

<b>DEPARTMENT:</b> Legal and Compliance	<b>POLICY DESCRIPTION:</b> Role of Federal False Claims Act and Similar State Civil or Criminal Statutes in Preventing and Detecting Fraud & Abuse in Federal Health Care Programs
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**SCOPE:** Employees of all Company-affiliated facilities and other healthcare businesses, including, but not limited to, hospitals, health plans, ambulatory surgery centers, home health agencies, physician practices; employees of all Corporate Departments and Markets; and contractors and agents of all Company entities.

**PURPOSE:** To provide detailed information to all employees (including officers and other management) and all Healthcare Contractors and Agents (as the term “Healthcare Contractors and Agents” is defined below) of the Company (as the term “Company” is defined below) about the role of the Federal and State false claims statutes in detecting fraud and abuse in all Federal Health Care Programs, so that the Company will be in compliance with Section 6032 of the Federal Deficit Reduction Act of 2006 (the “DRA”) entitled “Employee Education About False Claims Recovery” prior to the January 1, 2007 effective date of Section 6032

**POLICY:** To comply with the education and dissemination requirements of Section 6032 of the DRA and any implementing regulations which may be adopted by the U.S. Department of Health and Human Services related to Section 6032.

The text of this Policy shall provide detailed information with respect to both (1) the role of the following laws and (2) the Company’s other policies and procedures, in preventing and detecting fraud, waste and abuse in the Federal Health Care Programs (including, without limitation, the Medicare Program and all State Medicaid programs):

- The Federal False Claims Act
- Federal administrative remedies for false claims and statements
- State laws pertaining to civil or criminal penalties for false claims and statements
- Whistleblower provisions under federal and state laws

All Company, facility or other affiliated entity employee handbooks shall include the following information (either directly or indirectly, as a supplement thereto and a part thereof, by delivery of this Policy and attachments along with any handbook):

- A specific discussion of the laws described above
- The rights of employees to be protected as whistleblowers
- The Company’s other policies and procedures for detecting and preventing fraud, waste and abuse in the Federal Health Care Programs

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**DEFINITIONS**

**Company**, as used herein, is defined to mean Vanguard Health Systems, Inc., a Delaware corporation, and all entities owned or controlled, directly or indirectly, by Vanguard Health Systems, Inc.

**CRA**, as used herein, is defined to mean the Program Fraud Civil Remedies Act of 1986 (31 U.S.C., Chapter 38).

**DRA**, as used herein, is defined to mean the Federal Deficit Reduction Act of 2005, Pub. Law 109-171 (2006).

**False Claims Act or Federal False Claims Act**, as used herein, shall each mean the Federal False Claims Act ( 31 U.S.C. Sections 3279-3733).

**Federal Health Care Programs**, as used herein, is defined to mean the Federal Medicare Program, any State Medicaid Program, Tricare and any other Federal health care program where funds under the Program are paid with Federal funds to the Company or its affiliated entities.

**Healthcare Contractors and Agents**, as used herein, is defined to mean the Company’s contractors, subcontractors or agents which or who (1) furnish or otherwise authorize the furnishing of Medicaid health care items or services; (2) perform billing or coding functions; (3) are involved in the monitoring of health care provided by the Company or (4) supply products used in the furnishing of Medicaid health care services; such individuals, businesses or organizations to include, without limitation, contract therapists, physicians (including, but not limited to, house staff, hospitalists and independent contractors and pharmacies); but excluding individuals, businesses or organizations that perform functions not associated with the provision of Medicaid health care items or services, such as copy or shredding services, grounds maintenance, or hospital cafeteria or gift shop services.

