that, at a minimum, are consistent with how those terms are defined in 42 C.F.R. § 455.2:

Abuse

Includes any practice that is inconsistent with acceptable fiscal, business, medical, or healthcare practices that unnecessarily increase costs or causes unnecessary harm. It also includes Medicaid beneficiary or EBCI Tribal Option Member practices that result in unnecessary cost to the Medicaid program.

Calendar Day

The twenty-four (24) hour period from midnight to midnight each day. It includes all days in a month, including weekends and holidays. Unless otherwise specified, references to days in the NCDHHS/EBCI Tribal Option Contract are calendar days.

Cherokee Indian Hospital Authority (CIHA)

The entity authorized by the Eastern Band of the Cherokee Indians to act as the Indian Managed Care Entity (IMCE) operating the EBCI Tribal Option.

Chief Executive Director of Quality and Safety

This is the CIHA position that serves as the CIHA/EBCI Tribal Office Compliance Officer and EBCI Tribal Option Privacy Officer. This position will serve as point of contact with state or federal regulatory agencies, including NC Medicaid regarding matters of Program Integrity related to fraud, waste, or abuse.

CIHA Business Day

Monday through Friday 8:00 a.m. through 4:30 p.m., Eastern Standard Time, except for holidays observed by CIHA. These holidays will be submitted annually to NCDHHS, included in the EBCI Tribal Option Member and Provider Handbooks, and posted on the EBCI Tribal Option website at www.ebcitribaloption.com.

Code of Federal Regulations (CFR)

A compilation of administrative laws governing federal regulatory agency practice and procedures. This includes such agencies as Medicaid, Medicare, and Indian Health Service.

Credible Allegation of Fraud

May refer to an allegation, which has been verified by NC Medicaid, from any source, including, but not limited to, the following: Fraud hotline complaints; Claims data mining; Patterns identified through provider audits; Civil false claims cases; and Law enforcement investigations. Allegations are considered to be credible when they have indicia of reliability, and NC Medicaid has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis.

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Delegated Entity

An organization gives an entity the authority to perform certain functions on its behalf. Although the organization may delegate the authority to perform a function, it may not delegate the responsibility for ensuring that the function is performed appropriately.

EBCI Tribal Option 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 NCDHHS/EBCI Tribal Option Contract.

EBCI Tribal Option Primary Care Provider (PCP) Network

Primary Care Provider practices with whom the EBCI Tribal Option has enrolled into the Network through the execution of the PCP contract. CIHA Primary Care and satellite clinics are part of the EBCI Tribal Option PCP Network.

Employee

An individual hired by CIHA or a member of the EBCI Tribal Option PCP Network.

Fraud

An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable federal or state law.

Matter of Concern

- 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.

Medicaid Investigation Division (MID)

The Medicaid Investigation Division with the NC Attorney General's Office.

North Carolina Department of Health and Human Services (NCDHHS)

A Department within the North Carolina Executive Branch that is the designated single state agency with the US Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) for the administration of the Medicaid Program through the Division of Health Benefits.

Office of Compliance & Program Integrity (OCPI)

The Office within the Division of Health Benefits (NC Medicaid) with primary responsibility for receiving, investigating, and taking action regarding fraud, waste and abuse within the Medicaid program and other programs such as Third-Party Liability (TPL) and Pharmacy Lock-In.

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Patient and Family Advisory Council (PFAC)

A group of patients, family, and Medicaid beneficiaries to assist with CIHA and the EBCI Tribal Option operations by providing their perspective. They review Member materials, quality initiatives, and survey results and receive monthly or quarterly updates on activities. They make recommendations for improvements in the healthcare and support experience. The PFAC consists of twelve (12) members representing the diversity of the CIHA/EBCI Tribal Option community. Representation of the EBCI Tribal Option and Medicaid Member experience will be included in the membership. The structure of the Council may change over time.

Practitioner or Provider

A physician or other licensed individual under State law to practice his or her profession.

