

ADDENDUM TO HEALTHCARE PARTNERS’

POLICY NO. HCP-TQ-09,

THE CODE OF CONDUCT, AND THE

**SUMMARY OF FEDERAL FALSE CLAIMS ACT
AND ANALOGOUS STATE LAWS**

(Revised: May 2015)

This Addendum is intended to supplement the Fraud, Waste, and Abuse Detection and Prevention Policy (the “Policy”) of HCP Holdings, LLC (“HealthCare Partners”) for purposes of compliance with the Deficit Reduction Act of 2005 (the “DRA”). Pursuant to the DRA, HealthCare Partners is required to provide to all teammates of HealthCare Partners and HealthCare Partners’ subsidiary organizations included in the HealthCare Partners family of brands (collectively known as “HealthCare Partners), and to any contractor or agent of HealthCare Partners detailed information regarding: (a) the respective roles of the federal False Claims Act (the “Federal FCA”), the federal Program Fraud Civil Remedies Act (“PFCRA”), and analogous state laws (collectively, the “State FCAs”) in preventing and detecting fraud, waste, and abuse in Federal health care programs; (b) administrative remedies for false claims and statements established under the Federal FCA and the State FCAs, respectively; (c) whistleblower protections under the Federal FCA and the State FCAs, respectively; and (d) HealthCare Partners’ policies and procedures for detecting and preventing fraud, waste, and abuse. This Addendum provides detailed information regarding requirements (a) through (c) identified in the immediately preceding sentence. For information regarding HealthCare Partners’ internal policies and procedures for detecting and preventing fraud, waste, and abuse, please see the Policy and the additional policies and procedures identified therein.

SUMMARY OF FEDERAL FALSE CLAIMS ACT

The Federal FCA (*see* 31 U.S.C. §§ 3729 – 3733) was enacted in 1863 by a Congress concerned that contracted suppliers of goods to the Union Army during the Civil War were defrauding the Union Army. Over the life of the statute, the Federal FCA has been amended several times and interpreted on hundreds of occasions by federal courts (which sometimes issue conflicting interpretations of the statute). The purpose of this summary is not to explain how the Federal FCA evolved over the decades since its enactment or to discuss judicial interpretations of its provisions. Rather, in this summary, we endeavor to explain the most significant elements of the Federal FCA to give an introductory understanding of the Federal FCA and how it works.

Liability under the Federal FCA

In very general terms, the Federal FCA imputes liability to any person who knowingly submits a false claim to the Federal Government, causes another to submit a false claim to the Federal Government, or knowingly makes a false record or statement to get a false claim paid by the Federal Government. The Federal FCA also imputes liability for “*reverse false claims*,” which are false claims premised on improper actions taken by a person to avoid having to pay money that is owed to the Federal Government. Additionally, the Federal FCA creates liability for those who conspire to violate the Federal FCA.

Damages, Penalties, and Administrative Remedies

Pursuant to the Federal FCA, a person or entity that is held liable under the Federal FCA must pay a civil penalty of between \$5,500 and \$11,000 for each false claim (these amounts may be adjusted from time to time) and treble (*i.e.*, three times) the amount of the Federal Government’s damages. Under certain circumstances, where a person who has violated the Federal FCA timely reports the violation to the Federal Government, the Federal FCA permits the liability to be reduced to an amount not less than double damages (although such reduction is discretionary).

The Knowledge Requirement

A person does not violate the Federal FCA merely by submitting a false claim to the Federal Government. Rather, to violate the Federal FCA, a person must have submitted, or caused the submission of, a false claim (or made a false statement or record, etc.) ***and have knowledge of the falsity of the claim***. Under this standard, for a person to be held liable under the Federal FCA, such person must act with: (1) actual knowledge; (2) deliberate ignorance of the truth or falsity of the information; or (3) reckless disregard of the truth or falsity of the information. However, this standard does not require specific intent to defraud the government.

Definition of a “Claim”

The Federal FCA defines the term “*claim*” as a request or demand, whether under a contract or otherwise, for money or property made: (a) directly to an officer, employee, or agent of the Federal Government; or (b) to a contractor, grantee, or other recipient if the money is to be spent or used on the Federal Government’s behalf or to advance a Federal Government program or interest, provided that the Federal Government provides any of the money or property demanded or the Federal Government will reimburse the contractor or grantee.

Qui Tam Provisions

The Federal FCA allows private persons to file suit for violations of the Federal FCA on behalf of the Federal Government. A suit filed by an individual on behalf of the

Federal Government is known as a “*qui tam*” action, and the person bringing the action is referred to as a “*relator*.”

a. Filing a *qui tam* complaint

A *qui tam* complaint must be filed with a federal court under seal. The complaint and a written disclosure of all the relevant information known to the relator must be served on the U.S. Attorney for the judicial district where the *qui tam* was filed and on the Attorney General of the United States.

b. Government investigation

The *qui tam* complaint is initially sealed for 60 days, during which time the Federal Government is required to investigate the allegations in the complaint. If the Federal Government cannot complete its investigation within the initial 60-day period, it can seek extensions of the seal period while it continues its investigation. Once it has concluded its investigation, the Federal Government must then notify the court that it is proceeding with the action (generally referred to as “*intervening*” in the action) or declining to intervene in the action, in which case the relator can proceed with the action, generally at the relator’s own expense.

c. Rights/Responsibilities of the Parties to a *Qui Tam* Action

If the Federal Government intervenes in the *qui tam* action, it has the primary responsibility for prosecuting the action. It can dismiss the action, even over the objection of the relator, so long as the Court gives the relator an opportunity for a hearing; and the Federal Government can settle the action even if the relator objects, so long as the relator is given a hearing and the Court determines that the settlement is fair. If a relator seeks to settle or dismiss a *qui tam* action, it must obtain the consent of the Federal Government. Once the Federal Government intervenes, the Federal Government and the defendant can ask the Court to limit the relator’s participation in the litigation.

d. Award to the Relator

If the Federal Government intervenes in the *qui tam* action, the relator is entitled to receive between 15 and 25 percent of the amount recovered by the Federal Government through the *qui tam* action. If the Federal Government declines to intervene in the action, the relator’s share is increased to 25 to 30 percent if the relator prevails. Under certain circumstances, the relator’s share may be reduced to no more than 10 percent and, if the relator planned and initiated the fraud, the Court may reduce the award without limitation. The relator’s share is paid to the relator by the Federal Government out of the payment received by the Federal Government from the defendant. If a *qui tam* action is successful, the relator is entitled to legal fees and other expenses of the action to be paid by the defendant. The Federal FCA also provides that, if the Federal Government chooses to obtain a recovery from the defendant in certain types of proceedings other

than the relator's Federal FCA suit, the relator is entitled to the same share of the recovery as if the recovery was obtained through the relator's Federal FCA suit.

Notwithstanding the foregoing, a relator that files and proceeds with a frivolous qui tam action may incur substantial financial liabilities. If the Federal Government does not proceed with the action and the relator conducts the action, the Court may award to the defendant its reasonable attorneys' fees and expenses in the event the defendant prevails in the action and the Court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. Such fees and expenses can be substantial.

e. Statutory Bars to Qui Tam Actions

The Federal FCA provides several circumstances, in which a relator cannot file or pursue a *qui tam* action, including:

1. The relator was convicted of criminal conduct arising from his or her role in the Federal FCA violation;
2. Another *qui tam* concerning the same conduct already has been filed (this is known as the "*first to file bar*");
3. The government already is a party to a civil or administrative money proceeding concerning the same conduct;
4. The *qui tam* action is based upon information that has been disclosed to the public through any of several means: criminal, civil, or administrative hearings in which the government is a party, government hearings, audits, reports, or investigations, or through the news media (this is known as the "*public disclosure bar*;" and
5. The statutory time period for filing a claim has lapsed.

Whistleblower Protections

The Federal FCA includes a provision which protects whistleblowers from retaliation from their employers. In general, the Federal FCA entitles any employee, contractor, or agent to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is 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, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop one or more violations of the Federal FCA.

SUMMARY OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

PFCRA is a separate, but related, statutory scheme that provides for administrative remedies against any person who makes, or causes to be made, a false claim or written statement to certain federal agencies, including the Department of Health and Human Services. In contrast to the Federal FCA, under PFCRA, the determination of whether a claim is false and the imposition of fines and penalties are made by the federal agency as opposed to the federal court system (with the exception of the judicial review process). PFCRA addresses lower dollar fraud, and generally applies to claims of \$150,000 or less. *See* 31 U.S.C. §§ 3801, et seq.

SUMMARY OF STATE FALSE CLAIMS ACTS

PLEASE NOTE: Although we provide a summary of each of the State FCAs, this does not mean that each State FCA applies directly to the HealthCare Partners-affiliated entity with which you work. Generally speaking, a particular State FCA is applicable to a HealthCare Partners-affiliated entity only if the HealthCare Partners-affiliated entity provides services that are reimbursed or paid for by that state's Medicaid program. If you have any questions concerning the applicability of a particular State FCA, please contact Team Quest at: CorporateCompliance@healthcarepartners.com

This is a summary only. If you would like to read the full text of a particular state's State FCA, the text of such statutes is generally publically available, in electronic form on the respective state's governmental website.

Alabama

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Under Alabama law, an individual may be convicted of a felony if he or she with intent to defraud or deceive:

- Makes, or causes to be made or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for any payment, regardless of amount, from the Medicaid Agency, knowing the same to be false; or
- Makes, or causes to be made, or assists in the preparation of any false statement, representation, or omission of a material fact in any claim or application for medical benefits from the Medicaid Agency, knowing the same to be false.

Ala. Code § 22-1-11(a).

Penalties: Persons found guilty shall be fined not more than \$10,000 or imprisoned for not less than one year nor more than five years, or both. Ala. Code § 22-1-11(a).

Administrative sanctions may also be taken against the provider, including suspension or termination of the provider's Medicaid participation and restitution of any improper payments. Ala. Admin. Code §560 - X- 4 - .04.

Bringing an Action: Alabama law does not contain *qui tam* or relator provisions. There are also no provisions for a private citizen to share a percentage of any monetary recoveries.

Statute of Limitations: Actions pursuant to Alabama’s fraud laws must be brought within two years from when the fraud was or reasonably should have been discovered. Ala. Code § 6-2-38.

Whistleblower Protections: Alabama law protects public employees who report potential violations of laws against retaliation. Ala. Code §§ 36-25-24 and 36-26A-1 et seq.

Alaska

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Although Alaska does not have a specific state FCA, it has adopted a generally applicable medical assistance fraud statute that makes it unlawful for a person to submit false and fraudulent claims to the Alaska Medicaid program. Alaska Stat. § 47.05.210.

Penalties: The authorized sanctions for violating the statute include, but are not limited to:

- Recoupment of the overpayments;
- Mandatory claims review before payment; and
- Termination of participation in the Alaska Medicaid program.

Alaska Stat. § 47.05.240, Alaska Admin. Code tit. 7 §§ 43.950, 43.955.

Bringing an Action: The Alaskan Medicaid fraud laws do not contain *qui tam* or whistleblower provisions. However, other Alaska statutes allow for actions in the name of state, political subdivisions, or public corporations. Alaska Stat. § 09.10.120.

Statute of Limitations: Actions brought pursuant to Alaska’s medical assistance fraud statute must be brought in the name of or for the benefit of the state, within six years of the discovery the facts constituting the fraud. Alaska Stat. § 09.10.120.

Whistleblower Protections: Alaskan statutes include whistleblower protection provisions for public employees. The statutes do not address whistleblower protection provisions related to employees generally. Alaska Stat. § 39.90.100.

Arizona

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Arizona law prohibits false and fraudulent claims from being submitted to the state Medicaid program where a person knows or has reason to know that the claim:

- Is for medical or other services that were not provided as claimed;
- Is false or fraudulent;
- Relates to an individual who was terminated or suspended from participation in the program on the date services were rendered;
- Is for an item or service that is substantially in excess of the individual's needs or of a quality that fails to meet established standards of health care;
- Relates to a patient who was not a member on the date listed on the submitted claim;
- Is for services provided by, or under the supervision of, an individual who (1) was not a licensed physician, (2) obtained a medical license through misrepresentations of material fact, or (3) falsely represented to a patient that a physician was certified in a specialty field; or
- Is submitted in violation of an agreement between the provider and the state or administration.

Ariz. Rev. Stat. Ann. §36-2918.

Penalties: Violation of the Arizona statute above can result in civil penalties not to exceed \$2,000 for each item or service falsely claimed and an assessment not to exceed two times the amount claimed for each item or service. Penalties may include state monies expended to conduct an investigation, audit or inquiry. Ariz. Rev. Stat. Ann. §36-2918(B) and Ariz. Admin. Code §R9-22-1101, et seq.

Bringing an Action: All contractors, subcontracted providers of care and noncontracting providers are required by law to report, in writing, any cases of suspected fraud or abuse. Any person who makes a report, in good faith, will be immune from civil liability, unless that person has been charged with or is suspected of the fraud or abuse reported. Ariz. Rev. Stat. Ann. §36-2918.01. Any contractor, subcontracted provider of care, or noncontracting provider who fails to report, commits an act of unprofessional conduct and is subject to disciplinary action. This duty to report fraudulent schemes and practices can be found at Ariz. Rev. Stat. Ann. §13-2311.

Statute of Limitations: Arizona law does not contain a statute of limitations for actions brought by the State of Arizona. However, Arizona law does require commencement and prosecution within three years after a cause of action accrues. For relief on the ground of fraud or mistake, causes of action shall not be deemed to have accrued until the discovery

by the aggrieved party of the facts constituting the fraud or mistake. Ariz. Rev. Stat. Ann. §12-543.

Whistleblower Protections: Whistleblowers are protected from civil liability for reporting suspected fraud, unless the whistleblower has been charged with or is suspected of the reported fraud. Ariz. Rev. Stat. Ann. §36-2918.01(B). Arizona also provides separate whistleblower protections for public employees. Ariz. Rev. Stat. Ann. §38-531, et. seq., Ariz. Rev. Stat. Ann. §23-1501.

Arkansas

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: The Arkansas Medicaid Fraud False Claims Act provides that the following constitute a violation of the law:

- Knowingly making false statements in any application for any benefit or payment or in determining rights to a benefit or payment under the Arkansas Medicaid program;
- Knowingly makes or causes to be made any false statement or representation of a material fact use in determining rights to a benefit or payment;
- Having knowledge of any occurrence of any event affecting initial or continued rights to benefits or payments;
- Applying to receive any benefit or payment for the use and benefit of another, and knowingly using the benefit or payment, or any part thereof, for other than the use and benefit of the other person;
- Knowingly presenting or cause to be presented, a claim for payment for physician's services where the physician is not licensed;
- Soliciting or receiving remuneration (kickback, bribe, rebate) directly or indirectly, overtly or covertly, in cash or kind, to refer patients for items or services or purchase, lease, order or arrange payment for any good, service, facility or item payable under the Act;
- Knowingly making or inducing a false statement relating to the conditions or operation of a facility so that the facility qualifies for certification or recertification;
- Knowingly charging a patient for services at a rate in excess of established state rates;
- Knowingly accepting, soliciting or receiving any gift, money, donation or other consideration as a precondition for admission into a hospital or other qualified facility; or
- Knowingly participating in or permitting the participation of any individual previously found guilty of Medicaid fraud, theft of public benefits or abuse of adults.

Ark. Stat. §§ 20-77-901 et seq.

Penalties: Penalties include full restitution and a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation, plus three times the amount of all payments found to have been fraudulently received. Damages may be reduced to no less than two times the damages sustained by the state and no civil penalty if mitigating factors are revealed. Ark. Stat. § 20-77-903. Criminal penalties and fines may also be imposed. However, both criminal and civil penalties shall not be applied to the same payment received or claim made by any person under the Arkansas Medicaid Program or its fiscal agents. Ark. Code Ann. § 5-55-101 et seq. In April, 2011, Arkansas enacted an amendment to the Medicaid Fraud False Claims Act to provide a larger reward to individuals who provide information that aids the state in prosecuting fraud. While the previous statute had capped the monetary award at \$100,000, the 2011 amendment provides that the state may award up to 10% of the penalty recovered to an individual informer. Ark. Code Ann. §20-77, S.B. 838, 88th Gen. Assemb.; Reg. Sess. (Ark. 2011), §5-55-113.

Bringing an Action: There is no private right of action (*qui tam*) under the Arkansas Medicaid Fraud False Claims Act. However, the court may pay sums not exceeding 10% of the aggregate penalty recovered, but not more than \$100,000, to a person who provided information that led to the detecting and bringing to trial and punishment of persons guilty of violating the Medicaid fraud laws. Ark. Stat. § 20-77-911.

