



INCENTIVISING PASSAGE OF STATE FALSE CLAIMS ACTS

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ISSUE DESCRIPTION

The Deficit Reduction Act of 2005 (DRA), enacted February 8, 2006, contained provisions which create incentives for states to enact anti-fraud legislation modeled after the federal False Claims Act (FCA). Many states have civil false claims acts focusing on Medicaid fraud, but few have modeled their statutes on the federal FCA. The FCA as amended in 1986 provides for penalties and triple damages for anyone who knowingly submits or causes the submission of false or fraudulent claims to the United States for government funds or property.¹ Under the FCA's *qui tam* provisions, a person with evidence of fraud, also known as a whistle blower or relator, is authorized to file a case in federal court and sue, on behalf of the government, persons engaged in the fraud and to share in any money the government may recover.² Since that time the government has won recoveries of over \$15 billion from fiscal years 1987 through 2005.³

The incentives in the DRA entitle any state that has a law relating to false or fraudulent claims that meets federal standards outlined in the act to a enhanced federal medical assistance percentage (FMAP) for claims settlements reached through their state FCA. The Congressional Budget Office (CBO) has estimated that the provisions would reduce Medicaid spending by a combined \$252 million over the 2006-2010 periods and by \$1.1 billion over the 2006-2015 periods. States with False Claims Acts include: California, Delaware, the District of Columbia, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, New Mexico, Tennessee, Texas, and Virginia.⁴

FRAUD AND ABUSE ACTIVITIES

As Medicaid program administrators, states have a daunting responsibility to ensure the integrity of the activities conducted within this ever growing venture. Oversight by state administrators is the first line of prevention against Medicaid fraud and abuse. In their role as administrators states are required to address provider enrollment, claims review and case referrals. Specifically federal statute or the Center for Medicare and Medicaid Services (CMS) Regulation require states to:

1. collect and verify basic information on potential providers, including whether the providers meet state licensure requirements and are not prohibited from participating in federal health care programs,

2. have an automated claims payment and information retrieval system—intended to verify the accuracy of claims, the correct use of payment codes, and patients' Medicaid eligibility—and a claims review system intended to develop statistical profiles on services, providers, and beneficiaries to identify potential improper payments, and
3. refer suspect overpayments or over utilization cases to other units in the Medicaid agency for corrective action, and potential fraud cases to law enforcement—generally to the state's Medicaid Fraud Control Unit for investigation and prosecution.⁵

State agencies are required to conduct preliminary investigations when they identify questionable practices or receive complaints of suspected Medicaid fraud or abuse.⁶ CMS's role has been largely one of support to the states. In most states the function of investigating and prosecuting providers for fraud falls to the state Medicaid Fraud Control Unit (MFCU) typically located within the state attorney general's office. Forty-eight states and the District of Columbia have established MFCUs.⁷ The following chart shows MFCUs' funding and statistical accomplishments for the past 10 years:

Medicaid Fraud Control Units Federal Expenditures and Related Federal/State Statistical Accomplishments			
Year	Federal Grants*	Federal/State Receivables	Convictions
2005	\$144,330,097	\$709,619,411	1,123
2004	131,086,294	572,585,322	1,160
2003	119,831,000	268,481,661	1,096
2002	116,979,079	288,315,524	1,147
2001	106,699,505	252,585,423	1,002
2000	95,979,000	180,941,872	970
1999	89,703,745	88,738,327	886
1998	85,793,887	83,625,633	937
1997	80,557,146	147,642,299	871
1996	77,453,688	57,347,248	753

* Amounts awarded to MFCUs

Source: Testimony of Daniel R. Levinson, Inspector General, U.S. Department of Health and Human Services before the Senate Committee on Homeland Security and Governmental Affairs, March 28, 2006.

¹ The False Claims Act, as amended, is codified at 31 U.S.C. §§3729-33.

² GAO-06-320R, False Claims Act.

³ GAO-06-320R, False Claims Act.

⁴ Taxpayers Against Fraud, The False Claims Act Legal Center, "What is the False Claims Act and Why is it Important," Washington, D.C. (<http://www.taf.org/whyfca.htm>). (Internet document.)

⁵ GAO, *Medicaid Integrity: Implementation of New Program Provides Opportunities for Federal Leadership to Combat Fraud and Abuse*, GAO-06-578T (Washington, D.C.: March 28, 2006).

⁶ 42CFR§455.14.

⁷ North Dakota and Idaho have not established MFCUs, and, in these two states, the state agency is responsible for conducting investigations and referring cases to state or local prosecutors.

In 2003, the U.S. Government Accountability Office (GAO) added Medicaid to its list of high-risk programs, owing to the program's size, growth, diversity, and fiscal management weaknesses. They estimated that a nationwide rate of improper payment as low as three percent in FY2004 would have resulted in a loss of about five billion in federal funds.⁸ Senator Chuck Grassley, chairman of the Committee on Finance drafted the new provisions in the DRA which will provide states with an additional tool to fight fraud and abuse in the Medicaid system. The FCA has been one of the federal government's primary weapons to fight fraud against the government for years. "This represents a new partnership between the states and the federal government in fighting Medicaid fraud," Grassley said. "It gives states an increased share of any money recovered for Medicaid fraud, if the state chooses to pass a state False Claims Act."

Related provisions in the act require that providers who receive or make annual Medicaid payments under the state plan of at least five million must provide federal FCA education to their employees as a condition of receiving Medicaid payments. They must also meet certain criteria which include establishing written policies, procedures and protocols for training all employees. The DRA also establishes a Medicaid Integrity Program under the authority of CMS designed to improve state program oversight and technical assistance.

SUMMARY OF APPLICABLE PROVISIONS

If a state has in effect a law relating to false or fraudulent claims that meet certain requirements, the state will receive a 10 percent increase to the state share of any recovery obtained under the state law. Section 6032 of the DRA specifically outlines four requirements for determining if a state FCA is compliant:

1. *The law establishes liability to the State for false or fraudulent claims described in [the federal FCA] with respect to any expenditure described in [Title 19, the Medicaid Program];*
2. *The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in [the federal FCA];*
3. *The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General; and,*
4. *The law contains a civil penalty that is not less than the amount of the civil penalty authorized [by the federal FCA].*

Senator Grassley has emphasized that the importance of meeting each element of the *qui tam* requirement cannot be understated; the FCA works to detect and prevent fraud and abuse because of the *qui tam* provisions.⁹ States having laws in effect prior to the January 1, 2007 effective date will be deemed in compliance as long as the law continues to meet compliance.

⁸ GAO, *Medicaid Integrity: Implementation of New Program Provides Opportunities for Federal Leadership to Combat Fraud and Abuse*, GAO-06-578T (Washington, D.C.: March 28, 2006).

⁹ U.S. Senate Committee on Finance, "Grassley Works to Implement New Incentives for States to Fight Medicaid Fraud," Washington, D.C. (<http://finance.senate.gov/press/Gpress/2005/prg032106.pdf>) (Internet Document, 03/21/06).