**Health Reform Law**, as used herein, is defined to mean The Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010.

**HHS**, as used herein, is defined to me the United States Department of Health and Human Services.

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**PROCEDURE:**

**A. The Federal False Claims Act.**

The False Claims Act was enacted in 1863 in response to “rampant fraud” perpetrated on the Union Army during the Civil War. Almost 140 years later, multiple amendments in 1986 to the Act expanded the law beyond its modest military origins to encompass virtually any individual or entity that transacts business with the Federal government. The current version of the False Claims Act (31 U.S.C. Sections 3279-3733) prohibits a variety of fraudulent activities involving government funds including fraudulent activities to obtain funds from the Federal Health Care Programs.

The False Claims Act provision most commonly invoked against health care providers is 31 U.S.C. §3729(a)(1), which imposes liability when: (1) a defendant presents, or causes to be presented, a claim for payment or approval to a Federal Health Care Program (including, without limitation, the Federal Medicare Program and each State Medicaid program); (2) the claim is false or fraudulent; and (3) the defendant’s acts are undertaken “knowingly.” Liability also accrues to a health care provider when it knowingly or improperly retains an overpayment that it has an obligation to refund within 60 days of identifying the overpayment or by the date a corresponding cost report is due, whichever is earlier. Such “knowledge” includes both deliberate ignorance and reckless disregard of the truth or falsity of the claim. For purposes of the Act, a claim includes “any request or demand . . . for money or property” as long as the Federal government provides any portion thereof.

The Fraud Enforcement and Recovery Act of 2009 expanded the scope of the False Claims Act by, among other things, creating liability for knowingly and improperly avoiding repayment of an overpayment received from the government and broadening protections for whistleblowers. Under the Health Reform Law, the False Claims Act is implicated by the knowing failure to report and return an overpayment within 60 days of identifying the overpayment or by the date a corresponding cost report is due, whichever is later. Further, the Health Reform Law expands the scope of the False Claims Act to cover payments in connection with the new health insurance exchanges to be created by the Health Reform Law, if those payments include any federal funds.

In addition to this basic false claims prohibition, several other provisions of the Act can be used against health care providers. The false records provision, § 3729(a)(2), applies to defendants who knowingly make or use false records or statements to obtain payment of claims. Section 3729(a)(3) prohibits conspiracies “to defraud the Government by getting a false or fraudulent claim allowed or paid.” The 1986 Amendments also prohibited “reverse false claims,” which involve the use of false records “to conceal, avoid, or decrease an obligation to pay or transmit money or property to the

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Government”—a provision that takes on new significance in the context of Medicare Cost Reports.

With respect to the role of the False Claims Act in preventing and deterring fraud, waste and abuse, according to Taxpayers Against Fraud (“TAF”), perhaps the leading private nonprofit organization which promotes use of the False Claims Act, “The False Claims Act is the single most important tool U.S. taxpayers have to recover the billions of dollars stolen through fraud by U.S. government contractors every year.” In October 2006 TAF reported that the Federal Government had a record year for fraud recoveries from False Claims Act lawsuits in fiscal 2006, which ended Sept. 30, 2006. All told, False Claims Act lawsuits, the bulk of which related to healthcare, brought in some \$3.1 billion for government coffers and whistle-blowers. That topped the previous record of \$2.2 billion in fiscal 2003, TAF said. Settlements reached in fiscal 2006 included \$900 million from Tenet Healthcare Corp., \$567 million from biotechnology firm Serono, \$435 million from drugmaker Schering-Plough Corp., and \$265 million from St. Barnabas Health Care System, West Orange, N.J.

Violators of the Federal False Claims Act are liable to the Federal government for a mandatory civil penalty of between \$5,500 to \$11,000 per claim, plus three times the government’s damages. Because health care providers—unlike most defense contractors, for example—tend to submit a large number of relatively small claims each year, the statutory penalties quickly can reach very high levels in health care matters.

It is impossible to list all of the health care frauds that have been prosecuted under the False Claims Act, but the following list gives some idea of the scope of the false claims on the Government that have been uncovered to date using the provisions of the False Claims Act:

- Billing for goods and services that were never delivered or rendered.
- Performing inappropriate or unnecessary medical procedures in order to increase Medicare or Medicaid reimbursement.
- Billing for medical procedures or tests not performed.
- Automatically running a lab test whenever the results of some other test fall within a certain range, even though the second test was not specifically requested.
- Unbundling - Using multiple billing codes instead of one billing code for a drug panel test in order to increase remuneration.
- Bundling -- Billing more for a panel of tests when a single test was asked for.

