

1. Federal False Claims Act 31 U.S.C. §§ 3729 - 3733

The federal False Claims Act, also known as the “Lincoln Law,” was first enacted during the Civil War to address fraudulent activity in supplying goods to the Union Army. The law now applies to any federally funded contract or program and establishes liability for any person who knowingly presents or causes to be presented a false or fraudulent claim to the United States government for payment. In 1986, the False Claims Act was expanded to include Medicare and Medicaid programs.

2. Summary of Provisions

The False Claims Act prohibits knowingly making a false claim against the government. False claims can take the form of overcharging for a product or service, delivering less than the promised amount or type of service, delivering less than the promised amount or type of goods or services, underpaying money owed to the government and charging for one thing while providing another.

The False Claims Act imposes civil liability on any person or entity who:

- knowingly files a false or fraudulent claim for payments to Medicare, Medicaid or other federally funded health care program;
- knowingly uses a false record or statement to obtain payment on a false or fraudulent claim from Medicare, Medicaid or other federally funded health care program; or
- conspires to defraud Medicare, Medicaid or other federally funded health care program by attempting to have a false or fraudulent claim paid.

“Knowingly” means:

- actual knowledge that the information on the claim is false;
- acting in deliberate ignorance of whether the claim is true or false; or
- acting in reckless disregard of whether the claim is true or false.

3. Penalties

The False Claims Act is not a criminal statute and thus imposes civil penalties. No proof of specific intent is required. A person or entity, such as a hospital, found liable under the False Claims Act is subject to a civil money penalty of between \$5,500 and \$11,000 plus three times the amount of damages that the government sustained because of the illegal act. In health care cases, the amount of damages sustained is the amount paid for each false claim that is filed.

4. Qui Tam “Whistleblower” Provision

To encourage individuals to come forward and report misconduct involving false claims, the FCA includes a *qui tam* or whistleblower provision. Anyone may bring a *qui tam* action under the federal False Claims Act in the name of the United States in federal court. A *qui tam*

action is defined as a claim brought by an informer/relator under a statute that establishes a penalty for the commission or omission of a certain act. Part of the penalty paid by the wrongdoer is paid to the informer with the remainder going to the government.

5. Qui Tam Procedure

The case is initiated by an informer filing his or her lawsuit in a federal district court on behalf of the government for false or fraudulent claims submitted by an individual or an entity doing business with, or reimbursed by the United States government. The lawsuit is filed “under seal” and is not served on (presented to) the defendant at this time to enable the government to investigate the claim. The government has 60 days to investigate and decide whether it will pursue the action, in which case the complaint is unsealed and the Department of Justice or a United States Attorney’s office begins prosecuting the claim. If the government decides not to pursue the case, the person who filed the action has the right to continue with the case on his or her own. The government may join the action at a later date if it can demonstrate good cause for doing so. Any case must be brought within six years of the filing of the false claim.

6. Qui Tam Whistleblower Awards

If the government proceeds with the lawsuit and is successful, the person who filed the action will receive between 15 and 25 percent of any monies recovered for the government plus attorney fees and costs. The amount of the award depends on the contributions of the individual to the success of the case. If the government declines to pursue the case, the *qui tam* whistleblower will be entitled to between 25 and 30 percent of the proceeds of the case, plus reasonable expenses and attorneys’ fees and costs awarded against the defendant. The award may be reduced, however, if the court finds that the whistleblower planned and initiated the violation.

7. Qui Tam Whistleblower Anti-Retaliation Protections

Individuals within an organization who observe activities or behavior that may violate the law in some manner and who report their observations either to management or to governmental agencies are provided protections under the law. Whistleblowers initiating a *qui tam* action may not be discriminated or retaliated against in any manner by their employer. Employees, who are discharged, demoted, harassed, or confront discrimination in furtherance of a *qui tam* action or as a consequence of whistleblowing activity, are entitled to all relief necessary to make the employee whole.

8. Federal Program Fraud Civil Remedies Act 31 U.S.C. §§ 3801 - 3812

The Program Fraud Civil Remedies Act of 1986 (PFCRA) provides administrative remedies for making false claims to certain federal agencies, including the Department of Health and Human Services (HHS) separate from and in addition to, the judicial or court remedy for false claims provided by the Civil False Claims Act.

The Act is quite similar to the Civil False Claims Act in many respects, but is broader and more detailed, with differing penalties. The Act deals with submission of improper “claims” or “written statements” to a federal agency. PFCRA was enacted as a means to address lower dollar frauds, and generally applies to claims of \$150,000 or less.

9. Summary of Provisions

The PFCRA imposes liability on people or entities who file a claim that they know or have reason to know:

- is false, fictitious, or fraudulent;
- includes or is supported by any written statement that contains false, fictitious, or fraudulent information;
- includes or is supported by a written statement that omits a material fact, which causes the statement to be false, fictitious, or fraudulent, and the person or entity submitting the statement has a duty to include the omitted fact; or
- is for payment for property or services not provided as claimed.

10. Penalties

A violation of this section of the PFCRA is punishable by a \$5,000 civil penalty for each wrongfully filed claim, plus an assessment of twice the amount of any unlawful claim that has been paid.

In addition, a person or entity violates the PFCRA if they submit a written statement that they know or should know:

- asserts a material fact that is false, fictitious or fraudulent; or
- omits a material fact that they had a duty to include, the omission caused the statement to be false, fictitious, or fraudulent, and the statement contained a certification of accuracy.

Violations are investigated by the HHS Office of the Inspector General and enforcement actions must be approved by the Attorney General. PFCRA enforcement can begin with a hearing before an administrative law judge. Penalties may be recovered through a civil action brought by the Attorney General or through an administrative offset against “clean” claims. Because of the availability of other criminal, civil and administrative remedies, cases are not routinely prosecuted under PFCRA.

11. State False Claims Acts

Many states have enacted statutes like the Federal Claims Act that provide a civil remedy for the submission of false and fraudulent claims to state health care programs, including Medicaid. As of November 2006, at least twenty-five states have enacted civil false claims laws.

12. Specific Provisions of the False Claims Language in the Deficit Reduction Act (applies to LEAs, but not to states)