

Implementing DRA Section 6032: False Claims Acts Information

Section 6032 of the Federal Deficit Reduction Act of 2005 (“DRA”) requires entities that make or receive annual Medicaid payments of \$5 million or more to provide in written policies applicable to employees, contracts and agents ***detailed information about the False Claims Act and any state laws that pertain to civil or criminal penalties for making false claims and statements, and the whistleblower protection under such laws, including the role of such laws in preventing and detecting fraud, waste and abuse in federal health care programs.*** The policies must also include detailed information about the entity’s policies and procedures for detecting and preventing fraud, waste and abuse. Finally, the employee handbook for the entity must include a specific discussion of the laws, the rights of employees to be protected as whistleblowers and the entity’s compliance policies.

DRA Section 6032 is effective January 1, 2007.

Summaries of state laws within the disclosure requirements of the DRA follow as of September 6, 2006. This list of state laws may not be complete, and other state laws may also be included within the purview of the disclosure requirements of the DRA. The information provided in this document is intended for informational purposes only and should not be construed as legal advice. The reader should be cautioned to check additional states for updates to the listed laws and any additional laws. If you have questions as to other state laws that should be included in the written policies required by the DRA, contact one of the attorneys listed below or the Foley & Lardner LLP attorney with whom you normally deal.

The state summaries are templates for the disclosure requirements for Section 6032. These materials and information are intended to provide information (not advice) about important new legislation. The great number of legal developments does not permit the issuing of an update for each one, nor does it allow the issuing of a follow-up on all subsequent developments. Internet subscribers and online readers should not act upon this information without consulting with legal counsel.

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THE FEDERAL FALSE CLAIMS ACT

Executive Summary

The Federal False Claims Act (“FCA”) helps the federal government combat fraud and recover losses resulting from fraud in federal programs, purchases, or contracts. 31 U.S.C. §§ 3729-3733.

Liability and Damages/Statute of Limitations

- Actions that violate the FCA include: (1) submitting a false claim for payment, (2) making or using a false record or statement to obtain payment for a false claim, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the U.S. Government (the “Government”).
- The FCA imposes penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the Government for FCA violations.
- Lawsuits must be filed by the later of either: (1) three years after the violation was discovered by the federal official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Private or *Qui Tam* Actions/Whistleblower Provisions

- An individual (or *qui tam* plaintiff) can sue for violations of the FCA. Individuals who report fraud generally receive between 15 and 25 percent of the total amount recovered (plus reasonable costs and attorney fees) if the Government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own.
- An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The FCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination are entitled to all relief necessary to be made whole, including two times their back pay plus interest, reinstatement at the seniority level they would have had except for the discrimination, and compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims § 3729

Liability § 3729(a)

The following actions constitute FCA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the Government or the Armed Forces of the United States (the “Armed Forces”) for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Government;
- Conspiring to get a false claim allowed or paid by the Government;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the Government money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Government;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the Government or a member of the Armed Forces who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Government.

A person may be liable for:

- A civil penalty \$5,500 to \$11,000 for each false claim;
- Three times the amount of damages that the Government sustains because of the violations; and
- The costs of a civil suit for recovery penalties or damages.

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the U.S. officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any Government investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person’s disclosure, and the person had no actual knowledge of an investigation into such violation.

Exclusion § 3729(e)

The FCA does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

Definitions § 3729, § 3733

Knowing and Knowingly § 3729(b)

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Claim § 3729(c)

“Claim” includes any request or demand for money or property (including those made under contract) to the Government or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the Government.

Civil Actions for False Claims § 3730

Responsibilities of the Attorney General § 3730(a)

The Attorney General is required to investigate false claim violations and is authorized to file civil suits for false claims violations.

Actions by Private Persons or *Qui Tam* Plaintiffs § 3730(b)

An individual also has the right to file a civil suit for him or herself and for the Government. The suit must be filed in the name of the Government. The suit is filed and served on the Government. The suit and all information are filed under seal, and most remain under seal for at least sixty days. The suit may be dismissed only if the court and the Attorney General consent to the dismissal in writing.

If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Government. Once the action is filed, no person other than the Government is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui tam* Actions § 3730(c)

If the Government decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Government decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Government can intervene later upon a showing of good cause.

Award to *Qui tam* Plaintiff § 3730(d)

If the Government prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the award cannot be more than 10 percent of the recovery.

If the Government decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

Certain Actions Barred § 3730(e)

An individual cannot bring a *qui tam* action against a member of Congress, a member of the judiciary, or a senior executive branch official based on evidence already known to the Government.

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the Government is already a party.

An individual cannot bring an *qui tam* action based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Government before filing a civil action). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a congressional, administrative, or GAO report, hearing, audit, or investigation; or from the news media.

Government Not Liable for Certain Expenses § 3730(f)

The Government is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

Whistleblower Protection § 3730(h)

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the district court for such relief.

False Claims Procedure § 3731

Statute of Limitations § 3731(b)

A civil suit must be brought within the later of either: (1) three years of the date that the violation is known or should have been known by the federal official responsible for investigating the action but no more than ten years after the violation occurred; or (2) six years after the violation was committed.

Burden of Proof § 3731(c)

The Government or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

The Arkansas Medicaid Fraud Act

Executive Summary

The Arkansas Medicaid Fraud Act (“AMFA”) provides for criminal sanctions in cases of fraud under the Medicaid Program. Ark. Code Ann. § 5-5-101.¹

Liability and Damages

- Actions that violate the AMFA include: (1) Purposely making (or causing to be made) false statements or concealing relevant knowledge in regard to any benefit or payment under the Arkansas Medicaid Program or in regard to the condition or operation of an entity as regards certification; (2) purposely converting a benefit to a use other than for the use and benefit of the other person; (3) purposely soliciting or receiving any remuneration (kickback, bribe, or rebate) in exchange for certain referrals or recommendations; (4) purposely charging in excess of the rates established by the state or requiring funds additional to those paid by the program as a condition of admission or continued stay.
- Penalties of full restitution, a mandatory fine of three times the total amount of the false claims, and a fine of up to \$3,000 per claim may be imposed. Any monetary penalties imposed under the AMFA are *additional* to those imposed by the AMFFCA. Additionally, violating the AMFA is a Class A misdemeanor if the aggregate amount of violations is under \$200, a Class C felony if the aggregate amount is between \$200 and \$2,500, and a Class B felony if the aggregate amount is over \$2,500. There may be additional fines associated with criminal conviction.
- The AMFA applies only to Medicaid claims.

Qui Tam Actions/Whistleblower Protections

- Under the AMFA, individuals who report fraud to the Attorney General receive up to ten percent of the total amount recovered, but in no case will an individual receive more than \$100,000.
- Persons who provide access to records to the state are not subject to civil or criminal liability.

¹ The Arkansas Medicaid Frauds False Claims Act (“AMFFCA”), which provides for civil sanctions. Ark. Code Ann. § 20-77-901.

Summary of Key Provisions

False Claims § 5-55-111

Medicaid Fraud

The following actions constitute Medicaid fraud under the AMFA:

False Statements:

- Purposely making or causing to be made any false statement or representation of a material fact in any application for any benefit or payment;
- Purposely making or causing to be made any false statement or representation of a material fact for use in determining rights to a benefit or payment;
- Purposefully concealing or failing to disclose the occurrence of any event affecting a right to any benefit or payment for oneself or any other individual on whose behalf one has applied for benefits, with an intent to secure the benefit in a greater amount than is due or when no benefit is authorized;
- Purposely presenting or causing to be presented a claim for a physician's service while knowing that the individual who furnished the service was not licensed as a physician;
- Purposely making, causing to be made, inducing or seeking to induce the making of any false statement or representation of a material fact with respect to:
 - The conditions or operation of any entity in order that it may qualify as an entity for which certification is required; or
 - Information required pursuant to applicable federal and state law, rules, regulations, and provider agreements
- Purposely making or causing to be made any false statement or representation of a material fact in any application for a benefit or payment in violation of the rules, regulations, and provider agreements issued by the Arkansas Medicaid Program or its fiscal agents.

Misuse of funds/Overcharging

- Purposefully converting a received benefit or payment or any part thereof to a use other than for the use and benefit of the other person;
- Purposely charging for any service provided to a patient under the program at a rate in excess of the rates established by the state; or charging, soliciting, accepting, or receiving, in addition to any amount otherwise required to be paid under the program, any consideration other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient as a precondition of admission or continued stay when the cost of the services provided are paid for under the program.

Remuneration:

- Purposely soliciting or receiving any remuneration, (kickback, bribe, or rebate), in return for:
 - Referring an individual for the furnishing or arranging for the furnishing of any item or service for which payment may be made under the program; or
 - Purchasing, leasing, ordering, or arranging for or recommending the same for any service or item for which payment may be made under the program;
- Purposely offering or paying any remuneration to induce a person:
 - To refer an individual for the furnishing or arranging for the furnishing of any item or service for which payment may be made under the program; or
 - To purchase, lease, order, or arrange for or recommend the same for any service or item for which payment may be made under the program
 - This shall not apply to:
 - A reduction in price obtained by a provider of services if disclosed and reflected in the costs claimed by an entity under the program;
 - Any amount paid by an employer to an employee who has a bona fide employment relationship for providing of covered items or services; or
 - Any amount paid by a vendor to a person authorized to act as a purchasing agent, if: (a) a written contract exists which specifies a fixed amount or a fixed percentage of the value of the purchases made by the entity, and (b) in the case of an entity that is a parity provider under Ark. Code Ann. § 20-9-101, the person discloses as required by the Director of the Department of Health and Human Services; and
 - Any payment practice pursuant to applicable federal or state law;

Additionally, under Ark. Code Ann. § 5-55-103, it is illegal Medicaid participation to participate in the program after having pleaded guilty or nolo contendere to or been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults (Ark. Crim. Code, §§ 5-1-101 et seq.), or as a certified health provider or the fiscal agent of such a provider employing, engaging as an independent contractor or consultant, or otherwise permitting the participation in business activities, any such person.

Liability

Under the AMFA, a person who commits Medicaid fraud will be liable for:

- Full restitution to the Department of Health and Human Services;
- A mandatory fine in the amount of three (3) times the amount of all payments judicially found to have been illegally received from the Arkansas Medicaid Program or its fiscal agent; and
- Up to three thousand dollars (\$3,000) for each false claim.

To enable the court to properly fix the amount of restitution, the prosecuting attorney shall recommend an amount that would make the Arkansas Medicaid Program whole, including the expense of investigation and all other measurable monetary damages directly related to the offense. If the defendant disagrees with the recommendation of the prosecuting attorney, he or she is entitled to introduce evidence in mitigation of the amount recommended.

Additionally, if there has been a civil judgment entered as the result of a civil action brought or threatened to be brought by Attorney General, under Ark. Code Ann. § 5-55-103 a person will be liable for:

- A fine in the amount of two times the amount of all payments found to have been fraudulently received; and
- A fine of up to two thousand dollars for each false claim

Fines under the AMFA are additional to those under the AMFFCA. Under Ark. Code Ann. § 5-55-109, amounts paid under the AMFFCA may not be applied against fines under the AMFA.

Additionally, under Ark. Code Ann. § 5-55-103, committing Medicaid fraud is either a misdemeanor or felony offense. Medicaid fraud is a:

- Class B felony if the aggregate amount of payments illegally claimed is two thousand five hundred dollars or more;
- A Class C felony if the aggregate amount of payments illegally claimed is less than two thousand five hundred dollars but more than two hundred dollars;
- Otherwise, Medicaid fraud is a Class A misdemeanor.

Under Ark. Code Ann. § 5-4-201, there are fines associated with criminal conviction. These fines are, in relevant part:

- Not more than \$15,000 for a Class B felony;
- Not more than \$10,000 for a Class C felony;
- Not more than \$1,000 for a Class A misdemeanor.

Under Ark. Code Ann. § 5-55-109, these are “additional” fines.

Committing illegal Medicaid participation is either a misdemeanor or felony offense. Illegal Medicaid participation is a:

- Class A misdemeanor for the first offense;
- Class D felony for the second offense;
- Class C felony for the third offense and subsequent offenses.

Additionally, under Ark. Code Ann. § 5-55-110, violators for either offense may be suspended from the program or have their provider agreement revoked.

Definitions

Claim § 5-55-102 (2)

"Claim" means any written or electronically submitted request or demand for reimbursement made to the Arkansas Medicaid Program by any provider or its fiscal agents for each good or service purported to have been provided to any Medicaid recipient whether or not the State of Arkansas provides any or no portion of the money that is requested or demanded.

Fiscal agents § 5-55-102 (3)

"Fiscal agents" means any:

- Individual;
- Firm;
- Corporation;
- Professional Association;
- Partnership;
- Organization; or
- Other legal entity,

that, through a contractual relationship with the Department of Health and Human Services and, thereby, the State of Arkansas receives, processes, and pays claims under the Arkansas Medicaid Program.