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- Double billing - Charging more than once for the same goods or service.
- Upcoding procedures - Inflating bills by using diagnosis billing codes that suggest a more expensive illness or treatment.
- Billing for brand -- Billing for brand-named drugs when generic drugs are actually provided.
- Phantom employees and doctored time slips: Charging for employees that were not actually on the job, or billing for made-up hours in order to maximize reimbursements.
- Upcoding employee work: Billing at doctor rates for work that was actually conducted by a nurse or resident intern.
- Being over-paid by the government for sale of a good or service, and then not reporting that overpayment.
- Prescribing a medicine or recommending a type of treatment or diagnosis regimen in order to win kickbacks from hospitals, labs or pharmaceutical companies.
- Billing for unlicensed or unapproved drugs.
- Forging physician signatures when such signatures are required for reimbursement from Medicare or Medicaid.

The Health Reform Law significantly increased the rights of whistleblowers to bring False Claims Act actions by materially narrowing the so-called “public disclosure” bar to their False Claims Act actions. Until the Health Reform Law was enacted, a whistleblower was not entitled to pursue publicly disclosed claims unless he or she was a direct and independent source of the information on which his or her allegations of misconduct were based. Under new Health Reform Law provisions:

- It will now be enough that the whistleblower has independent knowledge that materially adds to publicly disclosed allegations.
- Furthermore, the Health Reform Law limits the type of activity that counts as a “public disclosure” to disclosures made in a federal setting; disclosure in state reports or state proceedings will no longer qualify.
- Even if all requirements are met to bar a whistleblower’s suit, the Health Reform Act permits

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the Department of Justice to oppose a defendant’s motion to dismiss on public disclosure bar grounds, at its discretion so that the whistleblower can proceed with his or her complaint.

The Health Reform Act also provides that a submission of claims for services or items generated in violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim under the False Claims Act.

In summary, it is a violation of the False Claims Act if a defendant:

- Knowingly presents (or causes to be presented) to the Federal government a false or fraudulent claim for payment;
- Knowingly uses (or causes to be used) a false record or statement to get a false claim paid by the Federal government;
- Conspires with others to get a false or fraudulent claim paid by the Federal government; or
- Knowingly uses (or causes to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the Federal government.

The False Claims Act covers fraud involving any federally funded contract or program, with the exception of tax fraud.

The civil penalty for violating the False Claims Act is three times the dollar amount that the government is defrauded (i.e. treble damages) and civil penalties of \$5,500 to \$11,000 for each offense.

*More detailed information about the Federal False Claims Act is set forth in Exhibit A hereto. We urge you to read this detailed information for a full explanation of this very important statute.*

**B. Federal Administrative Remedies for False Claims and Statements.**

In addition to the statutory penalties under the False Claims Act mentioned above, the Federal government has available to it certain administrative remedies for false claims and statements under Chapter 38 of Title 31 of the United States Code, the Program Fraud Civil Remedies Act of 1986 the (“CRA”). These administrative remedies were implemented by HHS in 45 CFR Part 79 to impose civil penalties and assessments up to \$150,000 against persons who make, submit, or present, or

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cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to governmental authorities or to their agents.

Under Section 79.3 of this Part and Section 3802 of the CRA, each and every false claim to any Federal Health Care Program is subject to a civil penalty of \$5,500 which may be imposed administratively by an official in the Office of Inspector General of the Department of Health and Human Services (the “OIG”).

Under Section 79.4 of this Part and Section 3804 of the CRA, the investigating official in the OIG is given full subpoena power to investigate the false claim and statement and if such official deems that a violation of the CRA has occurred, such official is to send a report with such conclusions to a reviewing official who is the General Counsel of the Department of Health and Human Services or his designee.

