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OVERVIEW OF RELEVANT HEALTHCARE LAWS

SCOPE:

All Envision Healthcare colleagues. For purposes of this policy, all references to “colleague” or “colleagues” include temporary, part-time and full-time employees, independent contractors, clinicians, officers and directors.

PURPOSE:

To make all colleagues of Envision Healthcare and its subsidiaries and affiliates (the “Company”) aware of the healthcare laws relevant to the Company.

POLICY:

There are several federal and state fraud and abuse laws that govern the healthcare industry. All colleagues of the Company must strictly follow these laws. The following laws are particularly applicable:

- A. The Federal Anti-Kickback Statute;
- B. The Federal Anti-Kickback Safe Harbors and Exceptions;
- C. The Federal Self-Referral “Stark Law” Statute;
- D. The Federal False Claims Statute;
- E. The Program Fraud Civil Remedies Act;
- F. State False Claims Acts; and
- G. The Federal Laws Governing Consumer Inducements.

The policies included in the Company’s Corporate Compliance Program have been developed as a result of these specific healthcare laws and regulations.

Each law is discussed briefly below. If you have questions, you should consult your immediate supervisor, the Legal Department or the Chief Compliance Officer.

A. THE FEDERAL ANTI-KICKBACK STATUTE

Overview

The Federal Healthcare Program Anti-Kickback Statute (the “Anti-Kickback Statute”), 42 U.S.C. § 1320a-7b, imposes criminal penalties on individuals and entities that knowingly and willfully solicit or receive remuneration “in return for referring an individual to a person for the furnishing or arranging for the furnishing of an item or service” or “in return for purchasing, leasing, ordering,

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or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under... a federal healthcare program.”

Prohibited Inducements

The Anti-Kickback Statute prohibits a person from knowingly and willfully offering or paying remuneration to any person to induce that person to refer or purchase, lease, order or arrange for or recommend the purchasing, leasing or ordering of items or services for which payment may be made by a federal healthcare program.

The types of remuneration prohibited by the Anti-Kickback Statute include, but are not limited to, “cash” or “in kind” kickbacks, bribes and rebates. Additionally, the Anti-Kickback Statute expressly prohibits both “direct” and “indirect” remuneration.

Penalties

Any person convicted of knowingly and willfully violating the Anti-Kickback Statute shall be found guilty of a felony, and fined not more than \$100,000 or imprisoned for not more than 10 years, or both, for each violation. Violators of the Anti-Kickback Statute also are subject to exclusion from federal healthcare programs by the Secretary of Health and Human Services (“HHS”), regardless of whether a criminal conviction has been obtained. In addition, the Secretary of HHS may impose civil monetary penalties for each violation of the Anti-Kickback Statute of: (a) up to \$100,000; and (b) three times the amount of the remuneration in question.

B. THE FEDERAL ANTI-KICKBACK SAFE HARBORS AND EXCEPTIONS

Overview

The Anti-Kickback Statute includes limited statutory exceptions for certain financial arrangements, specifically an exception for employment arrangements. Additionally, the Department of Health and Human Services (“DHHS”) has promulgated regulations, termed “safe harbors,” specifying certain payment practices that are exempted from the prohibitions of the Anti-Kickback Statute. However, the protection afforded by the safe harbor regulations is limited to very narrow circumstances.

The Statutory Exception For Employment Arrangements and the Employment Safe Harbor

The Anti-Kickback Statute includes a statutory exception for “any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.” The safe harbor regulations also address employment arrangements but narrow the statutory exception through the definition of “employee.” Specifically, the safe harbors provide that the term “employee” has the same meaning under IRS rules, which adopts the “usual common law rules.” DHHS also considers the purpose of the employment, the amount paid for the service, and whether services were performed, in assessing the employment relationship, and could challenge “sham” employment arrangements despite the arguably blanket protection of this exception.

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The Statutory Exception For Discounts and the Discount Safe Harbor

The Anti-Kickback Statute includes a statutory exception for “a discount or other reduction in price obtained by a provider of services or other entity under a Federal healthcare program if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity.” The discount safe harbor regulation narrows the statutory exception through its restrictive definition of the word “discount”. Specifically, the discount safe harbor regulation restricts the term “discount” by excluding such typical discount arrangements as: discounted or free items or services in exchange for the purchase of different items or services; discounts not applicable to Medicare or Medicaid; and, discounts given directly to beneficiaries (for example, waivers of co-insurance). The discount safe harbor also prescribes specific disclosure standards for different types of entities: sellers, buyers, and offerors. All buyers (this category includes providers that buy goods and services and submit claims to Medicare and Medicaid) other than those who file cost reports can only take advantage of discounts made at the time of the original sale or rebates that are fixed and disclosed in writing to the buyer at the time of the original sale. Non-cost reporting buyers generally are not required to report discounts on claims submitted to Federal health care programs, but must provide documentation of discounts to the Secretary upon request. Notably, HHS has stated that the “most important aspect of the discount safe harbor is that the Federal health care programs share in the discount in proportion to the percentage the programs pay of the total cost.”

The Space and Equipment Rental and Personal Services and Management Contracts Safe Harbors

The regulations create safe harbors for certain contracts for space and equipment rental and personal services and management contracts. These three separate safe harbors are virtually identical in their requirements. For each safe harbor, a written agreement must be executed. The term of the agreement must be for at least one (1) year and must specify the aggregate payment amount as well as the premises, equipment, or services covered. If the agreement does not contemplate full-time services, the agreement must also specify the schedule of intervals, their precise length, and the exact charge for such intervals. In addition, the payments must be based upon fair market value, and not vary on the volume or value of any federal healthcare program covered referrals or business generated between the parties.

Electronic Health Records Safe Harbor

In order to eliminate barriers to the adoption of electronic health records, the regulations created a safe harbor that allows the donation of electronic health records, items, and services to individuals or entities engaged in the delivery of healthcare by specified donors. The safe harbor excludes laboratory companies from the types of entities that may donate electronic health records items and services; requires that the electronic health records software be deemed interoperable; and prohibits any action that limits or restricts the use, compatibility, or interoperability of donated items or service. This safe harbor will expire on December 31, 2021.

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Compliance with Safe Harbor Provisions is Voluntary

Compliance with the terms of each criterion in a safe harbor regulation is voluntary. Although compliance with these safe harbor regulations assures an entity or an individual that a particular practice does not violate the Anti-Kickback Statute, an action or arrangement that does not satisfy each criterion of a safe harbor does not necessarily violate the Anti-Kickback Statute. Rather, it will be subject to a facts-and-circumstances based analysis.

C. THE FEDERAL SELF-REFERRAL “STARK LAW” STATUTE

Overview

The Federal Self-Referral Law (the “Stark Law”), 42 U.S.C. § 1395nn; 42 C.F.R. § 411, prohibits a physician who has a financial relationship with an entity (or whose immediate family member has a financial relationship with an entity) from making a “referral” of a Medicare or Medicaid patient to that entity for the furnishing of “designated health services” for which payment may be made under the Medicare or Medicaid programs.

This is a strict liability statute, meaning that if a financial relationship exists, that financial relationship must be structured to meet all the requirements of an applicable Stark exception. There are a number of exceptions, some of which are described at a high level below. Given the importance of qualifying for an exception, any financial relationship should be reviewed by Envision’s Legal Department for compliance with the requirements of an exception.

Definitions

”Financial relationship” is defined in the Stark Law to include both compensation arrangements as well as ownership and investment interests.

“Designated health services” includes, among other services, in-patient and outpatient hospital services, imaging services, clinical laboratory services and home health services.