Purposely § 5-2-202 (1)

A person acts "purposely" with respect to his or her conduct or a result of his or her conduct when it is the person's conscious object to engage in conduct of that nature or to cause the result.

Records § 5-55-102 (6)

"Records" means all documents including, but not limited to, medical documents and X rays, developed by any person through the claimed provision of any goods or services to any Medicaid recipient.

Criminal Actions for False Claims

Responsibilities of the Attorney General § 5-55-106

The office of the Attorney General is the entity to which a case of suspected Medicaid fraud shall be referred by the Arkansas Medicaid Program or its fiscal agents for the purposes of investigation, civil action, or referral to the prosecuting attorney having criminal jurisdiction in the matter.

Award to *Qui Tam* Plaintiff § 5-55-113

A person who provides information which leads to the detecting and bringing to trial and punishment persons guilty of violating the Medicaid fraud laws may receive a reward for doing so, at the court's discretion. The amount may be up to ten percent of the aggregate penalty recovered, or in any case not more than one hundred thousand dollars, as the court may deem just.

The Attorney General may petition the court on behalf of a person who provides such information in an amount commensurate with the quality of information determined by the court to have been provided. If the Attorney General does not request the reward for information from the court on behalf of a person who has provided information, he or she may pursue the reward on his or her own behalf, but neither the state nor any defendant within the action shall be liable for expenses incurred in such suit.

There is no explicit whistleblower protection. However, under Ark. Code Ann. § 5-55-104(d), notwithstanding any other law to the contrary, no person will be subject to civil or criminal liability for providing access to records to the Director of the Department of Human Services, the Attorney General, or the prosecuting attorneys.

Exclusions § 5-55-113(d)

Employees or fiscal agents charged with the duty of referring or investigating cases of Medicaid fraud who are employed by or who contract with any governmental entity are not eligible to receive a reward.

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- Penalties of full restitution, a mandatory fine of three times the total amount of the false claims, and a fine of up to \$3,000 per claim may be imposed. Any monetary penalties imposed under the AMFA are *additional* to those imposed by the AMFFCA. Additionally, violating the AMFA is a Class A misdemeanor if the aggregate amount of violations is under \$200, a Class C felony if the aggregate amount is between \$200 and \$2,500, and a Class B felony if the aggregate amount is over \$2,500. There may be additional fines associated with criminal conviction.
- The AMFA applies only to Medicaid claims.

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- Purposefully concealing or failing to disclose the occurrence of any event affecting a right to any benefit or payment for oneself or any other individual on whose behalf one has applied for benefits, with an intent to secure the benefit in a greater amount than is due or when no benefit is authorized;
- Purposely presenting or causing to be presented a claim for a physician's service while knowing that the individual who furnished the service was not licensed as a physician;
- Purposely making, causing to be made, inducing or seeking to induce the making of any false statement or representation of a material fact with respect to:
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- Purposely soliciting or receiving any remuneration, (kickback, bribe, or rebate), in return for:
 - Referring an individual for the furnishing or arranging for the furnishing of any item or service for which payment may be made under the program; or
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- Purposely offering or paying any remuneration to induce a person:
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 - To purchase, lease, order, or arrange for or recommend the same for any service or item for which payment may be made under the program
 - This shall not apply to:
 - A reduction in price obtained by a provider of services if disclosed and reflected in the costs claimed by an entity under the program;
 - Any amount paid by an employer to an employee who has a bona fide employment relationship for providing of covered items or services; or
 - Any amount paid by a vendor to a person authorized to act as a purchasing agent, if: (a) a written contract exists which specifies a fixed amount or a fixed percentage of the value of the purchases made by the entity, and (b) in the case of an entity that is a parity provider under Ark. Code Ann. § 20-9-101, the person discloses as required by the Director of the Department of Health and Human Services; and
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To enable the court to properly fix the amount of restitution, the prosecuting attorney shall recommend an amount that would make the Arkansas Medicaid Program whole, including the expense of investigation and all other measurable monetary damages directly related to the offense. If the defendant disagrees with the recommendation of the prosecuting attorney, he or she is entitled to introduce evidence in mitigation of the amount recommended.

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The Attorney General may petition the court on behalf of a person who provides such information in an amount commensurate with the quality of information determined by the court to have been provided. If the Attorney General does not request the reward for information from the court on behalf of a person who has provided information, he or she may pursue the reward on his or her own behalf, but neither the state nor any defendant within the action shall be liable for expenses incurred in such suit.

There is no explicit whistleblower protection. However, under Ark. Code Ann. § 5-55-104(d), notwithstanding any other law to the contrary, no person will be subject to civil or criminal liability for providing access to records to the Director of the Department of Human Services, the Attorney General, or the prosecuting attorneys.

Exclusions § 5-55-113(d)

Employees or fiscal agents charged with the duty of referring or investigating cases of Medicaid fraud who are employed by or who contract with any governmental entity are not eligible to receive a reward.

The California False Claims Act

Executive Summary

The California False Claims Act (“CFCA”) applies to fraud involving state, city, county or other local government funds. Cal. Gov’t Code §§ 12650-12655. The CFCA encourages voluntary disclosure of fraudulent activities by rewarding individuals who report fraud and allowing courts to waive penalties for organizations that voluntarily disclose false claims.

Liability and Damages/Statute of Limitations

- The actions that violate the CFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state or local government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the CFCA if he or she does not disclose the false claim to the state or local government within a reasonable time after discovery of the false claim.
- The maximum civil penalty is \$10,000, per claim. Persons who violate the CFCA may be liable to the state for three times the amount of damages that the state sustains because of the violation. The court can waive penalties and reduce damages for CFCA violations if the false claims are voluntarily disclosed. The CFCA does not apply to false claims of less than \$500.
- Lawsuits must be filed within three years after the violation was discovered by the state or local official who is responsible for investigating the false claim (but no more than ten years after the violation was committed).

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or qui tam plaintiffs) can sue for violations of the CFCA. Individuals who bring an action under the CFCA receive between 15 and 33 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 50 percent (plus reasonable costs and attorney’s fees) if the qui tam plaintiff litigates the case on his or her own.
- An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The CFCA bars employers from interfering with an employee’s disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) punitive damages, if appropriate.

Summary of Key Provisions

False Claims Liability

Actionable Conduct § 12651(a)

The following acts constitute CFCA violations:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to get a false claim allowed or paid by the state or by any political subdivision;
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery;
- Delivering less property than the amount of the receipt, where the person has possession or control of public property;
- Knowingly making or delivering a false receipt, where the person is authorized to deliver a document;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property; and
- Knowingly making or using a record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or local government.

Liability to the State or Political Subdivision § 12651(a)

A person will be liable to the state or political subdivision for:

- Three times the amount of damages that the state or local government sustains because of the false claims violations;
- The costs of a civil suit for recovery of damages; and
- A civil penalty of up to \$10,000 for each false claim.

Eligibility for Reduction in Penalty § 12651(b)

The court may reduce the damages to two times that which the state or the political subdivision sustains and waive the civil penalty, if the person committing the violation (i) provided all information about the violation to the entity responsible for investigation such violation, (ii) fully cooperated in the investigation, and (iii) at the time the person provided the information to the investigating entity, the prosecution, civil action, or administrative action had not been commenced and the person had no actual knowledge of the investigation.

Joint and Several Liability § 12651(c)

Liability is joint and several for any act committed by two or more persons.

Exclusion § 12651(d)-(f)

The CFCA does not apply to false claims involving less than \$500; workers' compensation claims; claims made under the Government Code; or claims, records, or statements made under the Revenue and Taxation Code.

Statute of Limitations § 12654(a)

A civil suit must be filed within three years after the violation is discovered by the state or local governmental entity responsible for investigating the action (but no more than ten years after the violation was committed).

Definitions**Claim § 12650(b)(1)**

"Claim" includes any request for money, property, or services made to the state or any political subdivision (or to any contractor, grantee, or other recipient), where any portion of the money, property, or services requested was funded by the state or any political subdivision.

Knowingly § 12650(b)(2)

"Knowingly" means the organization:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

Person § 12650(b)(4)

"Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Political Subdivision § 12650(b)(2)

A "political subdivision" includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity.

Prosecuting Authority § 12651(b)(3)

"Prosecuting authority" refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings.

False Claims Actions**Civil Actions for False Claims § 12652(a)-(b)**

The Attorney General and the prosecuting authority each have authority to investigate, file, and conduct civil actions.

Civil Actions by Private Persons or *Qui Tam* Plaintiffs § 12652(c)

An individual has a right to bring a civil action for violation of the CFCA on his or her own behalf and on behalf of the state or a political subdivision. The action may be dismissed only

with the written consent of the court, taking into account the best interests of the parties involved and the purpose of the CFCA.

Procedures for Filing a Complaint § 12652(c), § 12652(e)-(f)

If a *qui tam* plaintiff alleges a false claims violation, the complaint and disclosure of the evidence and information that the person possesses must be directed to the State Attorney General. The complaint must be provided to the Attorney General on the same day that it is filed in Superior Court in camera. § 12652(c)(3). When a *qui tam* plaintiff brings an action, no other person can bring a related action based on the same facts. § 12652(c)(10).

If the state or political subdivision decides to file a civil suit, it assumes primary responsibility for prosecuting the action. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations. § 12652(e)(1). If the state or political subdivision decides not to file a suit, the *qui tam* plaintiff still has the right to proceed with the action. The state or political subdivision can intervene later if its interest is not being adequately represented by the *qui tam* plaintiff. § 12652(f)(2).

Burden of Proof § 12654(c)

The state, the political subdivision, or the *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Certain Actions Barred § 12652(d)

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or political subdivision is already a party. § 12652(d).

An individual cannot file a lawsuit based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based). § 12652(d)(3)(B). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision; or by the news media. § 12652(d)(3)(A).

Awards § 12652(g)

If the state or political subdivision prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff receives between 15 and 33 percent of the recovery (plus reasonable costs and attorney's fees), depending on his or her contribution to the case. § 12652(g)(2). If the state or political subdivision decides not to file a lawsuit and the *qui tam* plaintiff successfully litigates the action, the *qui tam* plaintiff receives between 25 and 50 percent of the award or settlement. Employees who participated in fraudulent activities are not guaranteed any recovery. § 12652(g)(5). If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. § 12652(g)(9).

Whistleblower Protection

Employer Interference with Employee Disclosures § 12653(a)-(b)

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; or
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action. § 12653(a)-(b).

Liability of Employer § 12653(c)

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest;
- Compensation for any special damage sustained as a result of the discrimination; and
- Punitive damages, where appropriate.

An employee is entitled to bring an action in the Superior Court for such damages. If the employee does so, the employer is liable for litigation costs and reasonable attorney's fees.

Limitations on Eligibility of Employees for Damages § 12653(d)

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she:

- Voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

The Delaware False Claims and Reporting Act

Executive Summary

The Delaware False Claims and Reporting Act (“FCRA”) helps the state government combat fraud and recover losses resulting from fraud in state programs, purchases, or contracts. Del Code Ann. Tit. 6, §§ 1201–1209.

Liability and Damages/Statute of Limitations

- The actions that violate the FCRA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state government.
- Penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the state or county for FCRA violations may be imposed.
- A civil suit must be filed within the latter of: (1) six years after the violation was committed or (2) three years after the date that the violation was discovered (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the FCRA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The FCRA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims § 1201

Liability § 1201(a)-(b)

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim to the Government for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Government;
- Conspiring to get a false claim allowed or paid by the Government;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the Government money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Government;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the Government who has no legal right to sell or pledge the property; and
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or county.

A person will be liable for:

- A civil penalty \$5,500 to \$11,000 for each false claim; and
- Three times the amount of damages that the state or county sustains because of the violations; and
- The costs of a civil suit for recovery of damages.

Eligibility for Reduction in Penalty § 1201(b)

The court may reduce the damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the Government officer responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Definitions § 1202

Knowing and Knowingly

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or

- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Claim

"Claim" includes any request or demand for money or property made to the Government (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the Government.

Government

"Government" includes all departments, boards or commissions of the executive branch of the State of Delaware; all political subdivisions of the state; the Delaware Department of Transportation and all state and municipal authorities; all organizations created by statute that perform an essential government function; and all organizations, entities, or persons receiving funds of the state where the violation relates to the use of state funds.

Affected Person, Entity, or Organization

"Affected person, entity, or organization" includes an employee or former employee of a person who is liable under § 1201 or a labor organization.

Civil Actions for False Claims

Responsibilities of the Attorney General § 1203(a)

The Attorney General is required to investigate false claim violations and is authorized to file civil suits for false claims violations.

Actions by Private Persons § 1203(b)

Any affected person, entity, or organization also has the right to file a civil suit for him or herself and for the Government. The suit must be filed in the name of the Government. The action may be dismissed only with the written consent of the court and the Attorney General.

If a private person (or *qui tam* plaintiff) alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General. Once the action is filed, no person other than the Government is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui Tam* Actions § 1204

If the Government decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a nominal party to the action, subject to certain limitations.