Relationship

A director, officer, or partner of the EBCI Tribal Option PCCM entity; a subcontractor of the CIHA/EBCI Tribal Option entity, as governed by 42 C.F.R. § 438.230; person with beneficial Ownership of five percent (5%) or more of the CIHA/EBCI Tribal Option entity's equity; or a network Provider or person with an employment, consulting, or other arrangement with the CIHA/EBCI Tribal Option for the provision of items and services that are significant and material to the CIHA/EBCI Tribal Option obligations under the NCDHHS/EBCI Tribal Option Contract.

Subcontractor

An entity having an arrangement with CIHA and/or EBCI Tribal Option, where CIHA and/or EBCI Tribal Option use the products and/or services of that entity to fulfill some of its obligations under the NCDHHS/EBCI Tribal Option Contract. Use of a subcontractor does not create a contractual relationship between the subcontractor and NCDHHS, only CIHA. Network primary care providers (PCPs) are not considered subcontractors for the NCDHHS/EBCI Tribal Option Contract.

Suspension

Items or services furnished by a specified Provider, who has been convicted of a program-related offense in a federal, state, or local court, will not be reimbursed under Medicaid.

United States Office of Inspector General (US OIG)

The Office of Inspector General (OIG) is an independent, bi-partisan federal agency that conducts audits to review the effectiveness, efficiency, economy, and integrity of all programs and operations, including those performed by its contractors and grantees who receive federal funding. This work is conducted in order to determine whether: the programs and operations are in compliance with the applicable laws and regulations; resources are efficiently and economically being utilized; and programs achieve their intended results. The OIG also conducts criminal, civil, and administrative investigations into alleged violations of federal laws relating to programs, operations, and personnel.

Waste

The inappropriate use of resources.

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Whistleblower

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

PROCEDURE:

The EBCI Tribal Option has designated the CIHA/EBCI Tribal Option Compliance Officer as the point of contact with all federal and state regulatory or law enforcement agencies regarding matters of fraud, waste, and/or abuse/misuse. This position will evaluate potential cases of fraud, waste, and/or abuse/misuse and refer the case to NC Medicaid or other regulatory or law enforcement agencies as appropriate. The CIHA/EBCI Tribal Option Compliance Officer will serve as a liaison with the North Carolina Department of Justice Medicaid Investigations Division (MID) and facilitate a timely response to NCDHHS requests for information, including claims data.

The initial category in the *Fraud Prevention Policy and Plan* is the screening of personnel, Providers, and subcontractors prior to hire, awarding of contracts, and periodically thereafter. Additional specifications are found in the *EBCI Tribal Option Subcontractor Monitoring Policy* and the *EBCI Tribal Option Monitoring Policy for Key Personnel, Tribal Option Employees, and Governing Board Members*. The screening is referred to as disclosures.

- EBCI Tribal Option and its subcontractors shall provide to NCDHHS written disclosures of any prohibited affiliation as outlined in 42 C.F.R. § 438.610 and 42 C.F.R. § 438.608(c)(1);
- In accordance with 42 C.F.R. § 438.602(c) and 42 C.F.R. § 438.608(c)(2), the EBCI Tribal Option and its subcontractors shall provide to NCDHHS written disclosures of information on Ownership and control as required under 42 C.F.R. § 455.104;
- In accordance with 42 C.F.R. § 455.104, the EBCI Tribal Option shall include the following information in its disclosure to NCDHHS, as applicable:
 - The name, address, date of birth, and social security number of any individual with an Ownership or Control Interest in CIHA/EBCI Tribal Option;
 - The name, address, and tax identification number of any corporation or partnership with an Ownership or Control Interest in CIHA/EBCI Tribal Option or in any subcontractor in which CIHA or EBCI Tribal Option has a five percent (5%) or more interest. The address for a corporation shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
 - Whether the person (individual or corporation) with an Ownership or Control Interest in CIHA/EBCI Tribal Option is related to another person with an Ownership or Control Interest in CIHA/EBCI Tribal Option as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an Ownership or Control Interest in any subcontractor of CIHA/EBCI Tribal Option in which CIHA/EBCI Tribal Option has a five percent (5%) or more interest is related to another person with Ownership or Control Interest in CIHA/EBCI Tribal Option as a spouse, parent,