Statute of Limitations: Under the Arkansas Medicaid Fraud False Claims Act, the statute of limitations for filing suit is five years from the date on which the violation has occurred. Ark. Stat. § 20-77-908.

Whistleblower Protections: The Arkansas Medicaid Fraud False Claims Act does not have an explicit whistleblower protection provision. Notwithstanding any other law to the contrary, no person is subject to any civil or criminal liability for providing access to records used to investigate whether any person may have committed the crime of Medicaid fraud. Ark. Code Ann. §5-55-104(d). Arkansas Code also provides whistleblower protection for public employees. Ark. Stat. §§ 21-1-603, et. seq.

California

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the California False Claims Act if he/she:

- Knowingly presents, or causes to be presented a false claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, directly or indirectly, a false record or statement to get a false claim paid or approved;
- Conspires to defraud the government by getting a false claim allowed or paid;
- Has possession, custody or control of public property or money used or to be used by the government and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the government and knowingly makes or delivers a receipt that falsely represents the property used or to be used;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who may not lawfully sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to or from the government; or
- Benefits from an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.

Cal. Gov. Code, § 12651.

Penalties: A person in violation of the above is liable for three times the amount of damages sustained, the cost of bringing the action, and a civil penalty of not less than \$5,000 and not more than \$10,000 for each false claim. Damages can be reduced to no less than two times the damages sustained, and no civil penalty, if the person voluntarily discloses the false claims violations and cooperates with the investigation. Cal. Gov. Code, § 12651(b). In addition, enrollment in the California Medicaid program may be denied for any applicant that is under investigation for, or that has been convicted of a felony or misdemeanor involving, fraud or abuse within the previous ten years. Cal. W&I Code §14043.36.

Bringing an Action: *Qui tam* actions are allowed in California. The plaintiff in a *qui tam* action will be awarded 15%, but not more than 33%, of the proceeds of the action or settlement. If the state chooses not to proceed with a *qui tam* action, the plaintiff will

receive an amount not less than 25% and not more than 50% of the proceeds of an action or settlement. Cal. Gov. Code, § 12652.

Statute of Limitations: A civil action brought under this statute may not be filed more than three years after the date of discovery by the Attorney General or prosecuting authority with jurisdiction to act under this statute, or, in any event, not more than ten years after the date on which the violation was committed. Cal. Gov. Code, § 12654.

Whistleblower Protections: California law forbids any employer from adopting, creating or enforcing any policy that prevents an employee from disclosing or assisting in the investigation of a false claims violation. Employers are also prohibited from discharging, demoting, suspending, threatening or in any other manner discriminating against an employee who discloses or furthers a false claims action. Employers who violate these provisions are subject to penalties. Cal. Gov. Code, § 12653. California law also provides whistleblower protection to state employees. Cal. Gov. Code, § 8547.

Colorado

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Colorado Medicaid False Claims Act (“CMFCA”) if he/she:

- Knowingly presents, or causes to be presented to the government, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- Has possession, custody, or control of property or money used, or to be used, by the state in connection with the Colorado Medical Assistance Act and knowingly delivers, or causes to be delivered, less than all of the money or property;
- Authorizes the making or delivery of a document certifying receipt of property used, or to be used by the state in connection with the Colorado Medical Assistance Act and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true; or
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state in connection with the Colorado Medical Assistance Act who lawfully may not sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state in connection with the Colorado Medical Assistance Act, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit

money or property to the state in connection with the Colorado Medical Assistance Act;

- Conspires to commit one of the violations described in the bullet points above.

C.R.S. §§ 25.5-4-305.

Penalties: A person who violates the Colorado Medical Assistance Act is liable for civil penalties in amounts that are equivalent to the civil penalties allowed under the Federal FCA, plus three times the amount of damages that the state sustains because of the act of the person. However, if a court determines that the person who committed the violation self-reported the violation within 30 days after discovery and before a criminal prosecution, civil action, administrative action has begun (and before the person's actual knowledge of a governmental investigation into the same), the amount of civil penalties may be reduced to not less than twice the amount of damages the state sustained. Civil penalties may also be assessed, such as for the costs of any civil action the state brought to recover any penalties or damages. C.R.S. § 25.5-4-305.

Bringing an Action: *Qui tam* actions are allowed under the CMFCA. C.R.S. § 25.5-4-306(2). Whistleblowers may recover between 15% and 25% of any proceeds from the action or settlement if the state intervenes in the case and between 25% and 30% if the state decides not to intervene. C.R.S. § 25.5-4-306(4). The relator may also receive an amount of reasonable expenses, and attorney fees and costs.

Statute of Limitations: A civil action under this act may not be brought after the later of (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, but in no event more than ten years after the date on which the violation is committed. C.R.S. § 25.5-4-307.

Whistleblower Protections: Health care providers are prohibited from taking disciplinary action against a health care worker who makes a good faith report or disclosure regarding patient safety information or quality of patient care. C.R.S. § 8-2-123. In addition, a private enterprise that has a contract with a state agency is prohibited from taking disciplinary action against an employee who has disclosed information which, if not disclosed, could result in the waste of public funds, could endanger the public health, safety, or welfare, or could otherwise adversely affect the interests of the state. C.R.S. § 24-114-102.

The CMFCA provides that any employee, contractor, or agent who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by an employer because he or she lawfully acts in furtherance of an action filed under the Colorado Medical Assistance Act is entitled to all relief necessary to make the employee, contractor, or agent whole. This relief shall include reinstatement with the same seniority status, twice the amount of any

back pay plus interest, and compensation for any special damages that the discrimination caused including litigation costs and reasonable attorney fees. C.R.S. § 25.5-4-306(7).

Connecticut

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: Connecticut recently enacted its Connecticut False Claims Act (“CFCA”), which applies to medical assistance programs administered by the Department of Social Services (DSS). With respect to goods and services rendered through any DSS medical assistance program, the CFCA prohibits anyone from:

- Knowingly presenting, or causing to be presented to a state employee or officer, a false or fraudulent claim for payment or approval;
- Knowingly making, using, or causing to be made or used, a false record or statement to secure payment or approval of a false or fraudulent claim under these programs;
- Conspiring to defraud the state by securing the allowance or payment of a false or fraudulent claim;
- Having possession, custody, or control of property or money used, or to be used, by the state relative to these programs, and, with intent to defraud the state or willfully conceal the property, deliver or cause to be delivered less property than the amount for which the person receives a receipt or certificate;
- Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the state relative to these programs and, with intent to defraud the state, make or deliver the document without completely knowing that the information on it is true;
- Knowingly buying, or receiving as a pledge of an obligation or debt, public property from a state employee or officer who may not legally sell or pledge the property; and
- 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 state.

Conn. Gen. Stat. § 17b-301b.

Penalties: Anyone who violates the CFCA is liable for a civil penalty between \$5,000 and \$10,000, three times the amount of damages to the state due to the violation, and the costs of investigating and prosecuting the violation. The treble damages penalty may be reduced if the person committing the violation self-reported it within 30 days, cooperated with state investigators, and had no knowledge of an investigation or action regarding the violation. Conn. Gen. Stat. § 17b-301b.

Bringing an Action: *Qui tam* actions are permitted under the CFCA. If civil penalties or damages are received by the state, the person bringing the action must receive between 15% and 25% of the proceeds, based on the extent to which he or she substantially contributed to the prosecution. The court can award the person less than 15% in certain cases. In cases where the Attorney General declined to proceed and the individual conducts the action, the reward may be between 25% and 30% of the proceeds. Conn. Gen. Stat. § 17b-301d, 301e.

Statute of Limitations: A civil action under the CFCA 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 dates when fact 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, but in to event more than ten years after the date on which the violation is committed, whichever last occurs. Conn. Gen. Stat. § 17b-301l.

Whistleblower Protections: The CFCA provides that any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by an employer because he or she lawfully acts in furtherance of an action filed under the CFCA is entitled to all relief necessary to make the employee whole. This relief must include reinstatement with the same seniority status, twice the amount of any back pay plus interest, and compensation for any special damages that the discrimination caused. Conn. Gen. Stat. § 17b-301k.

Delaware

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Delaware False Claims and Reporting Act if he/she:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to approved false or fraudulent claim; Has possession, custody, or control of property or money used, or to be used by the government, and knowingly delivers or causes to be delivered, less than all of that money or property;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the government and, intending to defraud the government, makes or delivers the receipt without completely knowing that the information on the receipt is true;

- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the government who may not lawfully sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the government; or
- Conspires to commit one of the above-specified violations.

Del. Code Ann. Tit. 6 § 1201.

Penalties: A person who has violated the statute above is liable for a civil penalty of no less than \$5,500 and no more than \$11,000 for each violation, three times the amount of actual damages, and the expenses and attorney fees and costs incurred as a result of a civil action brought to recover any such penalty or damages. Damages may be reduced to no less than two times the damages sustained by the state, if the person self-reports within thirty days, fully cooperates with any government investigation of such violations, and, at the time the person reports the violation, no criminal prosecution, civil action, investigation, or administrative action has commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into such violations. Del. Code Ann. Tit. 6 § 1201.

Bringing an Action: Delaware law allows *qui tam* actions. If a *qui tam* action is brought and the government intervenes, the plaintiff will receive between 15% and 25% of the proceeds or settlement or, in some limited instances, no more than 10%. If the government does not intervene, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. Del. Code Ann. Tit. 6 §§ 1203-1205. The plaintiff may also receive an amount of reasonable expenses, and attorney fees and costs.

Statute of Limitations: A civil lawsuit brought under the Delaware False Claims and Reporting Act must be brought within the later of: (1) six years from when the violation occurred, or (2) three years after facts material to the right of action are known or reasonably should have been known by the official of the government charged with responsibility to act in the circumstances of the violation was discovered by the relevant agency, but no more than ten years after the violation was committed. Del. Code Ann. Tit. 6, §1209.

Whistleblower Protections: An employee, contractor, or agent who is discharged, demoted, suspended, threatened or discriminated against in the terms and conditions of employment for furthering an enforcement action is entitled to relief, including reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages. Del. Code Ann. Tit. 6, §1208.

District of Columbia

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of the D.C. Code if he/she:

- Knowingly presents, or causes to be presented, a false claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- 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;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the District and, intending to defraud the District, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the District who lawfully may not sell or pledge property;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the District, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the District;
- Conspires to commit one of the violations described in the bullet points above;
- Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District; or
- Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due and knowingly fails to repay the inadvertent payment or overpayment to the District.

D.C. Official Code § 2-381.02.

Penalties: A person who commits any of the violations above shall be liable for three times the amount of damages which the District sustains, the costs of a civil action brought to recover penalties or damages, and may be liable for a civil penalty of not less than \$5,500, and not more than \$11,000, for each false or fraudulent claim. Damages may be reduced to no less than two times the amount of damages (and no civil penalty), if the person committing the violation self-reported within 30 days, fully cooperated with any investigation by the District, and, at the time the person furnished the District with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual

knowledge of the existence of an investigation into the violation. D.C. Official Code § 2-381.02. Criminal penalties and fines may also apply. *See* D.C. Official Code §2-381.09.

Bringing an Action: The D.C. Code allows for *qui tam* actions. If the District proceeds with the action, the plaintiff will receive between 15% and 25% of the proceeds of the judgment or settlement, except that, if the plaintiff was substantially involved in the fraudulent acts, the court may award less than 10%. If the District elects not to pursue the *qui tam* action, the plaintiff will receive between 25% and 30% of the proceeds. If the *qui tam* plaintiff is convicted of criminal conduct arising from his or her role in the violation, the *qui tam* plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. D.C. Official Code § 2-381.03. If the District does not proceed with the action and the *qui tam* plaintiff conducts the action, the court may award to the defendant reasonable attorneys fees and expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the *qui tam* plaintiff was frivolous, vexatious, or brought solely for purposes of harassment. D.C. Official Code § 2-381.03.

Statute of Limitations: Under the DC False Claims Act, a civil lawsuit must be brought within the later of: (1) six years from when the violation occurred 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 District charged with the responsibility to act in those circumstances, but no more than ten years after the violation was committed. D.C. Official Code § 2-381.05.

Whistleblower Protections: Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is 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, contractor, or agent, or associated others in furtherance of an action under the DC False Claims Act. The relief includes reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination. D.C. Official Code § 2-381.04.

Florida

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Florida False Claims Act if he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;

- Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;
- 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;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without knowing that the information on the receipt is true;
- Knowingly buys or receives, as a pledge of an obligation or a debt, public property from an officer or employee of the State who may not sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to the State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State; or
- Conspires to commit one of the above-specified violations.

Fla. Stat. § 68.082.

Penalties: A person found to be in violation of the Florida False Claims Act is liable for civil penalties of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the State because of the act or omission of that person. Damages may be reduced to no less than two times the amount of damages sustained by the State, if: (a) the person committing the violation self-reported within 30 days, (b) at the time the person furnished the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the statute with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the same, and/or (c) the person fully cooperated with any related investigation. Fla. Stat. § 68.082.

Bringing an Action: Florida law provides for *qui tam* actions. Fla. Stat. § 68.083. If the Department of Legal Affairs proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered. However, if the case is based primarily on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Department does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. If the plaintiff planned or initiated the violations, he/she will receive a reduced reward. The plaintiff shall also be entitled to receive an amount for reasonable expenses that the Court finds to have been necessarily incurred, plus reasonable attorney fees and costs. Fla. Stat. § 68.085.

Statute of Limitations: Under Florida law, a civil action under this act 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, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last. Fla. Stat. § 68.089.

Whistleblower Protections: Florida law provides that employees who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done in furtherance of an action or investigation relating to a false claim will have a cause of action under Fla. Stat. § 112.3187 (the “Whistle-blower’s Act”). Fla. Stat. § 68.088.

Georgia

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Georgia State False Medicaid Claims Act if he/she:

- Knowingly presents, or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
- Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;
- Has possession, custody or control of property or money used or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Being authorized to make or deliver a document certifying receipt of property used or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who may not lawfully sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, increase or decrease an obligation to pay, repay or transmit money or property to the State of Georgia.

O.C.G.A. § 49-4-168.1, et seq.

Penalties: A person found to be in violation of the Georgia Act is liable for civil penalties of not less than \$5,500 and not more than \$11,000 for each fraudulent claim,

plus three times the amount of damages sustained by the Georgia Medicaid program because of the act of such person. Damages may be reduced to no less than two times the amount of damages sustained by the Georgia Medicaid program if the person committing the violation self-reported within 30 days, did not have actual knowledge of the existence of an investigation into the violation, and fully cooperated with any investigation. The person will also be liable for the costs of the civil action to enforce the Georgia Act. O.C.G.A. § 49-4-168.1.

Bringing an Action: The Georgia Act provides for *qui tam* actions. If the Attorney General proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. O.C.G.A. § 49-4-168.2.

Statute of Limitations: Under Georgia law, a false claims act claim must be brought within six years from when the violation occurred, or three years after the date when facts material to the right of civil action are known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed. O.C.G.A. § 49-4-168.5.

Whistleblower Protections: An employee will be entitled to relief if discharged, demoted, suspended, threatened, harassed or discriminated against in the terms and conditions of his/her employment by his/her employer due to lawful acts done by the employee, on behalf of the employee or others in furtherance of a civil action under the Act. Relief shall include reinstatement with seniority status, two times the amount of back pay with interest and any damages sustained. O.C.G.A. § 49-4-168.4.

Hawaii

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Hawaii False Claims Act if he/she:

- Knowingly presents, or causes to be presented to an officer or employee of the State a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;
- Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;

- Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who may not lawfully sell or pledge the property;
- Knowingly makes, uses, or causes 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 State; or
- Is a beneficiary of an inadvertent submission of a false claim to the State, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim.

Haw. Rev. Stat. §661-21.

Penalties: A person found to be in violation of the Hawaii statute is liable for civil penalties of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages sustained by the state. Damages may be reduced to no less than two times the amount of damages sustained by the state, if the person committing the violation self-reported within 30 days, did not have actual knowledge of the existence of an investigation into the violation, and fully cooperated with any investigation. Haw. Rev. Stat. § 661-21.

Bringing an Action: Hawaii law provides for *qui tam* actions. Haw. Rev. Stat. §661-25. If the attorney general proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered. However, if the case is based primarily on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Department does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. If the plaintiff planned or initiated the violations, he/she will receive a reduced reward. Haw. Rev. Stat. §661-27.

Statute of Limitations: In Hawaii, a civil suit must be brought within six years after the false claim is discovered or should have been discovered, but no more than ten years after the violation was committed. Haw. Rev. Stat. §661-24.