If the Government decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The state or county can intervene later upon a showing of good cause.

Award to *Qui Tam* Plaintiff § 1205

If the Government prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case.

If the Government decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

If the court finds the defendant not guilty and the claim frivolous or filed for an improper reason (such as for harassment) in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

Certain Actions Barred § 1206

A *qui tam* plaintiff cannot bring an action against a Government official if the suit is based on information already known to the Government.

A *qui tam* plaintiff cannot file a suit based on allegations in a civil suit or an administrative proceeding in which the Government is already a party

A *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with independent knowledge of the information on which the allegations are based (including knowledge based on his or her own investigation) and who has voluntarily provided the information to the Government before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; or from the news media.

Government Not Liable for Certain Expenses § 1207

The Government is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

Statute of Limitations § 1209

A civil suit must be brought within the latter of: (1) six years after the violation was committed, or (2) three years after the violation is discovered or should have been discovered (but no more than ten years after the violation was committed).

Whistleblower Protection § 1208

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the Court of the State of Delaware for such relief.

The District of Columbia False Claims Law

Executive Summary

The District of Columbia (D.C.) Procurement Reform Amendment Act (“PRA”) applies to fraud involving District funds. D.C. Code §§ 2-308.13-2-308.20. It encourages voluntary disclosure of fraudulent activities and protects and rewards individuals who report fraud.

Liability and Damages/Statute of Limitations

- The actions that violate the PRA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the District. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the PRA if they do not disclose the false claim soon after they discover it. Those who fail to repay overpayments from the District also violate the PRA.
- The maximum penalty is \$10,000 per claim. Damages of three times the amount that the District sustains because of the violation may be awarded. The courts can waive penalties for PRA violations if the false claims are voluntarily disclosed.
- Lawsuits must be filed within the latter of either: (1) three years after the violation is discovered by the District official responsible for investigating violations (but no more than nine years after the violation was committed), or (2) six years after the violation was committed.

Qui Tam Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the PRA. Individuals who report fraud receive between 10 and 20 percent of the amount recovered in cases where the District prosecutes the case, and between 25 and 40 percent (plus reasonable costs and attorney fees) in cases where the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The PRA bars employers from interfering with an employee’s disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded: (1) two times back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) punitive damages, if appropriate.

Summary of Key Provisions

False Claims Liability

False Claims § 2.308.14(a)

The following actions constitute PRA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the District for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the District;
- Conspiring to get a false claim allowed or paid by the District;
- Knowingly delivering (or causing to be delivered) less property than the amount of the receipt, where the person has possession or control of District money or property;
- Knowingly making or delivering a false receipt, where the person is authorized to make or deliver the receipt for District property;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the District;
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the claim is false, and failing to disclose the false claim to the District; or
- Benefiting from an inadvertent payment by the District of monies not owed and knowingly failing to repay the District.

Treble Damages, Costs, and Civil Penalties § 2.308.14(a)-(c)

A person will be liable to the State for:

- Three times the amount of damages that the District sustains because of the violations;
- The costs of a civil suit to recover penalties or damages; and
- A civil penalty of \$5,000-\$10,000 per claim. § 2.308.14(a).

The court may reduce the damages to not more than two times that which the District sustains, and waive the civil penalty if:

- The person committing the violation voluntarily disclosed all information known to him or her to the officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any official investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation. § 2.308.14(b).

Liability is joint and several for any act committed by two or more persons. § 2.308.14(c)

Exclusions § 2.308.14(d)

The PRA does not apply to workers' compensation claims; unemployment compensation claims; or District tax claims, records, or statements.

Definitions

Claim § 2.308.13(1)

“Claim” includes any request or demand for money or property made to the District (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the money or property requested is funded by or will be reimbursed by the District.

Knowing and Knowingly § 2.308.13(3)(A)

“Knowing” and “Knowingly” means the person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information

No proof of specific intent to defraud is required.

Person § 2.308.13(4)

“Person” includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Proceeds § 2.308.13(5)

“Proceeds” includes civil penalties, treble damages, and criminal fines.

Corporation Counsel Investigations and Prosecutions § 2-308.15(a)

The PRA authorizes the Corporation Counsel to investigate false claim violations that relate to District funds and to file and conduct a civil suit for false claims violations in the D.C. Superior Court.

Civil Actions by Individual as *Qui Tam* Plaintiffs § 2-308.15(b)-(e)

An individual also has the right to bring a civil suit for PRA violations for himself or herself and either for the District or in the name of the District. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the purpose of the PRA. § 2-308.15(b)(1).

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Corporation Counsel. § 2-308.15(b)(3). On the same day as the information is provided to the Corporation Counsel, the complaint must be filed in Superior Court in camera. § 2-308.15(b)(3). When a *qui tam* plaintiff brings an action, no other person can bring a related action based on the same facts. § 2-308.15(b)(6).

If the District files a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations. § 2-308.15(d)(1).

If the District chooses not to file a civil suit, the *qui tam* plaintiff still has a right to proceed with a lawsuit. § 2-308.15(e)(1). The State can intervene later upon application to the court. § 2-308.15(e)(2).

Award to *Qui tam* Plaintiff § 2-308.15(f)

If the District prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 10 and 20 percent of the proceeds, depending on his or her role in the case. If the *qui tam* plaintiff was involved in the fraudulent activity, the court may award him or her less than 10 percent. § 2-308.15(f)(1).

If the District chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 40 percent of the award. If the *qui tam* plaintiff was involved in the fraudulent activity, the court may award him or her less than 25 percent. § 2-308.15(f)(2). The courts may also require that the defendant pay the *qui tam* plaintiff's reasonable costs and attorney's fees. § 2-308.15(f)(4).

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the plaintiff may be required to pay the defendant's reasonable costs and attorney fees. § 2-308.15(f)(5).

Certain Actions Barred § 2-308.15(c)

An individual cannot bring a *qui tam* action against a member of the Council of the District of Columbia, a member of the judiciary, or an elected official in the Executive branch (based on an official act during his or her term of office). § 2-308.15(c)(1).

An individual cannot bring a *qui tam* action based on the public disclosure of allegations unless he or she is the original source of the information. An original source is an individual with direct and independent knowledge of the information on which the allegations are based, who has voluntarily provided information to the District before filing a civil action, and whose information was the basis for the public disclosure. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, report, or audit required by the Council of the Auditor, the Inspector General, or another District or federal agency; or from the news media. § 2-308.15(c)(2).

An individual cannot bring a *qui tam* action if he or she has been convicted of a criminal offense in connection with the false claim violations. § 2-308.15(6).

Whistleblower Protection

Employer Interference with Employee Disclosures § 2-308.16(a)-(b)

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; or
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Employer § 2-308.16(c)

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest;
- Compensation for any special damage sustained as a result of the discrimination; and
- Where appropriate, punitive damages.

An employee is entitled to bring an action in the Superior Court for such damages. If the employee does so, the employer is liable for litigation costs and reasonable attorneys' fees.

Limitations on Eligibility of Employees for Damages § 2-308.16(d)

If an employee's conduct has resulted in a false claim being submitted to the District, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she:

- Voluntarily disclosed information to a government or law enforcement agency; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

False Claims Procedure

Statute of Limitations § 2-308.17(a)

A civil suit must be filed within the latter of either: (1) three years after the violation was discovered or should have been discovered by the Office of Corporation Counsel (but no more than nine years after the violation was committed); or (2) six years after the violation was committed.

Burden of Proof § 2-308.17(c)

The State or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

The Florida False Claims Act

Executive Summary

The Florida False Claims Act (“FFCA”) helps prevent fraud and allows the state to recover funds lost because of fraud in state programs, purchases, or contracts. Fla. Stat. §§ 68.081–68.09.

Liability and Damages/Statute of Limitations

The actions that violate the FFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state government.

Penalties of \$5,000 to \$10,000 per claim plus three times the amount of damages to the state government for FFCA violations may be imposed.

Lawsuits must be filed within the latter of either: (1) five years after the violation was committed, or (2) two years after the state official responsible for investigating the violation discovered the important facts (but no more than seven years after the violation was committed).

Qui Tam Actions/Whistleblower Provisions

An individual (or *qui tam* plaintiff) can sue for violations of the FFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

Employees who report fraud and consequently suffer discrimination can sue their employers under the Florida Civil Rights Act.

Summary of Key Provisions

False Claims §68.082

The following actions constitute FFCA violations:

- Knowingly submitting (or causing to be submitted) a false claim to an officer or employee of a state agency for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by a state agency;
- Conspiring to get a false claim allowed or paid by a state agency;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the state agency money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to deceive a state agency;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of a state agency who has no legal right to sell or pledge the property; and
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to a state agency. § 68.082(2).

A person will be liable to the State for:

- A civil penalty \$5,000 to \$10,000 for each false claim; and
- Three times the amount of damages that the agency sustains because of the violations. § 68.082(2).

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any official investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation. § 68.082(3).

Definitions §68.082

Agency

"Agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

Claim

"Claim" includes any request or demand for money or property made to a state agency (including

those made under contract) or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the state.

Knowing and Knowingly

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. Innocent mistake is a defense to charges brought under the FFCA. § 68.082(1).

Civil Actions for False Claims § 68.083

The FFCA authorizes the Department of Legal Affairs and the Department of Banking and Finance to investigate and file civil suits for false claims violations. § 68.083(1).

An individual (or *qui tam* plaintiff) also has the right to file a civil suit for him or herself and for the affected agency. The suit must be filed in the name of the State of Florida. The lawsuit may be dismissed only if the Attorney General gives written consent. § 68.083(2).

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General (as head of the Department of Legal Affairs) and the Comptroller (as head of the Department of Banking and Finance). § 68.083(3). Once the action is filed, only the named departments are allowed to intervene or file a lawsuit based on the same facts. § 68.083(7).

Rights of the Parties in Civil Actions § 68.084

If the state decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations. §§ 68.084 (1)-(2).

If the state chooses not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The State can intervene later upon a showing of good cause. § 68.084 (3).

Award to Plaintiffs Bringing Actions §§ 68.085-68.086

If the state prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. § 68.085(1). If the case is primarily based on disclosures other than those of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. § 68.085(2). If the State chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, the *qui tam* plaintiff will receive between 25 and 30 percent of the award or settlement. § 68.085(3). In either case, the court will award the *qui tam* plaintiff reasonable attorney fees and costs. § 68.086.

If the court finds that the *qui tam* plaintiff planned and initiated the violation on which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the civil suit and will not receive any monetary award. § 68.085(6).

Exemptions to Civil Actions § 68.087

A legal action cannot be brought against a member of the Legislature, a member of the judiciary, or senior executive branch official based on evidence already known to the state government. § 68.087(1).

An individual cannot bring a *qui tam* action based on allegations in a civil or administrative proceeding in which the State agency is already a party. § 68.087(2).

An individual cannot bring a *qui tam* action based on the public disclosure of allegations, unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the State government before filing a civil suit. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general, Auditor General, Comptroller, or Department of Banking and Finance report, hearing, audit, or investigation; or from the news media. § 68.087(3).

A *qui tam* action cannot be brought by a state government attorney or a past or present state employee if the lawsuit is based on information obtained in the course of government employment. § 68.087(5).

A *qui tam* action cannot be brought if the information was obtained from a present or former employee of state government who was not acting in his or her scope of employment. § 68.087(5).

An action cannot be brought against a county or municipality. § 68.087(6).

Protection for Participating Employees § 68.088

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure can sue the employer under the Florida Civil Rights Act.

Limitations of Actions § 68.089

A civil suit must be brought within the latter of either: (1) five years after the violation was committed; or (2) two years after the important facts are discovered by the state official responsible for investigating the violation (but no more than seven years after the violation was committed).

Burden of Proof § 68.090

The State or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

The Hawaii False Claims Act

Executive Summary

The Hawaii False Claims Act (“HFCA”) helps the state government combat fraud and recover losses resulting from fraud in state programs, purchases, or contracts. Haw. Rev. Stat. §§ 661-21 to 661-29. Hawaii has also enacted a separate law applying false claims to counties. Haw. Rev. Stat. §§ 46-171 to 46-179.

Liability and Damages/Statute of Limitations

- The actions that violate the HFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the HFCA if he or she does not disclose the false claim soon after he or she discovers it.
- Penalties of \$5,000 to \$10,000 per claim plus three times the amount of damages to the state or county for HFCA violations may be imposed.
- A civil suit must be filed within six years after the violation was discovered, but no more than ten years after the violation was committed.

Qui Tam Actions

- An individual (or *qui tam* plaintiff) can sue for violations of the HFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The HFCA contains no special protections for whistleblowers.

County False Claims Law

The county false claims law is virtually identical to that of the state false claims law, except that its provisions reflect the fact that the government is a county.