“Physician” means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery; a doctor of dental surgery or dental medicine legally licensed to practice dentistry; a doctor of optometry; doctor of podiatric medicine; and a chiropractor.

The phrase “immediate family members” includes: spouse, natural or adoptive parent, child or sibling, step-parent, step-child, step-brother or step-sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild and spouse of a grandparent or grandchild.

Exception for Bona Fide Employment Relationships

The Stark Law includes an exception for compensation paid by an employer to an employee under a bona fide employment relationship so long as the employment is for identifiable services, the amount of payment is consistent with fair market value, and the compensation is not determined in a manner that takes into consideration the volume or value of any referrals made to the employer. Although the exception includes a requirement that the payment not be determined

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based on the volume or value of referrals, exempted from the exception are payments in the form of productivity bonuses based on services performed personally by the physician.

Exception for Personal Service Arrangements

The Stark Law excepts certain compensation arrangements between a physician and an entity where the physician is an independent contractor and not an employee. In order to qualify for the exception, these personal service arrangements must be set out in writing, describe the services covered, have a term of at least one year, determine the payment in advance in a manner that reflects fair market value and not the volume or value of any referrals or business generated between the parties, and the services performed under the arrangement must not involve the counseling or promotion of a business arrangement or other activity that violates any state or federal law.

Exception for Fair Market Value Arrangements

Compensation resulting from an arrangement between an entity and a physician (or group of physicians) for the provision of items or services, other than rental of office space, may fall under the exception to the Stark Law for fair market value compensation if certain conditions are satisfied. Among other conditions, the arrangement must be set forth in a writing signed by the parties and the compensation must be set in advance, consistent with fair market value, and not determined in a manner that takes into account the volume or value of referrals or other business generated by the referring physician. Additional restrictions apply to compensation for rental of equipment.

D. THE FEDERAL FALSE CLAIMS STATUTE

Overview

The Federal False Claims Act (“FCA”) prohibits anyone from *knowingly* presenting, or *causing to be presented*, a false or fraudulent claim in order to secure payment from the federal government. A person found to have violated this statute is liable of not less than \$11,463 and not more than \$22,927 for each claim, plus three times the amount of damages sustained by the federal government. The False Claims Act defines “knowing” and “knowingly” as: actual knowledge; deliberate ignorance of the truth or reckless disregard of the truth or falsity. Therefore, no proof of specific intent to defraud is required to demonstrate a violation of this Act.

The FCA helps the federal government combat fraud and recover losses resulting from fraud in federal programs, purchases, or contracts. A person or entity may violate the FCA by knowingly: (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. 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.

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Qui Tam Actions and Whistleblower Protections

An individual also has the right to file a civil suit for him or herself and for the government to challenge a FCA violation. The suit must be filed in the name of the government. Such an individual is called a *qui tam* plaintiff or “relator”. Successful relators may receive between 15 and 30 percent of the total amount recovered (plus reasonable costs and attorney fees) depending on the involvement of the relator and whether the government prosecuted the case. 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.

E. THE PROGRAM FRAUD CIVILE REMEDIES ACT

Under the Program Fraud Civil Remedies Act, federal law also provides for administrative remedies against providers for false claims and statements of not more than \$10,261 for each false claim or statement, and an assessment of up to twice the amount of such claim. These administrative civil remedies are described further in the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, and 45 C.F.R. § 79.3.

A “false claim” (for purposes of the administrative remedies) is defined as a claim that the person knows or has reason to know (i) is false or fraudulent, (ii) includes or is supported by any written statement which asserts a material fact which is false, (iii) includes or is supported by any written statement that omits a material fact, is false as a result of such omission, and is a statement in which the person making such statement has a duty to include such material fact, or (iv) is for payment for the provision of property or services which the person has not provided as claimed. A “false statement” is defined as a statement that the person knows or has reason to know asserts a material fact that is false or omits a material fact that makes the statement false.

F. STATE FALSE CLAIMS ACTS

Many states in which the Company does business also have state false claims acts that prohibit anyone from knowingly presenting, or causing to be presented, a false or fraudulent claim in order to secure payment from local and/or state government. Many of these state false claims acts are similar to the federal FCA and provide for lawsuits either by the government or a *qui tam* plaintiff (or “relator”). Many of these laws also include whistleblower protections similar to the federal FCA. If you have any questions about a specific state law, please contact the Legal or Ethics & Compliance Department.

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G. THE FEDERAL LAWS GOVERNING CONSUMER INDUCEMENTS

Civil Monetary Penalties – Patient Inducement Prohibition

The Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a, authorizes the imposition of civil money penalties for offering inducements to individuals eligible for Medicare or Medicaid if the offeror knows or should know that it will influence the patient to order or receive items or services from a particular provider, practitioner or supplier. Significantly, the statute defines remuneration as including the waiver of co-insurance and deductibles and transfers of items or services for free or for other than fair market value. However, there are limited exceptions provided in the statute. For instance, co-insurance waivers that are based on financial need and meet other requirements are protected. Additionally, in light of the potential application of this provision to managed care arrangements, the statute excepts from the scope of illegal remuneration differentials in co-insurance and deductible amounts that are part of the benefit plan design – e.g., as part of a PPO or similar managed care product – and that are disclosed and meet other standards defined by HHS. There are also exceptions for incentives given to individuals to promote the delivery of preventive care and for other remuneration that promotes access to care and poses a low risk of harm to patients and Federal health care programs. Similarly, there is a safe harbor to the Anti-Kickback Statute, which also applies as an exception to this law, that allows eligible entities to provide local transportation for patients if certain conditions are met.

POLICY REVIEW

The Ethics & Compliance Department will review and update this Policy in the normal course of its review of the Ethics & Compliance Program.

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ALABAMA

The state of Alabama has not adopted any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Alabama Medicaid program. Violations of the statute are criminal offenses punishable by imprisonment and/or significant monetary penalties. See ALA. CODE § 22-1-11.

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ARIZONA

The state of Arizona has not adopted any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted fraud and false statement statutes that make it unlawful for a person to submit false and fraudulent statements or claims to an Arizona state department or agency. Violations of these statutes are civil and criminal offenses and are punishable by imprisonment and significant monetary penalties and assessments. See ARIZ. REV. STAT. §§ 13-2310, 13-2311, 36-2918 and 36-2957.

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ARKANSAS

The Arkansas Medicaid Fraud Act (“AMFA”) provides for criminal sanctions in cases of fraud under the Medicaid Program. ARK. CODE ANN. § 5-55-101. See also the Medicaid Fraud False Claims Act (“MFFCA”), which provides for civil sanctions in the event of such fraud. ARK. CODE ANN. § 20-77-901.

Liability and Damages

- Actions that violate the AMFA include but are not limited to: (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 and a fine up to three times the total amount of the false claims may be imposed. Any monetary penalties imposed under the AMFA are *additional* to those imposed by the MFFCA. Additionally, violating the AMFA is a Class A felony if the aggregate amount of payments illegally claimed is \$25,000 or more; a Class B felony if the aggregate amount is between \$5,000 and \$25,000; and a Class C felony if the aggregate amount is between \$2,500 and \$5,000; otherwise Medicaid fraud is a Class A misdemeanor. 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.
- The AMFA does not allow whistleblowers to prosecute actions on the state’s behalf (i.e., no *qui tam* provisions).

