

Complete Healthcare Compliance Manual 2024

Whistleblowers: Federal and State False Claims Acts

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What Are Federal and State False Claims Acts in Relation to Whistleblowers?

The federal False Claims Act (FCA) prohibits healthcare providers from submitting claims for payment to the federal government that are fraudulent or false.^[2] The U.S. Department of Health & Human Services (HHS) Office of the Inspector General (OIG), in consultation with the U.S. Department of Justice (DOJ) Office of the Attorney General (AG), reviews and determines whether state false claims laws can qualify for a federal incentive under section 1909 of the Social Security Act (SSA).^[3] Those states with deemed or approved laws receive a 10% increase in the share of FCA amounts recovered under the law.

Once approved, the OIG sends a letter to the state attorney general saying it received, reviewed, and approved the state's request; under the requirements of section 1909 of the SSA, this provides financial incentive for the state to enact a law relating to the submission of fraudulent or false claims to the state Medicaid program. To date, 22 states have false claims laws that have been reviewed and approved, seven states have false claims laws and supplemental submissions that have not been approved, and 21 states have not submitted state false claims laws for OIG/AG review.

Qui Tam Relators/Whistleblowers

Under federal and state false claims acts, a qui tam relator is a private party or person who brings an action or lawsuit on the government's behalf. Here, the person and not the government is considered the plaintiff. A qui tam relator may also be known as a whistleblower under the FCA. Whistleblowers are typically private, public, or government employees who discover fraudulent activities during their employment. Examples of fraudulent business activities commonly reported by whistleblowers in healthcare may include knowingly overbilling the Medicaid program for a surgical service, knowingly including false documentation in medical records to decrease an obligation to pay money to the federal government, conspiring with others to get a false claim paid by Medicare for services that were not rendered, or avoiding the obligation to repay identified overpayments.

A private citizen whistleblower may choose this course of action (to bring a lawsuit) because of concerns that were presented to the healthcare organization that were not adequately addressed, remediated, or resolved by the organization. Similarly, an employee whistleblower may take this path for several reasons, including:

- Lack of a confidential internal reporting process;
- Fear of retaliation by the organization or job loss;
- Desire to improve billing services and charges to patients, expose the wrongdoing to protect the public, and improve the organization; or
- An internal report was made but not addressed, remediated, or resolved by the organization.

If the government prevails and the defendant is found to have defrauded a government program such as Medicare

or Medicaid, then the plaintiff (the qui tam relater or whistleblower) receives a portion of the recovery from the defendant. If the whistleblower lives in a state where the OIG has approved the state law and the defendant is found guilty of defrauding the state Medicaid program, then the whistleblower is entitled to a 10% larger award from the defendant.

State False Claims Laws

As a compliance professional it is essential to familiarize yourself not only with the federal FCA laws but also with the state false claims laws that govern your healthcare organization and whistleblower claims. **Table 1. State False Claims Laws Reviewed and Approved by the OIG** lists states with federally approved false claims laws that would permit a 10% state recovery increase, and **Table 2. State False Claims Laws Reviewed and Not Approved by the OIG** lists states that have not received approval.^[4]

Table 1. State False Claims Laws Reviewed and Approved by the OIG

State and Date Enacted	Link to Approval Letter
California (1/25/19)	https://oig.hhs.gov/documents/false-claims-act/277/California.pdf
Colorado (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/278/Colorado.pdf
Connecticut (12/30/16)	https://oig.hhs.gov/documents/false-claims-act/279/Connecticut.pdf
Delaware (1/25/19)	https://oig.hhs.gov/documents/false-claims-act/280/Delaware.pdf
Georgia (1/25/19)	https://oig.hhs.gov/documents/false-claims-act/284/Georgia.pdf
Hawaii (10/1/19)	https://oig.hhs.gov/documents/false-claims-act/286/Hawaii.pdf
Illinois (12/5/17)	https://oig.hhs.gov/documents/false-claims-act/287/Illinois.pdf
Indiana (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/252/Indiana.pdf
Iowa (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/253/Iowa.pdf

Massachusetts (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/255/Massachusetts.pdf
Minnesota (5/27/21)	https://oig.hhs.gov/documents/false-claims-act/369/Minnesota_False_Claims_Act_Letter_05272021.pdf
Montana (10/4/21)	https://oig.hhs.gov/documents/false-claims-act/1003/montana2021.pdf
Nevada (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/261/Nevada.pdf
New York (1/25/19)	https://oig.hhs.gov/documents/false-claims-act/266/NewYork.pdf
North Carolina (10/26/18)	https://oig.hhs.gov/documents/false-claims-act/267/NorthCarolina.pdf
Oklahoma (6/6/17)	https://oig.hhs.gov/documents/false-claims-act/268/Oklahoma.pdf
Rhode Island (1/25/19)	https://oig.hhs.gov/documents/false-claims-act/269/RhodeIsland.pdf
Tennessee (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/270/Tennessee.pdf
Texas (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/271/Texas.pdf
Vermont (12/28/16)	https://oig.hhs.gov/documents/false-claims-act/272/Vermont.pdf
Virginia (8/14/18)	https://oig.hhs.gov/documents/false-claims-act/273/Virginia.pdf
Washington (8/14/18)	https://oig.hhs.gov/documents/false-claims-act/274/Washington.pdf

Table 2. State False Claims Laws Reviewed and Not Approved by the OIG

State and Date of Opinion	Link to Opinion Letter
Florida (3/21/11) Supplement (8/31/11) Supplement 2 (12/28/16)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/281/Florida.pdf • https://oig.hhs.gov/documents/false-claims-act/282/florida-supplement.pdf • https://oig.hhs.gov/documents/false-claims-act/283/florida-supplement2.pdf
Louisiana (11/15/11)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/254/Louisiana.pdf
Michigan (03/21/11) Supplement (08/31/11) Supplement 2 (12/28/16)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/256/Michigan.pdf • https://oig.hhs.gov/documents/false-claims-act/257/Michigan-supplement.pdf • https://oig.hhs.gov/documents/false-claims-act/258/Michigan-supplement2.pdf
New Hampshire (7/24/08) Supplement (12/28/16)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/262/NewHampshire.pdf • https://oig.hhs.gov/documents/false-claims-act/263/NewHampshire-supplement.pdf
New Jersey (3/21/11)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/264/NewJersey.pdf
New Mexico (7/27/08)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/265/NewMexico.pdf
Wisconsin (3/21/11) Supplement (12/28/16)	<ul style="list-style-type: none"> • https://oig.hhs.gov/documents/false-claims-act/275/Wisconsin.pdf • https://oig.hhs.gov/documents/false-claims-act/276/Wisconsin-supplement.pdf

The following is a list of states that have not submitted state laws for review and where there would be no additional recovery percentage under federal or state law. States without submissions for OIG review are:

- Alabama
- Alaska
- Arizona
- Arkansas
- Idaho

- Kansas
- Kentucky
- Maine
- Maryland
- Mississippi
- Missouri
- Nebraska
- North Dakota
- Ohio
- Oregon
- Pennsylvania
- South Carolina
- South Dakota
- Utah
- West Virginia
- Wyoming

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