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- child, or sibling;
 - The name of any disclosing entity, other disclosing entity, Fiscal Agent, or managed care entity, as those terms are defined in 42 C.F.R. § 455.101, in which an owner of CIHA/EBCI Tribal Option has an Ownership or Control Interest; and
 - The name, address, date of birth, and social security number of any Managing Employee of CIHA or EBCI Tribal Option. The Managing Employees shall include CIHA’s Governing Board and Key Primary Care Case Management (PCCM) personnel as noted in the NCDHHS/EBCI Tribal Option Contract;
- Applicable aspects of CIHA, EBCI Tribal Option, and subcontractors shall submit applicable Ownership and disclosure information to NCDHHS at the following times:
 - Upon the effective date of the Contract;
 - When CIHA submits a Provider application, executes a Provider agreement with NCDHHS, or upon request of NCDHHS during the Provider enrollment revalidation process;
 - Within thirty-five (35) calendar days of either a change of Ownership;
 - Annually as required by the NCDHHS/EBCI Tribal Option Contract; and
 - Upon written request by NCDHHS;
- EBCI Tribal Option shall submit full and complete information to NCDHHS upon request about the Ownership of any subcontractor with whom CIHA/EBCI Tribal Option has had business transactions totaling more than twenty-five thousand dollars (\$25,000) during the twelve (12) month period, ending on the date of the request;
- EBCI Tribal Option shall report to NCDHHS within sixty (60) calendar days when it has identified payments (i.e., as described in Attachment A. Payment Schedule and Provisions) in excess of amounts specified in the NCDHHS/EBCI Tribal Option Contract and in accordance to 42 C.F.R. § 438.608(c)(3);
- EBCI Tribal Option shall be responsible for screening all employees and subcontractors to ensure these individuals have not been excluded from participation in federal health care programs prior to employment or contract;
- CIHA/EBCI Tribal Option shall not employ or contract with an individual who has been debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation (FAR); or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549 [42 C.F.R. § 438.610 (a) and (b)].

The second category to the *EBCI Tribal Option Fraud Prevention Policy and Plan* is the promotion of Program Integrity. EBCI Tribal Option shall:

- Check the Validation of Exclusion List Status:
 - CIHA/EBCI Tribal Option shall, prior to contracting for operations supporting the EBCI Tribal Option, check the exclusion status of all potential Network PCPs, subcontractors, and vendors against the following lists (collectively, these lists are referred to as the “Exclusion Lists”) to ensure that CIHA/EBCI Tribal Option does not pay federal funds to excluded persons or entities:

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- NCDHHS Excluded Provider List;
 - U.S. Department of Health and Human Services, Office of Inspector General's (HHS-OIG) List of Excluded Individuals/Entities (LEIE);
 - The System for Award Management (SAM);
 - The Social Security Administration Death Master File (SSA DMF);
 - To the extent applicable, National Plan and Provider Enumeration System (NPPES); and
 - Office of Foreign Assets Control (OFAC).
- CIHA/EBCI Tribal Option shall disclose to NCDHHS, within thirty (30) calendar days of its knowledge, any disciplinary actions that have been imposed on any licensed physician, physician assistant, nurse practitioner, or psychologist or their governing body related to fraud, waste, and/or abuse/misuse;
- To the extent applicable, EBCI Tribal Option shall check, at least monthly, the exclusion status of persons who are agents and Managing Employees of CIHA/EBCI Tribal Option, Network PCPs, delegated entities, and subcontractors against the Exclusion Lists to ensure that CIHA/EBCI Tribal Option does not pay federal funds to excluded persons or entities. CIHA/EBCI Tribal Option shall not be controlled by a sanctioned individual as outlined in 42 C.F.R. § 438.808(a);
- CIHA/EBCI Tribal Option shall take appropriate action upon identification that a person, agent, Managing Employee, Network PCP, delegated entities, or subcontractor appear on one (1) or more of the Exclusion Lists (each an "Excluded Person"), which may include termination of the relationship with the Excluded Person and ceasing payments owed to such Excluded Person;
- CIHA/EBCI Tribal Option shall report to NCDHHS within two (2) CIHA business days of identification of an Excluded Person the following information:
 - The name(s) of the Excluded Person(s);
 - To the extent applicable, the amounts paid to the Excluded Person(s) over the previous twelve (12) months;
 - The National Provider Identifier (NPI) of any Network PCP appearing on any of the Exclusion Lists and the list(s) where the Network PCP appeared; and
 - NC Medicaid will notify EBCI Tribal Option within five (5) State business days of taking any adverse action in response to information provided by EBCI Tribal Option. This includes the validation and checking of the Exclusion List status of persons who are agents and Managing Employees of CIHA/EBCI Tribal Option, Network PCPs, delegated entities, subcontractors, and vendors. Actions taken by CIHA/EBCI Tribal Option may be the result of the adverse action taken by NCDHHS;
- CIHA/EBCI shall not engage in any prohibited relationships as outlined in 42 C.F.R. § 438.610. EBCI Tribal Option shall not knowingly have a relationship with any of the following:
 - An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the FAR; or from participating in procurement activities under regulations issued under Executive Order No.12549 or

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- under guidelines implementing Executive Order No. 12549;
 - An individual or entity who is an affiliate, as defined in the FAR at 48 C.F.R. §2.101, of a person; and
 - An individual or entity that is excluded from participation in any Federal healthcare program under Section 1128 or 1128A of the SSA;
- CIHA/EBCI shall adhere to federal and state laws regarding prohibited payments. To the extent applicable, CIHA/EBCI Tribal Option shall not expend amounts for any item or service (other than an emergency item or service, not including items or services furnished in an emergency room of a hospital) prohibited under Section 1903(i) of the SSA;
- CIHA/EBCI shall report to NCDHHS and, upon request, to the United States Secretary of the Department of Health and Human Services (US DHHS), the Inspector General of the US DHHS, the Comptroller General, and Members a description of transactions between CIHA/EBCI Tribal Option and a party in interest as defined in section 1318(b) of the Public Health Service Act, including the following transactions:
 - Any sale, exchange, or leasing of any property between CIHA/EBCI Tribal Option and such a party;
 - Any furnishing for consideration of goods, services (including management services), or facilities between CIHA/EBCI Tribal Option and such a party, but not including salaries paid to employees for services provided in the normal course of their employment; and
 - Any lending of money or other extension of credit between CIHA/EBCI Tribal Option and such a party as referenced in Section 1903(m)(4)(A) of the SSA;
- CIHA/EBCI Tribal Option shall not be located outside of the United States in accordance with 42 C.F.R. § 438.602(i).

The third category of this *EBCI Tribal Option Fraud Prevention Policy and Plan* is the development, implementation, and periodic review of fraud, waste, and abuse/misuse prevention actions. To promote integrity in all EBCI Tribal Option PCCM entity activities and to combat fraud, waste, and/or abuse/misuse, CIHA and EBCI Tribal Option shall design and implement a proactive fraud prevention, detection, and referral process which guards against internal (staff) and external (Members, Providers, subcontractors, or others) fraud, waste, and/or abuse/misuse of Benefits, program funds, and misuse of the systems that support the EBCI Tribal Option.