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CALIFORNIA

The California False Claims Act (“CFCA”) applies to fraud involving state, city, county or other local government funds. CAL. GOV’T CODE §§ 12650 – 12656. 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) knowingly present 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 \$11,000, 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 the latter of: (1) three years after the violation was known or should have been known by the state or local official responsible for investigating the false claim (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

- Individuals (or *qui tam* plaintiffs) 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.
- An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The CFCA contains whistleblower protections. 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.

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COLORADO

The Colorado Medicaid False Claims Act (“CMFCA”) is a civil statute which is designed to eliminate waste, fraud, and abuse in the State’s Medicaid program. See COL. REV. STAT. §§ 25.5-4-303.5 to 25.5-4-310.

Liability and Damages/Statute of Limitations

- Violations of CMFCA include but are not limited to: (1) knowingly presenting a false or fraudulent claim for payment; (2) knowingly making a false record material to a false or fraudulent claim; (3) having possession, custody, or control of property or money used by the state in connection with the “Colorado Medical Assistance Act” and knowingly delivering less than all of the money or property; or (4) conspiring to commit a violation of the act.
- The maximum civil penalty is \$11,000, per claim. Persons who violate the CMFCA may be liable to the state for three times the amount of damages that the state sustains because of the violation. The court can reduce damages for CMFCA violations if the false claims are voluntarily disclosed.
- Lawsuits must be filed by the later of either: (1) three years after the violation was 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.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) who bring an action under the CMFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney’s fees) if the *qui tam* plaintiff litigates the case on his or her own.
- If the court finds the action brought by the *qui tam* plaintiff to be based primarily on disclosures of specific information, other than original information, the court may award to the *qui tam* plaintiff such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the *qui tam* plaintiff in advancing the case to litigation.
- The CMFCA contains whistleblower protections. 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) costs and damages; and (4) punitive damages, if appropriate.

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CONNECTICUT

The Connecticut False Claims Act (“CFCA”) imposes liability on individuals who knowingly submit false claims to Connecticut health and human services programs, including Medicaid. See CONN. GEN. STAT. §§ 4-274 – 4-289.

Liability and Damages/Statute of Limitations

- The actions that violate the CFCA include but are not limited to: (1) knowingly present a false or fraudulent claim for payment under a state-administered health or human services program; (2) knowingly make or use a false record or statement material to a false or fraudulent claim under a state-administered health or human services program; or (3) conspire to commit a violation of this CFCA.
- Any person who violates CFCA shall be liable to the state for a maximum civil penalty of \$11,000, three times the amount of damages that the state sustains because of the violation, and the costs of investigation and prosecution of such violation. The court can reduce damages for CMFCA 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 Connecticut official responsible for investigating violations (but no more than 10 years after the violation was committed), or (2) six years after the violation was committed.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) who bring an action under the CFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 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 contains whistleblower protections. 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.

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DELAWARE

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, §§ 1201–1211.

Liability and Damages/Statute of Limitations

- The actions that violate the FCRA include but are not limited to: (1) knowingly present or cause to be presented a false claim for payment; (2) knowingly make, use, or cause to be made a false record or statement to get a false claim paid; (3) conspiring to commit a violation of the FCRA; or (4) making or using a false record to avoid payments owed to the state government.
- Penalties of \$10,957 to \$21,916 per claim plus three times the amount of damages 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.

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DISTRICT OF COLUMBIA

The District of Columbia (D.C.) False Claims Law (“FCL”) imposes liability on individuals who knowingly present false or fraudulent claims for payment to the District, misappropriate District property, or deceptively avoid binding obligations to pay the District, among other violations. D.C. CODE §§ 2-381.01 – 2-381.10.

Liability and Damages/Statute of Limitations

- Violations of the FCL include but are not limited to: (1) knowingly presents or causes to be presented, a false or fraudulent claim for payment or approval; (2) knowingly makes, uses, or causes a false record or statement material to a false or fraudulent claim; (3) has possession, custody, or control of property or money used, or to be used, by the District and knowingly delivers, or causes to be delivered, less than all of that money or property; or (4) conspires to commit a violation of FCL.
- The maximum penalty is \$11,000 per claim. Damages of three times the amount that the District sustains because of the violation may be awarded. The courts can reduce damages for FCL 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 10 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) who report fraud receive between 15 and 25 percent of the amount recovered in cases where the District prosecutes the case, and between 25 and 30 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 FCL 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) special damages, if appropriate.

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FLORIDA

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. ANN. §§ 68.081–68.092.

Liability and Damages/Statute of Limitations

- The actions that violate the FFCA include but are not limited to: (1) knowingly present or cause to be presented a false or fraudulent claim ; (2) knowingly make, use, or cause to be made or used a false record or statement material to a false claim; (3) conspiring to commit a violation of the FFCA; 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 government for FFCA violations may be imposed.
- Lawsuits must be filed within the latter of either: (1) six years after the violation was committed, or (2) three years when material facts of the violation are known or reasonably should have been known by the state official responsible for investigating the violation (but no more than ten years after the violation as 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 Whistle-blower’s Act.

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GEORGIA

The Georgia State False Medicaid Claims Act (“SFMCA”) is intended to provide a partial remedy for the problem of false or fraudulent claims submitted to this Georgia Medicaid Program. The SFMCA does so by providing specific procedures whereby the state, and private citizens acting for and on behalf of the state, may bring civil actions against persons and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. GA. CODE ANN., §§ 49-4-168 to 49-4-168.6. Georgia’s Taxpayer Protection False Claims Act expands Georgia’s *qui tam* provisions beyond Medicaid. GA. CODE ANN., §§ 23-3-120 to 23-3-127.

Liability and Damages/Statute of Limitations

- Actions that violate the SFMCA include, but are not limited to: (1) knowingly presenting or causing to be presented to the Georgia Medicaid Program a false or fraudulent claim for payment or approval; (2) knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved; or (3) conspiring to defraud the Georgia Medicaid Program by getting a false or fraudulent claim allowed or paid.
- Violations of the SFMCA can result in civil penalties consistent with the civil penalties provision of the federal False Claims Act, plus three times the amount of the damages which the Georgia Medicaid Program sustains because of the Act.
- Lawsuits must be filed within the later of: (1) six years after the date the violation was committed; or (2) four years after the date when facts material to the right of civil action are known or should have been known by the state official charged with the responsibility to act in the circumstances; provided, however, that in no event shall any civil action be filed more than 10 years after the date upon which the violation was committed.

***Qui Tam* Actions/Whistleblower Protections**

- An individual (or *qui tam* plaintiff) can sue for violations of the SFMCA. 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.
- The SFMCA 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.

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HAWAII

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. ANN. §§ 661-21 – 661-31. Hawaii has also enacted a separate law applying false claims to counties. HAW. REV. STAT. ANN. §§ 46-171 – 46-181.

Liability and Damages/Statute of Limitations

- The actions that violate the HFCA include but are not limited to: (1) knowingly present or cause to be presented, a false claim; (2) knowingly make, use, or cause to be made or used, a false record or statement material to 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 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 \$5,500 to \$11,000 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 important protections for whistleblowers. Employees who are discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee in furtherance of a civil action under the HFCA shall be entitled to all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained.

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.

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IDAHO

Idaho has not adopted any false claims act or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted generally applicable anti-fraud statutes that make it unlawful for a person to submit false and fraudulent claims to the Idaho Medicaid program. Violations of the statutes are civil and criminal offenses and are punishable by imprisonment and significant monetary penalties. IDAHO CODE ANN. §§ 56-227 – 56-227F.

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ILLINOIS

The Illinois False Claims Act (“IFCA”) applies to fraud involving State government, local government, and public educational institution funds. 740 ILL. COMP. STAT. ANN. 175/1 – 175/8.