Whistleblower Protections: Hawaii has a “Whistleblower Protection Act”. Under Hawaii law, an employer may not discharge, threaten or otherwise discriminate against an employee regarding the employee’s compensation, terms, conditions, location or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report a violation of any law or contract executed by the State or if the employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or court action. Haw. Rev. Stat. §378-62.

Idaho

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of Idaho law if he/she knowingly, with intent to defraud, by means of a willfully false statement or representation or by deliberate concealment or any material fact, or any other fraudulent scheme or device:

- Presents for allowance or payment any false or fraudulent claim for furnishing services or supplies; or
- Attempts to obtain or obtains authorization for furnishing services or supplies; or
- Attempts to obtain or obtains compensation from public funds greater than that to which he is legally entitled for services or supplies furnished or purportedly furnished.

Idaho Code Ann. § 56-227A, § 56-209h(6).

Penalties: Any provider or person who violates the Idaho law is guilty of a felony and may be prosecuted under the criminal code. Idaho Code Ann. § 56-227A The provider and person will be liable for civil damages equal to three times the amount by which any figure is overstated. Idaho Code Ann. § 56-227B, § 56-209h(6). Under the Idaho Health Care Fraud Act, the provider must repay any overpayments or claims previously found to have been obtained contrary to a statute, rule, regulation, or provider agreement. Penalties also include exclusion from state health care programs (e.g., Medicaid), a civil penalty of up to \$1,000 per violation, and referral to the Medicaid Fraud Unit. Idaho Code Ann. § 56-209h(6)(h).

Bringing an Action: Idaho law does not provide for *qui tam* actions.

Statute of Limitations: Under Idaho law, the statute of limitations for an action for relief on the ground of fraud or mistake is three years. The cause of action in such a case does not accrue until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake. Idaho Code Ann. § 5-218(4).

Whistleblower Protections: An employer may not take adverse action against an employee because the employee, or a person on behalf of an employee, communicates in good faith the existence of any waste of public funds, property or manpower or a violation or suspected violation of a law, rule or regulation. Idaho Code Ann. §§ 6-2101, 6-2104.

Illinois

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Illinois Whistleblower Reward and Protection Act, also known as the Illinois False Claims Act (“IL Act”) if he/she, among other things:

- Knowingly presents, or causes to be presented, to an officer or employee of the State a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State;
- Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;
- Has possession, custody or control of property or money used or to be used, or to be used, by the State and, intending to defraud the State or willfully to conceal the property, delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Being authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State who may not lawfully sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to the State.

§ 740 Ill. Comp. Stat. 175/3

Penalties: A person found to be in violation of the IL Act is liable for civil penalties of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the state, as well as the costs of a civil action brought to recover any such penalty or damages. § 740 Ill. Comp. Stat. 175/3.

Bringing an Action: The IL Act allows *qui tam* actions. If the state proceeds with a *qui tam* action, the plaintiff will be rewarded between 15% and 25% of the proceeds or settlement. If the case is based primarily on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the state chooses not to proceed with the *qui tam* action, the plaintiff is entitled to receive between 25% and 30% of the proceeds

or settlement. If the plaintiff is found to have planned or initiated any violations of the Act, the court may reduce the plaintiff's reward. 740 Ill. Comp. Stat. 175/4.

Statute of Limitations: Under the IL Act, a civil lawsuit must be brought within the later of 1) six years from when the violation has occurred or 2) three years after the violation was discovered by the relevant agency, but no more than ten years after the violation was committed. 740 Ill. Comp. Stat. 175/5.

Whistleblower Protections: An employee who is discharged, demoted, suspended, threatened, harassed, or in any other matter discriminated against in the terms and conditions of employment because of lawful acts done by employee, on behalf of the employee or others in furtherance of a civil action under the IL Act shall be entitled to all relief necessary to make the employee whole, including reinstatement with seniority, two times the amount or back pay, interest on back pay and compensation for any special damages. 740 Ill. Comp. Stat. 175/4(g).

A person is in violation of the IL Act if he or she knowingly takes adverse employment action against an employee for disclosing information to a government or law enforcement agency, if the employee has reasonable cause to believe that the information discloses a violation of state or federal law, rule or regulation. § 740 Ill. Comp. Stat. 175/3.

Other: The Chicago False Claims Act allows whistleblowers to bring suit in the name of the City of Chicago where a wrongdoer engages in conduct that defrauds the State or local government of taxpayer dollars. Title 1 Municipal Code of Chicago, Chap. 1-21 through 2-152.

Indiana

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of Indiana's False Claims and Whistleblower Protection Act if he/she knowingly or intentionally:

- Presents a false claim to the state for payment or approval;
- Makes or uses a false record or statement to obtain payment or approval of a false claim;
- With the intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
- With the intent to defraud the state, authorizes the issuance of a receipt without knowing that the information on the receipt is true;

- Receives public property as a pledge or obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
- Makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;
- Conspires with another person to perform any of the acts set forth above; or
- Causes or induces another person to perform any of the acts set forth above.

IC § 5-11-5.5-2.

Penalties: Persons who violate the Indiana law are liable for at least \$5,000 per claim, plus up to three times the amount of damages sustained by the state and are also liable for the costs associated with the civil action brought to recover damages. The court can reduce the penalty to two times the amount of damages if it finds that the person furnished state officials with all information known to the person about the violation not later than thirty days after the date on which the person obtained the information, fully cooperated with the investigation of the violation, and did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials. IC § 5-11-5.5-2.

Bringing an Action: Indiana law allows *qui tam* actions. IC § 5-11-5.5-4. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. IC § 5-11-5.5-6.

Statute of Limitations: Under the Indiana False Claims and Whistleblower Protection Act, a civil lawsuit may be brought within six years after the date the violation was discovered, or not later than three years after the date when facts material to the cause of action are discovered or reasonably should have been discovered, but no more than ten years after the violation was committed. IC § 5-11-5.5-9.

Whistleblower Protections: An employee will be entitled to relief if discharged, demoted, suspended, threatened, harassed or otherwise discriminated against in the terms and conditions of employment by the employee's employer because of his/her objection to a false claims violation or omission or his/her involvement in a false claims action, including initiating, testifying assisting or participating in an action. An employee is entitled to all relief necessary to make the employee whole. This may include reinstatement with the same seniority status, two times the amount of back pay plus interest, and compensation for any special damages sustained, including costs and expenses of litigation and reasonable attorney's fees. IC § 5-11-5.5-8.

Iowa

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Iowa False Claims Act if he/she is:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation of these acts;
- 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;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state, or a member of the Iowa national guard, who lawfully may not sell or pledge property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state.

IA Code § 685.2.

Penalties: A person who commits any of the acts outlined above is liable to the state for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages which the state sustains because of the act of that person. Depending on certain facts, the court may assess not less than two times the amount of damages which the state sustains. IA Code § 685.2.

Bringing an Action: Iowa law allows *qui tam* actions. IA Code § 685.3. If a *qui tam* action is brought, the plaintiff shall receive at least 15% but not more than 25% of the award. If the court finds the action is based primarily on specific information other than the information provided by the *qui tam* plaintiff, the court can award an amount it considers appropriate, but no more than 10% of the proceeds. If the state does not proceed with the action, the *qui tam* plaintiff will receive between 25% and 30% of the proceeds, plus expenses. IA Code § 685.3.

Statute of Limitations: Plaintiffs may not file their complaints more than 10 years after the date on which the violation occurred. IA Code § 685.4.

Whistleblower Protections: The Iowa False Claims Act protects whistleblowers from retaliation by their employers. IA Code § 685.3.

Kansas

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: The following acts constitute violations of the Kansas False Claims Act, for which civil penalties, costs and attorney fees may be recovered by a civil action:

- Knowingly presenting or causing to be presented to any employee, officer or agent of the state or political subdivision thereof or to any contractor, grantee or other recipient of state funds or funds of any political subdivision thereof, a false or fraudulent claim for payment or approval;
- 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;
- Defrauding the state or any political subdivision thereof by getting a false claim allowed or paid or by 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 state or to any political subdivision thereof;
- Having possession, custody or control of public property or money used or to be used by the state or any political subdivision thereof and knowingly delivering or causing to be delivered less property or money than the amount for which the person receives a certificate or receipt;
- Authorizing to make or deliver a document certifying receipt of property used or to be used by the state or any political subdivision thereof and knowingly making or delivering a receipt that falsely represents the property received;
- Knowingly buying or receiving as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property;
- Being a beneficiary of an inadvertent submission of a false claim to any employee, officer or agent of the state or political subdivision thereof, or to any contractor, grantee or other recipient of state funds or funds of any political subdivision thereof, who subsequently discovers the falsity of the claim and fails to disclose the false claim and make satisfactory arrangements for repayment to the state or affected political subdivision thereof within a reasonable time after discovery of the false claim;
- Conspiring to commit any violation set forth above.

K.S.A. § 75-7503.

Penalties: A person who violates the Kansas Act is liable to the state or any affected political subdivision thereof, for three times the amount of damages which the state or such political subdivision sustains because of the act of that person and is liable to the state for a civil penalty of not less than \$1,000 and not more than \$11,000 for each violation. A person found to have committed any of the following acts is also liable to the state or such affected political subdivision for all reasonable costs and attorney fees incurred in a civil action brought to recover any of those penalties or damages. K.S.A. § 75-7503. Under certain circumstances, the court may assess not more than two times the amount of damages and no civil penalty shall be imposed. K.S.A. § 75-7503. Violation of the Kansas Medicaid Fraud Control Act is a criminal offense punishable by substantial fines and imprisonment. K.S.A. § 21-4503a.

Bringing an Action: Kansas law does not provide for *qui tam* actions. The Kansas Act specifically states that there is no private cause of action. K.S.A. § 75-7504.

Statute of Limitations: A civil action under this statute may not be brought more than six years after the date on which the violation was committed; or more than three years after the date on which the violation was discovered or reasonably should have been discovered, but in no event more than 10 years after the date on which the violation was committed, whichever occurs last. K.S.A. § 75-7505.

Whistleblower Protections: Any employee who is discharged, demoted, suspended, threatened, harassed or in any other manner retaliated against in the terms and conditions of employment by such employee's employer because of lawful acts undertaken in good faith by the employee on behalf of the employee or others, in furtherance of an action under the Kansas Act, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed, shall be entitled to all relief necessary to make the employee whole. K.S.A. § 75-7506.

Kentucky

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Kentucky's Control of Fraud and Abuse laws state that no person shall:

- Knowingly or wantonly devise a scheme or plan a scheme or artifice, or enter into an agreement, combination or conspiracy to obtain or aid another in obtaining payments from any medical assistance program under this chapter by means of any fictitious, false or fraudulent application, claim, report or document submitted to the Cabinet for Health and Family Services, or intentionally engage in conduct with advances the scheme or artifice;

- Intentionally, knowingly, or wantonly make, present or cause to be made or presented to an employee or officer of the Cabinet for Health and Family Services any false, fictitious, or fraudulent statement, representation, or entry in any application, claim, report or document used in determining rights to any benefit or payment;
- With intent to defraud, knowingly make, or induce, or seek to induce the making of a false statement or false representation of a material fact with respect to the conditions or operations of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, as a hospital, skilled-nursing facility, intermediate-care facility, home-health agency, or other provider of services to the Medical Assistance Program; or
- In any matter within the jurisdiction of the Cabinet for Health and Family Services under this chapter, knowingly falsify, conceal, or cover up by any trick, scheme, or device a material fact, or make any false, fictitious, or fraudulent statement or representation, or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.

Ky. Rev. Stat. Ann. § 205.8463.

Penalties: A provider found to be in violation is liable for full restitution of any payments received in violation of Kentucky's Control of Fraud and Abuse laws, including interest, civil penalties up to three times the amount of excess payments, a civil fine of \$500 for each false or fraudulent claim submitted, the costs of the action brought to recover damages, and removal of the provider from the Kentucky Medical Assistance Program. Ky. Rev. Stat. Ann. § 205.8463, Ky. Rev. Stat. Ann. § 205.8467.

Bringing an Action: Kentucky law does not provide for *qui tam* actions.

Statute of Limitations: Kentucky's Control of Fraud and Abuse laws contain no explicit statute of limitations. However, under Kentucky law, causes of action for fraud must be brought within five years. Ky. Rev. Stat. § 430.120(12).

Whistleblower Protections: No employer shall, without just cause, discharge or in any manner discriminate or retaliate against any person who in good faith makes a report required or permitted by Kentucky law, testifies or is about to testify, in any proceeding with regard to any report or investigation. Any individual who is injured by an act violating this statute, is entitled to recover the actual damages sustained as well as the costs of the lawsuit. Ky. Rev. Stat. Ann. § 205.8465.

Louisiana

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of Louisiana's Medical Assistance Programs Integrity Law ("LA Act") is he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim;
- Knowingly engages in misrepresentation to obtain or attempt to obtain payment from medical assistance program funds, or makes, uses, or causes to be made or used, a false record or statement to obtain payment for a false or fraudulent claim from medical assistance program funds;
- Conspires to defraud or attempts to defraud the medical assistance programs through misrepresentation or by obtaining or attempting to obtain payment for a false claim; or
- Knowingly submits a claim for goods, services or supplies that are medically unnecessary or which were of substandard quality or quantity.

La. Rev. Stat. Ann. §46:438.3

Penalties: A person who violates the LA Act is liable for the damages sustained by the Louisiana medical assistance program, plus a civil fine in an amount not to exceed three times the value of the illegal remuneration. In addition to the actual damages, there may be a civil monetary fine but not more than penalties up to \$10,000 per false claim and interest on the civil fine. La. Rev. Stat. Ann. § 46:438.6.

Bringing an Action: Louisiana law allows for *qui tam* actions. La. Rev. Stat. Ann. §46:439.1. If the attorney general intervenes in the action, Plaintiff receives between 15% and 25% of the proceeds of the judgment or settlement. If the *qui tam* action is based primarily on the disclosures of others, the court may award less than 15%. If the plaintiff was substantially involved in the fraudulent acts, the court may reduce the award. If the attorney general elects not to pursue the *qui tam* action, the court shall decide a reasonable reward for the plaintiff not less than 25% but no more than 30% of the recovery. La. Rev. Stat. Ann. § 46:439.4.

Statute of Limitations: Under the LA Act, plaintiffs must file their complaint within one year of the date they knew or should have known of the illegal acts in question. However, a civil lawsuit must be brought no later than ten years after the violation was committed. La. Rev. Stat. Ann. §§ 46:438.2, 46:438.3.

Whistleblower Protections: An employer cannot discharge, demote, suspend, threaten, harass or discriminate against in any matter an employee because of any lawful act

engaged by the employee or on behalf of the employee in furtherance of any action taken pursuant to the LA Act with regard to a health care provider or other person from whom recovery is or could be sought. However, a *qui tam* plaintiff is not entitled to recover if the courts find that the *qui tam* plaintiff instituted or proceeded with an action that was frivolous, vexatious, or harassing. La. R.S. §46.440.3.

Maine

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Maine false claims laws impose liability on persons or companies for the following activities:

- Making or causing to be made or presenting or causing to be presented for payment or approval any claim upon or against Medicaid or upon any funds administered by Medicaid, knowing such claim to be false, fictitious or fraudulent;
- For the purpose of obtaining or aiding another to obtain the payment or approval of such a claim, making any false written statement or submitting any false document not believed to be true; and
- Entering into any agreement, combination or conspiracy to defraud Medicaid by obtaining the payment or approval of any false, fictitious or fraudulent claim.

22 M.R.S.A. § 15.

Maine also has numerous criminal provisions of general application in the Maine Criminal Code that prohibit fraud, theft, and false statements to government agencies that may be applicable in addressing health care fraud, waste, and abuse. 17-A M.R.S.A. § 1 et seq.

Penalties: A violation of these laws may result in restitution of improper payments plus interest and a civil penalty of three times the amount of excess benefits or payment, but not less than \$2,000 for each false claim or \$2,000 per each false document submitted to support a false claim, whichever is greatest, plus attorney fees and expenses to pursue reimbursement, as well as suspension or termination from the Medicaid program. In addition, any person who violates these laws may be guilty of crimes punishable by imprisonment for up to six months and a fine of up to \$10,000 for corporations or \$1,000 for individuals. 22 M.R.S.A. § 15.

Bringing an Action: These laws do not contain *qui tam* or whistleblower provisions. Likewise, there are no provisions allowing a private citizen to share a percentage of any monetary recoveries.

Statute of Limitations: Maine's false claims laws do not contain an explicit statute of limitations. However, under Maine law, actions for fraud must be brought within six years. 14 M.R.S.A. § 859.