The EBCI Tribal Option shall develop and implement policies and processes to identify and report suspected fraud, waste, and/or abuse/misuse. Applicable CIHA employees, all EBCI Tribal Option employees, subcontractors supporting the EBCI Tribal Option, and EBCI Tribal Option PCPs shall be trained on reporting fraud, waste, and/or abuse/misuse. All employees, subcontractors, PCP Network Providers (internal and external PCPs), and all other agents of the EBCI Tribal Option, as defined shall report fraud, waste, and/or abuse/misuse through one (1) or more of the following:

- EBCI Fraud, Waste, and Abuse Tip Line: 1-800-455-9014;
- U.S. Office of Inspector General Fraud Line: 1-800-HHS-TIPS (1-800-447-8477);
- Department of Health and Human Services, Office of the Secretary: 919-855-4800;

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- Office of the State Auditor Hotline: 1-800-730-TIPS (1-800-730-8477);
- Office of the Attorney General: (919) 881-2320;
- EBCI Fraud, Waste, and Abuse Tip Line: 1-800-455-9014;
- NC Medicaid Fraud, Waste and Abuse Tip Line: 1-877-DMA-TIP1 (1-877-362-8471);
- NC Medicaid Fraud and Abuse Confidential Complaint Form:
<https://medicaid.ncdhhs.gov/meetings-notices/report-fraud-waste-or-abuse/medicaid-fraud-and-abuse-confidential-complaint>

In the instance that a CIHA/EBCI Tribal Option employee has a concern or knowledge of an illegal or dishonest activity, the CIHA/EBCI Tribal Option employee should report the allegation to his/her immediate supervisor, the CIHA Human Resources Director, or to one (1) of the entities previously listed.

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 CIHA/EBCI Tribal Option employee should exercise good judgement to avoid a baseless allegation.

- The report of a concern of an illegal or dishonest activity will be forwarded by the receiving supervisor (the contact person) to the CIHA Human Resources Manager. The CIHA Human Resources Manager shall work collaboratively with the CIHA/EBCI Tribal Option Compliance Officer who is responsible for facilitating the investigation and coordinating any required corrective action;
- Any concerns applicable to the CIHA Human Resources Manager or the CIHA/EBCI Tribal Option Compliance Officer should be reported to the EBCI Tribal Option Director or the CIHA CEO.

The CIHA/EBCI Tribal Option employee, who has a concern or knowledge of an illegal or dishonest activity, is not responsible for investigating the alleged illegal or dishonest activity or for determining if fault or corrective measures are needed. The CIHA/EBCI Tribal Option Compliance Officer with the collaboration of the CIHA Human Resources Manager, if applicable, shall conduct an internal investigation of any allegations against a CIHA or EBCI Tribal Option employee. The investigation may include, but is not limited to:

- Interviews;
- Research and analysis of materials or data;
- Consultation with or review by subject matter experts; and
- Referral to a federal and/or state regulatory agency to conduct the investigation and/or handle disposition of the allegation.

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 this *Policy*, it is expected that privacy protections and compliance will be maintained. This *Policy* and procedures will compliment and work in tandem with the *EBCI Tribal Option Whistleblower Protection Policy*.

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In considering fraud, waste, and/or abuse/misuse decisions, 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 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 the federal FCA includes no retaliation. The federal 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 federal FCA requirements and this *Policy*.

Additional examples of relevant laws include, but are not limited to:

- Anti-Kickback Statute (AKS);
- Beneficiary Inducement Law;
- Exclusion Statute;
- Whistleblower Protection Act (WPA);
- Other relevant federal Fraud, Waste and Abuse (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 Medicare and Medicaid (CMS) or NC Medicaid;
- NC General Statutes and promulgated NC Medicaid Rules, CMS approved State Plan Amendments (SPAs), or Waivers; and
- NC Medicaid Bulletins, Implementation Memos, and other issued sub regulatory guidance.

