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False Claims in Healthcare
Chapter 7. State False Claims Acts

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The federal False Claims Act (FCA) (31 U.S.C. §§ 3729–3733) was enacted in 1863 by Congress to address concerns that suppliers of goods to the Union army during the American Civil War were defrauding the army. The FCA provided that any person who knowingly submitted false claims to the government was liable for double the government's damages plus a penalty of $2,000 for each false claim. Since then, the FCA has been amended several times.

One of the primary purposes of false claims laws is to combat fraud and abuse in government healthcare programs. False claims laws do this by making it possible for the government to bring civil actions to recover damages and penalties when healthcare providers submit false claims. These laws often permit qui tam suits, which are lawsuits brought by whistleblowers known as "relators," typically employees or former employees of healthcare facilities that submit false claims.

In the wake of the federal FCA, numerous states have also enacted false claims statutes, which often run parallel to the FCA. Since 2005, states have been eligible to receive an additional 10% of a recovery in Medicaid-related false claims actions if, among other things, the state has a false claims act that is deemed by the U.S. Department of Health & Human Services (HHS) Office of Inspector General (OIG) to match or exceed the effectiveness of the federal FCA.[3]

State False Claims Acts and HHS OIG Approval

A majority of states have passed legislation specifically modeled on the federal civil FCA to pursue those who commit fraud on state governments. Most of these state false claims acts provide that qui tam whistleblowers may bring claims on behalf of the state. While a state is free to enact any legislation it chooses, the state is entitled only to a 10% increase in its share of recovered funds in Medicaid false claims actions if its false claims law meets with the approval of the HHS OIG. The HHS OIG, in consultation with the attorney general, determines whether states have false claims acts that qualify for an incentive under section 1909 of the Social Security Act. Those states deemed to have qualifying laws receive the 10-percentage-point increase in their share of any amounts recovered under such laws.

HHS OIG has published four principles that govern whether a state statute will allow the state to qualify for the bonus recovery, based on the requirements set forth in section 1909(b) of the Social Security Act:

- Establish liability to the state for false or fraudulent claims, as described in the federal FCA, with respect to Medicaid spending;
- Contain provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in the FCA;
- Contain a requirement for filing an action under seal for 60 days with review by the state attorney general; and

- Contain a civil penalty that is not less than the amount of the civil penalty authorized under the FCA.[4]

The following state false claim statutes have been approved by HHS OIG:

- California
- Colorado
- Connecticut
- Delaware
- Georgia
- Hawaii
- Illinois
- Indiana
- Iowa
- Massachusetts
- Minnesota
- Montana
- Nevada
- New York
- North Carolina
- Oklahoma
- Rhode Island
- Tennessee
- Texas
- Vermont
- Virginia
- Washington[5]

Six other states have enacted state false claims statutes that failed to obtain HHS OIG approval:

- Florida
- Louisiana
- Michigan

- New Hampshire
- New Jersey
- New Mexico[6]

By way of example, in evaluating the Florida False Claims Act, the HHS OIG cited concerns with:

- The narrower range of conduct covered by the statute,
- The more limited whistleblower protections from retaliatory actions,
- The absence of a relation back provision that expands the statute of limitations for government complaints in intervention,
- Florida's expanded public disclosure bar,
- Florida's jurisdiction-stripping provision for certain cases involving current or former state employees, and
- The absence of an inflation adjustment provision for penalties under the Florida False Claims Act.[7][8][9]

Twenty-one states have not sought HHS OIG approval of any state false claims statute, and there is considerable variation in the style and content of state fraud and abuse laws in these states. In some cases, the state has enacted a state false claims act (including qui tam provisions), but the state law contains limitations that preclude HHS OIG approval. For example, Maryland's False Claims Act contains many of the key features contained in the federal FCA, but it provides that a qui tam action must be dismissed if the state declines to intervene.[10] In other cases, these states may only have a Medicaid false claims act that does not permit qui tam suits or may have enacted only a general Medicaid anti-fraud statute rather than a state false claims act statute. For example, Alabama law currently only provides for criminal (rather than civil) false claims liability.[11] Finally, in one interesting example, Wisconsin repealed its state false claims act in 2015 after the HHS OIG determined that the statute failed to satisfy the requirements to secure the 10% increase in Wisconsin's share of recoveries.