Under Section 79.5 of this Part if such reviewing official deems that a civil penalty under Section 79.3 of this Part is warranted, then the reviewing officer is required to sent a notice to the Attorney General of the United States that the reviewing officer will institute an administrative complaint under Section 79.7 of this Part before an Administrative Law Judge and such administrative complaint is subject to the approval of the Attorney General.

Civil penalties determined due in these administrative proceedings may be collected by administrative offset under Section 3716 of Title 31 of the US Code, except their shall be no administrative offset against a refund of an overpayment of Federal taxes then owing by the United States to such person. See Section 79.44 of Part 79 and Section 3807 of the CRA.

With respect to the role of the CRA in preventing and deterring fraud, waste and abuse in the Federal Health Care Programs, these provisions give the OIG an administrative, non-judiciary alternative to insure against and deter false claims and are an important additional weapon against fraud, waste and abuse.

**C. Whistleblower Provisions Under Federal Law.**

The False Claims Act contains *qui tam*, or whistleblower, provisions. *Qui tam* is a unique mechanism in the law that allows employees or any other private person (known as “*qui tam relators*” or, more commonly, “whistleblowers”) with evidence of fraud against the Federal Health Care Programs (including, without limitation, any State Medicaid program) to sue in the Federal courts, on behalf of the government, in order to recover the stolen funds. A *qui tam* suit initially remains confidential

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under seal for at least 60 days (but usually much longer) while the Federal Department of Justice investigates and decide whether to join the action of the employee whistleblower. If the Department of Justice joins the suit, it then has the primary responsibility for prosecuting the suit and, if effect, takes over prosecution of the matter. If the Department of Justice chooses not to intervene, the qui tam relator has the right to conduct the lawsuit by himself/herself. In compensation for the risk and effort of filing a *qui tam* case, where the Government joins the suit, the whistleblower or qui tam relator will usually be awarded a portion of the Federal damages and penalties recovered, generally in an amount of between 15 and 25 percent of such proceeds depending upon the extent to which the whistleblower substantially contributed to the prosecution of the suit. However, if the court finds that the suit was primarily based upon specific information (other than information provided by the whistleblower), then the court will award the whistleblower such sum as it deems appropriate, but not in excess of 10% of the Federal funds recovered. Where the Government does not join the suit, the employee whistleblower will be awarded not less than 25% nor more than 30% of the Federal funds recovered, such exact amount to be determined by the court in its reasonable discretion. The whistleblower is also entitled under the Act to recover his/her reasonable expenses, plus reasonable attorneys' fees and costs. Because the Federal False Claims Act applies only to false claims against the Federal Government, the qui tam relator is not entitled to a share of the State portion of any Medicaid recovery under the False Claims Act.

The False Claims Act also contains provisions that specifically address concerns an employee may have about his/her job security in the event that an employee reports fraud by his/her employer and becomes a qui tam relator. If an employee is "discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against . . . by his or her employer because of lawful acts done by the employee . . . or others in furtherance of an action under [the whistle blower provisions of the False Claims Act], [the employee] shall be entitled to all relief necessary to make the employee whole." The relief provided for under the Act includes reinstatement (with seniority restored), double the amount of any lost 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's fees.

With respect to the role of such whistleblower provisions in preventing fraud, waste and abuse in the Federal Health Care Programs, as Sen. Charles Grassley (R-IA) and Rep. Howard Berman (D-CA) have noted:

"Studies estimate the fraud deterred thus far by the qui tam[or whistleblower] provisions runs into the hundreds of billions of dollars. Instead of encouraging or rewarding a culture of deceit, corporations

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now spend substantial sums on sophisticated and meaningful compliance programs. That change in the corporate culture -- and in the values-based decisions that ordinary Americans make daily in the workplace -- may be the law's most durable legacy."