The CIHA/EBCI Tribal Option Compliance Officer shall regularly and periodically monitor the issuance of fraud alerts by the U.S. Department of Health and Human Services, Office of Inspector General (HHS OIG). All fraud alerts, so issued, shall be carefully considered by the CIHA/EBCI Tribal Option Compliance Officer and the Eastern Band of Cherokee Indians Legal Division. CIHA and the EBCI Tribal Option shall revise and amend this *Fraud Prevention Policy and Plan*, as necessary, in accordance with such fraud alerts. In addition, CIHA and EBCI Tribal Option shall immediately cease and correct any conduct applicable to CIHA and EBCI Tribal Option and take reasonable action to prevent such conduct from recurring in the future. If appropriate, CIHA and

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EBCI Tribal Option may take steps towards inquiries and investigations if infractions are identified as a pattern and will follow the steps in reporting and correcting identified infractions.

EBCI Tribal Option shall create and maintain processes to identify and refer to the State suspected fraud, waste, and/or abuse/misuse that do not infringe on the rights of individuals and are consistent with due process of law. Upon discovery of such acts, CIHA and/or EBCI Tribal Option shall immediately notify the OCPI. NC Medicaid will determine if the allegation needs to be forwarded to the NC Office of the Attorney General, Medicaid Fraud Unit.

Voluntary Reporting

CIHA and EBCI Tribal Option are committed to voluntary disclosure if it is discovered that CIHA and/or EBCI Tribal Option have been involved in misconduct to the extent that it:

- a. Is a clear violation of criminal law;
- b. Has a significant adverse effect on the quality of care provided to program beneficiaries (in addition to any other legal obligations regarding quality of care) or indicates evidence of a systemic failure to comply with applicable laws, an existing compliance plan, or other standards of conduct, regardless of the financial impact on Federal health care programs.

Once an allegation of fraud has been referred to NCDHHS and until further written notice by NCDHHS, the EBCI Tribal Option shall not take any further action, including the following:

- Contacting the subject of the allegation about any matters related to the investigation;
- Entering into or attempting to negotiate any settlement or agreement regarding the matter; or
- Accepting any monetary or other thing of valuable consideration offered by the subject of the allegation in connection with the incident involving CIHA or EBCI Tribal Option's own conduct to NCDHHS, using NCDHHS' defined Fraud, Waste, and Abuse Report, within five (5) CIHA business days of making the allegation determination.

EBCI Tribal Option/CIHA understands that substantiation of credible allegation of fraud or suspected fraud may result in referral to MID, potential suspension of payments, potential for prepayment review, or potential administrative sanctions if supported by federal/state regulations. These administrative findings will be communicated to the EBCI Tribal Option Provider Network Manager for consideration of impact with EBCI PCP contracting.

When the allegation of fraud, misuse, and/or abuse/misuse is related to the action of an EBCI Tribal Option Member, the receiving entity of the allegation shall contact the CIHA/EBCI Tribal Option Compliance Officer or the NC Medicaid OCPI. Reports may also be made to the local county Department of Social Services (DSS) or the EBCI/NCDHHS Medicaid and Food and Nutrition Service (FNS) Eligibility Office for follow up.

The CIHA/EBCI Tribal Option Compliance Officer will provide the business records of the EBCI Tribal Option to NCDHHS, as needed, and have the requisite qualifications to sign an affidavit certifying or, if necessary, testifying that the records were:

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- a. Made at or near the time of the events by a person with knowledge;
- b. Kept in the normal course of regularly conducted business activity; and
- c. Made in the regular place of the contractor's business activity.

CIHA/EBCI Tribal Option shall cooperate with all appropriate state and federal agencies during any investigations, including the MID with the NC Attorney General's Office and/or the HHS OIG in investigating fraud and abuse. CIHA/EBCI Tribal Option shall:

- Provide data or information requested by NCDHHS or MID in the standardized format within five (5) CIHA business days of receiving the request; and
- Cooperate with NCDHHS and MID to mitigate any potential financial or other harm caused by a potentially fraudulent Provider's action due to NCDHHS' or MID's own investigation of the matter.

