

False Claims Acts

Federal False Claims Act. The federal False Claims Act prohibits the knowingly submission of a false or fraudulent claim for payment to the federal government. It also prohibits the use of false statements or records for the purpose of obtaining an improper payment or concealing the receipt of such a payment. The Act applies to all claims for payment of an item or service furnished to a beneficiary of Medicare, Medicaid, or other federally-financed health care program. It also applies to certain claims-related filings and reports such as Medicare and Medicaid cost reports.

The term “knowingly” includes actual knowledge that a claim or statement is false, deliberate ignorance of the truth or falsity of a claim or statement (willful blindness), or reckless disregard for the truth or falsity of a claim or statement. This does not include honest mistakes or errors, but it may include failure to implement adequate measures to ensure the accuracy of claims or statements or failure to undertake prompt remedial steps to correct improper claims or statements once they are discovered.

Penalties for violation of the Act can include:

- civil penalties of up to three times the value of any improper payments received as the result of a false claim or statement, plus
- additional civil penalties of \$5,500 to \$11,000 per false claim.

As further encouragement to report false claims, the Act also authorizes private “whistleblowers” to file a suit against another private party for alleged false claims. The federal government has the option to join the suit or to let the original private party pursue the matter on his or her own. If suit ultimately results in a monetary judgment or settlement, the whistleblower who initially brought the suit may be awarded a percentage of the funds recovered. A whistleblower’s share may be reduced or eliminated if he or she is found to have planned and initiated the false claims violation.

The Act prohibits retaliation against an employee who files a whistleblower suit. An employee may not be discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against in his or her employment as a result of the employee’s lawful acts in furtherance of a false claims action. The whistleblower may be entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination such as litigation costs and reasonable attorney’s fees.

State False Claims Acts. A number of states have adopted laws similar to the federal False Claims Act covering claims and statements relating to state government payments. These generally include items and services furnished to state Medicaid beneficiaries or beneficiaries of other state-sponsored health care programs.

Penalties for violation of state false claims acts vary, but are generally designed to be large enough to pose a significant deterrent to fraudulent behavior. Many state acts also include whistleblower provision and protections.