Summary of Key Provisions

False Claims § 661-21; § 46-171

Liability § 661-21(a); § 46-171(a)

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim to the state or county for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the state or county;
- Conspiring to get a false claim allowed or paid by the state or county;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the state or county money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the state or county;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the state or county who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or county; or
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or county within a reasonable time after discovery.

A person will be liable for:

- A civil penalty \$5,000 to \$10,000 for each false claim;
- Three times the amount of damages that the state or county sustains because of the violations; and
- The costs of a civil suit for recovery of damages.

Eligibility for Reduction in Penalty § 661-21(b); § 46-171(b)

The court may reduce the damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the state or county responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the state or county investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Joint and Several Liability § 661-21(c); § 46-171(c)

Liability is joint and several for any act committed by two or more persons.

Exclusion § 661-21(d); § 46-171(d)

The law does not apply to controversies of less than \$500 or to claims filed under the tax code.

Definitions § 661-21(e); § 46-171(e)**Knowing and Knowingly**

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Claim

"Claim" includes any request or demand for money or property made to the state or county government (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the state or county.

Civil Actions for False Claims**Responsibilities of the Attorney General or County Counsel § 661-22; § 46-172**

The Attorney General or county counsel is required to investigate false claim violations and is authorized to file civil suits for false claims violations.

Actions by Private Persons or *Qui Tam* Plaintiffs § 661-25; § 46-175

An individual also has the right to file a civil suit for him or herself and for the state or county. The suit must be filed in the name of the state or county. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the purpose of the law. § 661-25(a); § 46-175(a).

If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the state or county. § 661-25(b); § 46-175(b). Once the action is filed, no person other than the state or county is allowed to intervene or file a lawsuit based on the same facts. § 661-25(e); § 46-175(e).

Rights of the Parties to *Qui Tam* Actions § 661-26; § 46-176

If the state or county decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations. § 661-26(a); § 46-176(a).

If the state or county decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The state or county can intervene later upon a showing of good cause. § 661-26(c); § 46-176(c).

Award to *Qui Tam* Plaintiff § 661-27; § 46-177

If the state or county prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery § 661-27(a)

If the state or county decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. § 661-27(b). In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs. § 46-177(b).

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award. § 661-27(c); § 46-177(c).

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. § 661-27(d); § 46-177(d).

Certain Actions Barred § 661-27 - § 661-28; § 46-177- § 46-178

An individual cannot bring a *qui tam* action against a member of the state or county senate or house of representatives, a member of the judiciary, or an elected official in the executive branch of the state or county, based on evidence already known to the state or county. § 661-27(e)(1); § 46-177(e)(1).

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or county is already a party. § 661-27(e)(3); § 46-177(e)(3).

An individual cannot bring an *qui tam* action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based, who has voluntarily provided the information to the state or county before filing a civil action, and whose information was the catalyst for the investigation, report, audit or hearing that led to the public disclosure. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative or administrative report, hearing, audit, or investigation; or from the news media. § 661-28; § 46-178.

Statute of Limitations § 661-24; § 46-174

A civil suit must be brought within six years after the violation is discovered or should have been discovered, but no more than ten years after the violation was committed.

Burden of Proof § 661-23; § 46-173

The state or county or *qui tam* plaintiff must prove all essential elements of the cause of action by a preponderance of the evidence.

Government Not Liable for Certain Expenses § 661-29; § 46-179

The state or county is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

The Illinois Whistleblower Reward and Protection Act

Executive Summary

The Illinois Whistleblower Reward and Protect Act (“WRPA”) applies to fraud involving State government, local government, and public educational institution funds. 740 Ill. Comp. Stat. 175/1-175/8.

Liability and Damages/Statute of Limitations

- Actions that violate the WRPA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the State.
- Penalties of \$5,000 to \$10,000 per claim plus three times the amount of damages to the state government for WRPA violations may be imposed.
- Lawsuits must be filed within the latter of either: (1) three years after the violation is discovered by the State official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

Qui Tam Actions/Whistleblower Provisions

- An individual (or *qui tam* plaintiff) can sue for violations of the WRPA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the State prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The WRPA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages incurred.

Summary of Key Provisions

False Claims Liability 175/3

False Claims 175/3(a)

The following actions constitute WRPA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the State or the Illinois National Guard for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the State;
- Conspiring to get a false claim allowed or paid by the State;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the State money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the State;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the State or a member of the Illinois National Guard who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the State.

A person will be liable to the State for:

- A civil penalty of \$5,000 to \$10,000 for each false claim; plus
- Three times the amount of damages that the State sustains because of the violations; and
- The costs of a civil suit to recover penalties or damages.

Exclusion 175/3(d)

The WRPA does not apply to claims, records, or statements made under the Illinois Income Tax Act.

Definitions 175/2-175/3

State 175/2(a)

“State” means the State of Illinois, any agency of State government, plus any of the following entities that elect to adopt the WRPA by ordinance or resolution: the system of State colleges and universities, any school district, any public community college district, any municipality, municipal corporations, units of local government, or any combination of the above under an intergovernmental agreement that includes provisions for a governing body.

Knowing and Knowingly 175/3(b)

“Knowing” and “Knowingly” means the person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information

No proof of specific intent to defraud is required.

Claim 175/3(c)

“Claim” includes any request or demand for money or property made to the State (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the money or property requested is funded by or will be reimbursed by the State.

Civil Actions for False Claims 175/4

Responsibilities of the Attorney General and the Department of State Police 175/4(a)

The WRPA authorizes the Attorney General and the Department of State Police to investigate false claim violations that relate to State government agencies. The Attorney General has the authority to file a civil suit for false claims violations.

Actions by Private Persons or *Qui Tam* Plaintiffs 175/4(b)–175/4(c)

An individual also has the right to bring a civil suit for WRPA violations for him or herself and for the State. The suit must be filed in the name of the State. The action may be dismissed only if the court and the Attorney General consent to the dismissal in writing. 175/4(b)(1).

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the State. 175/4(b)(2). Once the action is filed, only the State is allowed to intervene or file a lawsuit based on the same facts. 175/4(b)(5).

If the State decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations. 175/4(c)(1).

If the State chooses not to file a civil suit, the *qui tam* plaintiff still has a right to proceed with the action. The State can intervene later upon a showing of good cause. 175/4(c)(3).

Award to *Qui tam* Plaintiff 175/4(d)

If the State prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is primarily based on disclosures other than those of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. 175/4(d)(1).

If the State chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees. 175/4(d)(2).

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award. 175/4(d)(3).

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. 175/4(d)(4).

Certain Actions Barred 175/4(e)

A legal action cannot be brought against a member of the General Assembly, a member of the judiciary, or an exempt official based on evidence already known to the State. 175/4(e)(2).

An individual cannot bring a *qui tam* action based on allegations in a civil suit or an administrative proceeding in which the State is already a party. 175/4(e)(3).

An individual cannot bring a *qui tam* action based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the State before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation; or from the news media. 175/4(e)(4).

State Not Liable for Certain Expenses 175/4(f)

The State is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action.

Whistleblower Protection 175/4(g)

An employee who is discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained as a result of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the circuit court for such relief.

False Claims Procedure 175/5

Statute of Limitations 175/5(b)

A civil suit must be filed within the latter of either: (1) three years after the violation was discovered or should have been discovered by the state or local governmental entity responsible for prosecuting the action (but no more than ten years after the violation was committed); or (2) six years after the violation was committed.

Burden of Proof 175/5(c)

The State or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

The Indiana False Claims Act

Executive Summary

The Indiana False Claims Act (“IFCA”) helps the state combat fraud and recover losses resulting from fraud in programs, purchases, or contracts.

Ind. Code Ann. §§ 5-11-5.5-5.

Liability and Damages/Statute of Limitations

Actions that violate the IFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring with another person to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the governmental entity.

The minimum civil penalty is \$5,000 per claim. Damages of up to three times the amount that the state sustains because of the violation may also be awarded. The courts will waive penalties for IFCA violations and reduce damages if the false claims are voluntarily disclosed.

A civil suit must be filed within six years after the date that the violation was discovered, but no more than ten years after the violation was committed.

Qui Tam Actions/Whistleblower Protections

A private person (or *qui tam* plaintiff) can sue for violations of the IFCA. Individuals who report fraud receive between 10 and 15 percent of the total amount recovered if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the private person litigates the case on his or her own as a *qui tam* action. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

The IFCA contains protections for whistleblowers. Employees who suffer discrimination due to their disclosure of fraudulent activity may be awarded: (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims §§ 5-11-5.5-2 to 5-11-5.5-9

Liability § 5-11-5.5-2

The following actions constitute false claims violations:

- Knowingly submitting a false claim for payment or approval;
- Knowingly making or using a false record or statement to get a false claim paid or approved;
- Delivering to the state less property than the amount of the receipt, where the person has possession or control of the governmental state's money or property and intends to defraud the state;
- Making or delivering a receipt without knowing that the information on the receipt is true, where the person is authorized to make or deliver the receipt and intends to defraud the state;
- Knowingly receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to avoid an obligation to pay money or transmit property to the state;
- Conspiring with another person to perform any of the above-mentioned acts; and
- Causing or inducing another person to perform any of the above-mentioned acts.

A person will be liable for:

- A civil penalty of at least \$5,000 for each false claim;
- Up to three times the amount of damages that the state sustained because of the violations; and
- The costs of a civil suit to recover penalties or damages.

Eligibility for Reduction in Penalty § 5-11-5.5-2

The court must eliminate the civil penalty and can reduce the damages to two times the amount that the state sustains:

- The person committing the violation disclosed all information known to him or her to state officials within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Statute of Limitations § 5-11-5.5-9

A civil suit must be brought within six years after the violation was discovered by a state official who is responsible for investigating false claims, but no more than ten years after the date on which the violation is committed.

Certain Actions Barred § 5-11-5.5-7

A private person (or *qui tam* plaintiff) cannot file a complaint or civil suit:

- If he or she is an incarcerated offender;
- Against the state, a state officer, a judge, a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information already known to the state.
- Based on allegations in a civil suit or an administrative proceeding in which the state is already a party; or
- Based on the public disclosure of allegations unless he or she is the original source, e.g. an individual who has direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the state before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; legislative, administrative, or other public report, hearing, audit, or investigation; or a news media report.

Definitions § 5-11-5.5-1

Claim

"Claim" includes any request or demand for money or property made to the state (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by the state.

Person

"Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Civil Actions for False Claims § 5-11-5.5-3

Responsibilities of the Attorney General or Inspector General

The Attorney General or Inspector General may investigate false claim violations and file civil suits for false claims violations.

Actions by Private Person or *Qui Tam* Actions

A *qui tam* plaintiff also has the right to file a civil complaint alleging a false claims violation on behalf of the state. The court may dismiss a suit if either the Attorney General or Inspector General files a motion to dismiss and explains why dismissal is appropriate. If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General and the Inspector General. Once the action is filed, no one other than the Attorney General or Inspector General is allowed to intervene or file a lawsuit based on the same facts.

If the Attorney General or Inspector decides to file a civil suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the private person who initially filed the complaint. If the Attorney General or Inspector General decides not to file a civil suit, the *qui tam* plaintiff still has the right to prosecute the case. The Attorney General or Inspector General can intervene later upon a showing of good cause.

Award to Private Person or *Qui Tam* Plaintiff

If the Attorney General or Inspector General prosecutes a case initiated by a *qui tam* plaintiff and the state prevails, the *qui tam* plaintiff will receive between 10 and 15 percent of the recovery plus reasonable costs and attorney fees.

If the *qui tam* plaintiff prosecutes the action on his or her own, he or she will receive between 25 and 30 percent of the proceeds of the amount recovered plus reasonable costs and attorney fees.

If the Attorney General or Inspector General prosecutes a case initiated by a *qui tam* plaintiff and the evidence is based primarily on publicly available information, the *qui tam* plaintiff's recovery will be limited to no more than 10 percent. Publicly available information includes that found in a criminal, civil, or administrative hearing; a legislative, administrative, or other public report, hearing, audit, or investigation; or a news media report.

If the court finds that the private person planned and initiated the fraudulent activity or was convicted of a crime relating to violation of the IFCA, the *qui tam* plaintiff is not guaranteed any award.

If the court finds that a lawsuit brought by a *qui tam* plaintiff is frivolous, the court may require that person to pay the defendant reasonable costs and attorney fees.

The state is not liable for the expenses, costs of attorney fees of a private party for any action brought under the IFCA.

Employer Interference with Employee Disclosures

Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her objection to false claims violation or involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination.

The Louisiana Medical Assistance Programs Integrity Law

Executive Summary

The Louisiana Medical Assistance Programs Integrity Law (“MAPIL”) combats fraud and abuse by health care providers participating in the medical assistance programs. LA Rev. Stat. Ann §§ 46:437.1-440.3.