CIHA/EBCI Tribal Option shall report new information related to a previously referred potential instance of fraud to NCDHHS. CIHA/EBCI Tribal Option shall submit the new information using the Fraud, Waste, and Abuse Submission Form within five (5) CIHA business days of receiving or identifying the new information. CIHA/EBCI Tribal Option shall not take action, such as termination related to potential findings of fraud, waste, and/or abuse/misuse without approval of NC Medicaid. Any such action taken after CIHA/EBCI Tribal Option has received approval by NC Medicaid must be reported to NC Medicaid within five (5) CIHA business days of taking the action. Action by CIHA/EBCI Tribal Option shall not preclude NC Medicaid or MID from conducting an audit or accepting a self-disclosure from a Provider.

CIHA/EBCI Tribal Option and NC Medicaid shall meet as needed to discuss issues related to fraud, waste, and/or abuse/misuse of Medicaid funds and resources.

Data Integrity Standards for Reporting

EBCI Tribal Option shall maintain accurate data to produce and submit routine reports, certifying them to be accurate and true, to NC Medicaid as required by the NCDHHS/EBCI Tribal Option Contract. The certification shall follow the reporting requirements as outlined in the *EBCI Tribal Option Compliance with State Reporting Requirements Policy*.

Training and Education

Applicable parties train on the *CIHA Compliance Plan* and the *EBCI Tribal Option Fraud Prevention Policy and Plan*. This training will happen at hiring or contract execution and annually thereafter. The training shall cover:

- Federal and state Program Integrity and fraud, waste, and/or abuse/misuse laws;
- Definitions including fraud, waste, and/or /abuse/misuse and quality of care concerns;
- Typical offenders of fraud, waste, and/or abuse/misuse;
- The spectrum of fraud and abuse with examples;
- Practices for detection, identification, reporting, and prevention of fraud, waste, and/or abuse; and

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- Duties of reporting suspected or known fraud, waste, and/or abuse/misuse.

The PCP Network Providers and EBCI Tribal Option Members are informed of methods of reporting fraud, waste, and/or abuse/misuse in the *EBCI Tribal Option Member Handbook* and the *EBCI Tribal Option Provider Manual*. The EBCI Tribal Option website also has prompts on how to report, links for reporting suspected incidents of fraud, waste, and/or abuse/misuse, and contact information for reporting. Examples of Member training and education include:

- Protecting personal information;
- Minimizing identity theft;
- Sharing medical information with family or caregiver;
- Tips to Members;
- Understanding Medicaid marketing rules; and
- Understanding telemarketing fraud.

On an annual basis, EBCI Tribal Option, along with CIHA, shall design Member and Provider campaigns to address prevention and reporting of fraud, waste, and/or abuse/misuse in the Medicaid Program and the CIHA system. PFAC, EBCI Tribal Option Quality Improvement Committee, and the EBCI Tribal Option Provider Council shall provide input and review the fraud, waste, and/or abuse/misuse campaign and plan. The EBCI Tribal Option Quality Improvement Committee shall also review trends of fraud, waste, and/or abuse/misuse and recommend modifications of the *Plan* or training opportunities.

EBCI Tribal Option Collaboration with NC Medicaid Pharmacy Lock-In Program

In compliance with *NC Medicaid Clinical Coverage Policy 9, Outpatient Pharmacy*, EBCI Tribal Option will incorporate adherence to and reporting of EBCI Tribal Option Members or Medicaid Medical Home beneficiaries to OCPI. The North Carolina Administrative Code 10A NCAC 22F .0704 and 10A NCAC 22F .0104 and Session Law 2015-241, Section 12F.16. (l), along with 42 C.F.R. § 431.54 and the NC Medicaid State Plan Amendment, support the EBCI Tribal Option's development of procedures in collaboration with NC Medicaid for the control of overutilization and misuse of Medicaid benefits related to pharmacy.

EBCI Tribal Option acknowledges the understanding that a Medicaid beneficiary/member identified for the lock-in program is restricted to a single prescriber and pharmacy in order to obtain opioid analgesics, benzodiazepines, and certain anxiolytics. The beneficiary must obtain all prescriptions for these medications from their lock-in prescriber and lock-in pharmacy in order for the claim to pay. Claims submitted that are written by a prescriber or filled at a pharmacy other than those listed on the lock-in file are denied.