Liability and Damages/Statute of Limitations

- Actions that violate the IFCA include but not limited to: (1) knowingly present or cause to be presented a false claim for payment; (2) knowingly make, use, or cause to be used, 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 \$5,500 to \$11,000 per claim plus three times the amount of damages to the state government for IFCA 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 IFCA. 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 IFCA 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.

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INDIANA

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. Indiana has a separate act, the Medicaid False Claims and Whistleblower Protection Act (“MFCWPA”), which specifically applies to false or fraudulent claims made or submitted in relation to the Medicaid program. IND. CODE ANN. § 5-11-5.7.

Liability and Damages/Statute of Limitations

- Actions that violate the IFCA include but are not limited to: (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.
- Violations of the MFCWPA include but are not limited to: (1) knowingly presents a false or fraudulent claim for payment or approval; (2) knowingly makes or uses a false record or statement material to a false or fraudulent claim; (3) has possession, custody, or control of property or money used, or to be used, by the state and knowingly delivers, or causes to be delivered, less than all of that money or property; or (4) conspires to commit a violation of the MFCWPA.
- The minimum civil penalty pursuant to IFCA 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. Penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the state government for MFCWPA violations may be imposed.
- A civil suit pursuant to IFCA 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. Lawsuits pursuant to MFCWPA 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 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.
- A private person (or *qui tam* plaintiff) can also sue for violations of the MFCWPA. 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

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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.

- Both IFCA and MFCWPA contain protections for whistleblowers. Employees who suffer discrimination due to their disclosure of fraudulent activity in violation of either IFCA or MFCWPA 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.

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IOWA

The Iowa False Claims Act (“IFCA”) imposes liability on individuals who knowingly present false or fraudulent claims for payment to the state; misappropriate state property; or conceal, avoid or decrease an obligation to pay or transmit property to the State of Iowa. IOWA CODE §§ 685.1 - 685.7.

Liability and Damages/Statute of Limitations

- Violations of the IFCA include but are not limited to: (1) knowingly present a false or fraudulent claim for payment; (2) knowingly make or use a false record or statement material to a false or fraudulent claim; (3) conspire to commit a violation of this section; (4) having possession, custody or control of property or money used by the state, knowingly deliver less property than the amount for which the person receives a certificate or receipt; or (5) being authorized to make a document certifying receipt of property used by the state and intending to defraud the state, make such document without completely knowing that the information on the document is true.
- The civil penalty under IFCA is not more and not less than the civil penalty allowed under the federal False Claims Act. In addition, damages of up to three times the amount that the state sustains because of the violation may also be awarded.
- Lawsuits must be filed by the later of either: (1) three years after the violation was 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.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the IFCA. Individuals who bring an action under the IFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 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 IFCA 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) special damages, if appropriate.

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KANSAS

The state of Kansas has not adopted any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a Medicaid Fraud Control Act that makes it unlawful for a person to submit false and fraudulent claims to the Kansas Medicaid program. Violation of this Act is a criminal offense punishable by substantial fines and imprisonment. Additionally, violators of the Act may be liable for payment of full restitution to the state plus interest and reasonable expenses. KAN. STAT. ANN. §§ 21-5925 – 21-5934. Kansas also has a separate act, the Kansas False Claims Act (“KFCA”), which applies more broadly to false or fraudulent claims made or submitted to the state. KAN. STAT. ANN. §§ 75-7502 – 75-7511.

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KENTUCKY

Kentucky has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Kentucky Medicaid program. The statute also makes it unlawful for any person to present false information regarding an institution or facility so that it may be licensed or recertified as a Medicaid provider. Violations of the statute are both civil and criminal offenses and are punishable by substantial fines and imprisonment. KY. REV. STAT. ANN. §§ 205.8451, 205.8463, 205.8465, 205.8467. Any person who reports suspected fraud to the state Medicaid Fraud Control Unit or the Medicaid Fraud and Abuse hotline shall not be liable in any civil or criminal action based on the report if it was made in good faith, nor may an employer, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes such a report or who participates in any proceeding related to such report. KY. REV. STAT. ANN. § 205.8465.

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LOUISIANA

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 – 46:440.3.

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.
- Violations of MAPIL can result in civil monetary penalties of up to \$11,000 per claim , plus up to three times the amount of actual 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.
- Lawsuits must be filed by the later of either: (1) three years after the violation was 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**

- 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 25 percent of the total amount recovered if the state prosecutes the case, and up to 35 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.

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MAINE

The state of Maine has not adopted any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a false claims statute that makes it unlawful for any person to make, or cause to be made, or presented or cause to be presented for payment, any claim to the Medicaid program, knowing such claim to be false, fictitious or fraudulent, or to aid or abet in any such conduct. Violations of this statute are criminal and civil offenses and are punishable by imprisonment and/or significant monetary penalties. ME. REV. STAT. tit. 22, § 15. In addition, the state has enacted a general whistleblower protection act that makes it unlawful to retaliate in any fashion against an individual, who, acting in good faith, reports orally or in writing to the employer or a public body that the employee has reasonable cause to believe there is a violation of law or rule adopted by the state. ME. REV. STAT. tit 26, §§ 831 - 840.

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MARYLAND

Maryland’s False Health Claims Act (“FHCA”) imposes liability on individuals who knowingly submit false or fraudulent claims to Maryland state health plans or programs, including Medicaid. MD. CODE ANN. Health-General §§ 2-601 – 2-611. The Maryland False Claims Act (“Maryland FCA”) covers fraud relating to all state programs involving state funding and/or state contracts, and expands beyond the health care realm. MD General Provisions Code §§ 8-101 – 8-111.

Liability and Damages/Statute of Limitations

- Actions that violate the FHCA and Maryland FCA include but are not limited to: (1) knowingly present a false or fraudulent claim for payment; (2) knowingly make or use a false record or statement material to a false or fraudulent claim; (3) conspire to commit a violation of this section; or (4) having possession, custody or control of property or money used by the state, knowingly deliver less property than the amount for which the person receives a certificate or receipt.
- 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 reduce penalties and limit recovery to actual damages if the defendant voluntarily discloses violations and cooperates with the investigation.

Lawsuits must be filed by the later of either: (1) three years after the violation was 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**

- A private individual (or *qui tam* plaintiff) can sue for violations of the FHCA or Maryland FCA, but only the state can seek civil monetary penalties. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the total amount recovered (plus reasonable costs and attorney fees).
- The FHCA and Maryland FCA contain 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.

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MASSACHUSETTS

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 ch. 12, § 5.

Liability and Damages/Statute of Limitations

- Actions that violate the MFCA include but not limited to: (1) knowingly present or cause to be presented a false claim for payment; (2) knowingly make, use or cause to be made, a false record to get a false claim paid; (3) conspiring to make a false claim or get one paid; or (4) knowingly make or use 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 \$5,500 to \$11,000 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.

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MICHIGAN

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 §§ 400.601 - 400.615.

Liability and Damages/Statute of Limitations

- Actions that violate the MMFCA include but not limited to: (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.
- 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 known or reasonably should have been known by the state official charged with responsibility to act in the circumstances (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 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.

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MINNESOTA

The Minnesota False Claims Act (“MFCA”) imposes liability on individuals who knowingly present false or fraudulent claims for payment to the state, misappropriate state property, or deceptively conceal or avoid binding obligations to pay the state, among other obligations. MINN. STAT. §§ 15C.01 – 15C.16.