In summary,

- An individual can share in a percentage of a government recovery in a False Claims Act action or settlement if they bring an action on behalf of the United States as a “qui tam relator.”
- The FCA protects these qui tam relators (sometimes called “whistleblowers”) against discharge, demotion, harassment, or other discrimination by their employers as a result of the claims they make under the False Claims Act.

*More detailed information about the Federal False Claims Act, including the whistleblower provisions thereof discussed in this Section C, is set forth in Exhibit A hereto. We urge you to read this detailed information for a full explanation of the whistleblower provisions of this very important statute.*

**D. State Laws Pertaining to Civil or Criminal Penalties for False Claims and Statements, including Whistleblower Provisions.**

Many States (including all of the States in which the Company, its healthcare facilities and other healthcare businesses operate facilities, except for Arizona, as described in the Exhibits attached hereto) have passed statutes similar to the Federal False Claims Act. These statutes commonly allow private citizens (including employees) to act as whistleblowers to file suit against health care providers located in their jurisdictions for making false claims for reimbursement to State governments or their agencies, including, without limitation, all State Medicaid programs. Detailed information about these state laws in the following states relevant to the Company’s business are attached hereto, as reflected in the following chart.

*Employees and Company agents and contractors are urged to read the specific Exhibit or Exhibits attached to this Policy for the States relevant to their employment/relationship with the Company for detailed statutory information with respect to preventing fraud, waste and abuse in that state’s governmental healthcare programs and/or its Medicaid Program, as the case may be. In other words, please see the following Exhibits attached to this Policy for the statutes of the States*

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*mentioned in the following chart for the civil or criminal penalties for false claims and statements under the laws of these specified States:*

<u>Name of State</u>	<u>Exhibit to this Policy With Detailed Statutory Information</u>
Texas	B
Illinois	C
Massachusetts	D
Indiana	E
Arizona	F
California	G
Michigan	H

With respect to the role of such state laws in preventing and deterring fraud, waste and abuse in the Federal Health Care Programs, such state laws give local state officials and whistleblowers additional remedies and rights (beyond those set forth in the Federal statutes) to handle health care fraud on a local level utilizing non-Federal officials and remedies. Not only are additional remedies useful giving additional options to enforcement officials, but sometimes utilizing local officials is more effective in rooting out fraud where use of Federal officials is counter-productive in respect of local issues.

**E. The Company’s Other Policies and Procedures in Preventing and Detecting Fraud, Waste and Abuse in the Federal Health Care Programs**

The Company voluntarily maintains a company-wide Compliance Program designed to ensure that the Company maintains high standards of ethics and conduct in the operation of its business and implement policies and procedures so that all of its employees act in compliance with all applicable laws, regulations and company policies. In other words, the Company has a formal Compliance Program with written policies regarding policies and procedures for detecting and preventing fraud, waste and abuse. The organizational structure of the Company’s Compliance Program includes oversight by the Company’s board of directors and a high-level corporate management compliance committee. The board of directors and compliance committee are responsible for ensuring that the Compliance Program meets its stated goals and remains up-to-date to address the current regulatory environment and other issues affecting the healthcare industry. The Company’s Senior Vice President of Compliance and Ethics reports jointly to the Company’s Chairman and Chief Executive Officer and to the Company’s board of directors, serves as Chief Compliance Officer and is charged with direct responsibility for the day-to-day management of the Company’s Compliance Program.

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Other features of our compliance program include Regional Compliance Officers who are based in each of the Company’s operating regions and report to the Chief Compliance Officer, initial and periodic ethics and compliance training and effectiveness reviews, a toll-free hotline (**1-888-895-9945**) for employees to report, without fear of retaliation, any suspected legal or ethical violations, annual “fraud and abuse” audits to examine all of our payments to physicians and other referral sources and annual “coding audits” to make sure our hospitals bill the proper service codes in respect of obtaining payment from the Medicare and Medicaid Programs.