Liability and Damages/Statute of Limitations

- Actions that violate the MAPIL are knowingly submitting false claims for payment from medical assistance programs, including claims for medically unnecessary or substandard services. The MAPIL also addresses false illegal kickbacks of patient referrals, the delivery of substandard goods and services, and false representations of Medicaid eligibility.
- Penalties of up to \$10,000 per claim may be imposed, plus three times the amount of damages to the state government for false claim violations. The court can waive penalties and limit recovery to actual damages if the defendant voluntarily discloses violations and cooperates with the investigation.
- A civil suit must be filed within ten years after the violation was committed.

Qui Tam Actions/Whistleblower Provisions

- A private individual (or *qui tam* plaintiff) can sue for violations of the MAPIL, but only the state can seek civil monetary penalties. *Qui tam* plaintiffs who report fraud receive between 10 and 20 percent of the total amount recovered if the state prosecutes the case, and up to 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. A *qui tam* plaintiff cannot file a lawsuit based on public information, unless he or she can confirm that he or she is the original source of the information.
- The MAPIL contains important protections for whistleblowers. Employees who suffer discrimination because of their involvement in false claims actions may be awarded full relief plus punitive damages from their employers.

Summary of Key Provisions

False Claims

False Claims § 438.3

The following actions constitute MAPIL violations:

- Knowingly submitting (or causing to be submitted) a false claim;
- Knowingly misrepresenting any information in order to obtain payment from medical assistance program funds;
- Conspiring to defraud the medical assistance program by misrepresentation or by attempting to obtain payment for a false claim; and
- Knowingly submitting a claim for goods, services or supplies which were medically unnecessary or of substandard quality or quantity.

Managed care providers operating under a contract or voucher with the medical assistance program are also liable for failure to provide medically necessary goods, services, or supplies, or for supplying substandard goods services and supplies.

Exclusion § 438.3(F)

The MAPIL does not apply unless actual damages exceed \$1000.

Statute of Limitations § 438.3(G)

Complaints must be filed within ten years after the alleged violation was committed.

Liability § 438.6

The entity will be liable for:

- Actual damages to the medical assistance program;
- A civil fine of up to three times the amount of actual damages, plus interest;
- A civil monetary penalty of up to \$10,000 for each false claim; and
- All costs, expenses and fees related to investigations and proceedings associated with the violation.

Eligibility for Reduction in Damages § 438.7

The court may waive the civil fines and monetary penalties if:

- The person committing the violation disclosed all information known to him or her to the secretary or attorney general within thirty days of obtaining the information;
- The person fully cooperated with all investigations of the violation; and
- No criminal prosecution or civil or administrative action had been commenced at the time of the person's disclosure.

Burden of Proof § 438.8

The medical assistance program must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Definitions

Knowing and Knowingly § 437.3

“Knowing” and “Knowingly” means the person:

- Has actual knowledge of the information; or
- Acts in deliberate ignorance of the truth or falsity of the information.

Claim § 437.3

“Claim” includes any request or demand for payment made against medical assistance program funds. A claim may be based on costs or projected costs, and includes any entry or omission in a cost report or similar document, book of account, or any other document that supports the claim.

Qui Tam Actions

Actions by Private Persons or *Qui Tam* Plaintiffs § 439.1

An individual has the right to bring a civil suit on behalf of himself or herself and the medical assistance program. The private person who initiates the action shall be known as the *qui tam* plaintiff, and the civil suit shall be referred to as the *qui tam* action.

Certain Actions Barred § 439.1

A *qui tam* action cannot be based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the attorney general or secretary before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; or in a governmental audit report, investigation, or hearing.

A private person cannot bring a *qui tam* action based on a disclosure through the media, unless the person can prove that he or she is the original source of the information.

Qui Tam Action Procedures § 439.2

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be filed with the secretary or attorney general.

If the secretary or attorney general decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations.

If the state chooses not to file a civil suit, the *qui tam* plaintiff still has a right to proceed with a civil suit.

Award to *Qui tam* Plaintiff § 439.4

If the attorney general or secretary prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 10 and 20 percent of the recovery (plus reasonable costs and attorney fees), excluding the civil monetary penalty and

actual damages. The court will consider the *qui tam* plaintiff's contribution to the investigations and proceedings. If the case is primarily based on disclosures other than those of the *qui tam* plaintiff, the courts may award less than 10 percent.

If the attorney general or secretary chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive up to 30 percent of the award or settlement plus reasonable expenses and attorney's fees.

If the court finds that the *qui tam* plaintiff participated in the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive.

The court will award the defendant reasonable costs and attorney fees if it finds that the claim is meritless or harassing. The defendant may also file a civil suit against the *qui tam* plaintiff to recover losses or damages.

State Not Liable Expenses § 437.1(F)

The state is not liable for any expenses incurred by a *qui tam* plaintiff in conducting a civil action or any award against a *qui tam* plaintiff.

Whistleblower Protection

Employer Interference with Employee Disclosures § 439.1(G)

Employers are prohibited from discharging, demoting, suspending, threatening, harassing, discriminating against a *qui tam* plaintiff because of his or her involvement in a false claims action, unless the court finds that the action was frivolous or instituted to vex or harass the defendant.

Liability of Employer § 440.3

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief that state or federal law grants him or her, plus punitive damages.

The Massachusetts False Claims Act

Executive Summary

The Massachusetts False Claims Act (“MFCA”) is a law designed to help the state government combat fraud and recover losses resulting from fraud in state programs, purchases, or contracts. Mass. Gen. Laws Ann. ch. 12, § 5.

Liability and Damages/Statute of Limitations

- Actions that violate the MFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the Commonwealth or a political subdivision. Anyone who enters into an agreement or contract with the Commonwealth or a political subdivision, knowing that the information contained therein is false violates the MFCA. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the MFCA if he or she does not disclose the false claim within a reasonable time after he or she discovers it. Contracts are also subject to the MFCA.
- Penalties of \$5,000 to \$10,000 per claim may be imposed, plus three times the amount of damages to the Commonwealth or political subdivision for MFCA violations.
- A civil suit must be filed within the latter of: (1) six years after the violation was committed, or (2) three years after the date that the violation was discovered (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the MFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MFCA contains important protections for whistleblower. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims § 5B

Liability

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Commonwealth or any political subdivisions;
- Conspiring to defraud the Commonwealth or a political subdivision by getting a false claim allowed or paid;
- Delivering (or causing to be delivered) to the Commonwealth less property than the amount of the receipt, where the person with possession or control of the Commonwealth or political subdivision's money or property intends to conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Commonwealth or a political subdivision;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the Commonwealth or a political subdivision who has no legal right to sell or pledge the property;
- Entering into an agreement, contract, or understanding with the Commonwealth or a political subdivision, knowing that the information contained therein is false;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Commonwealth or a political subdivision; and
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery.

A person will be liable for:

- A civil penalty \$5,500 to \$10,000 for each false claim;
- Three times the amount of damages that the Commonwealth or political subdivision sustains because of the violations (including consequential damages); and
- The costs of a civil suit for recovery of damages (including reasonable attorney's fees, reasonable expert's fees, and the costs of the investigation).

Eligibility for Reduction in Penalty

The court may reduce the damages to the amount of damages that the Commonwealth or a political subdivision sustains because of the acts of a person if:

- The person committing the violation voluntarily disclosed all information known to him or her to an official of the Attorney General responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and

- No criminal prosecution, or civil or administrative action had been commenced at the time of the person’s disclosure, and the person had no actual knowledge of an investigation into such violation.

Liability for Action of Agent

A corporation, partnership, or other person is liable to the Commonwealth for the acts of its agency, where the agent acted with apparent authority.

Exclusion

The MFCA does not apply to tax claims, records, or statements.

Definitions § 5A

Knowing and Knowingly

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Claim

"Claim" includes any request or demand for money or property made to the Commonwealth or any political subdivision (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by the Commonwealth or a political subdivision.

Person

“Person” means any natural person, corporation, partnership, association, trust, or other business or legal entity.

Political Subdivision

“Political Subdivision” includes any city, town, county, or other governmental entity authorized or created by state law, including public corporations and authorities.

Civil Actions for False Claims § 5C-5L

Responsibilities of the Attorney General § 5C(1)

The Attorney General is required to investigate false claim violations involving state funds or funds from any political subdivision, and is authorized to file civil suits for false claims violations.

Actions by Private Persons or *Qui Tam* Plaintiffs § 5C(2)

An individual also has the right to file a civil suit for him or herself and for the Commonwealth or a political subdivision. The action may be dismissed only with the Attorney General’s submission of written reasons for consenting and the court’s approval.

If a private person (or *qui tam* plaintiff) alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General. Once the action is filed, no person other than Attorney General is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui Tam* Actions § 5D

If the Attorney General decides to file a civil suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Attorney General decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Attorney General can intervene later upon a showing of good cause.

Award to *Qui Tam* Plaintiff § 5E

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery.

If the Attorney General decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

Certain Actions Barred § 5G

A *qui tam* plaintiff cannot bring an action against governor, lieutenant governor, the attorney general, the treasurer, secretary of state, auditor, member of the general court, inspector general, or a member of the judiciary, if the suit is based on information already known to the Commonwealth.

A *qui tam* plaintiff cannot file a suit based on allegations in a civil suit or an administrative proceeding in which the Commonwealth or any political subdivision is already a party

A *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the Commonwealth (without public disclosure) before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; a legislative, administrative, auditor's or inspector general's report, hearing, audit, or investigation; or from the news media.

Liability for Expenses and Attorney Fees § 5I

If the court finds the defendant not guilty and the claim insubstantial, frivolous, or harassing in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

The Commonwealth is not liable for expenses, costs, or attorney fees incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

Statute of Limitations § 5K

A civil suit must be brought within the latter of: (1) six years after the violation was committed, or (2) three years after the violation is discovered or should have been discovered (but no more than ten years after the violation was committed).

Burden of Proof § 5L

The state, the political subdivision, or the *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

Whistleblower Protection § 5J

Employer Interference with Employee Disclosures

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action;
- Requiring as a condition of employment that any employee agree to, accept, or sign any agreement that limits or denies the employee's rights to bring an action or provide information to a government or law enforcement agency; and
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Employer

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained as a result of the discrimination.

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the appropriate superior court for such damages. If the employee does so, the employer is liable for litigation costs and reasonable attorneys' fees.

Limitations on Eligibility of Employees for Damages

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she:

- Voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

The Michigan Medicaid False Claims Act

Executive Summary

The Michigan Medicaid False Claims Act (“MMFCA”) is a state law that is designed prevent fraud, kickbacks, and conspiracies in connection with the Medical Assistance Program. Mich. Comp. Laws Ann. §§ 400.601-400.613.

Liability and Damages/Statute of Limitations

- Actions that violate the MMFCA include: (1) knowingly making (or causing to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; (2) concealing or failing to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled; and (3) conspiring to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violations are punishable by civil and criminal penalties.
- Violation of the MMFCA constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both. A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact is liable to the state for a civil penalty equal to the full amount received plus triple damages.

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the MMFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case and between 25 and 30 percent if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MMFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement in their position without loss of seniority, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims §§ 400.603-400.607

Liability

Under § 400.603, it is a violation to:

- Knowingly make (or cause to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; or
- Conceal or fail to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled;

Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

Under § 400.604, it is a violation to solicit, offer, or receive a kickback in connection with furnishing goods or services for Medicaid. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$30,000 or less, or both.

Under § 400.605, it is a violation to knowingly make or induce false statements with respect to the conditions of operation in order to obtain certification as a hospital, skilled nursing facility, intermediate care facility, or home health agency. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$30,000 or less, or both.

Under § 400.606, it is a violation to conspire to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

Under § 400.607, it is a violation to:

- Knowingly make or present (or cause to be made or presented) to the state a false claim; or
- Knowingly make or present (or cause to be made or presented) to the state a claim that falsely represents the medical necessity of the goods or services.

Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

If a person is convicted three or more times for an offense under this Act and subsequently convicted of another offense under this Act, he or she may be sentenced to imprisonment for not more than ten years.

Civil Penalties § 400.612

A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact shall be liable to the state for a civil penalty equal to the full amount received plus triple damages.

Definitions § 400.602

Knowing and Knowingly

“Knowing” and “Knowingly” means a person is aware or should be aware that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowing or knowingly does not include errors or mistakes, unless the person’s course of conduct indicates a persistent tendency to cause inaccuracies.

Claim

"Claim" means an attempt to cause the department of social services to pay out money under the social welfare act, §§ 400.1-400.121.

False

“False” means wholly or partially deceptive or untrue.

Benefit

“Benefit” means the receipt of money, goods, or anything of monetary value.

Person

“Person” means an individual, corporation, association, partnership, or other legal entity.

Responsibilities of the Attorney General § 400.610

The Attorney General may investigate alleged violations of this Act.

Civil Actions §400.610(a)

Actions by Private Persons

An individual (or *qui tam* plaintiff) also has the right to file a civil suit to recover losses to the state. A suit filed under the MMFCA will be dismissed unless the Attorney General is notified and has an opportunity to oppose the dismissal.