Liability and Damages/Statute of Limitations

- The actions that violate the MFCA include but are not limited to: (1) knowingly present a false or fraudulent claim for payment; (2) knowingly make or use a false record or statement material to a false or fraudulent claim; (3) conspire to commit a violation of this section; or (4) knowingly make a false record or statement material to an obligation to pay or transmit money or property to the state.
- Penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the state or county for MFCA violations may be imposed.
- A civil suit must be filed within the latter of: (1) three years after the date that the violation was discovered or (2) six years after the violation occurred (but in no event more than ten years after the violation was committed).

***Qui Tam* Actions**

- 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 whistleblowers. Employees who are discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee in furtherance of a civil action under the MFCA shall be entitled to all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained.

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MISSISSIPPI

Mississippi has not adopted any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid Fraud Control Act that makes it unlawful for a person to submit false and fraudulent claims to the Mississippi Medicaid program. Violations of the Act are both civil and criminal offenses and are punishable by imprisonment and significant monetary penalties. MISS. CODE ANN. §§ 43-13-209, 43-13-211, 43-13-213, 43-13-215, 43-13-225.

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MISSOURI

The state of Missouri has not adopted any false claims acts or statutes that contain a *qui tam* provision that is similar to the one found in the federal False Claims Act. It has, however, adopted false statement statutes that make it unlawful for a person to submit false and fraudulent claims to the Missouri Medicaid program. Violations of these statutes are criminal and civil offenses punishable by substantial fines and imprisonment. Violators may be liable for payment of full restitution to the state plus interest and reasonable expenses. Additionally, there are important protections for whistleblowers. Employees who are discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in the terms and conditions of employment because the of lawful acts done by the employee to assist in the furtherance of an action under the false claims statutes are entitled to: (1) reinstatement to the employee’s position without loss of seniority; and (2) two times the amount of back pay with interest. See MO. REV. STAT. §§ 191.900 – 191.914, 198.006, 198.142, 198.155, 198.158.

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MONTANA

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. §§ 17-8-401 to 17-8-416.

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, (4) making or using a false record to avoid payments owed to the governmental entity, or (5) withholding, concealing, or falsely certifying receipt of public property or money owed to the government 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 \$11,000. The court may also award damages of three times the amount that the state sustains because of the violation.
- Lawsuits must be filed by the later of either: (1) three years after the violation was 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 Protections**

- A private person (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. 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 important protections for whistleblowers. Employees who are discriminated against in the terms and conditions of employment because of lawful acts done by the employee in furtherance of a civil action under the MFCA shall be entitled to all relief necessary to make the employee whole, including reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained.

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NEBRASKA

The State of Nebraska has not adopted acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a False Medicaid Claims Act (“FMCA”) which makes it unlawful for a person to: (1) submit false and fraudulent claims to the Nebraska Medicaid program, or conspire to do so, (2) make or use a false record in order to avoid payments to the state, or (3) withhold, conceal, or falsely certify receipt of public property or money owed to the state. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the FMCA if he or she fails to report the claim within sixty days of such discovery. However, if more than six years have passed, the beneficiary is not obligated to make such a report.

Violations of the statute result in civil penalties up to \$10,000 for Medicaid fraud. The court may also award damages of three times the amount of the false claim. The FMCA also establishes a Medicaid fraud control unit under the Attorney General. NEB. REV. STAT. ANN. §§ 68-934 – 68-947.

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NEVADA

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. ANN. §§ 357.010 to 357.250.

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 \$5,500 to \$11,000 per claim plus three times the amount of damages to the state government for false claim violations may be imposed.
- Lawsuits must be filed by the later of either: (1) three years after the violation was 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**

- Individuals (or *qui tam* plaintiffs) can sue for violations of the statute. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 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. Employee claims based on retaliation or discrimination must be brought not more than 3 years after the conduct complained of occurred.

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NEW HAMPSHIRE

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, (4) withholding, concealing, or falsely certifying receipt of property or money owed to the state, or (5) 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.
- Lawsuits must be filed by the later of either: (1) three years after the violation was 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 Protections**

- Individuals (or *qui tam* plaintiffs) can sue for violations of the statute. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 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 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.

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NEW JERSEY

The New Jersey False Claims Act (“NJFCA”) was enacted by the state in order to combat fraud and abuse in the submission of claims and the transaction of business with the state. N.J. REV. STAT. §§ 2A:32C-1 – 2A:32C-18.

Liability and Damages

- Actions which violate the NJFCA include, but are not limited to: (1) knowingly presenting or causing to be presented to an employee, officer or agent of the state, or to any contractor, a false claim for payment or approval; (2) knowingly making, using or causing to be made or used a false record to get a false claim paid or approved by the state; (3) conspiring to defraud the state by getting a false claim allowed or paid by the state; or (4) possessing custody or control of public property or money to be used by the state and knowingly delivering less property than the amount for which the person receives a certificate or receipt.
- Violations may result in civil penalties of not less than and not more than the civil penalty allowed under the Federal False Claims Act, 31 U.S.C.A. § 3729 et seq., (i.e., between \$5,500 and \$11,000) plus three times the amount of damages which the state sustains because of the act. In addition, attorney’s fees and costs may be awarded.
- A civil action instituted under the NJFCA may not be brought: (1) more than six years after the date on which the violation is committed; or (2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances, whichever occurs last, but in no event more than 10 years after the date on which the violation is committed.

***Qui Tam* Actions/Whistleblower Protections**

- Individuals (or *qui tam* plaintiffs) can sue for violations of the statute. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 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 NJFCA 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, (3) compensation for any costs or damages incurred, and (4) punitive damages, if appropriate.

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NEW MEXICO

The New Mexico Fraud Against Taxpayers Act (“FATA”) helps the state combat fraud and recover losses resulting from false or fraudulent claims against state agencies or programs. N.M. STAT. ANN. §§ 44-9-1 to 44-9-14. New Mexico also has a Medicaid False Claims Act (“MFCA”) that imposes liability on individuals who knowingly submit false claims to New Mexico’s Medicaid program. N.M. STAT. ANN. §§ 27-14-1 to 24-14-15.

Liability and Damages

- Actions that violate the FATA include, but are not limited to: (1) knowingly presenting, or causing to be presented, to an employee, officer or agent of the state, or to a contractor or other recipient of state funds, a false or fraudulent claim for payment or approval; (2) knowingly making or using, or causing to be made or used, a false record or statement to obtain approval or payment on a false or fraudulent claim; or (3) conspiring to defraud the state by obtaining approval or payment on a false claim.
- Violations of the MFCA include, but are not limited to: (1) knowingly presenting a false or fraudulent claim for payment under the Medicaid program; (2) knowingly making or using a false record or statement material to a false or fraudulent claim; and (3) knowingly making a claim under the Medicaid program for a service or product that was not provided.
- For each violation of the FATA, the following may be imposed: penalties of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages sustained by a state agency because of the violation, plus the costs of a civil action brought to recover damages or penalties, and reasonable attorneys’ fees. For each violation of MFCA, the penalty imposed is three times the amount of damages to the state.

***Qui Tam* Actions/Whistleblower Protections**

- Individuals (or *qui tam* plaintiffs) can sue for violations of either the FATA or the MFCA. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) in cases where the *qui tam* plaintiff litigates the case on his or her own.
- The FATA and the MFCA both 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 and (3) compensation for any costs or damages incurred. The FATA allows employees to collect punitive damages where appropriate.

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NEW YORK

The New York False Claims Act (“NYFCA”) makes it a civil offense to defraud the state or any local government. N.Y. STATE FIN. LAW §§ 187 – 194.