Beneficiary/member inclusion and exclusion criteria and dispensing procedures for emergency prescriptions outlined in *NC Medicaid Clinical Coverage Policy 9* shall be followed. EBCI Tribal Option and OCPI shall establish, implement, and maintain points of contact and reporting procedures.

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Third Party Liability for Providers or Members

CIHA and EBCI Tribal Option shall utilize data distributed by NC Medicaid regarding Third Party Liability (TPL) to assist in ensuring that the NC Medicaid Program's Member and Provider Payment responsibilities are carried out according to federal law for tribal Members and Providers. This information is an additional factor to determine if fraud, misuse, and/or abuse/misuse is present. NC Medicaid will provide EBCI Tribal Option details of other insurance found for EBCI Tribal Option Members to ensure NC Medicaid is the payor of last resort.

CIHA Patient Access/EBCI Tribal Option Member Services will review the information in the Patient/Member's EBCI Tribal Option record to determine the accuracy of the information and will subsequently follow up with NC Medicaid for any clarifications or necessary review.

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**EASTERN BAND OF CHEROKEE INDIANS (EBCI) TRIBAL OPTION
FRAUD PREVENTION POLICY AND PLAN:
POLICY IMPLEMENTATION/REVISION INFORMATION**

Original Effective Date: 4/15/2021

Revision Information:

Date	Section Updated	Change
11/3/2022	Policy Header	Added Cherokee language translation and syllabary for “EBCI Tribal Option, “CIHA” to “Executive Committee” title, and “Last Reviewed” date
11/3/2022	Staff Governed By	Updated the “Staff Governed By” section with the appropriate parties
11/3/2022	All sections	Checked and amended grammar, numbering, and readability as needed
11/3/2022	Policy and Procedure	Amended EBCI Tribal Option Policy titles and the “NCDHHS Excluded Provider List” title
11/3/2022	Policy and Procedure	Added “fraud, waste, and/or abuse/misuse” in all applicable instances
11/3/2022	Policy and Procedure	Changed “Department” to “NCDHHS”
11/3/2022	Definitions	Amended the “Abuse,” “EBCI Tribal Option PCP Network,” “Employee,” “NCDHHS,” “PFAC,” “Relationship,” “Subcontractor,” “US OIG,” and “Whistleblower” definition
11/3/2022	Definitions	Added “Code of Federal Regulations” to the definition list
11/3/2022	Procedure	Added “CIHA/” to the beginning of the “EBCI Tribal Option Compliance Officer” title and amended “Unit” to “Division when identifying “MID”
11/3/2022	Procedure	Updated the list of entities for reporting fraud, waste, and/or

**EBCI Tribal Option Fraud Prevention Policy and Plan:
Policy Implementation/Revision Information**

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		abuse/misuse and included relevant phone numbers
11/3/2022	Procedure	Amended the titles of the <i>EBCI Tribal Option Whistleblower Protection Policy</i> and the <i>EBCI Tribal Option Compliance with State Reporting Requirements Policy</i>
11/3/2022	Procedure	Added “U.S. Department of Health and Human Services” before the “Office of Inspector General” title
11/3/2022	Procedure	Amended “Provider Services” to “Provider Network” in the “EBCI Tribal Option Provider Network Manager” title
11/3/2022	Procedure	Amended the name of the “EBCI/NCDHHS Medicaid and FNS Eligibility Office”
11/3/2022	Procedure	Changed the language from “All CIHA, Tribal Option staff, subcontractors, and the PCP Network” to “Applicable parties” train on the <i>CIHA Compliance Plan</i> and the <i>EBCI Tribal Option Fraud Prevention Policy and Plan</i>
11/3/2022	Procedure	Amended the title of “Patient Registration” to “Patient Access”
11/3/2022	Policy Implementation/ Revision Information	Added policy revision information table

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Policy Implementation/Revision Information**

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