The Company has adopted, distributed to all of its employees and has available on its intranet to its employees a written Code of Business Conduct and a written Corporate Compliance Manual (collectively, "Code of Conduct"). These include: (a) the Company’s commitment to full compliance with all Federal Health Care Program Requirements, including its commitment to prepare and submit accurate claims and to have financial relationships with its medical staff that are consistent with such requirements; (b) the Company’s requirement that all of its personnel are expected to comply with all Federal Health Care Program requirements and with the Policies and Procedures below; (c) the requirement that all of the Company’s personnel are expected to report to the Chief Compliance Officer or a Regional Compliance Officer or other appropriate official suspected violations of any Federal Health Care Program requirements or of the Company’s own Policies and Procedures; (d) the possible consequences to both the Company and its personnel of the failure to comply with Federal Health Care Program Requirements and with the Company’s own Policies and Procedures, and the failure to report such noncompliance; and (e) the right of the Company’s personnel to use the Disclosure Program described below and the Company’s commitment to non-retaliation, and to maintain, as appropriate, confidentiality and anonymity with respect to such disclosures.

The Company’s Code of Conduct explains the Company’s non-retaliation policy as follows:

**“No Retaliation.** If you report in good faith what you suspect to be illegal or unethical activities, you should not be concerned about retaliation from others. Any employee who commits or condones any form of retaliation will be subject to serious disciplinary action by the Company, up to, and including, termination. Furthermore, employees should keep in mind that the Company could be subject to criminal or civil actions for any acts of retaliation against employees who “blow the whistle” to outside enforcement agencies or Congress or the employee’s supervisory officials in respect of U.S. securities law violations or any provision of federal law relating to fraud. It is illegal under federal law for public companies to retaliate against any employee who so provides information or testifies about any such matter that an employee reasonably believes constitutes a violation of such federal laws.”

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The Company has in place Policies and Procedures regarding the operation of its Compliance Program and the Company's compliance with Federal Health Care Program requirements. For example, the Legal Department has prepared and made available to all employees on the Company's intranet over 50 written Policies and Procedures, the primary focus of which is preventing and detecting fraud, waste and abuse in the Federal Health Care Programs. The Policies and Procedures are made available to all relevant Company personnel. At least annually (and more frequently, if appropriate), the Corporate Compliance Committee reviews and updates as necessary its Policies and Procedures and, if revisions are made, makes available the relevant portions of any revised Policies and Procedures to all Company personnel whose job functions relate to the revised Policies and Procedures.

The Company also has in place training programs which address: (a) the Federal Health Care Program requirements regarding the accurate coding and submission of claims; (b) policies, procedures, and other requirements applicable to the documentation of medical records; (c) the personal obligation of each individual involved in the claims submission process to ensure that such claims are accurate; (d) applicable reimbursement statutes, regulations, and program requirements and directives; (e) appropriate financial arrangements; (f) the legal sanctions for violations of Federal Health Care Program requirements; and (g) examples of proper and improper claims submission practices.

The Company's Corporate Compliance Department maintains a Disclosure Program that includes a mechanism to enable all employees to disclose, to the Company's Chief Compliance Officer or some other person who is not in the disclosing individual's chain of command, any identified issues or questions associated with the Company's policies, conduct, practices, or procedures with respect to a Federal Health Care Program believed by the individual to be a potential violation of criminal, civil, or administrative law. The Company's Corporate Compliance Department publicizes the existence of the disclosure mechanism to all Company personnel. The Disclosure Program emphasizes a non-retribution, non-retaliation policy, and includes a reporting mechanism for anonymous communications for which appropriate confidentiality is maintained. Each disclosure is reviewed by the Company's Chief Compliance Officer, who either investigates the disclosure or refers the disclosure to the relevant department or manager for follow up and any appropriate corrective action.