Liability and Damages/Statute of Limitations

- Actions that violate the NYFCA include, but are not limited to: (1) knowingly presenting, or causing to be presented, to any employee, officer or agent of the state or a local government (“government”), a false or fraudulent claim for payment or approval; (2) knowingly making, using or causing to be made or used, a false record or a statement to obtain a false or fraudulent claim paid or approved by the government; (3) conspiring to defraud the government by getting a false or fraudulent claim allowed or paid; and (4) knowingly making, using or causing to be made or used, a false record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the government.
- Violations of the NYFCA are punishable by civil fines of not less than \$6,000 or more than \$12,000 per violation, plus three times the amount of damages which the state sustains because of the violation. In addition, a violator is liable for the cost, including attorneys’ fees, of a civil action brought to recover any such penalty or damages.
- If the person committing the violation furnishes all known information to the officials responsible for investigating the false claim within thirty days after obtaining the information, the court may assess not more than two times the amount of damages sustained.
- A civil action under the NYFCA must be commenced no later than 10 years after the date on which the violation is committed.

***Qui Tam* Actions/Whistleblower Protections**

- An individual (or *qui tam* plaintiff) may sue for violations of the NYFCA. Individuals who do so 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 attorneys’ 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 that information.
- The NYFCA provides important protections for whistleblowers. Any employee who is discharged or discriminated against by his or her employer because of lawful acts in furtherance of an action brought under the NYFCA is entitled to all reasonable relief necessary to make the employee whole. Such relief includes, but is not limited to, an injunction to restrain continued discrimination; reinstatement to the individual’s position and seniority rights; payment of two times back pay, plus interest; and compensation for any special damages sustained as a result of the discrimination.

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NORTH CAROLINA

The North Carolina State False Claims Act (“SFCA”) adopts any false claims acts or statutes that contain *qui tam* or whistleblower provisions that are similar to those found in the federal False Claims Act. N.C. GEN. STAT. §§ 1-605 to 1-618.

Liability and Damages/Statute of Limitations

- The actions that violate the SFCA include, but are not limited to: (1) knowingly presenting a false or fraudulent claim for payment; (2) knowingly making or using a false record or statement material to a false or fraudulent claim; (3) conspiring to commit a violation of this section; (4) knowingly making a false record or statement material to an obligation to pay or transmit money or property to the state; or (5) possessing custody or control of public property or money to be used by the state and knowingly delivering less property than the amount for which the person receives a certificate or receipt.
- Any person who violates SFCA shall be liable to the state for civil penalties of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages that the state sustains because of the violation, and the costs of investigation and prosecution of such violation. The court can reduce damages for SFCA violations if the false claims are voluntarily disclosed. Lawsuits must be filed by the later of either: (1) three years after the violation is discovered by the government official responsible for investigating violations (but no more than 10 years after the violation was committed), or (2) six years after the violation was committed.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the SFCA. Individuals who bring an action under the SFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney’s fees) if the *qui tam* plaintiff litigates the case on his or her own.
- The SFCA 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) special damages, if appropriate.

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OHIO

At this time, there is no Ohio false claims act that closely parallels the federal False Claims Act. However, Ohio law requires that specified health care entities provide certain information about the federal False Claims Act, Ohio false statement laws, and whistleblower protections. OHIO REV. CODE ANN. § 5162.15. In addition, Section 2913.40 of the Ohio Revised Code is a criminal law statute that is designed to prevent the commission of fraud on the state medical assistance program. OHIO REV. CODE ANN. § 2913.40. Ohio law also prohibits false statements made in connection with an application for Medicaid eligibility. OHIO REV. CODE ANN. § 2913.401. These laws *do not* contain provisions that allow individuals (or *qui tam* plaintiffs) with original information concerning fraud to file a lawsuit on behalf of the state.

Violations of Section 2913.40 (related to Medicaid fraud), Section 2913.401 (related to Medicaid eligibility fraud), and Section 2921.13 (related to certain false statements) result in penalties ranging from a first degree misdemeanor to a third, fourth or fifth degree felony, depending on the value of the property, services or funds obtained. A person found guilty of violating Section 2913.40 may have to pay the costs of the investigation and prosecution of the violation. A person found guilty of Section 2913.401 can be compelled to make restitution of the amount of benefits received for which the applicant or recipient was not eligible (plus interest). A person who violates Section 2921.13 is liable in a civil action to any person harmed by the violation. The remedies set forth in Sections 2913.40, 2913.401, and 2921.13 do not preclude the use of any other criminal or civil remedy.

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OKLAHOMA

The Oklahoma Medicaid False Claims Act (“OMFCA”) was enacted by the legislature to combat fraud and abuse in the Medicaid program. OKLA. STAT. tit. 63, §§ 5053 – 5053.7.

Liability and Damages

- Actions that violate the OMFCA include, but are not limited to: (1) knowingly presenting, or causing to be presented, to an officer or employee of the state, a false or fraudulent claim for payment or approval; (2) knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the state; (3) conspiring to defraud the state by getting a false or fraudulent claim paid or allowed; or (4) possessing custody or control of public property or money to be used by the state and knowingly delivering less property than the amount for which the person receives a certificate or receipt.
- A person who violates the OMFCA is liable to the state for a civil penalty in an amount consistent with the Federal False Claims Act (31 U.S.C. § 2729(a)) as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74), plus three times the amount of damages which the state sustains because of the violation.
- A civil action brought under the OMFCA may not be brought: (1) more than six years after the date on which the violation is committed, or (2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, whichever occurs last, but in no event more than 10 years after the date on which the violation is committed.

***Qui Tam* Actions/Whistleblower Protections**

- Individuals (or *qui tam* plaintiffs) can sue for violations of OMFCA. *Qui tam* plaintiffs who report fraud receive between 15 and 25 percent of the amount recovered in cases where the state prosecutes the case, and between 25 and 30 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 OMFCA 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 special damages incurred.

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OREGON

The Oregon False Claims Act (“OFCA”) makes it a civil offense to defraud the state or any local government. OR. REV. STAT. §§ 180.750 to 180.785. Oregon also has a False Claims for Health Care Payments Act (“FCHCP”) which imposes criminal liability for making false claims for health care payments. OR. REV. STAT. §§ 165.690 to 165.698.

Liability and Damages

- Actions that violate the OFCA include but are not limited to: (1) knowingly presenting for payment or approval, or causing to be presented for payment of approval, a false claim; (2) knowingly making, using, or causing to be made or used, a false record or statement; (3) conspiring to present for payment or approval a claim the person knows is false; or (4) making or using a false statement to conceal, avoid or decrease an obligation to pay or transmit money or property to a public agency if the person knows the statement is false.
- Violations of the FCHCP include (1) knowingly making or causing to be made a claim for health care payment that contains any false statement in order to receive a health care payment; or (2) knowingly concealing from or failing to disclose information to a health care payor with the intent to obtain a health care payment to which the person is not entitled.
- A person who violates to OFCA is liable to the state for a civil penalty of \$10,000 or twice the amount of damages, whichever is greater, for each violation (plus reasonable costs and attorney fees). The court may not award a penalty if the defendant fully cooperates with the investigation and provides the state with all known information concerning the violation within 30 days of acquiring the information. Violations of the FCHCP are criminal offenses punishable by imprisonment and/or significant monetary penalties.
- Lawsuits under the OFCA must be brought within three years after the date that the officer charged with the responsibility for the claim discovers the violation. In no event may an action be brought more than 10 years after the date on which the violation was committed. Lawsuits under the FCHCP must be brought five years from

***Qui Tam* Actions/Whistleblower Protections**

- Currently, neither the OFCA nor the FCHCP contain *qui tam* or relator provisions. Additionally, there are no provisions for a private citizen to share a percentage of any monetary recoveries.
- The Oregon Bureau of Labor of Industries has enacted regulations prohibiting discrimination against employees based on whistle blowing activities described in certain Oregon statutes. For example, Oregon Administrative Rule 839-010-0100 prohibits any employer from discriminating or retaliating against an employee because the employee has, in good faith, reported a criminal activity; caused a complainant’s information or complaint to be filed against any person; or cooperated with a law enforcement agency criminal investigation.