Whistleblower Protections: The Maine Whistleblowers' Protection Act prohibits public and private employers from retaliating against any employee who discloses, in good faith, a violation of any federal, state, or local law, rule, regulation or ordinance, any deviation in the standard of care, or suspected patient abuse or neglect. Maine's laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position. This whistleblower protection requires an employee to notify his/her employer of the suspected violation, condition or practice before disclosing it to a government agency or to law enforcement. This notice requirement does not apply to reports of suspected patient or resident abuse, neglect or exploitation that employees are required to report under other applicable laws. 26 M.R.S.A. § 831 et seq. Maine Human Rights Act contains whistleblower protection provisions to protect employees from retaliation or discrimination. 5 M.R.S.A. § 4653.

Maryland

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Under Maryland's False Health Claims Act, effective October 2010, a person may not:

- Knowingly present or cause to be presented a false or fraudulent claim for payment or approval;
- Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim;
- Conspire to commit a violation under the Act;
- Have possession, custody, or control of money or other property used by or on behalf of the State under a State health plan or a State health program and knowingly deliver or cause to be delivered to the State less than all of that money or other property;
- Be authorized to make or deliver a receipt or other document certifying receipt of money or other property used or to be used by the State under a State health plan or a State health program; and intending to defraud the State or the Department, make or deliver a receipt or document knowing that the information contained in the receipt or document is not true;
- Knowingly buy or receive as a pledge of an obligation or debt publicly owned property from an officer, employee, or agent of a State health plan or a State health program who lawfully may not sell or pledge the property;
- Knowingly make, use, or cause to be made or used, a false record or statement material to an obligation to pay or transmit money or other property to the State;

- Knowingly conceal, or knowingly and improperly avoid or decrease, an obligation to pay or transmit money or other property to the State; or
- Knowingly make any other false or fraudulent claim against a State health plan or a State health program.

Md. Code Ann., Health-Gen § 2-602.

Penalties: Violation of this law creates liability of a civil penalty of not more than \$10,000 for each violation, and an additional amount of not more than three times the amount of damages the State sustained. These penalties are in addition to any criminal, civil, or administrative penalties provided under any other State or federal statute or regulation. Md. Code Ann., Health-Gen § 2-602.

Bringing an Action: Maryland law allows for *qui tam* actions. With some exceptions, if the State intervenes and proceeds with an action and the State prevails, the court shall award the relator an amount that is not less than 15% and not more than 25% of the proceeds of the action or settlement of the claim, and proportional to the amount of time and effort that the relator substantially contributed to the final resolution of the civil action. Md. Code Ann., Health-Gen § 2-604 – 2-605. Relators should have direct and independent knowledge of the fraud, outside of what is publicly available, in order to have a valid claim. Md. Code Ann., Health-Gen § 2-606.

Statute of Limitations: A civil action under this law may not be filed after the later of 1) six years after the date on which the underlying violation occurred, or 2) three years after the date when facts material to the right of action are known by the relator, the State's Inspector General, or the Director of the State's Medicaid Fraud Control Unit or reasonably should have been known, but in no event more than ten years after the date on which the underlying violation is committed. Md. Code Ann., Health-Gen § 2-609.

Whistleblower Protections: A provider in Maryland may not take a retaliatory action against an employee because the employee acts lawfully in furtherance of an action filed under the Maryland False Health Claims Act; discloses or threatens to disclose to a supervisor or to a public body and activity, policy, or practice that the employee reasonably believes is in violation of the Maryland law; provides information to, or testifies before, a public body conducting an investigation, hearing or inquiry into a suspected violation by the provider; or objects to or refuses to participate in any activity, policy, or practice that the employee reasonably believes is in violation of the Maryland law. Md. Code Ann., Health-Gen. § 2-607.

Massachusetts

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of Massachusetts' False Claims Act ("MA Act") if he/she:

- Knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used a false record or statement to obtain payment or approval of a claim by the commonwealth;
- Conspires to defraud the commonwealth through the allowance or payment of a fraudulent claim;
- Has possession, custody or control of property or money used or to be used by the commonwealth and knowingly delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt with the intent to willfully conceal the property;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the commonwealth and, with the intent to defraud the commonwealth, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the commonwealth knowing that said officer or employee may not lawfully sell or pledge the property;
- Enters into an agreement, contract or understanding with one or more officials of the commonwealth or any political subdivision thereof knowing the information contained therein is false;
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to or from the commonwealth; or
- Is a beneficiary of an inadvertent submission of a false claim to the commonwealth, subsequently discovers the falsity of the claim, and fails to disclose the false claim within a reasonable time after discovery of the false claim.

Mass. Gen. Laws Ch. 12, §5B.

Penalties: Any person found to be in violation of the MA Act is liable for a civil penalty of no less than \$5,000 and no more than \$10,000; per violation, plus three times the amount of damages sustained by the state; expenses incurred in bringing the civil action; and attorney's fees and costs. Damages may be reduced to no less than two times the amount of damages sustained by the state, if the person committing the violation self-reported within 30 days, did not have actual knowledge of the existence of an

investigation into the violation, and fully cooperated with any investigation. Mass. Gen. Laws Ch. 12 § 5B.

Bringing an Action: Massachusetts law allows for *qui tam* actions. Mass. Gen. Laws Ch. 12 § 5C. If the attorney general proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. If the court finds that plaintiff planned, initiated or knowingly participated in the violations, the court may reduce or eliminate the proceeds that the plaintiff would otherwise receive. Mass. Gen. Laws Ch. 12 § 5F.

Statute of Limitations: Under the MA Act, a civil lawsuit must be brought within the later of 1) six years after the violation was committed, or 2) three years after the date the violation was discovered, but no more than ten years after the violation was committed. Mass. Gen. Laws Ch. 12 § 5K.

Whistleblower Protections: The MA Act forbids any employer from adopting, creating or enforcing any policy or regulation that prevents an employee from disclosing a violation of the MA Act to the government or a law enforcement agency or from acting to further a false claims action, including investigating, initiating, testifying or assisting in an action. No employer may discharge, demote, suspect, threaten, harass, deny promotion to or in any other manner discriminate against an employee in terms or conditions of employment because of lawful acts done by the employee or on behalf of the employee in disclosing information to a government or law enforcement agency or in furthering claims action. If an employer does so, the employee will be entitled to reinstatement with the same seniority status, two times the amount of back pay with interest, and compensation for any special damages including attorneys' fees. Mass. Gen. Laws Ch. 12, §5J.

Michigan

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Michigan Medicaid False Claims Act ("MI Act") if he/she:

- Enters into an agreement, combination or conspiracy to defraud the state by obtaining or aiding another to obtain payment or allowance of a false claim;

- Makes or presents or causes to be made or presented to an employee or officer of the state a claim under the social welfare act, upon or against the state, knowing the claim to be false;
- Makes or presents or causes to be made or presented a claim under the social welfare act that he/she knows falsely represents that the goods or services for which the claim is made were medically necessary; or
- Knowingly makes, uses, or causes 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 state pertaining to a claim presented under the social welfare act.

Mich. Comp. Laws §§ 400.606 and 400.607.

Penalties: A person who violates the MI Act is subject to a fine of not more than \$50,000 or imprisonment of not more than 4 years or both. A person who enters into an agreement to defraud the state is subject to a fine of not more than \$50,000 or imprisonment for not more than ten years or both. Mich. Comp. Laws §§ 400.606, 400.607. A defendant may be ordered to pay damages equal to up to three times the actual harm to the state, plus a fine between \$5,000 and \$10,000 for each violation of the act. Mich. Comp. Laws. § 400.612.

Bringing an Action: Michigan law allows for *qui tam* actions. If a *qui tam* action is brought and the attorney general intervenes, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. If the court finds that the plaintiff planned and initiated the conduct upon which the action is brought, the court may reduce or eliminate any proceeds the plaintiff would otherwise be entitled to receive. Mich. Comp. Laws § 400.610a.

Statute of Limitations: A person may not bring a civil action under the MI Act 1) more than six years after the date on which the violation was 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 of Michigan charged with the responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation was committed. Mich. Comp. Laws § 400.614.

Whistleblower Protections: The MI Act prohibits employers from discharge, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in the terms and conditions employment because the employee engaged in lawful acts including initiating, assisting in, or participating in the furtherance of an action under the MI Act. This does not apply to an employee who brought a frivolous claim, planned and initiated the conduct, or is convicted of criminal conduct arising from such violation, as determined by the court. An employer who violates this provision is liable to the employee for: 1) reinstatement to the employee's position without loss of seniority, 2) two times the amount of lost back pay plus interest; 3) compensation for any

special damages, and 4) any other relief necessary to make the employee whole. Mich. Comp. Laws § 400.610c.

Minnesota

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Minnesota False Claims Act (“**MN Act**”) if he/she:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for repayment or approval;
- Knowingly makes or uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Has possession, custody or control of property or money used, or to be used, by the State or a political subdivision and knowingly delivers or causes to be delivered less than all of that money or property;
- Is authorized to make or deliver a document certifying receipt for money or property used, or to be used, by the State or a political subdivision and, intending to defraud the State or a political subdivision, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State or a political subdivision who lawfully may not sell or pledge the property;
- Knowingly makes or uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the State or a political subdivision, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision; or
- Conspires to commit one of the above-specified violations.

Minn. Stat. §15C.02.

Penalties: Any person found to be in violation of the MN Act is liable for a civil penalty of no less than \$5,500 and no more than \$11,000 per violation, plus three times the amount of damages sustained by the State and expenses incurred in bringing the civil action, including attorney’s fees and costs. Damages may be reduced to no less than two times the amount of damages sustained by the State, if the person committing the violation self-reported within 30 days, fully cooperated with any investigation, and, at the time the person furnished the state or the political subdivision with information about the violation, no criminal prosecution, civil action, or administrative action had been

commenced under the MN Act and the person did not have actual knowledge of the existence of an investigation into the same. Minn. Stat. § 15C.02.

Bringing an Action: Minnesota law allows for *qui tam* actions. Minn. Stat. § 15C.05. If a *qui tam* action is brought and the Attorney General intervenes out the outset, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement; if the Attorney General does not intervene at the outset, but subsequently intervenes, the person is entitled to receive between 15% and 30% of the proceeds. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. If the court finds that the plaintiff planned and initiated the conduct upon which the action is brought, the court may reduce or eliminate any proceeds the plaintiff would otherwise be entitled to receive. Minn. Stat. § 15C.13.

Statute of Limitations: An action under the MN Act may not be commenced more than three years after the date of discovery of the fraudulent activity by the prosecuting attorney or more than six years after the fraudulent activity occurred, whichever occurs later, but in no event more than ten years after the date on which the violation is committed. Minn. Stat. § 15C.11.

Whistleblower Protections: An employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole if that employee, contractor, or agent is 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, contractor, agent, or associated others in furtherance of an action under the MN Act, which such relief shall include reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. Minn. Stat. § 15C.145.

Mississippi

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of the Mississippi Medicaid Fraud Control Act (“MS Act”) if he/she:

- Enters into an agreement, combination or conspiracy to defraud the state by obtaining or aiding another to obtain payment or allowance of a false, fictitious or fraudulent claim for Medicaid benefits; or
- Makes, presents or causes to be made or presented a claim for Medicaid benefits, knowing the claim to be false, fictitious or fraudulent.

Miss. Code Ann. § 43-13-211 and 43-13-213.

Penalties: A person who violates the MS Act is subject to imprisonment of not more than five years or a fine of not more than \$50,000 or both. Miss. Code Ann. § 43-13-215. A health care provider or vendor committing any act or omission in violation of the MS Act, shall be directly liable to the state and shall forfeit and pay to the state a civil penalty equal to the full amount received, plus an additional penalty equal to triple the full amount received. Miss. Code Ann. § 43-13-225.

Bringing an Action: The MS Act does not provide for *qui tam* actions.

Statute of Limitations: The MS Act does not identify time limitations for bringing an action. However, under Mississippi law, an action for which no other period of limitations is proscribed, must be brought within three years. Miss. Code Ann. § 15-1-49.

Whistleblower Protections: The MS Act does not provide whistleblower protections. However, Mississippi law prohibits any agency from dismissing or otherwise adversely affecting the compensation or employment status of any public employee because the public employee testified or provided information to a state investigative body. Miss. Code Ann. § 25-9-173.

Missouri

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation Protection? Yes

Reviewed by OIG? No

False Claims: While Missouri has a Medicaid False Claims Act (the Missouri Health Care Payment Fraud and Abuse Act), Missouri 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 several generally applicable Medicaid anti-fraud statutes that make it unlawful for a person to submit false and fraudulent claims to the Missouri Medicaid program. A person is in violation of Missouri statutes relating to Medicaid fraud enforcement if he/she shall knowingly make or cause to be made a false statement or false representation of a material fact in order to receive a health care payment, including but not limited to:

- Knowingly presenting to a health care payer a claim for a health care payment that falsely represents that the health care for which the health care payment is claimed was medically necessary, if in fact it was not;

- Knowingly concealing the occurrence of any event affecting an initial or continued right under a medical assistance program to have a health care payment made by a health care payer for providing health care;
- Knowingly concealing or failing to disclose any information with the intent to obtain a health care payment to which the health care provider or any other health care provider is not entitled, or to obtain a health care payment in an amount greater than that which the health care provider or any other health care provider is entitled; or
- Knowingly presenting a claim to a health care payer that falsely indicates that any particular health care was provided to a person or persons, if in fact health care of lesser value than that described in the claim was provided.

Mo. Rev. Stat. §191.905.

Penalties: A person who violates Missouri law is subject to criminal penalties, a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation, plus three times the amount of the damages which the state sustained. The court can reduce the penalty to two times the amount of damages if it finds that the person furnished state officials with all information known to the person about the violation not later than thirty days after the date on which the person obtained the information, fully cooperated with the investigation of the violation, and did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials. The person may also be required to reimburse the reasonable costs attributable to the investigation and prosecution of the violation. Mo. Rev. Stat. §191.905.

Bringing an Action: Missouri law does not provide for *qui tam* actions. However, if the case is successful, the whistleblower may receive up to 10% of the amounts recovered by the state, provided that the whistleblower is the original source of the information. If the whistleblower planned, initiated, or participated in the violation, however, he will receive no reward. Mo. Rev. Stat. § 191.907.

Statute of Limitations: The Missouri Medicaid False Claims Act does not identify an explicit statute of limitations. However, Missouri law provides a five year statute of limitations for an action for relief on the ground of fraud, the cause of action in such case to be deemed not to have accrued until the discovery by the aggrieved party, at any time within ten years, of the fact constituting the fraud. Mo. Rev. Stat. §516.120.

Whistleblower Protections: Missouri provides relief to any employee who has been discharged, demoted, suspended, threatened, harassed or otherwise discriminated against because the employee initiates, assists in, or participates in a proceeding or court action under section 191.900 to 191.910. This relief does not apply to employees who (i) bring a frivolous or vexatious action, (ii) planned, initiated, or participated in the conduct, or (iii) is convicted of criminal conduct arising from the violation, as determined by the court. The employee is entitled to reinstatement with the same seniority, two times the amount of back pay and interest on the back pay. Mo. Rev. Stat. § 191.908

Montana

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person may be liable under the Montana False Claims Act (the "Montana FCA") if he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Has possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivers or causes to be delivered less than all of the property or money;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and, with the intent to defraud the governmental entity or to willfully conceal the property, makes or delivers a receipt without completely knowing that the information on the receipt is true;
- Knowingly buys or receives as a pledge of an obligation or debt public property of the governmental entity from any person who may not lawfully sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used a false record or statement material to an obligation to pay or transmit money or property to a governmental entity or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to a governmental entity;
- As a beneficiary of an inadvertent submission of a false or fraudulent claim to the governmental entity, subsequently discovers the falsity of the claim or that the claim is fraudulent and fails to disclose the false or fraudulent claim to the governmental entity within a reasonable time after the discovery of the false or fraudulent claim; or
- Conspires to commit one of the above-specified violations.

Mont. Code Ann. § 17-8-403.

Penalties: A person found to be in violation of the Montana FCA is liable to a governmental entity for a civil penalty of not less than \$5,500 and not more than \$11,000 for each violation, plus three times the amount of damages that a governmental entity sustains, along with expenses, costs, and attorney fees. However, the treble damages may be reduced to double damages if: (a) the person committing the act furnished the government attorney with all information known to that person about the act within 30 days after the date on which the person first obtained the information; (b) the person fully

cooperated with any investigation of the act by the government attorney; and (c) at the time that the person furnished the government attorney with information about the act, a criminal prosecution, civil action, or administrative action had not been commenced with respect to the violation and the person did not have actual knowledge of the existence of an investigation into the violation. Mont. Code Ann. § 17-8-403.