**F. Employee Handbooks.**

All Company, facility or other affiliated entity employee handbooks shall include (either directly or indirectly, as a supplement thereto and a part thereof, by delivery of this Policy and attachments along with any handbook) the following:

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- A specific discussion of the laws described in this Policy, including the applicable state laws for the specific employees
- The rights of employees to be protected as whistleblowers
- The Company’s other policies and procedures for detecting and preventing fraud, waste and abuse in the Federal Health Care Programs

**G. Further Employee Considerations About Use of the Federal or State False Claims Acts.**

Although the Federal False Claims Act is a powerful tool to combat fraud, even TAF explains in its public materials on its website ([www.taf.org](http://www.taf.org)) that it is a tool that is sharply constrained by both the law and economics of litigation for the following reasons:

- For a civil case to be filed, the fraud has to reach a certain size, otherwise it is generally not worth it for the whistleblower to risk his or her career to file suit, nor is it worth it for a law firm to take on the case and risk the loss of the enormous time and expense that a False Claims Act represents.
- A law firm that takes on a False Claims Act case must believe it has a very strong case in order to proceed. Not only can a firm be out time and money, but if the government does not take the case and the whistleblower proceeds, he or she can be forced to pay the defendants’ attorney’s fees if the court finds that the claim was frivolous or brought primarily for purposes of harassment.

Indeed, while there may be instances in which use of the Federal False Claims Act or a state False Claims Act is the appropriate approach for the employee, the Company’s experience, as well as that of many health care professionals, has been that most of the time, employee use of internal compliance procedures will allow the Company to better and more quickly address any issues it may have. Thus, in this Policy the Company encourages its employees first to make use of those internal procedures, including the Company’s hotline (at **888-895-99450**), to report fraud, waste and abuse in the Federal Health Care Programs (including, without limitation, the Medicare and Medicaid Programs). In the Company’s opinion, employees in particular need to understand the potential difficulty with jumping into a lawsuit that will necessarily put them in an adversarial relationship with their employer (the Company). This is true even though the Company has very strong safeguards against retaliation, because an employee whistleblower often ends up feeling extremely uncomfortable with co-workers and management of his/her employer regardless of how the employer handles the matter. Furthermore, whistleblower actions can go on for years, and recoveries are always uncertain, as is the share that the whistleblower may take. Such actions also can cause great



<b>DEPARTMENT:</b> Legal and Compliance	<b>POLICY DESCRIPTION:</b> Role of Federal False Claims Act and Similar State Civil or Criminal Statutes in Preventing and Detecting Fraud & Abuse in Federal Health Care Programs
<b>PAGE:</b> 14 of 15	<b>REPLACES POLICY DATED:</b> January 1, 2011
<b>APPROVED:</b> April 1, 2011	<b>RETIRED:</b>
<b>EFFECTIVE DATE:</b> April 1, 2011	<b>REFERENCE NUMBER:</b> LEGL.055 and CD.006

harm to the employer (the Company), as they are expensive, consume large amounts of resources, and can alienate employees from each other and from the Company. This can be as damaging for the whistle-blowing employee as well as the employer, the Company.

**H. Policy Dissemination Requirements.**

This Policy shall be disseminated to all employees of the Company (including officers and other management) as well as to all of the Company’s Healthcare Contractors and Agents.

In respect of dissemination to the Company’s Healthcare Contractors and Agents, the Company must disseminate this Policy to its Healthcare Contractors and Agents, which must then abide by this Policy as to the work that such Healthcare Contractors and Agents perform for the Company, in addition to making this Policy available to the employees of such Healthcare Contractors and Agents.

This Policy may be disseminated on paper or in electronic form, but in each case must be readily available to all employees of the Company and to the Company’s Healthcare Contractors and Agents. Employees of the Company and the Company’s Contractors and Agents must be made aware of the existence of this Policy and its location.

