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Complete Healthcare Compliance Manual 2024
False Claims Act

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Fast Facts

Title of law: False Claims Act, civil actions for false claims, false claims procedure, false claims jurisdiction, civil investigative demands

Categories:

- Fraud and abuse
- Medicare
- Medicaid

U.S. Code: 31 U.S.C. §§ 3729–3733

Year enacted: 1863

Major amendments: 1943, 1986, 2009, 2010

Enforcement agencies: U.S. Department of Health & Human Services (HHS) Office of Inspector General (OIG), U.S. Department of Justice (DOJ)

Links to full text of law:

- https://www.govinfo.gov/content/pkg/USCODE-2011-title31/pdf/USCODE-2011-title31-subtitleIII-chap37-subchapIII-sec3729.pdf
- https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleIII-chap37-subchapIII-sec3730.pdf
- https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleIII-chap37-subchapIII-sec3731.pdf
- https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleIII-chap37-subchapIII-sec3732.pdf
- https://www.govinfo.gov/content/pkg/USCODE-2010-title31/pdf/USCODE-2010-title31-subtitleIII-chap37-subchapIII-sec3733.pdf

Applies to: Fraud involving any federally funded contract or program, with the exception of tax fraud. Concerns to healthcare include upcoding, off-label promotion, Medicaid rebates, failure to document patient care, deficient compliance, worthless services, and improperly retaining overpayment from a government healthcare program.[5]

What Is the False Claims Act?

The False Claims Act (FCA), also known as the "Lincoln Law," is a federal law that imposes liability on persons and companies who defraud governmental programs. It is one of the government's primary tools for combatting fraud. The FCA creates liability for any person who knowingly submits a false claim or makes a false claim to the government. The FCA also includes a qui tam provision, which allows private persons to file suit for violations of the FCA on behalf of the government. The FCA provides for up to treble damages and also provides awards of 15%–30% of recovery for those bringing cases.[6]

Healthcare fraud represents the largest and most profitable industry for qui tam false claims collections. In 2019, the healthcare industry accounted for 87% of all FCA judgments and settlements.[7] The FCA covers every claim for Medicare reimbursement. For example, if a practice group submits a Medicare claim for reimbursement for the examination of a patient that never took place, then this is a false claim. Other examples of false claims include upcoding procedures, unbundling procedures, filing multiple claims for the same procedure, and billing for medically unnecessary procedures, etc.[8]

History

The FCA was enacted in 1863 by Congress in response to concerns that suppliers of goods during the Civil War were defrauding the Union Army.[9] President Abraham Lincoln advocated for the passage of the FCA when war suppliers were shipping boxes of sawdust instead of guns and selling the same cavalry horses several times to the Union Army, amongst other fraudulent activities.[10] The law contained qui tam provisions that allowed private citizens to sue on the government's behalf. "Those who filed lawsuits…were entitled to receive 50 percent of the amount the government recovered as a result of their case."

In 1943, Congress changed the qui tam provisions, drastically reducing the reward amount for those bringing a claim on the government's behalf. This created less of an incentive for citizens to report fraud. A new provision also prevented whistleblowers from filing a lawsuit based on information already possessed by the government or a government employee, even if the whistleblower provided the information and the government chose not to investigate.

In the 1980s, the law was revised again after reports of widespread fraud against the government during the Cold War. There were many reports of outrageous billing practices by defense contractors against the military, and government enforcement agencies lacked resources to investigate. Congress amended the qui tam provisions to provide that whistleblowers who brought successful cases "were entitled to [15%–30%] of the government's recovery and attorneys' fees paid by the defendant."[11] They also removed the "government possession of information" bar against suits.

The FCA was amended again in 2009 and 2010 to clarify terms and expand its scope from the original law.[12]

Related Laws

Social Security Act: 42 U.S.C. § 1396h

Allows states to receive a 10% increase in their share of recovery in false claims related to Medicaid if the state enacts a qualifying state false claims law. As of early 2021, 21 states have a qualifying law and 8 states' laws have been denied approval after seeking review by the Office of Inspector General.[13] Alabama, Alaska, Arizona, Arkansas, Idaho, Kansas, Kentucky, Maine, Maryland, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, South Dakota, Utah, West Virginia, and Wyoming do not have a qualifying law and have not sought approval. A qualifying law is required to include the following:

- Liability for false claims as defined by the FCA with respect to any federal healthcare plan,
- Provisions that reward qui tam actions as effectively as the FCA,
- Requirement that the action remains under seal for 60 days, and
- Civil penalty not less than the penalty under the FCA.

Examples of Qualifying State False Claims Laws

Cal. Gov't Code §§ 12650-12656 (West 2020)

- Prohibits knowingly making false claims for money, property, or services to the state.
- Rewards qui tam plaintiff 15%–33% of the proceeds from a successful action. If the state does not proceed with the action, plaintiff may receive 25%–50% of the proceeds.
- Action remains under seal for 60 days.
- Protects employee whistleblowers from retaliation.
- Provides for treble damages, court costs, and a civil penalty not less than $5,500 and not more than $11,000 for each violation.

Tex. Hum. Res. Code Ann. §§ 36.001–36.132 (West 2019)

- Prohibits knowingly making false claims under a Medicaid program to receive an unauthorized benefit or payment.
- Rewards qui tam plaintiff 15%–25% of the proceeds from a successful action. If the state does not proceed with the action, plaintiff may receive 25%–30% of the proceeds.
- Action remains under seal for 180 days.
- Provides for two-times damages, interest, and a civil penalty not less than $5,500 and not more than $11,000 for each violation. Limit increases to $15,000 if the false claim results in injury to an elderly person, person with a disability, or a person younger than 18 years old.

740 Ill. Comp. Stat. 175/3 (2020)

- Prohibits knowingly making false claim for payment or approval to the state.
- Rewards qui tam plaintiff 15%–25% of the proceeds from a successful action. If the state determines the

claim is based primarily on information not from the qui tam plaintiff, plaintiff's award may be no less than 10%. If the state does not proceed with the action, plaintiff may receive 25%–30% of the proceeds.

- Action remains under seal for 60 days.
- Provides civil penalties equal to the federal False Claims Act plus treble damages. However, in qui tam actions where the state chooses not to intervene, the tax owed to the state equals or is under $50,000, and the violation relates to a tax from the state Department of Revenue, penalties include a $5,500–$11,000 civil penalty plus treble damages for each violation.