Bringing an Action: The Montana FCA has a *qui tam* provision permitting a person to bring a suit on behalf of the government. Mont. Code Ann. §17-8-406. A plaintiff filing a Montana False Claims Act case may receive between 15% and 25% of amounts recovered if the State intervenes and prosecutes the matter. If the State does not intervene, and the private plaintiff successfully prosecutes the case on his own, he may receive between 25% and 30% of the award. The Court may reduce the value of the award to no more than 10% in an action that the Court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the action. Moreover, if the Court finds that the plaintiff planned and initiated the underlying violation, the Court may, to the extent the Court considers appropriate, reduce or eliminate the share of the proceeds of the action that the person would otherwise receive. Further still, if the person bringing the action is convicted of criminal conduct arising from the person's role in the violation, the person must be dismissed from the civil action and may not receive any share of the proceeds of the action. Mont. Code Ann. § 17-8-410.

Statute of Limitations: Under Montana law, a civil action must be brought within the later of six years after the date on which the violation was committed or within 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 governmental entity charged with responsibility to act in the circumstances, but no more than 10 years following the violation. Mont. Code Ann. § 17-8-404.

Whistleblower Protections: Montana has whistleblower protection provisions that prohibit a governmental entity, private entity, or person from adopting or enforcing a rule, regulation or policy preventing an employee, agent, or contractor from disclosing information to a government or law enforcement agency with regard to or from acting in furtherance of an investigation or a violation of the Montana FCA. Additionally, no governmental entity, private entity, or person may discharge, demote, suspend, threaten, harass, or deny promotion to, or in any other manner discriminate against, an employee, agent, or contractor in the terms and conditions of employment, agency or contract because of the disclosure by the employee, agent, or contractor of information to a government or law enforcement agency pertaining to a violation of the Montana FCA. An employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole if the employee, contractor, or agent is 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, contractor, or agent or associated others in furtherance of an action under this part or other efforts to stop one or more violations of the Montana FCA, including reinstatement with the same seniority status the employee, contractor, or agent would have had but for

the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney fees. Mont. Code Ann. § 17-8-412.

Nebraska

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of the Nebraska False Medicaid Claims Act (“NE Act”) if he/she:

- Knowingly presents, or causes to be presented to an officer or employee of the state a false or fraudulent claim for payment or approval;
- Knowingly makes or uses or causes to be made or used a false record or statement to obtain payment or approval by the state of a false or fraudulent claim;
- Conspires to defraud the state by obtaining payment or approval by the state of a false or fraudulent;
- Has possession, custody or control of property or money used or to be used by the state and, intending to defraud the state or willfully to conceal the property, delivers or causes to be delivered, less property than the amount for which such person receives a certificate or receipt;
- Buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the state knowing that such officer or employee may not lawfully sell or pledge the property;
- Knowingly makes, uses, or causes to be made or used a false record or statement with the intent to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state;
- Is the beneficiary of an inadvertent submission of a false Medicaid claim to the state and subsequently discovers and, knowing the claim is false, fails to report the claim within 60 days of discovery;
- Charges, solicits, accepts or receives anything of value in addition to the amount legally payable under the medical assistance program in connection with a provision of a good or service to recipient knowing that such is not legally payable; or
- Knowingly fails to maintain records necessary to fully disclose the nature of all goods and services for which a claim was submitted or paid.

Neb. Rev. St. §§ 68-936 through 68.939.

Penalties: Any person violating the NE Act is liable for damages in the amount of three times the amount of the false claim submitted to the state, a civil penalty of not more than \$10,000, court costs and attorney’s fees. The court can reduce the penalty to two times the amount of damages if it finds that the person furnished state officials with all

information known to the person about the violation not later than thirty days after the date on which the person obtained the information, fully cooperated with the investigation of the violation, and did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials. A person who knowingly destroys records is subject to damages in the amount of three times the amount of the claim, plus court costs and attorney's fees. Neb. Rev. St. §§ 68-936, 68-939 and 68.940.

Bringing an Action: Nebraska law does not provide for *qui tam* actions. There is no provision for a private citizen to share a percentage of any monetary recoveries.

Statute of Limitations: A civil action under the False Medicaid Claims Act shall be brought within six years after the date the claim is discovered or should have been discovered by exercise of reasonable diligence and, in any event, no more than ten years after the date on which the violation of the act was committed. Neb. Rev. St. § 68-941.

Whistleblower Protections: The NE Act does not provide for whistleblower protections. However, Nebraska prohibits any state supervisor from taking personnel action against an employee because of the disclosure of information by the employee to an official which the employee reasonably believes evidences wrongdoing. Neb. Rev. St. § 81-2705. Further, Nebraska law prohibits employers from retaliating or discriminating against employees because of their lawful participation in making a complaint to the Nebraska Department of Health and Human Services. Neb. Rev. St. § 71.445.

Nevada

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Nevada False Claims Act ("NV Act") if he/she, with or without specific intent:

- Knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim;
- Has possession, custody or control of public property or money used or to be used by the State or a political subdivision and knowingly delivers or causes to be delivered to the State or a political subdivision less money or property than the amount of which the person has possession, custody, or control;
- Is authorized to prepare or deliver a document that certifies receipt of money or property used or to be used by the State or a political subdivision and knowingly

- prepares or delivers such a document without knowing that the information on the document is true;
- Knowingly buys, or receives as a pledge or a security for an obligation or debt, public property from a person who is not authorized to sell or pledge the property;
 - Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to an obligation to pay or transmit money or property to the State or a political subdivision;
 - Knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State or a political subdivision;
 - Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the State or political subdivision within a reasonable time; or
 - Conspires to commit any of the above-specified acts.

NRS § 357.040.

Penalties: A person who violates the NV Act is liable to the state for three times the amount of damages sustained by the state, a minimum civil penalty of not less than \$5,500 per claim and not more than \$11,000 per claim, and the costs of the action. The court can reduce the penalty to two times the amount of damages if it finds that the person furnished state officials with all information known to the person about the violation not later than 30 days after the date on which the person obtained the information, fully cooperated with the investigation of the violation, and there was no investigation, criminal prosecution, civil action, or administrative action concerning the violation at the time the person provided information to state officials. NRS §§ 357.040 and 357.050.

Bringing an Action: Nevada law provides for *qui tam* actions. NRS § 357.080. If the State moves forward with the *qui tam* action, the plaintiff is entitled to receive no less than 15% and no more than 33% of any recovery. If the State does not intervene, the plaintiff is entitled to no less than 25% and no more than 50% of any recovery. If the Court finds that the action was brought by a private plaintiff who planned or initiated the violation upon which the action is based, the Court may reduce the recovery to which the private plaintiff is otherwise entitled. Further, if the private plaintiff is convicted of criminal conduct arising from his or her role in the violation, the private plaintiff must be dismissed from the civil action and must not receive any share of the recovery. NRS § 357.210.

Statute of Limitations: Under the NV Act, an action may not be commenced more than three years after the date on which the Attorney General discovers, or reasonably should have discovered, the fraudulent activity, or more than six years after the fraudulent activity occurred, but in no event more than 10 years after the fraudulent activity occurred. NRS § 357.170.

Whistleblower Protections: If an employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or discriminated against in the terms and conditions of employment as a result of any lawful act of the employee, contractor, or agent in furtherance of an action brought pursuant to the NV Act, the employee, contractor, or agent is entitled to all relief necessary to make the employee, contractor, or agent whole, including, without limitation, reinstatement with the same seniority as if the discharge, demotion, suspension, threat, harassment, or discrimination had not occurred or damages in lieu of reinstatement if appropriate, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discharge, demotion, suspension, threat, harassment, or discrimination, and punitive damages if appropriate. NRS § 357.250.

New Hampshire

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: The New Hampshire False Claims Act was amended in June 2011 to clarify, among other things, the criteria for bringing an action as a relator. A person is in violation of New Hampshire False Claims Act (“NH Act”) if he/she:

- Knowingly presents, or causes to be presented, to an officer or employee of the department, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the department;
- Conspires to defraud the department by getting a false or fraudulent claim allowed or paid;
- Has possession, custody or control of property or money used or to be used by the department and, intending to defraud the department or willfully to conceal the property, delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, decrease an obligation to pay or transmit money or property to the department; or
- Is the beneficiary of an inadvertent submission of a false claim to the department, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the department within a reasonable time after discovery of the false claim.

N.H. Rev. Stat. Ann. § 167:61-b.

Penalties: A person who violates the NH Act is liable to the state for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages

sustained by the state, the costs of the action and attorney's fees. The court can reduce the penalty to two times the amount of damages if it finds that the person furnished state officials with all information known to the person about the violation not later than thirty days after the date on which the person obtained the information, fully cooperated with the investigation of the violation, and there was no investigation, criminal prosecution, civil action, or administrative action concerning the violation at the time the person provided information to state officials. N.H. Rev. Stat. Ann. §167:61-b.

Bringing an Action: New Hampshire law provides for *qui tam* actions. N.H. Rev. Stat. Ann. § 167:61-c. If the Attorney General proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the court finds that the plaintiff planned and initiated the violation upon which the action was brought, then the court may, to the extent it considers appropriate, reduce the share of proceeds received by the plaintiff. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. N.H. Rev. Stat. Ann. § 167:61-e.

Statute of Limitations: A civil suit under the NH Act must be brought within the later of six years after the violation occurred or within three years after the violation was discovered, but not more than ten years after the violation was committed. N.H. Rev. Stat. Ann. §167:61-b.

Whistleblower Protections: The NH Act prohibits any employer from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee in the terms and conditions of employment because of lawful acts done by the employee or on behalf of the employee in furtherance of an action under the NH Act. Any employee so discriminated against will be entitled to relief including reinstatement with the same seniority status, two times the amount of back pay with interest, and compensation for any special damages including litigation costs and reasonable attorneys' fees. N.H. Rev. Stat. Ann. § 167:61-c.

New Jersey

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of New Jersey False Claims Act if he/she:

- Knowingly presents or causes to be presented to an employee, officer or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval;

- Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the State;
- Conspires to defraud the State by getting a false or fraudulent claim allowed or paid by the State;
- Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the entity, makes or delivers a receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes 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 State.

N.J.S. 2A:32C-3.

Penalties: A person who violates the New Jersey False Claims Act is liable to the state for a civil penalty of not more than the civil penalty allowed under the federal False Claims Act (31 U.S.C.s.3729 et seq.), plus three times the amount of damages sustained by the state. Mitigating factors can reduce the damages to two times the amount of damages sustained by the state. N.J.S. 2A:32C-3. A defendant may also be ordered to pay a fine equal to that imposed under the Federal False Claims Act (currently \$5,500 to \$11,000) for each violation of the Act.

Bringing an Action: The New Jersey False Claims Act requires the NJ Attorney General to investigate any violations and bring an action. New Jersey law provides for *qui tam* actions. N.J.S. 2A:32C-5. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. N.J.S. 2A:32C-7.

Statute of Limitations: A civil action under the New Jersey False Claims Act may not be brought 1) more than six years after the date on which the violation of the act 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, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. N.J.S. 2A:32C-11.

Whistleblower Protections: The New Jersey False Claims Act prohibits employers from establishing any rule preventing an employee from disclosing information to a state or law enforcement agency or from pursuing a false claims action. The employer may not discharge, demote, suspend, threaten, harass, or otherwise discriminate against an employee because of lawful actions under the statute. An employer who violates this is liable for relief to make the employee whole, including reinstatement, double back pay,

interest on back pay, special damages, punitive damages, litigation costs and attorneys fees. N.J.S. 2A:32C-10.

New Mexico

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: New Mexico has both a Medicaid False Claims Act and a Fraud Against Taxpayers Act. The New Mexico Fraud Against Taxpayers Act imposes liability on persons who knowingly present false or fraudulent claims for payment to New Mexico, misappropriate state property, or deceptively avoid binding obligations to the state. N.M. Stat. § 44-9-1 – 44-9-14. A person is in violation of the New Mexico Medicaid False Claims Act (“NM Act”) if he/she:

- Presents or causes to be presented a false or fraudulent claim;
- Presents or causes to be presented a claim for payment knowing the person receiving a benefit or payment is not authorized or eligible for a benefit under the Medicaid program;
- Makes, uses, causes to be made or uses a record or statement to obtain a false or fraudulent claim, paid for or approved by the state knowing such record or statement is false;
- Conspires to defraud the state by getting a claim paid or allowed knowing such claim is false;
- Makes, uses, causes to be made or uses a record or statement to conceal, avoid or decrease an obligation to pay or transmit money to property to the state, knowing such record or statement is false;
- Knowingly applies for and receives a benefit or payment on behalf of another person and converts that benefit or payment to his/her own personal use;
- Knowingly makes a false statement or representation of material fact concerning the conditions or operation of a health care facility in order to obtain certification or recertification; or
- Knowingly makes a claim for services or products not provided.

N.M. Stat. § 27-14-4.

Penalties: A person who violates the NM Act shall pay the state a civil penalty equal to three times the amount of damages sustained by the state. A defendant may be ordered to also pay a fine equal to between \$5,000 and \$10,000 for each violation of the Act. N.M. Stat. §§ 27-14-4, 44-9-3. Additional penalties may apply to those defrauding the state under New Mexico’s Fraud Against Taxpayers Act. N.M. Stat. §§ 44-9-1 – 44-9-14.

Bringing an Action: The Department of Human Services is authorized to conduct an investigation of any violations. New Mexico law provides for *qui tam* actions. N.M. Stat. § 27-14-7. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. A civil action shall be brought within 4 years. N.M. Stat. § 27-14-9.

Statute of Limitations: Under the NM Act, civil actions must be brought within four years after the alleged violation. N.M. Stat. §§ 27-14-13, 37-1-4.

Whistleblower Protections: The NM Act protects against retaliation from employers for employees who initiate, assist or participate in an investigation under the NM Act. It does not apply to an employee who brings a frivolous action. N.M. Stat. § 27-14-12.

New York

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

Civil and Administrative Laws

False Claims: New York City has a False Claims Act. The New York City False Claims Act allows whistleblowers to bring suit in the name of the City of New York where a wrongdoer engages in conduct that defrauds the state or local government of taxpayer dollars. Violators are liable to the city for three times the amount of damages as well as a civil penalty between \$5,000 and \$15,000 for each violation. Title 7, Ch. 8, §7-801 et seq.

New York State amended and enhanced its False Claims Act in August 2010. A person is liable under New York's False Claims Act ("NY Act") if he/she:

- Knowingly presents, or causes to be presented, to any employee, officer, or agent of the State or a local government, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State or a local government;
- Conspires to defraud the State or a local government by getting a false or fraudulent claim allowed or paid;
- Has possession, custody, or control of property or money used, or to be used, by the State or a local government and, intending to defraud the State or a local

government or willfully to conceal the property or money, delivers, or causes to be delivered, less property or money than the amount for which the person receives a certificate or receipt;

- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the State or a local government and, intending to defraud the State or a local government, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State or a local government knowing that the officer or employee lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes 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 State or a local government.

N.Y. State Fin. Law § 189.

Penalties: The penalty for filing a false claim is between \$6,000 to \$12,000 per claim, plus three times the amount of damages which the state sustains because of the act of that person. The Court may reduce the damages to not more than two times the amount of damages sustained because of the act of the person if the Court finds that: (a) the person committing the violation had furnished all information known to such person about the violation to those officials responsible for investigating false claims violations on behalf of the State or a local government within 30 days after the date on which such person first obtained the information; (b) such person fully cooperated with any government investigation of such violation; and (c) at the time such person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation. The NY Act also holds a person liable for the costs, including attorneys' fees, of a civil action brought to recover any such penalty or damages. N.Y. State Fin. Law § 189.

Bringing an Action: The NY Act permits *qui tam* actions. N.Y. State Fin. Law § 190. If the suit eventually concludes with payments back to the government, the person who started the case can recover 25-30% of the proceeds if the government did not participate in the suit or 15-25% if the government did participate in the suit. N.Y. State Fin. Law § 190.

Statute of Limitations: Under the NY Act, a civil lawsuit must be brought no later than 10 years after the date on which the violation is committed. N.Y. State Fin. Law § 192.

Social Services Law 145-c Sanctions. If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement or misrepresenting, concealing or withholding facts (or committing an act intended to mislead, misrepresent, conceal or withhold facts), then the person's needs shall not be taken into account in determining his or her need or the person's family's need, for six months if a first offense, 12 months if a second offense (or for any offense if the benefits

received are \$1,000 - \$3,900), 18 months if a third offense (or for any offense if the benefits received are over \$3,900) and five years for four or more offenses.