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PENNSYLVANIA

Pennsylvania has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a fraud and abuse statute that makes it unlawful for a person to submit false or fraudulent claims to the Pennsylvania medical assistance program. Violations of this statute are criminal and civil offenses punishable by imprisonment and substantial fines and monetary penalties. 62 PA. STAT. ANN. § 1407.

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RHODE ISLAND

The Rhode Island State False Claims Act (“RISFCA”) imposes liability on any person or corporation who knowingly presents a false or fraudulent claim to the state, misappropriates public property, or avoids an obligation to the state. R.I. GEN. LAWS §§ 9-1.1-1 to 9-1.1-9.

Liability and Damages/Statute of Limitations

- The actions that violate the RISFCA include, but are not limited to: (1) knowingly present a false or fraudulent claim for payment; (2) knowingly make or use a false record or statement material to a false or fraudulent claim; (3) conspire to commit a violation of this section; (4) knowingly make a false record or statement material to an obligation to pay or transmit money or property to the state; or (5) possessing custody or control of public property or money to be used by the state and knowingly delivering less than the entirety of that property.
- A person who violates the RISFCA is liable to the state for a civil penalty in an amount consistent with the Federal False Claims Act (31 U.S.C. § 2729(a)) as adjusted by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Public Law 114-74), plus three times the amount of damages which the state sustains because of the violation.
- Lawsuits must be filed by the later of either: (1) three years after the violation is discovered by the Rhode Island official responsible for investigating violations (but no more than 10 years after the violation was committed), or (2) six years after the violation was committed.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the RISFCA. Individuals who bring an action under the RISFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 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 that information.
- The RISFCA protects whistleblowers from retaliation. 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, (3) compensation for any costs or damages they have incurred, and (4) special damages, if appropriate.

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SOUTH CAROLINA

South Carolina has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act.¹ It has, however, adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the South Carolina Medicaid program. It is also unlawful for a provider to knowingly and willfully conceal or fail to disclose any material fact, event, or transaction that affects payment or reimbursement under the state’s Medicaid plan. Violations of the statute are both civil and criminal offenses and are punishable by imprisonment and significant monetary penalties. S.C. CODE ANN. § 43-7-60; S.C. CODE ANN. REGS. 126-403.

¹ The most recent legislative attempt to enact a False Claims Act, S. 40, was pre-filed on December, 12, 2018, and was introduced and referred to the Committee on the Judiciary on January 8, 2019. As of October 24, 2019, there has been no recent movement with this bill.

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SOUTH DAKOTA

South Dakota has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid anti-fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the South Dakota Medicaid program. Violations of the statute include: (1) making or causing to be made a claim, knowing the claim to be false, in whole or in part, by commission or omission; (2) making or causing to be made a statement or representation for use in obtaining or seeking to obtain authorization to provide a good or a service, knowing the statement or representation to be false; (3) making or causing to be made a statement or representation for use by another in obtaining a good or a service under the Medical Assistance program, knowing the statement or representation to be false; or (4) making or causing to be made a statement or representation for use in qualifying as a provider of a good or a service under the Medical Assistance program, knowing the statement or representation to be false. Violations of the statute are both civil and criminal offenses and are punishable by imprisonment and significant monetary penalties. S.D. CODIFIED LAWS § 22-45-2.

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TENNESSEE

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 to 4-18-108. The Tennessee Medicaid False Claims Act (“TMFCA”) applies solely to false claims under the Medicaid program. TENN. CODE ANN. §§ 71-5-181 to 71-5-185.

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 \$25,000 per claim plus three times the amount of damages which the state sustains may be imposed for TMFCA violations.
- Under the TMFCA, a civil suit can be filed by 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)

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compensation for any costs or damages they have incurred. Under the TFCA, the employer may also be liable for punitive damages.

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TEXAS

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 – 36.132. Texas also enacted the Medical Assistance Program and the Award for Reporting Medicaid Fraud, Abuse or Overcharges. TEX. HUM. RES. CODE ANN. §§ 32.039 et seq. and TEX. HUM. RES. CODE ANN §§ 531.101 et seq.

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; (4) conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent; or (5) knowingly making or using of a false record or statement material to an obligation to pay or transmit money or property to this state under the Medicaid program, or knowingly concealing or avoiding an obligation to pay or transmit money or property to this state under the Medicaid program.
- 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 \$5,500 to \$15,000 (or the amounts imposed as provided by 31 U.S.C. § 3729(a)) 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 \$5,500 to \$11,000 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.

***Qui Tam* Actions/Whistleblower Protections**

- Individuals (or *qui tam* plaintiffs) can sue for violations of the FPL. Individuals who bring an action under the FPL receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney’s fees) if the *qui tam* plaintiff litigates the case on his or her own. 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 (including litigation costs and attorney fees).

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UTAH

The Utah False Claims Act (“UFCA”) imposes criminal and civil liability for making false claims for medical benefits. UTAH CODE. ANN. §§ 26-20-1 to 26-20-15.

Liability and Damages

- Violations of the UFCA include but are not limited to: (1) making or causing to be made false statements in an application for medical benefits; (2) making or causing to be made or presented to an employee or officer of the state a claim for medical benefits which is false, fraudulent, or for services which were not rendered or are not medically necessary; or (3) falsifying records in order to withhold state money or property, deceive state authorities, or retain unauthorized payments.
- Violation of the UFCA requires restitution and payment to the state’s for investigative costs. In addition, violations may result in a misdemeanor or felony of the second or third degree based on the dollar amounts of the fraudulent claims. Civil penalties for violating the UFCA range from \$5,000 to \$10,000 per claim, plus three times the amount of damages that the state sustains. A criminal action need not be brought in order for an individual to be held civilly liable under the UFCA.
- Under the UFCA, lawsuits must be brought by 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**

- The UFCA does not currently provide for a private right of action (or *qui tam* action).
- Additionally, the UFCA does not have a whistleblower protection provision. Instead, Utah law provides protection for state employees, which prohibits retaliation against state employees who disclose violations of state or federal law. UTAH CODE ANN. §§ 67-21-1 to 67-21-10.

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VIRGINIA

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 to 8.01-216.19.

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; (4) making or using a false record to avoid payments owed to the Commonwealth or a political subdivision; or (5) possessing custody or control of Commonwealth property or money and, intending to defraud the Commonwealth, knowingly delivering less than the entirety of that property.
- The Commonwealth imposes penalties of \$10,957 to \$21,916 (these limits are automatically adjusted to equal the amounts allowed under the Federal False Claims Act, 31 U.S.C. § 3729 et seq., as amended by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 Note, P.L. 101-410)), plus 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 by the later of either: (1) six year after the violation was committed, or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the Commonwealth charged with responsibility to act in the circumstances (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 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 (including litigation costs and reasonable attorney fees).