If the Attorney General decides to intervene in the suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Attorney General decides not to intervene, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Attorney General can intervene later upon a showing of good cause and without affecting the rights or status of the *qui tam* plaintiff

Once the action is filed, no one other than the Attorney General is allowed to intervene or file a lawsuit based on the same facts.

Award to *Qui Tam* Plaintiff

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery. If the case is based primarily on public information other than the disclosures of the *qui tam* plaintiff,

the courts cannot award him or her more than 10 percent of the recovery. Public disclosures include information in a civil, criminal, or administrative hearing in a state or federal department or agency; a legislative report, hearing, audit, or investigation; or the news media.

If the Attorney General decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement.

If the court finds that the *qui tam* plaintiff actively participated in the fraudulent activity upon which the civil suit was based, it may reduce his or her share of the recovery to any amount it considers appropriate. A person convicted of criminal conduct under this Act is not entitled to any share of the proceeds.

If the court finds that the action brought by the *qui tam* plaintiff was frivolous, the court must award the defendant reasonable attorney fees and expenses and impose a civil fine of not more than \$10,000.

Certain Actions Barred

A *qui tam* plaintiff cannot file a suit based on allegations in a civil suit, criminal investigation or proceeding, or an administrative investigation or proceeding in which the state or federal government is already a party.

A *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Attorney General before filing a civil action. Public disclosure includes disclosure in an criminal, civil, or administrative hearing; in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation; or from the news media.

The state and attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bring an action under this section.

Whistleblower Protection § 400.610(c)

Employer Interference with Employee Disclosures

Employers are prohibited from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action. This prohibition does not apply to an employee who: (1) the court finds brought a frivolous claim, (2) planned, initiated, or participated in the conduct upon which the action is based, or (3) is convicted of criminal conduct arising from a violation of this Act.

Liability of Employer

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement to the employee's position without loss of seniority;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained as a result of the discrimination.

The protected false claims activities include initiating, participating in, or assisting in a court action, or cooperating in or assisting with an investigation.

The Montana False Claims Act

Executive Summary

The Montana False Claims Act (“MFCA”) helps the state combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. Mont. Code Ann. §§ 401-412.

Liability and Damages/Statute of Limitations

- Actions that violate the MFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the governmental entity. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the MFCA if he or she does not disclose the false claim soon after he or she discovers it.
- The maximum penalty is \$10,000. The court may also award damages of two to three times the amount that the state sustains because of the violation. The court may waive penalties for MFCA violations if the false claims are voluntarily disclosed. The MFCA does not apply to controversies of less than \$500, tax claims, and certain other claims.
- A civil suit must be filed within three years after the date that the violation was discovered, but no more than ten years after the violation was committed.

Qui Tam Actions/Whistleblower Protections

- A private person (or *qui tam* plaintiff) can sue for violations of the MFCA. Individuals who report fraud receive between 10 and 15 percent of the total amount recovered if the government prosecutes the case, and between 15 and 50 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. A *qui tam* plaintiff cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MFCA contains protections for whistleblowers who are employed by governmental entities.

Summary of Key Provisions

False Claims

Liability § 403

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to defraud the governmental entity by getting a false claim allowed or paid;
- Delivering (or causing to be delivered) to the governmental entity less property than the amount of the receipt, where the person has possession or control of the governmental entity's money or property;
- Making or delivering a receipt that falsely represents the property, where the person is authorized to make or deliver the receipt;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the governmental entity or its contractors; and
- Benefiting from the inadvertent submission of a false claim, subsequently discovering its falsity, and failing to disclose the false claim to the government within a reasonable period of time.

A person will be liable for:

- A civil penalty of up to \$10,000 for each false claim; and
- Two to three times the amount of damages that the governmental entity sustains because of the violations; and
- The costs of prosecuting the civil suit.

Eligibility for Reduction in Penalty § 403

The court must eliminate the civil penalty if:

- The person committing the violation disclosed all information known to him or her to the government attorney within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Exclusion

The MFCA does not apply to controversies of less than \$500, worker's compensation claims, tax claims, or claims made to the department of natural resources and conservation.

Joint and Several Liability

Liability is joint and several for any act committed by two or more persons.

Certain Actions Barred § 403

A *qui tam* plaintiff cannot file a complaint or civil suit:

- Against a governmental entity or employee of a governmental entity arising from conduct within the scope of the officer's or employees duties;
- Based on allegations in a civil suit or an administrative proceeding in which the governmental entity is already a party; or
- Based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based, who has voluntarily provided the information to the governmental entity before filing a civil action, and whose information was the catalyst for the investigation that led to the public disclosure. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, hearing, or audit conducted by or at the request of a legislative body, the state or legislative auditor, the auditor or legislative body of a political subdivision; or in the news media.

Statute of Limitations § 404

A civil suit must be brought within three years after the violation is discovered, but no more than ten years after the violation was committed.

Definitions § 402

Claim

"Claim" includes any request or demand for money or property made to a governmental entity or its political subdivisions (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by a governmental entity.

Governmental Attorney

Governmental Attorney means the chief attorney for a governmental entity or the Attorney General.

Governmental Entity

"Governmental Entity" includes the state; a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or a unit of the Montana University system.

Knowing and Knowingly

"Knowing" and "Knowingly" means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

Person

"Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Civil Actions for False Claims

Responsibilities of the Government Attorney § 405

The Government Attorney may investigate false claim violations and file civil suits for false claims violations.

Actions by Private Persons § 406-407

A private person also has the right to file a civil complaint alleging a false claims violation. The action may be dismissed for good cause. If a private person alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the government attorney. Once the action is filed, no one other than the government attorney is allowed to intervene or file a lawsuit based on the same facts.

If the governmental attorney decides to file a civil suit, he or she assumes responsibility for prosecuting the action and the private person can join the action as a co-plaintiff. If the government attorney decides not to file a civil suit, the private person still has the right to proceed with a lawsuit. The government attorney can intervene later if the interests of the governmental entity are not being adequately represented. However, the private person or *qui tam* plaintiff retains principal responsibility for the action.

Award to Private Person or *Qui Tam* Plaintiff §§ 410-411

If the governmental entity prosecutes a case initiated by a private person who decides not to enter the suit as a co-plaintiff, the private person will receive between 10 and 15 percent of the recovery.

If the suit is filed by the private person either as plaintiff or co-plaintiff, he or she will receive between 15 and 50 percent of any damages or civil penalties. If the court finds that the private person participated in the fraudulent activity, he or she is not guaranteed any award.

Governmental Employer Interference with Employee Disclosures § 412

Governmental entities are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; and
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Governmental Employer § 412

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination.

The Nevada False Claims Law

Executive Summary

The Nevada statute, Submission of False Claims to State or Local Government (“SFC”) applies to fraud involving state, city, county, and other local government funds. Nev. Rev. Stat. §§ 357.010.

Liability and Damages/Statute of Limitations

- Actions that violate the SFC include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state or local government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the SFC if he or she does not disclose the false claim soon after he or she discovers it.
- Penalties of \$2,000 to \$10,000 per claim plus three times the amount of damages to the state government for false claim violations may be imposed.
- A civil suit must be filed within the latter of three years after the violation is discovered by the Attorney General or within five years after the violation is committed.

Qui Tam Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the statute. *Qui tam* plaintiffs who report fraud receive between 15 and 33 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 50 percent (plus reasonable costs and attorney fees) in cases where the *qui tam* plaintiff litigates the case on his or her own. A *qui tam* plaintiff cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The SFC bars employers from interfering with an employee’s disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) punitive damages, if appropriate.

Summary of Key Provisions

False Claims Liability

Actionable Conduct § 357.040

The following acts constitute violations of the law:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to get a false claim allowed or paid by the state or by any political subdivision;
- Knowingly delivering less property than the amount of the receipt, where the person has possession or control of public property;
- Knowingly making or delivering a false receipt, where the person is authorized to deliver a receipt;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or local government; and
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery;

Liability to the State or Political Subdivision § 367.040

A person will be liable to the state or political subdivision for:

- Three times the amount of damages that the state or local government sustains because of the false claims violations;
- The costs of a civil suit for recovery of damages; and
- A civil penalty of \$2,000 - \$10,000 for each false claim.

Limitation of Damages and Waiver of Penalty for Cooperation § 357.050

The court may reduce the damages to two to three times the amount of damaged sustained, and waive the civil penalty if:

- The person committing the violation voluntarily disclosed all information known to him or her to the Attorney General within thirty days of obtaining the information;
- The person committing the violation fully cooperated with any official investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Joint and Several Liability § 357.060

Liability is joint and several for any act committed by two or more persons.

Statute of Limitations § 357.170

A civil suit must be filed within the latter of either: (1) three years after the violation is discovered by the Attorney General, or (2) five years after the violation is committed.

Definitions

Claim § 357.020

"Claim" includes any request for money, property, or services made to the state or any political subdivision, (or to any contractor, grantee, or other recipient), where any portion of the money, property, or services requested was funded by the state or any political subdivision.

Political Subdivision § 357.030

A "political subdivision" includes any city, county, assessment district, or other local government.

Knowingly § 357.040(2)

"Knowingly" means the organization:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

False Claims Actions

Civil Actions for False Claims § 357.070

The Attorney General has the authority to investigate, file, and conduct civil actions.

Civil Actions by Private Plaintiffs § 357.080, § 357.100

An individual has a right to bring a civil action for violation of the statute on his or her own behalf and on behalf of the State of Nevada or a political subdivision. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the purpose of the law. § 357.080(1). When a *qui tam* plaintiff brings an action, no other person can bring a related action based on the same facts. § 357.080(2).

An individual cannot bring a *qui tam* action against a member of the legislature or judiciary, or an elected official in the Executive branch or a governing body of a political subdivision if the action is based on information known to the government. § 357.080(3)(a).

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or political subdivision is already a party. § 357.080(3)(b).

An individual cannot file a lawsuit based on the public disclosure of allegations unless he or she is the original source of the information. An original source is a person who has direct and independent knowledge of the information on which the allegations are based, has voluntarily provided the information to the government before bringing an action, and whose information

was the basis of the public disclosure. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, report, hearing, or audit conducted by or at the request of the legislature, an auditor, or the governing body of a political subdivision; or from the news media. § 357.100.

Procedures for Filing a Complaint § 357.080(4)-(5), § 357.110-130

If a *qui tam* plaintiff alleges a false claims violation, the complaint and disclosure of the evidence and information that the person possesses must be filed. The complaint must be copied to the Attorney General. § 357.080(4)-(5).

The Attorney General may choose to intervene in the action, to dismiss it, or to settle it.

§ 357.110. If the Attorney General intervenes, the *qui tam* plaintiff remains a party to the action.

§ 357.120. If the Attorney General decides not to intervene, the *qui tam* plaintiff has the right to proceed with a lawsuit. The Attorney General can intervene later if its interest is not being adequately represented by the *qui tam* plaintiff. In this case, the *qui tam* plaintiff retains primary responsibility for conducting the action. § 357.130.

Awards § 357.210, § 357.180

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 33 percent of the recovery, depending on his or her contribution to the case. If the Attorney General does not intervene at the onset, the *qui tam* plaintiff will receive between 25 and 50 percent of the award or settlement. § 357.210. In either case, the court may award reasonable costs and attorney's fees against the defendant to the *qui tam* plaintiff. If the court finds the defendant not guilty and the claim frivolous, the court may award the defendant reasonable costs and attorney fees. § 357.180.

Whistleblower Protection

Employer Interference with Employee Disclosures § 357.240

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; or
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Employer § 367.250

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest;
- Compensation for any special damage sustained as a result of the discrimination; and
- Where appropriate, punitive damages.

The employer is also liable for litigation costs and reasonable attorneys' fees that the employee incurs in trying to obtain these remedies.

Entitlement of Employee to Remedies § 357.250

An employee is only entitled to remedies if he or she:

- Voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer into any participation in fraudulent activity.

The New Hampshire Health Care False Claims Act

Executive Summary

The New Hampshire False Claims Act (“NHFCA”) helps the state combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. N.H. Rev. Stat. Ann. § 167.61.

Liability and Damages

- Actions that violate the NHFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state or local government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the NHFCA if he or she does not disclose the false claim soon after he or she discovers it.
- Penalties of \$5,000 to \$10,000 per claim may be imposed, plus three times the amount of damages to the state or county.
- Claims must be filed within the latter of six years after the violation was committed or three years after the violation is discovered (but not more than ten years) after the violation was committed.

Qui Tam Actions/Whistleblower Protections

- Private individuals (or *qui tam* plaintiffs) who report fraud receive between 15 and 25 percent of the total amount recovered if the attorney general prosecutes the case. An individual cannot file a lawsuit based on public information unless he or she is the original source of the information.
- The NHFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages incurred.