Social Services Law 145-b False Statements. It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any Social Services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device.

The State or the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to \$2,000 per violation. If repeat violations occur within five years, a penalty up to \$7,500 per violation may be imposed if they involve more serious violations of Medicaid rules, billing for services not rendered or providing excessive services.

Criminal Laws

Social Services Law 145, Penalties. Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

Social Services Law 366-b, Penalties for Fraudulent Practices.

Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a Class A misdemeanor.

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services, knowingly submits false information in order to obtain greater Medicaid compensation or knowingly submits false information in order to obtain authorization to provide items or services is guilty of a Class A misdemeanor.

Penal Law Article 155, Larceny. The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. It has been applied to Medicaid fraud cases.

- a. Fifth degree petit larceny involves property of any amount. It is a Class A misdemeanor.
- b. Fourth degree grand larceny involves property valued over \$1,000. It is a Class E felony.
- c. Third degree grand larceny involves property valued over \$3,000. It is a Class D felony.
- d. Second degree grand larceny involves property valued over \$50,000. It is a Class C felony.

- e. First degree grand larceny involves property valued over \$1 million. It is a Class B felony.

Penal Law Article 175, False Written Statements. Four crimes in this Article relate to filing false information or claims that have been applied in Medicaid fraud prosecutions.

- a. 175.05, Falsifying business records in the second degree involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a Class A misdemeanor.
- b. 175.10, Falsifying business records in the first degree includes the elements of the 175.05 offense and includes the intent to commit another crime or conceal its commission. It is a Class E felony.
- c. 175.30, Offering a false instrument for filing in the second degree involves presenting a written instrument (including a claim for payment) to a public office knowing that it contains false information. It is a Class A misdemeanor.
- d. 175.35, Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include intent to defraud the State or a political subdivision. It is a Class E felony.

Penal Law Article 176, Insurance Fraud. Six crimes in this Article apply to claims for insurance payment, including Medicaid or other health insurance.

- a. Insurance fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a Class A misdemeanor.
- b. Insurance fraud in the 4th degree is filing a false insurance claim for over \$1,000. It is a Class E felony.
- c. Insurance fraud in the 3rd degree is filing a false insurance claim for over \$3,000. It is a Class D felony.
- d. Insurance fraud in the 2nd degree is filing a false insurance claim for over \$50,000. It is a Class C felony.
- e. Insurance fraud in the 1st degree is filing a false insurance claim for over \$1 million. It is a Class B felony.
- f. Aggravated insurance fraud is the commission of insurance fraud more than once. It is a Class B felony.

Penal Law Article 177, Health Care Fraud. Five crimes apply to claims for health insurance payment, including Medicaid.

- a. Health care fraud in the 5th degree is knowingly filing, with the intent to defraud, a claim for payment that intentionally has false information or omissions. It is a Class A misdemeanor.
- b. Health care fraud in the 4th degree is filing false claims and annually receiving over \$3,000 in aggregate. It is a Class E felony.
- c. Health care fraud in the 3rd degree is filing false claims and annually receiving over \$10,000 in aggregate. It is a Class D felony.
- d. Health care fraud in the 2nd degree is filing false claims and annually receiving over \$50,000 in aggregate. It is a Class C felony.
- e. Health care fraud in the 1st degree is filing false claims and annually receiving over \$1 million in aggregate. It is a Class B felony.

Whistleblower Protections

Whistleblower Protections: The NY Act also provides protection for employees, contractors, or agents of any private or public employer who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the NY Act. Remedies include reinstatement with comparable employee, contractor, or agent would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. N.Y. State Fin. Law § 191.

New York Labor Law 740. An employer may not take any retaliatory action against an employee if the employee discloses information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer (1) is in violation of a law that creates a substantial and specific danger to the public health and safety; or (2) has committed health care fraud (as defined in Penal Law Article 177). The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation.

If an employer takes a retaliatory action against the employee, the employee may sue in State court for reinstatement to the same or equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that

the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

New York Labor Law §741. A health care employer may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, it may impose a civil penalty of \$10,000 on the employer.

North Carolina

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the North Carolina False Claims Act ("NC Act") if he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation of this section;
- 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;
- Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from any officer or employee of the State who lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the

State, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State.

N.C.G.S. §§ 1-605 – 1.618.

Penalties: A person who violates the NC Act is liable for a civil penalty not less than \$5,500 and not more than \$11,000 plus three times the amount of damages sustained by the Medical Assistance Program, as well as the cost of the civil action brought to recover the monies plus interest thereon. Damages may be reduced to no less than two times the amount of damages, if the person committing the violation self-reported within 30 days, did not have actual knowledge of the existence of an investigation into the violation, and fully cooperated with any investigation. N.C.G.S. §1-607.

Bringing an Action: The NC Act provides for a *qui tam* plaintiff. N.C.G.S. §1-608. If the state proceeds with an action brought by a *qui tam* plaintiff, the plaintiff shall receive between 15% and 25% of the proceeds of the action. If the state doesn't proceed with an action, the *qui tam* plaintiff shall receive between 25% and 30% of the proceeds, in addition to reasonable expenses and attorney's fees. N.C.G.S. §1-610.

Statute of Limitations: Under the NC Act, a civil lawsuit must be brought within the later of 1) six years after the violation was committed, or 2) three years after the date the violation was discovered, but no more than ten years after the violation was committed. N.C.G.S. § 1-615.

Whistleblower Protections: Any employee, contractor, or agent who is 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, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of an action the NC Act, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status the employee, contractor, or agent would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. N.C.G.S. § 1-613.

North Dakota

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: North Dakota has not yet enacted a false claims act. However, it is a violation of North Dakota law, if one, among other violations:

- Presents or causes to be presented for payment any false or fraudulent claim for care or services;
- Submits or causes to be submitted false information for the purpose of obtaining greater compensation than that to which the provider is legally entitled;
- Submits or causes to be submitted false information for the purpose of meeting prior authorization requirements;
- Over utilizes the Medicaid program by inducing, furnishing, or otherwise causing a recipient to receive care and services not required by the recipient; or
- Is convicted of a criminal offense arising out of the making of false or fraudulent statements or omission of fact for the purpose of securing any governmental benefit to which the provider is not entitled, or out of conspiring, soliciting, or attempting such an action.

N.D. Admin. Code § 75-02-05-05.

Penalties: The determination of appropriate sanctions shall be at the discretion of the director of the division of medical services or the director's designee. Sanctions could include:

- Repayment of claims;
- Suspension or termination from participation in the Medicaid program;
- One hundred percent review of provider's claims prior to payment; or
- Referral to peer review or to the state licensing board or other appropriate body for investigation.

N.D. Admin. Code § 75-02-05-08.

Bringing an Action: North Dakota law does not provide for a *qui tam* plaintiff.

Statute of Limitations: These North Dakota laws do not contain a statute of limitations. North Dakota does have a six year statute of limitations for fraud causes of action. The claim for relief won't be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud. N.D. Cent. Code § 28-01-16(6).

Whistleblower Protections: An employer may not discharge, discipline, threaten, discriminate or penalize an employee with regard to compensation, work conditions,

location or privileges of employment because the person, or a person acting on their behalf, in good faith reported a violation or suspected violation of a state or federal rule or law, or refused an order to perform an act that the employee believes to be illegal. An aggrieved employee may bring a civil suit against the employer and may recover injunctive relief, actual damages and attorney's fees. A willful violation of this law is a criminal infraction. N.D. Cent. Code § 34-01-20.

Ohio

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Ohio law considers it a criminal offense to knowingly make or cause to be made a false or misleading representation or statement for the purposes of obtaining reimbursement from the Ohio Medical Assistance Program. A service provider can also be found civilly liable for:

- Knowingly making or causing to be made a false or misleading statement or representation for use in obtaining reimbursement from the medical assistance program;
- Contrary to the terms of the person's provider agreement, charge, solicit, accept, or receive for goods or services that the person provides under the medical assistance program;
- Solicit, offer, or receive any remuneration, cash or in kind, including, but not limited to, a kickback or rebate, in connection with the furnishing of goods or services for which whole or partial reimbursement is or may be made under the medical assistance program;
- Knowingly alter, falsify, destroy, conceal, or remove any records that are necessary to fully disclose the nature of all goods or services for which the claim was submitted, or for which reimbursement was received, by the person;
- Knowingly alter, falsify, destroy, conceal, or remove any records that are necessary to disclose fully all income and expenditures upon which rates of reimbursements were based for the person;
- Receiving or attempting to receive payments by deception; receiving payments that the provider is not entitled to;
- Receiving payments that are in excess of the amounts that the provider is entitled to; or
- Falsifying any report or document required by federal or state law or provider agreement relating to Medicaid payments.

Oh. Rev. Code Ann. § 2913.40(B) - § 2913.40(D) and § 5111.03(A).

Penalties: A person who violates Ohio laws may be subject to criminal penalties, is liable for three times the amount of the excess payment, is subject to a fine of not less than

\$5,000 and not more than \$10,000 for each deceptive claim, and all reasonable costs associated with the action. A provider will have his/her agreement for services terminated. Oh. Rev. Code Ann. § 5111.03(B).

Bringing an Action: The Attorney General may bring the action. Ohio law does not provide for *qui tam* actions. Oh. Rev. Code Ann. § 5111.03(F).

Statute of Limitations: The actions against providers must be brought within six years after the conduct in violation of the Act. Oh. Rev. Code Ann. § 5111.03(F).

Whistleblower Protections: An employer cannot discipline or retaliate against an employee making a report of a violation of state, federal or local law or rule. The employee must notify their supervisor by written report with sufficient detail to describe the violation. The employer must make a good faith effort to correct the violation within twenty-four (24) hours or the employee may notify the prosecuting authority, a peace officer or an appropriate public agency or official. Employees can be disciplined for failure to make a good faith effort to ascertain the accuracy of information reported. State employees cannot be disciplined or retaliated against for reporting a violation of state or federal statute or rule or a misuse of public resources. Employees may be disciplined for reporting false information. An aggrieved employee's sole and exclusive remedy is to file an appeal with the state personnel board of review within thirty (30) days after alleged discriminatory action. Oh. Rev. Code Ann. § 4113.52(A)(1) et seq. and §124.341.

Oklahoma

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Oklahoma Medicaid False Claims Act ("OK Act") if he/she:

- Knowingly presents, or causes to be presented, directly or indirectly, to an officer or employee of the State of Oklahoma a false or fraudulent claim for payment or approval;
- Knowingly makes, uses or causes to be made or used, directly or indirectly, a false record or statement to get a false or fraudulent claim paid or approved by the state;
- Conspires to defraud the state by getting a false or fraudulent claim allowed or paid;
- Has possession, custody or control of property or money used or to be used by the state and, intending to defraud the state or willfully to conceal the property,

- delivers or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state and, intending to defraud the state, makes or delivers the receipt without completely knowing that the information on the receipt is true;
 - Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the state who the person knows may not lawfully sell or pledge the property; or
 - Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, increase or decrease an obligation to pay or transmit money or property to the state.

63 Okl. St. §§ 5053.1.

Penalties: A person who violates the OK Act is liable to the state for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages sustained by the state, the costs of the action and attorney's fees. Mitigating factors can reduce the damages to two times the amount of damages sustained by the state. 63 Okl. St. §§ 5053.1.

Bringing an Action: The OK Attorney General is authorized to bring the action. OK law provides for *qui tam* actions. 63 Okl. St. §§ 5053.2. If the state proceeds with a *qui tam* action, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. 63 Okl. St. §§ 5053.4.

Statute of Limitations: Under the OK Act, a civil lawsuit must be brought within the later of 1) six years after the violation was committed, or 2) three years after the date the violation was discovered, but no more than ten years after the violation was committed. 63 Okl. St. §§ 5053.6.

Whistleblower Protections: The OK Act provides relief to employees who have been discharged, demoted, suspended, threatened, harassed or discriminated against because of his/her lawful actions under the OK Act. Such person is entitled to all relief to make them whole, including reinstatement, double back pay, back pay interest, and special damages including litigation costs and attorneys fees. 63 Okl. St. §§ 5053.5(F)

The Whistleblower Act protects state employees from discipline when they disclose public information or report violations of state or federal law or policy, mismanagement, gross waste of public funds, danger to public health or safety, or when they discuss operations and functions of government agencies with the governor, legislature or the media. Employees are not protected if the knowingly or recklessly disseminate false or confidential information. 74 Okl. St. § 840-2.5.

Oregon

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Oregon recently enacted a state false claims act. A person is in violation of Oregon law if he/she:

- Presents for payment or approval, or causes to be presented for payment or approval, a claim that the person knows is a false claim.
- In the course of presenting a claim for payment or approval, makes or uses, or causes to be made or used, a record or statement that the person knows to contain, or to be based on, false or fraudulent information.
- Agrees or conspires with other persons to present for payment or approval a claim that the person knows is a false claim.
- Delivers, or causes to be delivered, property to a public agency in an amount the person knows is less than the amount for which the person receives a certificate or receipt.
- Makes or delivers a document certifying receipt of property used by a public agency, or intended to be used by a public agency, that the person knows contains false or fraudulent information.
- Buys property of a public agency from an officer or employee of a public agency if the person knows that the officer or employee is not authorized to sell the property.
- Receives property of a public agency from an officer or employee of the public agency as a pledge of an obligation or debt if the person knows that the officer or employee is not authorized to pledge the property.
- Makes or uses, or causes to be made or used, a false or fraudulent statement to conceal, avoid or decrease an obligation to pay or transmit moneys or property to a public agency if the person knows that the statement is false or fraudulent.
- Fails to disclose a false claim that benefits the person within a reasonable time after discovering that the false claim has been presented or submitted for payment or approval.

Or. Rev. Stat. §180.755.

Penalties: The court shall award to the state a penalty equal to the greater of \$10,000 for each violation or an amount equal to twice the amount of damages incurred for each violation. The court may mitigate an award of a penalty under this subsection based on any fine or penalty assessed against the defendant for substantially the same acts or omissions in a judgment under the federal False Claims Act, or under the federal Civil Monetary Penalty Law. Or. Rev. Stat. §180.760.

Bringing an Action: The Attorney General may commence an action. Or. Rev. Stat. § 180.760.

Statute of Limitations: An action under the Oregon statute must be brought within three years after the date that the officer or employee of the public agency charged with 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 is committed. Or. Rev. Stat. § 180.765.

Whistleblower Protections: The Oregon False Claims Act does not set forth whistleblower protections, however it is unlawful for any employer to demote, suspend or discharge an employee who in good faith reported criminal activity, aided in a criminal investigation or has brought a civil suit against the employer. Public employers cannot prohibit employees from reporting or punish employees who reasonably report criminal activity or gross waste of public funds. Or. Rev. Stat. § 659A.200 to 659A.224 and 659A.230 to 659A.233.

Pennsylvania

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Pennsylvania law prohibits fraud in connection with its medical assistance program, including:

- Knowingly or intentionally presenting a false or fraudulent claim for payment for any medical services or other items;
- Solicit or receive any remuneration, kickback, bribe or rebate directly or indirectly from or to any person in connection with services or products that are paid for, wholly or partially, by the medical assistance program;
- Submitting duplicate claims;
- Submitting claims for services, supplies or equipment which were not rendered to a recipient;
- Submitting claims for equipment, supplies or equipment which includes costs or charges not related to such services, supplies or equipment rendered to a recipient;
- Submitting a claim or referring a recipient to another provider by referral, order or prescription, for services, supplies or equipment which are not documented in the record in the prescribed manner and are of little or no benefit to the recipient, are below the accepted medical treatment standards, or are unneeded by the recipient;
- Submitting a claim which misrepresents the description of services, supplies or equipment dispensed or provided; the dates of services; the identity of the recipient; the identity of the attending, prescribing or referring practitioner; or the identity of the actual provider;

- Submitting a claim for reimbursement which is higher than the usual and customary charges;
- Submitting a claim for services not rendered by the provider;
- Dispensing services or products without a physician's written order;
- Except in emergency situations, dispense, render or provide a service or item to a patient claiming to be a recipient without making a reasonable effort to ascertain by verification through a current medical assistance identification card, that the person or patient is, in fact, a recipient who is eligible on the date of service and without another available medical resource;
- Entering into an agreement to obtain or help someone else to obtain payments for which there is no entitlement;
- Making false statements in the application for provider enrollment; or
- Commit any of the prohibited acts described in section 1403(d)(1), (2), (4) and (5).