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VERMONT

The Vermont False Claims Act (“VFCA”) imposes liability on individuals who knowingly present false or fraudulent claims for payment to the state; misappropriate state property; conceal, avoid or decrease an obligation to pay or transmit property to the State of Vermont; or conspire to commit a violation of the statute. 32 V.S.A. §§630 – 642.

Liability and Damages/Statute of Limitations

- he VFCA states that no person shall: (1) knowingly present, or cause to be presented, a false or fraudulent claim for payment or approval; (2) knowingly make, use, or cause to be made or used, a false record or statement; (3) knowingly present, or cause to be presented, a claim that includes items or services resulting from a violation of 13 V.S.A. chapter 21 or section 1128B of the Social Security Act, 42 U.S.C. §§ 1320a–7b; (4) knowingly present, or cause to be presented, a claim that includes items or services for which the State could not receive payment from the federal government because the claim includes designated health services furnished to an individual on the basis of a referral that would result in the denial of payment; (5) have possession, custody, or control of property or money to be used by the State, and knowingly deliver less than all of that property or money for which the person receives a certificate or receipt; (6) be authorized to make or deliver a document certifying receipt of property used, or to be used, by the State or its agent and, intending to defraud the State, make or deliver the receipt without completely knowing that the information on the receipt is true; (7) knowingly buy, or receive as a pledge of an obligation or debt, public property from an officer or employee of the State, who lawfully may not sell or pledge the property; (8) enter into a written agreement or contract with an official of the State or its agent knowing the information contained therein is false; (9) knowingly make or use a false record or statement material to an obligation to pay or transmit money or property to the State; (10) knowingly conceal or knowingly and improperly avoid or decrease an obligation to pay or transmit money or property to the State; (11) benefit from a mistaken submission of a false claim and fail to timely disclose the claim; or (12) conspire to violate the VFCA.
- Vermont imposes penalties of \$5,500 to \$11,000 per claim (as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461)), three times the amount of damages to the State, plus the costs of the investigation and prosecution of such violation
- A civil suit must be filed by the later of either: (1) six year after the violation was committed, or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances (but no more than ten years after the violation was committed).

***Qui Tam* Actions/Whistleblower Protections**

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- A whistleblower filing a False Claims Act case may receive between 15 and 25 percent of any recovery in matters joined by the Vermont Attorney General, and between 25 and 30 percent of the recovery if the whistleblower proceeds on his own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information. The court may reduce the amount of the award if the whistleblower's allegations are based on publicly disclosed information, or if the whistleblower planned and initiated the fraud.
- The VFCA 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 (including litigation costs and reasonable attorney fees).

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WASHINGTON

The Washington State Medicaid Fraud False Claims Act (“MFFCA”) imposes liability on any person or corporation who knowingly presents a false or fraudulent claim to the Washington Medicaid program, misappropriates public property, or avoids an obligation to the Washington state Medicaid agency. WASH. REV. CODE §§ 74.66.005 – 74.66.130.²

Liability and Damages/Statute of Limitations

- The actions that violate the MFFCA include, but are not limited to: (1) knowingly presenting a false or fraudulent claim for payment; (2) knowingly making or using a false record or statement material to a false or fraudulent claim; (3) conspiring to commit a violation of this section; (4) knowingly making a false record or statement material to an obligation to pay or transmit money or property to the state; or (5) possessing custody or control of state property or money and knowingly delivering less than the entirety of that property.
- Any person who violates the MFFCA shall be liable to the state for a civil penalty between \$10,975 and \$21,916 (or the inflation adjusted penalty amount imposed as provided by 31 U.S.C. Sec. 3729(a)), plus three times the amount of damages that the state sustains because of the violation, and the costs of investigation and prosecution of such violation. The court can reduce damages for MFFCA violations if the false claims are voluntarily disclosed.
- civil action under this section may be brought at any time, without limitation after the date on which the violation of the MFFCA occurred.

Private or *Qui Tam* Actions/Whistleblower Provisions

- Individuals (or *qui tam* plaintiffs) can sue for violations of the MFFCA. Individuals who bring an action under the MFFCA receive between 15 and 25 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 30 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.
- If defendant prevails, and the court finds that the privately prosecuted case was frivolous, the court may award fees and expenses to the defendant.
- The MFFCA 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) special damages, if appropriate.

² Effective June, 30 2024, the *qui tam* provisions of the Washington MFFCA will be repealed.

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WEST VIRGINIA

West Virginia has not adopted any false claims acts or statutes that contain *qui tam* provisions that are similar to those found in the federal False Claims Act. It has, however, adopted a generally applicable Medicaid Fraud Control Act that makes it unlawful for a person to submit false and fraudulent claims to the West Virginia Medicaid program. Violations of the Act are both civil and criminal offenses and are punishable by imprisonment and significant monetary penalties. The Act also establishes a Medicaid Fraud Control Unit, which is responsible for investigating false claims to the state Medicaid program. W. VA. CODE §§ 9-7-1 to 9-7-9.

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WISCONSIN

Wisconsin does not currently have a false claims act or statutes that contain qui tam provisions that are similar to those found in the federal False Claims Act.³ It has, however, adopted several provisions that allow the state to prosecute Medicaid fraud. Wisconsin’s Public Assistance Act prohibits knowing presentation of false claims to state officials made in relation to the state’s Medicaid program. Violations of the Public Assistance Act result in fines between \$5,000 and \$10,000. WIS. STAT. ANN. § 49.485. The statute also prohibits knowing concealments and failures to disclose known events that affect a person's initial or continued right to a benefit or payment, both directly and for others on whose behalf application is made or benefits or payments are received. Each statement, representation, concealment or failure is punishable by a fine between \$100 and \$15,000. WIS. STAT. ANN. § 49.49(4m).

³ Wisconsin repealed its primary statute pertaining to false claims for medical assistance, Wis. Stat. § 20.931, effective July of 2015. The impact of the repeal was to eliminate private individuals’ authority to bring *qui tam* actions for false claims for medical assistance. The repeal also scaled back protections for whistleblowers.

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WYOMING

The Wyoming Medicaid False Claims ACT (“WMFCA”), modeled after the federal False Claims Act, imposes civil penalties for making or benefitting from false statements in a claim under the Medicaid program. WYO. STAT. ANN. §§ 42-4-301 to 42-4-306.

Liability and Damages/ Statute of Limitations

- Actions that violate the WMFCA include: (1) knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval; (2) knowingly making, using or causing to be made or used a false record or statement material to a false or fraudulent claim; (3) mistakenly benefitting from a false or fraudulent claim and failing to correct or disclose that mistake; or (4) conspiring to violate the WMFCA.
- Violations of the WMFCA result in liability in the amount of three times the amount of damages which the state sustains because of the violation. A person who violates the WMFCA is liable to the state for the cost of bringing a civil action to recover any penalties or damages, and results in civil penalties between \$1,000 and \$10,000 per violation. The court can reduce damages for WMFCA violations if the false claims are voluntarily disclosed.
- A civil suit must be filed by the later of either: (1) six year after the violation was committed, or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with responsibility to act in the circumstances (but no more than seven years after the violation was committed).

Qui Tam Actions/Whistleblower Protections

- Wyoming law only permits the state government and not private citizens or employees to file civil lawsuits to recover monetary damages. There are no *qui tam* or relator provisions, and there are no provisions allowing a private citizen to share a percentage of any monetary recoveries.
- The WMFCA provides limited protections for employee whistleblowers who act in good faith by reporting violations of the WMFCA. Employees who report fraud and subsequently experience retaliation are entitled to economic damages.