Summary of Key Provisions

False Claims

False Claims § 167.61-b

The following actions constitute NHFCA false claims violations:

- Knowingly submitting (or causing to be submitted) to the Department a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to defraud the Department by getting a false claim paid;
- Delivering less property than the amount of the receipt, where the person has possession or control of the Department's money or property and intends to defraud the Department;
- Knowingly making or using a false record to avoid an obligation to pay money or transmit property to the Department; and
- Benefiting from an inadvertent submission of a false claim, subsequently discovering its falsity, and failing to disclose it to the Department within a reasonable time.

Liability

A person will be liable for:

- A civil penalty of \$5,000 to \$10,000 for each false claim;
- Three times the amount of damages that the state sustains because of the violations; and
- The costs of a civil suit for recovery of penalties or damages.

Eligibility for Reduction in Penalty

The court may reduce the damages to not less than two times or more than three times the amount of damages that the Department sustains and eliminate the civil penalty if:

- The person committing the violation voluntarily disclosed all information known to him or her to the state official responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Joint and Several Liability

Liability shall be joint and several for any act committed by two or more persons.

Exclusions

The Act does not apply to any controversy involving less than \$5,000 in damages, or to claims submitted prior to January 1, 2005.

Statute of Limitations

A civil suit must be brought within the latter of either: (1) six years of the date that the violation was committed, or (2) three years after the violation is discovered (but no more than ten years after the violation was committed).

Definitions 167.61-b

Claim

"Claim" includes any request or demand for money or property made to the Department (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by the Department.

Person

"Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Knowing and Knowingly

"Knowing" and "Knowingly" means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required.

Civil Actions

Action by Attorney General § 167.61-c

The Attorney General must investigate suspected violations, and it is authorized to file a civil suit in superior court against the person.

Actions by Private Persons or *Qui Tam* Plaintiffs § 167.61-c

A private individual (or *qui tam* plaintiff) has the right to bring a civil suit in the name of the state, if the person is affected by the false claims violations. Once a complaint is filed, no one other than the state can intervene or bring a related action based on the same facts.

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the state.

Procedures § 167:61-d

If the state proceeds with the civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. The *qui tam* plaintiff shall have the right to continue as a party to the action, subject to certain limitations.

Certain Actions Barred § 167:61-e

A *qui tam* plaintiff cannot bring an action against a Department official or any division, board, bureau, commission, or agency within the Department.

A *qui tam* plaintiff cannot bring an action based on allegations that are the subject of a civil or criminal suit or an administrative proceeding to which the state is already a party. ‘

A *qui tam* plaintiff cannot bring a suit based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Department before filing a civil action, and whose information was the catalyst for the for the investigation. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative or administrative report, hearing, audit or investigation; or from the news media.

Award to *Qui Tam* Plaintiff § 167:61-e

If the Department prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, plus reasonable costs and attorney fees. The court will consider the *qui tam* plaintiff’s contribution to the investigations and proceedings in determining the award. If the case is primarily based on public disclosures of information other than those provided by the *qui tam* plaintiff, the courts may award to the *qui tam* plaintiff whatever amount they consider appropriate up to 10 percent of the proceeds.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the person is convicted of criminal conduct arising from their role in the fraud or false claims violation, the court must dismiss the person from the civil action and bar them from receiving any share of the proceeds.

Whistleblower Protections § 167:61-c

Employer Interference with Employee Disclosures

Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination, including reasonable costs an attorney fees.

The protected false claims activities include investigating, initiating, testifying, or otherwise assisting in a civil action. An employee is entitled to bring an action in the superior court for damages.

The New Mexico Medicaid False Claims Act

Executive Summary

The New Mexico Medicaid False Claims Act (“NMFCA”) combats fraud and abuse by health care providers participating in the Medicaid Program. N.M. Stat. Ann. §§ 27-14-1.

Liability and Damages

- Actions that violate the NMFCA include: (1) submitting a false claim for payment under the Medicaid program, (2) submitting a claim for payment under the Medicaid program knowing that the person receiving the benefit is not eligible; (3) making a false record or statement to get a false claim paid; (4) conspiring to defraud the state by getting a false claim paid; and (5) making a claim under the Medicaid program for a service or product that was not provided. It is also a violation to make a false statement or misrepresentation concerning the conditions or operation of a health care facility so that the facility may qualify for certification or recertification by the Medicaid program.
- Any person or entity that violates the NMFCA is liable for three times the amount of damages that the state sustains.
- Actions must be filed within four years after the claim was submitted.

Qui Tam Actions/Whistleblower Protections

- Private individuals (or *qui tam* plaintiffs) who report fraud receive between 10 and 25 percent of the total amount recovered if the human services department prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information. The NMFCA contains important protections for whistleblowers.
- Employees who report fraud and consequently suffer discrimination may be awarded: (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False or Fraudulent Statements or Claims § 27-14-4

False or Fraudulent Statements or Claims

The following actions constitute NMFCA false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim for payment under the Medicaid program;
- Submitting (or causing to be submitted) a claim for payment under the Medicaid program knowing that the person receiving the benefit is not eligible;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by Medicaid;
- Conspiring to defraud the state by getting a false claim allowed or paid;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state, relative to the Medicaid program;
- Knowingly applying for and receiving a benefit or payment on behalf of another person and converting that benefit or payment to his own personal use;
- Knowingly making a false statement or misrepresentation concerning the conditions or operation of a health care facility so that the facility may qualify for certification or recertification required by the Medicaid program; and
- Knowingly making a claim under the Medicaid program for a service or product that was not provided.

Liability

The person or entity will be liable for three times the amount of damages that the state sustains because of the violation.

Definitions § 27-14-3

Claim

“Claim” means a written or electronically submitted request of payment for services provided under the Medicaid program.

Department

“Department” means the Human Services Department.

Civil Actions §§ 27-14-7- 27-14-10

Action by Department § 27-14-7

The Department must diligently investigate suspected violations, and it is authorized to file a civil suit.

Actions by Private Persons § 27-14-7

A private individual (or *qui tam* plaintiff) has the right to bring a civil suit in the name of the state, if the person is affected by the false claims violations. The action may be dismissed upon written consent of the court and the Department.

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Department. If the Department determines that there is no substantial evidence that a violation occurred, the complaint will be dismissed.

If the Department decides to proceed with the civil suit, it must obtain approval from the Attorney General. The Department assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. The *qui tam* plaintiff shall have the right to continue as a nominal party to the action.

If the Department decides not to proceed, the *qui tam* plaintiff has the right to proceed with the lawsuit. The Department may intervene later, upon a showing of good cause.

Certain Actions Barred § 27-14-10

A *qui tam* plaintiff cannot bring an action against a Department official, if the action is based on information known to the Department when the action was filed.

A *qui tam* plaintiff cannot bring an action based on allegations that are the subject of a civil suit to administrative proceeding to which the state is already a party. ⁶

A *qui tam* plaintiff cannot bring a suit based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the Department before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; or from the news media.

Award to Qui Tam Plaintiff § 27-14-9

If the Department prosecutes a case initiated by a private plaintiff and obtains an award or settlement, the private plaintiff will receive between 10 and 25 percent of the recovery, plus reasonable costs and attorney fees. The court will consider the *qui tam* plaintiff's contribution to the investigations and proceedings in determining the award. If the case is primarily based on public disclosures of information other than those provided by the *qui tam* plaintiff, the courts may award the to the *qui tam* plaintiff whatever amount they consider appropriate up to 10 percent of the proceeds.

If the Department decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement plus reasonable expenses and attorney's fees.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the person is convicted of criminal conduct arising from their role in the fraud or false claims violation, the court must dismiss the person from the civil action and bar them from receiving any share of the proceeds.

Whistleblower Protections § 27-14-12

Employer Interference with Employee Disclosures

Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination, including reasonable costs an attorney fees.

The protected false claims activities include investigating, initiating, testifying, or otherwise assisting in a civil action. An employee is entitled to bring an action in the appropriate court for damages.

The Tennessee False Claims Act and Tennessee Medicaid False Claims Act

Executive Summary

The Tennessee False Claims Act (“TFCA”) is a state law that is designed to help the state government and political subdivisions combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. Tenn. Code Ann. §§ 4-18-101. The Tennessee Medicaid False Claims Act (“TMFCA”) applies solely to false claims under the Medicaid program. Tenn. Code Ann. §§ 71-5-182.

Liability and Damages/Statute of Limitations

- Actions that violate the both the TFCA and the TMFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed. In addition, anyone who benefits from a false claim that was mistakenly submitted also violates the TFCA if he or she does not disclose the false claim soon after he or she discovers it. Finally, the TFCA also broadly prohibits using any false representation or practice to procure anything of value from the state government or any political subdivision. The courts can waive penalties and reduce damages for violations if the false claims are voluntarily disclosed. The TFCA does not apply to controversies of less than \$500, workers’ compensation claims, Medicaid claims, or tax claims.
- Penalties of \$2,500 to \$10,000 per claim plus three times the amount of damages to the state or political subdivision may be imposed for TFCA violations.
- Under the TFCA, a civil suit must be filed within three years after the violation was discovered, but no more than ten years after the violation was committed.
- The TMFCA applies only to Medicaid claims. Penalties of \$5,000 to \$10,000 per claim plus treble damages may be imposed for TMFCA violations.
- Under the TMFCA, a civil suit can be filed within the later of: (1) six years after the violation was committed, or (2) three years after the violation was discovered (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the TFCA or the TMFCA. Individuals who report fraud receive between 25 and 33 percent of the total amount recovered if the government prosecutes the case under the TFCA and between 15 and 25 percent under the TMFCA. If the *qui tam* plaintiff litigates the case on his or her own, he or she receives between 33 and 50 percent of the proceeds under the TFCA and between 25 and 30 percent under the TMFCA (plus reasonable costs and attorney fees). Under

both acts, an individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

- Both the TMFCA and the TFCA contain important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred. Under the TFCA, the employer may also be liable for punitive damages.

Summary of Key Provisions

False Claims § 3, § 71-5-181

Liability

The following actions constitute false claims violations for both Acts:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to defraud the state by getting a false claim allowed or paid; and
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property;

The TFCA applies if the claims involve funds of the state or any political subdivision. The TMFCA applies if the claims involve Medicaid funds.

In addition, the following actions violate the TFCA:

- Delivering (or causing to be delivered) to the state or any political subdivision less property than the amount of the receipt, where the person has possession or control of the state or political subdivision's money or property;
- Making or delivering a receipt that falsely represents the property, where the person is authorized to make or deliver the receipt;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery; and
- Knowingly making or using (or causing to be made or used) any false or fraudulent conduct, representation, or practice to procure anything of value, either directly or indirectly, from the state or any political subdivision.

Under the TFCA, a person may be liable for:

- A civil penalty \$2,500 to \$10,000 for each false claim;
- Three times the amount of damages that the state or political subdivision sustains because of the violations; and
- The costs of a civil suit for recovery of damages.

The TMFCA imposes civil penalties of \$5,000 to \$10,000 per false claim in addition to damages and costs of civil suits for recovery of damages involving Medicaid funds.

Eligibility for Reduction in Penalty

Under both acts, the court may reduce the damages to two times the amount of damages that the state or a political subdivision sustains and eliminate the civil penalty if:

- The person committing the violation voluntarily disclosed all information known to him or her to the state officer responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person’s disclosure, and the person had no actual knowledge of an investigation into such violation.

Exclusion

The TFCA does not apply to controversies of less than \$500, workers’ compensation claims, or tax claims. Under Section 8 of the TFCA, the TFCA does not apply to claims covered by the Medicaid False Claims Act. Medicaid false claims are addressed under the TMFCA.

Definitions

Knowing and Knowingly § 2, § 75-5-181

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Claim § 2

"Claim" includes any request or demand for money or property made to the state or its political subdivisions (including those made under contract) or to a contractor, grantee, or other person, whether under contract or not, if any portion of the requested money or property is funded by or will be reimbursed by the state or any political subdivision.

Political Subdivision § 2

“Political subdivision” includes any town, city, municipality, county, or other local governmental entity with jurisdictional boundaries.

Prosecuting Authority § 2

“Prosecuting authority” refers to the county counsel, city attorney, or other local government official responsible for investigating, filing, and conducting civil legal proceedings in the name of a political subdivision thereof.

Civil Actions for False Claims § 4, § 71-5-183

Responsibilities of the Attorney General

Under the TFCA, the Attorney General and the reporter are required to investigate false claim violations involving state funds and/or funds from any political subdivision and file civil suits for false claims violations. In addition, the prosecuting authority may investigate violations including political subdivision funds. Under the TMFCA, the state may elect to intervene in a civil action within 60 days after it receives both the complaint and the material evidence and information.

Actions by Private Persons

An individual also has the right to file a civil suit for him or herself and for the state or a political subdivision. The action may be dismissed only with the written consent of the court, taking into account the best interests of the parties involved and the public purposes behind the Act.

If a private person (or *qui tam* plaintiff) alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General. Once the action is filed, no one other than the Attorney General and/or the prosecuting authority is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui Tam* Actions

If the state or political subdivision decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the state or political subdivision decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The state or political subdivision can intervene later upon a showing of good cause.