62 P.S. Pa. Stat. §§ 1407, 1408. 55 Pa. Code § 1101.75.

Penalties: There are both criminal sanctions and civil penalties for violating Pennsylvania's anti-fraud laws. The penalty can include felony (3rd degree) charges for each violation, a maximum fee of \$15,000 and seven years imprisonment. Any person convicted repays the amount of excess monies received and shall pay an amount not to exceed three times the amount of the excess monies received. Those convicted could also be excluded from participation in the medical assistance program. 62 P.S. Pa. Stat. § 1407(b)(1), (2), and (3), 62 P.S. Pa. Stat. § 1408, 55 Pa. Code §§ 1101.76, 1101.92.

Bringing an Action: Pennsylvania does not provide legislation for *qui tam* actions.

Statute of Limitations: Under Fraud and Abuse controls, any civil or criminal prosecutions must be brought within five years of the date the violation occurred. 62 P.S. Pa. Stat. § 1411.

Whistleblower Protections: No employer may discharge, threaten, discriminate or retaliate against an employee who makes a good faith report, or is about to report, to the employer or appropriate authority an instance of waste or wrongdoing, including a violation of a federal, state or local law or regulation, or codes of conduct or ethics designed to protect the public interest; or for participating in an investigation, hearing, inquiry or court action. An aggrieved employee may file a civil action for injunctive relief and damages within 180 days of the alleged discrimination. A court may order reinstatement, back wages, actual damages, litigation costs and attorney fees. Employers may be fined up to \$500 for violations; public servants may be suspended for six months. 43 P.S. Pa. Stat. §§ 1421-1428.

Rhode Island

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the State False Claims Act if he/she:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- 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 property than all of that money or property;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the State, or a member of the guard, who lawfully may not sell or pledge the property; or
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State; or
- Conspires to commit an act in violation of one of the above-specified prohibitions.

R.I. Gen. Laws § 9-1.1-3.

Penalties: A person who violates the State False Claims act is liable to the State for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages which the state sustains because of the act of that person. A person violating the State False Claims Act shall also be liable to the State for the costs of a civil action brought to recover any such penalty or damages. R.I. Gen. Laws § 9-1.1-3.

Bringing an Action: *Qui tam* actions are allowed under the State False Claims Act. R.I. Gen. Laws § 9-1.1-4. If a *qui tam* action is brought and the State intervenes, the plaintiff will receive at least 15% but not more than 25% of the proceeds recovered, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the Court finds to be based primarily on disclosures of specific information, the Court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to

litigation. In addition to an amount for reasonable expenses which the Court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.

If the State does not intervene, the person bringing the action or settling the claim shall receive between 25% and 30% of the proceeds. Such person shall also receive an amount for reasonable expenses which the Court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs.

If the Court finds the action was brought by a person who planned and initiated the violation upon which the action was brought, the Court may reduce the share of the proceeds. If the person bringing the action is convicted of criminal conduct arising from his/her role in the violation, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. If the State does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. R.I. Gen. Laws § 9-1.1-4.

Statute of Limitations: Under the State False Claims Act, a civil action 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, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. R.I. Gen. Laws § 9-1.1-5.

Whistleblower Protections: Any employee, contractor, agent, or associated others who is 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, contractor, agent, or associated others in furtherance of an action under the State False Claims Act, shall be entitled to all relief necessary to make the employee, contractor, agent, or associated others whole. Such relief shall include reinstatement with the seniority status such employee, contractor, agent, or associated others would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. R.I. Gen. Laws § 9-1.1-4(g).

South Carolina

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims and Penalties: South Carolina does not have a state-enacted false claims act. However, South Carolina's state medical false claims laws provide criminal, civil, and administrative penalties and sanctions for health care providers violating its laws.

A person who knowingly causes to be presented a false claim for payment to an insurer transacting business in South Carolina, to a health maintenance organization transacting business in South Carolina, or to any person, including the State of South Carolina, providing benefits for health care in South Carolina, whether these benefits are administered directly or through a third person, or who knowingly assists, solicits, or conspires with another to present a false claim for payment as described above, is guilty of:

- A felony if the amount of the claim is at least \$5,000 and the person can be imprisoned up to ten years and fined up to \$5,000;
- A felony if the amount of the claim is more than \$1,000 but less than \$5,000, and the person can be imprisoned up to five years and fined;
- A misdemeanor amount of the claim is \$1,000 or less; and
- The person must be fined or imprisoned.

S.C. Code Ann § 38-55-170.

It is a misdemeanor for a medical provider to knowingly and willfully make or cause to be made a false claim, statement, or representation of a material fact: in an application or request for a benefit, payment, or reimbursement from a state or federal agency which administers or assists in the administration of the state's medical assistance or Medicaid program, or on a report, certificate or similar document submitted to a state or federal agency which administers or assists in the administration of the state's Medicaid program in order for a provider or facility to qualify or remain qualified under the state's Medicaid program. Each false claim or representation is considered a separate offense. It is illegal for a provider to knowingly and willfully conceal or fail to disclose any material fact, event or transaction which affects the provider's initial or continued entitlement to payment, reimbursement, or benefits under the state's Medicaid plan; or amount of payment, reimbursement, or benefit to which the provider may be entitled for services, goods, or assistance rendered. Each fact, event, or transaction concealed or not disclosed constitutes a separate offense. A person guilty can be imprisoned for three years and fined \$1,000 for each offense. S.C. Code Ann § 43-7-60.

It is a misdemeanor for (1) a person to knowingly and willfully to make or cause to be made a false statement or representation of material fact on an application for assistance,

goods, or services under the state's Medicaid program when the false statement or representation is made for the purpose of determining the person's entitlement to assistance, goods, or services; (2) any applicant, recipient, or other person acting on behalf of the applicant or recipient knowingly and willfully to conceal or fail to disclose any material fact affecting the applicant's or recipient's initial or continued entitlement to receive assistance, goods, or services under the state's Medicaid program; (3) a person eligible to receive benefits, services, or goods under the Medicaid program to sell, lease, lend, or otherwise exchange rights, privileges, or benefits to another person. A person guilty can be imprisoned for three years and fined \$1000. S.C. Code Ann. §§ 43-7-60, 43-7-70.

Bringing an Action: The S.C. Attorney General may bring an action to recover damages equal to three times the amount of an overstatement or overpayment and the court may impose a civil penalty of two thousand dollars for each false claim, representation, or overstatement made to a state or federal agency which administers funds under the state's Medicaid program. The state agency which administers the Medicaid program may impose other administrative sanctions against the provider authorized by law. South Carolina law does not provide for *qui tam* actions. S.C. Code Ann §§ 43-7-60, 43-7-90.

Statute of Limitations: There is no explicit statute of limitations in South Carolina's medical false claims laws. However, South Carolina law maintains a three year statute of limitations for general fraud actions. S.C. Code Ann § 15-3-530(7).

Whistleblower Protections: Government employers cannot discharge, suspend, demote, decrease the compensation, discipline or threaten employees who report violation or state or federal laws or rules; or expose criminal activity, corruption, waste, fraud or gross negligence; or who testify in a trial or hearing regarding those matters. Employees who make an unfounded allegation without good faith may be discharged. If an employee's actions in reporting results in a saving of public funds, the reporting employee is entitled to 25% of the estimated savings up to \$2,000. If an employee is dismissed within one year after having reported alleged wrongdoing, the employee may file suit after having exhausted all administrative remedies. Recoverable damages include lost wages, court costs and reasonable attorney fees, along with reinstatement. S.C. Code Ann. § 8-27-20, et seq.

South Dakota

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: South Dakota does not have a state-enacted false claims act. However, a person commits an offense if he/she makes or causes to be made:

- A claim, knowing the claim to be false, in whole or in part, by commission or omission;
- 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, in whole or in part, by commission or omission;
- A statement or representation for use by another in obtaining a good or a service under the program, knowing the statement or representation to be false, in whole or in part, by commission or omission; or
- A statement or representation for use in qualifying as a provider of a good or a service under the program, knowing the statement or representation to be false, in whole or in part, by commission or omission.

S.D. Codified Laws § 22-45-2.

In addition, each application to participate as a provider in the Medicaid program, each report stating income or expense upon which rates of payments are or may be based, and each invoice for payment for a good or a service provided to the recipient shall contain a statement that all matters therein are true and accurate, signed by the individual responsible for the provider, under the penalty of perjury. A person commits perjury if he signs or submits, or causes to be signed or submitted, such a statement, and he knows, or should have known, that the application, report, or invoice containing information is false, in whole or in part, by commission or omission. S.D. Codified Laws § 22-45-3.

Penalties: Violations represent Class 5 felonies, which could subject the violating individual or entity to five years imprisonment and a \$10,000 fine. Additionally, any person violating such provisions may be suspended or excluded from participation as a provider or as an employee of a provider. S.D. Codified Laws § 22-45-7. Any person who receives payment for furnishing a good or a service under the Medical Assistance Program, which the person is not entitled to receive may liable for civil penalties. S.D. Codified Laws § 22-45-7.

Any person who receives payment for furnishing a good or a service under the program which the person is not entitled to receive by reason of offense of the above provisions, may, in addition to any other penalties provided by the law, be liable for civil penalties which include: 1) payment of interest on the amount of the excess payment at the rate

provided for from the date on which payment was made to the date upon which repayment is made to the program; and 2) payment of up to three times the amount of damages sustained, including the cost of investigation and litigation; and payment in the sum of \$2,000 for each false or fraudulent claim, statement, or representation submitted for providing a good or service. S.D. Codified Laws § 22-45-7.

Bringing an Action: South Dakota does not contain *qui tam* or relator provisions.

Statute of Limitations: The statute of limitations for bringing claims under these South Dakota laws is six years. S.D. Codified Laws § 22-45-11.

Whistleblower Protections: An employee may file a grievance with the Career Service Commission if the employee believes that there has been retaliation because of reporting a violation of state law through the chain of command of the employee's department or to the attorney general's office or because the employee has filed a suggestion pursuant to this section. S.D. Codified Laws § 3-6A-52.

Tennessee

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Tennessee Medicaid False Claims Act ("TN Act") if he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval under the Medicaid program;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim under the Medicaid program;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state, or knowingly conceals, or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the state, relative to the Medicaid program; or
- Conspires to commit an act in violation of one of the above-specified prohibitions.

Tenn. Code Ann. § 71-5-182(1). Tennessee Code Annotated § 4-18-101 has similar prohibitions but applies to state funds in general.

Penalties: A person who has violated the TN Act is liable for civil penalties of no less than \$5,000 and no more than \$25,000, plus three times the amount of damages sustained by the state, and the costs of action in recovering such monies. Damages can be reduced

to no less than two times the damages sustained by the state if the following conditions are met: (i) the person committing the violation furnishes the State with all available information within 30 days after the date the person first obtained the information; (ii) the person fully cooperated with the State investigation; and (iii) at the time the person furnished the information to the State, no criminal prosecution, civil action or administrative action had been commenced under the TN Act and the person did not have actual knowledge of the existence of an investigation. Tenn. Code Ann. § 71-5-182.

Bringing an Action: The Tennessee Attorney General and the person reporting the violation are able to bring an action. Tennessee law allows for *qui tam* actions. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. Tenn. Code Ann. § 71-5-183.

Statute of Limitations: A civil lawsuit under the TN Act must be brought within the later of (1) six years after the violation was committed, or (2) three years after the date the violation was discovered, but no more than ten years after the violation was committed. Tenn. Code Ann. § 71-5-184.

Whistleblower Protections: Any employee, contractor, or agent who is 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, contractor, or agent on behalf of the employee, contractor, or agent or others in furtherance of an action under the TN Act, including investigation for, initiation of, testimony for, or assistance in, an action filed or to be filed under the TN Act, is entitled to all relief necessary to make the employee whole. Such relief includes reinstatement, double back pay, interest on the back pay, and special damages including litigation costs and reasonable attorneys' fees. Tenn. Code Ann. § 71-5-183(g).

Texas

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? Yes

False Claims: A person is in violation of the Texas Medicaid Fraud Prevention Act (the "Texas Act") if he/she:

- Knowingly makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;

- Knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized;
- Knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received;
- Knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:
 - The conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program; or
 - Information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program;
- Except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program;
- Knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:
 - Is not licensed to provide the product or render the service, if a license is required; or
 - Is not licensed in the manner claimed;
- Knowingly makes or cause to be made a claim under the Medicaid program for:
 - A service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;
 - A service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or
 - A product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate;
- Makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service;
- Is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange for health care benefits to individuals eligible under the Medicaid program and knowingly:
 - fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;
 - Fails to provide to the commission or an appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or
 - Engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's

managed care plan or in connection with marketing the organization's services to an individual eligible under the Medicaid program;

- Knowingly obstructs an investigation by the Attorney General of an alleged unlawful act under this section;
- Knowingly makes, uses, or causes the making or use of a false record or statement material to an obligation to pay or transmit money or property to the State of Texas under the Medicaid program, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the State of Texas under the Medicaid program;
- Knowingly engages in conduct that constitutes a violation under Section 32.039(b); or
- Conspires to commit an act in violation of one of the above-specified prohibitions.

Tex. Hum. Res. Code. §36.002

Penalties: A person who violates the Texas Act is subject to a variety of administrative and civil penalties, including, paying the State the amount of the payment or the value of any monetary benefit provided under the Medicaid program, plus interest on that amount from the date the benefit was received to the date the State recovers it, and civil penalties in an amount equal to two times the amount of damages sustained by the State plus: (a) between \$5,500 and \$15,000 for each unlawful act resulting in an injury to an elderly person, disabled person, or a minor; and (b) between \$5,500 and \$11,000 for each unlawful act that does not result in injury to an elderly person, disabled person, or a minor. The Texas Department of Health and Human Services shall suspend or revoke provider agreements, permits, licenses, and certificates issued to any person or entity involved in the violations and said provider will be excluded from the Medicaid program for a period of 10 years, unless such exclusion is otherwise waived or limited by the Executive Commissioner of the Texas Health and Human Services Commission. Tex. Hum. Res. Code. §§ 36.005, 36.052.

Bringing an Action: The Texas Attorney General is authorized to investigate and bring an action for injunctive relief and civil penalties. Tex. Hum. Res. Code §§ 36.051, 36.052. Texas law provides for *qui tam* actions. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement, costs, and attorneys fees. If the state does not proceed with the case, the person is entitled to receive at least 25% but not more than 30% of the proceeds of the action. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. Tex. Hum. Res. Code §36.101 et seq. Texas also has a provision that allows for an award to an individual who reports activity that constitutes fraud or abuse of funds in the state Medicaid program who reports overcharges in the program if the disclosure results in the recovery of an administrative penalty. The award may not exceed 5% of the amount of the administrative penalty that resulted from the individual's disclosure. Tex. Gov. Code § 531.101.

Statute of Limitations: If the State declines to intervene in an action, the person proceeding with the action may recover for an unlawful act for a period of up to six years before the date the lawsuit was filed, or for a period beginning when the unlawful act occurred until up to three years from the date the State knows or reasonably should have known facts material to the unlawful act, whichever of these two periods is longer, regardless of whether the unlawful act occurred more than six years before the date the lawsuit was filed. Notwithstanding, in no event shall a person proceeding with a suit recover for an unlawful act that occurred more than 10 years before the date the lawsuit was filed.

Whistleblower Protections: The Texas Act prohibits an employer from discharging, demoting, suspending, threatening, harassing or otherwise discriminating against an employee, contractor, or agent in their employment terms because of lawful actions taken in furtherance of the Texas Act, including investigation, testimony and assistance in actions files. They are entitled to reinstatement, at least double back pay, interest on the back pay, and special damages including litigation costs and attorneys fees. Tex. Hum Res. Code §36.115.

Utah

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of the Utah False Claims Act (“Utah Act”) if he/she:

- Makes or causes to be made a false statement or representation of a material fact in an application for benefits;
- Makes or causes to be made a false statement or representation in determining rights to a benefit;
- Having knowledge of the occurrence of an event affecting initial or continued rights to receive benefits, conceals or fails to disclose an event with the intent to obtain a benefit to which the person is not entitled or in an amount greater than that to which the person or any other person is entitled;
- Solicits, offers or receives a kickback, bribe or rebate in connection with furnishing or receiving goods or services which payment is made in whole or in part pursuant to a medical benefit program, or the referral of an individual to another person for the furnishing of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program;
- Knowingly and willfully makes or induces to be made a false statement or representation of material fact relating to the qualification of a facility or institution (second degree felony);
- Enters into an agreement, combination or conspiracy to defraud the state by obtaining or aiding another to obtain payment or allowance of a false claim;

- Makes, presents or causes to be made or presented a claim that is wholly or partially false, a claim for services not rendered, misrepresentations of the type or quantity of services rendered, representing charges at a higher rate than those charged by the provider, services not medically necessary, substandard services rendered, a claim that was previously paid, a claim for services covered by one or more private sources, unbundling services into artificial components or separate procedures;
- Fails to credit the state for payments received from other sources;
- Recovers or attempts to recover payment in violation of the provider agreement from a recipient under a medical benefit program or the recipient's family;
- Falsifies or alters with the intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement;
- Retains any unauthorized payment as a result of acts described by this section; or
- Aides or abets the commission of any act prohibited by this section.

