

Compliance Today – March 2018 Impact of state False Claims Acts

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Seasoned compliance professionals in healthcare are typically very familiar with the federal False Claims Act (FCA),^[1] which prohibits healthcare providers from submitting claims for payment to the federal government that are false or fraudulent. Compliance professionals are also familiar with the civil monetary and criminal penalties under the FCA.^[2] However, compliance professionals may be less familiar with state false claims acts that impact healthcare compliance activities in those states. It is important to establish both a compliance program and training that addresses both federal and state FCA requirements, as applicable. This article evaluates the impact of state FCA enforcement, in addition to federal FCA enforcement actions.

The role of the Office of the Inspector General

Section 1909 of the Social Security Act (SSA) was added by section 6031 of the Deficit Reduction Act of 2005 (DRA) (Pub. L. 109-171) to create financial incentives for states to enact legislation that establishes liability to the state for false or fraudulent claims to the state Medicaid program.^[3] The Office of the Inspector General (OIG) is amenable to reviewing a state's FCA draft or enacted legislation to determine if the state laws qualify for financial incentive. The OIG will review the state's FCA to see if it meets the following as described in the federal FCA:

- The state law must establish liability for false or fraudulent claims with respect to Medicaid spending [31 U.S.C. § 3729];
- Contain provisions that are at least as effective in facilitating and rewarding qui tam actions for false or fraudulent claims [31 U.S.C. §§ 3730-3732];
- Contain a requirement for filing the action under seal for 60 days for review by the state Attorney General [42 U.S.C. § 1396h] [Section 1909(b)(3) of the SSA]; and
- Contain a civil penalty that is equal to or greater than the federal penalty amount [31 U.S.C. § 3729].^[4]

The OIG and the Attorney General collaborate to determine whether the state FCA meets the requirements set forth above and qualifies for an incentive under section 1909 of the SSA. Compliance professionals who develop and implement compliance programs in accordance with federal and state requirements can help their entities and organizations save a lot of money by preventing FCA allegations and the resulting civil money penalties.

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