Award to *Qui Tam* Plaintiff

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 25 and 33 percent of the recovery under the TFCA, and between 15 and 25 percent under the TMFCA. Under the TMFCA, if the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery.

If the Attorney General decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 35 and 50 percent of the award or settlement under the TFCA and between 25 and 30 percent under the TMFCA. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff actively participated in the fraudulent activity upon which the civil suit was based, it may reduce his or her share of the recovery to any amount it considers appropriate.

The TMFCA contains further restrictions. If the *qui tam* plaintiff was convicted of criminal conduct arising from his or her role in the false claims violations, the court must dismiss that person and bar him or her from receiving any proceeds from the action.

If the court finds that the action brought by the *qui tam* plaintiff was frivolous or vexatious and the defendant prevails, the court must award the defendant reasonable attorney fees and expenses.

Certain Actions Barred

Under the TFCA, a *qui tam* plaintiff cannot bring an action against a member of the general assembly, the state judiciary, an elected official in the state executive branch, or a member of the

governing body of any political subdivision, if the action is based on evidence or information known to the state or political subdivision.

Under both the TFCA and the TMFCA, a *qui tam* plaintiff cannot file a suit based on allegations in a civil suit or an administrative proceeding in which the state or any political subdivision is already a party.

Under both the TFCA and the TMFCA, a *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based, who has voluntarily provided the information to the state or political subdivision before filing a civil action, and whose information served as the catalyst for the investigation that led to the public disclosure). Public disclosure includes disclosure in an investigation, report, hearing, or audit conducted by or at the request of the general assembly, comptroller of the treasury, or governing body of a political subdivision, or by the news media.

Statute of Limitations § 75-5-184

Under the TFCA, a civil suit must be brought within three years after the violation was discovered or should have been discovered, but no more than ten years after the violation was committed. Under the TMFCA, a civil suit must be brought within the later of: (1) six years after the violation was committed, or (2) three years after the violation was discovered (but not more than 10 years after the violation was committed).

Whistleblower Protection

Both the TFCA and the TMFCA make an employer liable for discriminating against an employee for his or her involvement in false claims actions. However, the TFCA is more expansive on the types of actions that trigger the employers' liability, and it limits remedies if the employee's conduct contributed to the false claims violations.

Employer Interference with Employee Disclosures § 5

Under the TFCA, employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; and
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Employer § 5, § 75-5-183

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest, and
- Compensation for any special damage sustained as a result of the discrimination.

The TFCA also provides that punitive damages may be assessed, where appropriate.

The protected false claims activities include investigating, initiating, testifying, or assisting in a false claims action that has been or will be filed. An employee is entitled to bring an action in the appropriate chancery court for such damages. If the employee prevails, the employer is liable for litigation costs and reasonable attorneys' fees.

Limitations on Eligibility of Employees for Damages § 5

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she:

- Voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

The Texas Medicaid Fraud Prevention Law

Executive Summary

The Texas Medicaid Fraud Prevention Law (“FPL”) combats fraud and abuse by health care providers participating in the Medicaid Program. Tex. Hum. Res. Code Ann. §§ 36.001.

Liability and Damages

- Actions that violate the FPL include: (1) making a false statement or concealing information that affects the right to a Medicaid benefit or payment, (2) submitting a claim for Medicaid payment for a product or service rendered by a person who is not licensed to provide that product or service or fails to indicate the license of the practitioner who actually performed the service, (3) submitting a claim for a service or product that has not been approved by the treating health care practitioner, or (4) conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent.
- The law requires restitution of the value of any Medicaid payment plus interest, damages of two times the value of the payment, and a civil penalty of \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age. If the violation does not result in such an injury, the law requires a civil penalty of \$1,000 to \$10,000 for each violation and damages of two times the value of the payment. A court may waive the civil penalties and award two times the amount of the payment if the defendant voluntarily discloses the violations.

Whistleblower Provisions

- Private individuals who report fraud receive between 10 and 25 percent of the total amount recovered if the state prosecutes the case. A private individual cannot prosecute a case on his or her own. The FPL contains important protections for whistleblowers.
- Employees who suffer discrimination because of their involvement in false claims actions may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims

False Claims § 36.002

The following actions constitute FPL false claims violations:

- Knowingly making (or causing to be made) a false statement or misrepresentation of facts on an application for a contract, benefit, or payment under the Medicaid program, or a document that is used to establish a person's eligibility for Medicaid benefits;
- Knowingly concealing or failing to disclose information that affects the right to a Medicaid benefit or payment;
- Knowingly receiving a benefit or payment on behalf of another and using it for something other than that for which it was intended;
- Knowingly making (or causing to be made) or inducing a false statement or misrepresentation on the conditions of operation of a facility so that it may obtain Medicaid certification;
- Knowingly charging, soliciting, or accepting a gift, money, donation as condition to the provision of service to a Medicaid recipient;
- Knowingly submitting a claim for payment under the Medicaid program for a product or service rendered by a person who is not licensed to provide the product or service, or is not licensed as claimed;
- Knowingly making a claim under the Medicaid program for a service or product that has not been approved by the treating health care practitioner, a service or product that is inadequate or inappropriate, or a product that has been debased, mislabeled or is otherwise inappropriate;
- Making a claim and knowingly failing to indicate the type of license and the identify of the health care provider; and
- Conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent.

Managed care providers operating under a contract are also liable for failure to provide Medicaid beneficiaries with the services required under the contract, or engaging in fraudulent activities in connection with the enrollment of individuals.

Liability § 36.052

The person or entity will be liable for:

- Restitution of the value of any payment provided under the Medicaid program;
- Interest on the value of the payment at the interest rate in effect on the day the payment was received;
- A civil penalty of \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age; or \$1,000 to \$10,000 for each violation that does not result in such an injury; and
- Two times the value of the payment.

Eligibility for Reduction in Damages § 36.052

The court must waive the civil penalties if:

- The person committing the violation disclosed all information known to him or her to the attorney general within thirty days of obtaining the information; and
- At the time, the attorney general had not yet begun an investigation.

Definition of Claim § 36.001

“Claim” means a written or electronically submitted request or demand that is signed by a provider or fiscal agency and identifies a product or service that was to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, and includes information that is used to determine a rate of payment under the Medicaid program.

Civil Actions

Action by Attorney General § 36.051

The attorney general has the authority to investigate or prosecute a case, or to seek an injunction from the court to restrain a person or entity from committing an unlawful act.

Actions by Private Persons §§ 36.101-36.107

A private individual has the right to bring a civil suit on behalf of himself or herself and the state. § 36.101.

If a private person alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the attorney general. § 36.102.

If the state chooses not to file a civil suit, the court must dismiss the action. § 36.104. If the state decides to proceed with the civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the private plaintiff. § 36.107

Once a complaint is filed, no person other than the state may intervene or file a suit based on the same facts. § 36.106

Certain Actions Barred § 36.114

A private individual cannot bring an action based on allegations that are the subject of a civil suit or administrative proceeding to which the state is already a party. ‘

A private individual cannot bring a suit based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the state before filing a civil action. Public disclosure includes disclosure in a criminal or civil hearing; a legislative or administrative report, hearing, audit, or investigation; or from the news media.

Award to Private Plaintiff § 36.111

If the state prosecutes a case initiated by a private plaintiff and obtains an award or settlement, the private plaintiff will receive between 10 and 25 percent of the recovery. The court will consider the private plaintiff's contribution to the investigations and proceedings in determining the award. If the case is primarily based on public disclosures of information other than those provided by the private plaintiff, the courts may award the to the *qui tam* plaintiff whatever amount they consider appropriate up to seven percent of the proceeds.

If the court finds that the private plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the person is convicted of criminal conduct arising from their role in the fraud or false claims violation, the court must dismiss the person from the civil action and bar him or her from receiving any share of the proceeds.

State Not Liable Expenses § 36.114

The state is not liable for any expenses incurred by a private person in bringing a civil action.

Whistleblower Protection

Employer Interference with Employee Disclosures § 36.115

Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination, including reasonable costs an attorney fees.

The protected false claims activities include investigating, initiating, testifying, or otherwise assisting in a civil action. An employee is entitled to bring an action in the appropriate district court for damages.

The Virginia Fraud Against Taxpayers Act

Executive Summary

The Virginia Fraud Against Taxpayers Act (“FTA”) is a state law that helps the Commonwealth combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. Va. Code Ann. §§ 8.01-216.1.

Liability and Damages/Statute of Limitations

- Actions that violate the FTA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the Commonwealth or a political subdivision.
- The Commonwealth imposes penalties of \$5,500 to \$10,000 per claim, three times the amount of damages to the Commonwealth for FTA violations, plus the costs of a civil suit for recovery of penalties or damages.
- A civil suit must be filed within the latter of: (1) six year after the violation was committed, or (2) three years after the date that the violation was discovered (but no more than ten years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- An individual (or *qui tam* plaintiff) can sue for violations of the FTA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information. The FTA contains important protections for whistleblower.
- Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred.

Summary of Key Provisions

False Claims

Liability § 8.01-216.3

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved;
- Conspiring to defraud the Commonwealth by getting a false claim allowed or paid;
- Delivering (or causing to be delivered) to the Commonwealth less property than the amount of the receipt, where the person has possession or control of the Commonwealth's money or property and intends to defraud the Commonwealth;
- Making or delivering a receipt without completely knowing that the information on it is true, where the person is authorized to make or deliver the receipt and intends to defraud the Commonwealth;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property; and
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Commonwealth.

A person will be liable for:

- A civil penalty \$5,000 to \$10,000 for each false claim; and
- Three times the amount of damages that the Commonwealth sustains because of the violations; and
- The costs of a civil suit for recovery of penalties or damages.

Eligibility for Reduction in Penalty § 8.01-216.3

The court may reduce the damages to two times the amount of damages that the state or a political subdivision sustains and eliminate the civil penalty if:

- The person committing the violation voluntarily disclosed all information known to him or her to the Government officer responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

Exclusion § 8.01-216.3

The FTA does not apply to income tax claims.

Statute of Limitations § 8.01-216.9

A civil suit must be brought within the latter of: (1) six years after the date that the violation was committed, or (2) three years after the violation is discovered (but no more than ten years after the violation was committed).

Definitions § 8.01-216.2 - 216.3

Attorney General

“Attorney General” means the Attorney General of Virginia, the Chief Deputy, and other deputies, counsels or Assistant Attorneys General employed by the Office of the Attorney General.

Claim

"Claim" includes any request or demand for money or property made to the Commonwealth or its political subdivisions (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by the Commonwealth.

Commonwealth

“Commonwealth” includes the Commonwealth of Virginia, any agency of state government, and any political subdivision of the Commonwealth.

Knowing and Knowingly

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

Person

“Person” means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

Civil Actions for False Claims § 8.01-216.4 – 216.8

Responsibilities of the Attorney General § 8.01-216.4

The Attorney General is required to investigate false claim violations involving Commonwealth funds and file civil suits for false claims violations.

Actions by Private Persons or *Qui Tam* Plaintiffs § 8.01-216.5

An individual also has the right to file a civil suit on behalf of him or herself and of the Commonwealth. The action may be dismissed only with the written consent of the court and the Attorney General.

If a private person (or *qui tam* plaintiff) alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Commonwealth. Once the action is filed, no one other than the Commonwealth is allowed to intervene or file a lawsuit based on the same facts.

Rights of the Parties to *Qui Tam* Actions § 8.01-216.6

If the Commonwealth decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Commonwealth decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Commonwealth can intervene later upon a showing of good cause.

Award to *Qui Tam* Plaintiff § 8.01-216.7

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than ten percent of the recovery. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the Attorney General decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement plus reasonable expenses and attorney's fees.

If the court finds that the *qui tam* plaintiff planned and initiated the fraudulent activity or he or she is convicted of criminal conduct in relation to the violation, the *qui tam* plaintiff will be dismissed from the civil action and shall not receive any share of the proceeds.

Certain Actions Barred § 8.01-216.8

A *qui tam* plaintiff cannot bring an action against any department, authority, board, bureau, commission, or agency of the Commonwealth, any political subdivision of the Commonwealth, a member of the general assembly, a member of the judiciary, or an exempt official (including the Governor, Lieutenant Governor, Attorney General, and the directors or members of any above-mentioned state or political subdivision entity).

A *qui tam* plaintiff cannot file a suit based on allegations in a civil suit or an administrative proceeding in which the Commonwealth is already a party.

A *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the Commonwealth before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing, in a legislative, administrative, or auditor of public accounts' report, hearing, audit, or investigation, or from the news media.

Liability for Expenses § 8.01-216.5

The Commonwealth is not liable for expense incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

Whistleblower Protection § 8.01- 216.8**Employer Interference with Employee Disclosures § 36.115**

Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination, including reasonable costs an attorney fees.

The protected false claims activities include investigating, initiating, testifying, or otherwise assisting in a civil action. An employee is entitled to bring an action in the appropriate court for damages.