Utah Code Ann. §§ 26-20-1 – 26-20-7.

Penalties: A person who violates the Utah Act is subject to criminal penalties, shall be required to make full restitution of all damages sustained by the state, pay the costs associated with enforcing the Utah Act, pay a civil penalty equal to three times the amounts of damages sustained by the state – not less than \$5,000 or more than \$10,000 for each claim, or at the discretion of the court, pay to the state a civil penalty of up to \$2,000 for each claim filed or act done in violation of this act. Utah Code Ann. §§ 26-20-9 – 26-20-9.5.

Bringing an Action: The State may conduct an investigation of suspected violations. The Utah Act does not provide for *qui tam* actions. Utah Code Ann. § 26-20-14.

Statute of Limitations: Under the Utah Act, a lawsuit must be brought within the later of 1) six years after the violation was committed, or 2) three years after the date the violation was discovered, but no more than ten years after the violation was committed. Utah Code Ann. § 26-20-15.

Whistleblower Protections: Under the Utah Protection of Public Employees Act, employees of the state or political subdivisions cannot be discharged, threatened, disciplined or discriminated against for reporting to a public body the existence or suspected existence of waste of public funds, property or manpower; or for a violation or suspected violation of state or federal law; or for refusing to comply with a directive the employee reasonably believes to be illegal. Employees are not protected if they fail to give written notice of the violation to the employer, unless they reasonably believe notice to be futile; fail to comply with administrative reporting procedures; or make the report knowing that it is malicious, false or frivolous. Violating employers can be fined up to \$500. Utah Code Ann. §§ 67-21-3 – 67-21-6.

Vermont

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Vermont does not have a specific state false claims act, but has laws that prohibit false statements and claims associated with health care items or services. Under Vermont law, it is unlawful for a person to:

- Knowingly file, attempt to file, or aid and abet in the filing of a claim for services to a recipient of benefits under a state or federally-funded assistance program for services which were not rendered;
- Knowingly file a false claim or a claim for unauthorized items or services under such a program, or knowingly bill the recipient of benefits under such a program or his family for an amount in excess of that provided for by law or regulation;
- Knowingly fail to credit the state or its agent for payments received from social security, insurance, or other sources; or
- In any way knowingly receive, attempt to receive, or aid and abet in the receipt of unauthorized payment as provided herein.

Vt. Stat. Ann. Tit. 33, § 141.

Penalties: Violation of the above Vermont false claims provisions may result in suspension from the Medicaid program, restitution for any improper payment plus interest, and a civil penalty of up to \$500 for each false claim or \$500 per each false document submitted to support a false claim, or three times the amount of the wrongful payment, whichever is greatest.

In addition, any person who violates these laws may be guilty of crimes punishable by imprisonment for up to ten years and/or a fine up to \$1,000 or an amount equal to twice the amount of assistance wrongfully obtained. Vt. Stat. Ann. Tit. 33, §§ 143, 143a.

A person shall not, with the intent to defraud, falsify, conceal, or cover up a material fact, or with intent to defraud make any false, fictitious or fraudulent claim or representation as to a material fact, or with intent to defraud make or use any writing or document knowing the same to contain any false, fictitious or fraudulent claim or entry as to a material fact. A person who violates this provision, if the prohibited act results in no loss to a governmental entity or benefit to the person or results in a loss to the governmental entity or benefit to the person of less than \$500 in value, be imprisoned not more than two years or fined not more than \$5,000, or both. If the act resulted in a loss to any governmental entity, or a benefit to the person of \$500 or more in value, be imprisoned not more than five years, or fined more than \$10,000, or both. Vt. Stat. Ann. Tit. 13, § 3016.

Bringing an Action: Vermont 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. Vt. Stat. Ann. Tit. 33, § 142.

Statute of Limitations: Vermont does not have a statute of limitations specific to false claims. However, Vermont law maintains a six year statute of limitation for actions of fraud. Vt. Stat. Ann. Tit. 12, § 511.

Whistleblower Protections: Vermont whistleblower laws prohibit public and private hospital and nursing home employers from retaliating against any employee who discloses a violation of any federal, state, or local law, rule, regulation or ordinance. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position. In order for the employee to have the protection afforded by the Vermont whistleblower laws, the employee must first report the suspected violation of law or improper quality of patient care to the employer, supervisor or other person designated by the employer to address such violations before disclosing it to another person or entity, such as a state agency. This notice requirement does not apply to disclosures or testimony made in response to a government inquiry, investigation, or hearing. It does, however, apply to an employee's objection to or refusal to participate in any activity, policy, or practice that the employee reasonably believes violates a law or constitutes improper quality of patient care. Vt. Stat. Ann. Tit. 21 §§ 507 to 509.

Virginia

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of the Virginia Fraud Against Taxpayers Act ("VA Act") if he/she:

- Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Conspires to commit a violation of these provisions;
- Has possession, custody, or control of property or money used, or to be used, by the Commonwealth and knowingly delivers, or causes to be delivered, less than all such money or property;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth,

- makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys or receives as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth who lawfully may not sell or pledge the property; or
 - Knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Commonwealth or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Commonwealth.

Va. Code Ann. § 8.01-216.3.

Penalties: A person who has violated the VA Act is liable for a civil penalty of no less than \$5,500 and no more than \$11,000, plus three times the amount of damages, and the costs and attorney's fees associated with the action. Damages may be reduced to no less than two times the damages sustained by the state if the following conditions are met: (i) the person committing the violation furnishes the state with all available information within 30 days after the date the person first obtained the information; (ii) the person fully cooperated with the state investigation; and (iii) at the time the person furnished the information to the state, that no criminal prosecution, civil action or administrative action had been commenced under the Act and the person did not have actual knowledge of the existence of an investigation. Va. Code Ann. § 8.01-216.3.

Bringing an Action: The Virginia Attorney General is authorized to bring an action. Va. Code Ann. § 8.01-216.4. In addition, Virginia law allows for *qui tam* actions. Va. Code Ann. § 8.01-216.5. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. If the Attorney General does not proceed with a *qui tam* action, the plaintiff will be awarded between 25% and 30% of the proceeds or settlement. Va. Code Ann. § 8.01-216.7.

Statute of Limitations: Under the VA Act, a civil lawsuit must be brought within the later of 1) six years from when the violation occurred, or 2) three years after the violation was discovered by the relevant agency, but no more than ten years after the violation was committed. Va. Code Ann. § 8.01-216.9.

Whistleblower Protections: Under the VA Act, any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because they have opposed practices in the Act, or initiated, testified, assisted or participated in an investigation, action or hearing, is entitled to relief to make them whole. This includes reinstatement, double back pay, interest on back pay, and special damages including litigation costs and attorney's fees. Va. Code Ann. §§ 8.01-216.8.

The Fraud and Abuse Whistle Blower Protection Act protects public employee whistle blowers against adverse employment action, prohibits discharge or retaliation against a whistle blower, provides for a civil cause of action, and establishes the Fraud and Abuse Whistle Blower Reward Fund. Va. Code Ann §§ 2.2-3009 et seq.

Washington

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: Washington has a health care false claims act statute. Under this statute, it is unlawful for a person to:

- Make or present or cause to be made or presented to a health care payer a claim for a health care payment knowing the claim to be false;
- Knowingly present to a health care payer a claim for a health care payment that falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards;
- Knowingly make a false statement or false representation of a material fact to a health care payer for use in determining rights to a health care payment;
- Conceal the occurrence of any event affecting his or her initial or continued right under a contract, certificate, or policy of insurance to have a payment made by a health care payer for a specified health care service, or conceal or fail to disclose any information with intent to obtain a health care payment to which the person or any other person is not entitled, or to obtain a health care payment in an amount greater than that which the person or any other person is entitled; or
- For a provider to willfully collect or attempt to collect an amount from an insured knowing that to be in violation of an agreement or contract with a health care payor to which the provider is a party.

Wash. Rev. Code § 48.80.030.

Penalties: A person who violates the health care false claims act statute is guilty of a class C felony. Wash. Rev. Code § 48.80.030.

Bringing an Action: The health care false claims act statute does not include *qui tam* or relator provisions.

Statute of Limitations: The health care false claims act statute does not provide an explicit statute of limitations. However, Washington provides a three year limitation for fraud causes of action. The cause of action in such a case does not deem to be accrued until the discovery by the aggrieved party of the facts constituting the fraud. Wash. Rev. Code § 4.16.080(4).

Whistleblower Protections: State governmental employees who provide information to state auditors about improper governmental action and suffer retaliation as a result can appeal to the superior court for a review of the alleged retaliation, without first exhausting administrative remedies. Employees must act in good faith and try to first give the information to the agency head before reporting it. State officials who retaliate can be held personally liable, with a fine of up to \$5,000, a suspension of up to 30 days and at a minimum have a letter of reprimand placed in their personnel file. Wash. Rev. Code §§ 42.40.020, 42.40.030, 42.40.050 and 49.60.250.

West Virginia

State-enacted False Claims Act? No

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of law governing Medicaid fraud if he/she:

- Knowingly makes or causes to be made a false statement or false representation of any material fact in an application for medical assistance;
- Knowingly makes or causes to be made a false statement or representation of any material fact necessary to determine the rights of any other person to medical assistance;
- Knowingly and intentionally conceals or fails to disclose any fact with the intent to obtain medical assistance under the medical programs to which the person is not entitled;
- Solicits, offers or receives any remuneration, kickback, rebate or bribe, directly or indirectly, with the intent of causing an unauthorized expenditure of monies;
- Makes, presents or causes to be made or presented a claim that is false, fraudulent or fictitious; or
- Enters into an agreement, combination or conspiracy to obtain or aid another to obtain the payment of a false, fraudulent or fictitious claim.

W.Va. Code §§ 9-7-4, 9-7-5.

Penalties: A person or entity that violates West Virginia law may be subject to criminal penalties including imprisonment from one to ten years and a fine up to \$10,000. A person or entity may be liable to the department of welfare for civil penalties of three times the amount of benefits or allowances to which the person or entity was not entitled, and liable for attorney's fees, and litigation costs. W.Va. Code §§ 9-7-4 – 9-7-6.

Bringing an Action: The Medicaid fraud control unit in the West Virginia department of welfare is authorized to bring an action. W.Va. Code § 9-7-6. West Virginia does not have provisions for *qui tam* actions.

Statute of Limitations: West Virginia laws addressing Medicaid fraud and abuse do not provide an explicit statute of limitations. However, West Virginia laws limit actions concerning fraud to two years after the cause of action accrues. W.Va. Code § 55-2-12.

Whistleblower Protections: West Virginia law pertaining to Medicaid fraud and abuse does not contain a whistleblower provision. However, West Virginia law does protect state employees from state government employers discharging, threatening, discriminating or retaliating against the employee, or changing the employee's compensation terms for an actual or planned good faith report of wrongdoing, or who participate in investigations, hearings, inquiries or trials involving wrongdoing or waste. The employee may sue for injunctive relief and damages including reinstatement, back pay, court cost and attorneys fees. Employers and public officials who violate this law will be punished by a civil fine of up to \$500. Unelected officials may be suspended from public service for up to six months. W. Va. Code § 6C-1-1 – 6C-1-8.

Wisconsin

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? Yes

Non-retaliation protection? Yes

Reviewed by OIG? Yes

Approved by OIG? No

False Claims: A person is in violation of Wisconsin law governing medical assistance fraud if he/she:

- Knowingly presents or causes to be presented to any officer, employee, or agent of this state a false claim for medical assistance.
- Knowingly makes, uses, or causes to be made or used a false record or statement to obtain approval or payment of a false claim for medical assistance.
- Conspires to defraud the state by obtaining allowance or payment of a false claim for medical assistance, or by knowingly making or 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 Medical Assistance program.
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease any obligation to pay or transmit money or property to the Medical Assistance program.
- Is a beneficiary of the submission of a false claim for medical assistance to any officer, employee, or agent of this state, knows that the claim is false, and fails to disclose the false claim to this state within a reasonable time after the person becomes aware that the claim is false.

Wis. Stat. Ann. § 20.931(2).

Penalties: A person who violates Wisconsin law is subject to criminal penalties, is liable for three times the amount of actual damages sustained by the state, and shall forfeit not

less than \$5,000 nor more than \$10,000 for each violation. Damages can be reduced to no less than two times the damages sustained. Wis. Stat. Ann. § 20.931(2).

Bringing an Action: The Wisconsin Attorney General is authorized to bring an action. Wisconsin law allows for *qui tam* actions. If a *qui tam* action is brought, the plaintiff will receive between 15% and 25% of the proceeds recovered or the settlement. If the case is based on disclosures other than those of the plaintiff, the plaintiff will not receive more than 10%. Wis. Stat. Ann. § 20.931(11).

Statute of Limitations: A civil action may be brought based on acts occurring prior to October 27, 2007, if the action is brought within the period specified in Wis. Stat. Ann. § 893.981. Wis. Stat. Ann. § 20.931(15). This section states that an action must be commenced within ten years after the cause of action or claim accrues or it will be barred. Wis. Stat. Ann. § 893.981.

Whistleblower Protections: This statute protects any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against by his or her employer because of lawful actions taken by the employee, on behalf of the employee, or by others in furtherance of an action or claim filed under the Act, including investigation for, initiation of, testimony for, or assistance in an action or claim filed or to be filed. The employee is entitled to all necessary relief to make the employee whole, including reinstatement, double back pay, interest on the back pay, and special damages including costs and attorney fees. Wis. Stat. Ann. § 20.931(14).

State employees are protected from any retaliatory action taken by an appointing authority, agent of an appointing authority or supervisor because of lawful disclosures made by the employee. The employee is not protected if they know or anticipate that the disclosure is likely to result in the receipt of anything of value, or if they knowingly make a false statement or illegal disclosures. Wis. Stat. Ann. § 230.83

Wyoming

State-enacted False Claims Act? Yes

False Claims Act with qui tam provisions? No

Non-retaliation protection? Yes

Reviewed by OIG? No

False Claims: A person is in violation of the Wyoming Medicaid False Claims Act if he/she:

- Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
- Is a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the state or a political subdivision of the state, or to any

contractor, grantee, or other recipient of state funds or funds of any political subdivision of the state who subsequently discovers the falsity of the claim and fails to disclose the false claim and make satisfactory arrangements for repayment to the state or the affected political subdivision within 90 days after discovery of the false claim; or

- Conspires to commit one of the acts specified above.

Wyo. Stat. Ann. § 42-4-303(a).

Penalties: A person who has violated the statute above is liable for a civil penalty of no less than \$1,000 and no more than \$10,000 for each violation, three times the amount of actual damages, and the cost incurred as a result of a civil action brought to recover any such penalty or damages. Wyo. Stat. Ann. § 42-4-303(a). Damages may be reduced to no more than two times the damages sustained by the State and no civil penalty, if the person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 45 days after information is requested and the person has substantially cooperated with any investigation by the State. Wyo. Stat. Ann. § 42-4-303(b).

Bringing an Action: Wyoming law only permits the State Attorney General or a State district attorney to investigate and bring an action under the Wyoming Medicaid False Claims Act. 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. *See* Wyo. Stat. Ann. § 42-4-304.

Statute of Limitations: A civil action under the Wyoming Medicaid False Claims Act shall not be brought more than six years after the date on which the violation was committed or 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, provided that in no event shall a civil action be brought more than seven years after the date on which the violation is committed. Wyo. Stat. Ann. § 42-4-305(a).

Whistleblower Protections: Any employee, contractor, or agent of a person being investigated for a violation of the Wyoming Medicaid False Claims Act shall be entitled to recover all economic damages suffered if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner retaliated against in the terms and conditions of employment because of lawful acts taken in good faith by the employee or others in an action reported, filed, or investigated under the Wyoming Medicaid False Claims Act. An action by an employee, contractor, or agent for retaliation must be brought not more than three years after the date when the alleged retaliation occurred. Wyo. Stat. Ann. § 42-4-304(b).