**REFERENCES:**

- The Federal False Claims Act (31 U.S.C. Sections 3279-3733). *See Exhibit A hereto.*
- Administrative remedies for false claims under 31 U.S.C., Chapter 38, 3801 *et seq.*
- State Laws for false claims referred to in Exhibits B to G hereto
- Deficit Reduction Act of 2005, Pub. Law 109-171 (2006)
- The Vanguard Health Systems, Inc. Code of Business Conduct and Ethics
- The Vanguard Health Systems, Inc. Corporate Compliance Manual
- Compliance Department Policies, CD.001 to CD.005
- Legal Department Policies, LEGL.001 to LEGL.054 and LEGL.056 to LEGL.063

## **THE FEDERAL FALSE CLAIMS ACT**

### **Executive Summary**

The Federal False Claims Act (“FCA”) helps the Federal government combat fraud and recover losses resulting from fraud in Federal programs, purchases, or contracts, including, without limitation, the Medicare Program and all State Medicaid programs. 31 U.S.C. §§ 3729-3733.

### **Liability and Damages/Statute of Limitations**

- Actions that violate the FCA include: (1) submitting a false claim for payment, (2) knowingly retaining an overpayment that a provider has an obligation to refund within 60 days of identifying the repayment or by the date a corresponding cost report is due, whichever is earlier, (3) making or using a false record or statement to obtain payment for a false claim, (4) conspiring to make a false claim or get one paid, or (5) making or using a false record to avoid payments owed to the U.S. Government (the “Government”).
- The FCA imposes penalties of between \$5,500 to \$11,000 per claim plus three times the amount of damages to the Government for FCA violations.
- Lawsuits must be filed by the later of either: (1) three years after the violation was discovered by the federal official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

### **Private or *Qui Tam* Actions/Whistleblower Provisions**

- An individual (or *qui tam* plaintiff, *relator* or *whistleblower*) can sue for violations of the FCA. Individuals who report fraud generally receive between 15 and 25 percent of the total amount recovered (plus reasonable costs and attorney fees) if the Government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own.
- An individual cannot file a lawsuit based on public information, unless he or she has independent knowledge that materially adds to publicly disclosed allegations.
- The FCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination are entitled to all relief necessary to be made whole, including two times their back pay plus interest,

**EXHIBIT A**  
**FEDERAL FALSE CLAIMS ACT**

reinstatement at the seniority level they would have had except for the discrimination, and compensation for any costs or damages they have incurred.

## **Summary of Key Provisions**

### **False Claims § 3729**

#### **Liability § 3729(a)**

The following actions constitute FCA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the Government or the Armed Forces of the United States (the “Armed Forces”) for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Government;
- Conspiring to get a false claim allowed or paid by the Government;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the Government money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Government;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the Government or a member of the Armed Forces who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Government.
- Knowingly retaining an overpayment that a provider has an obligation to refund within 60 days of identifying the overpayment or by the date a corresponding cost report is due, whichever is earlier.

A person may be liable for:

- A civil penalty of between \$5,500 to \$11,000 for each false claim;
- Three times the amount of damages that the Government sustains because of the violations; and
- The costs of a civil suit for recovery penalties or damages.

The Fraud Enforcement and Recovery Act of 2009 expanded the scope of the False Claims Act by, among other things, creating liability for knowingly and improperly avoiding repayment of an overpayment received from the government and broadening protections for whistleblowers. Under the Health Reform Law, the False Claims Act is implicated by the knowing failure to report and return an overpayment within 60 days of identifying the overpayment or by the date a corresponding cost report is due, whichever is later. Further, the Health Reform Law expands the scope of the False Claims Act to cover payments in connection with the new health insurance exchanges to be created by the Health Reform Law, if those payments include any federal funds.

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the U.S. officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any Government investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

**Exclusion § 3729(e)**

The FCA does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

**Definitions § 3729, § 3733**

**Knowing and Knowingly § 3729(b)**

“Knowing” and “Knowingly” means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

**Claim § 3729(c)**

“Claim” includes any request or demand for money or property (including those made under contract) to the Government or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the Government.

**Civil Actions for False Claims § 3730**

**Responsibilities of the Attorney General § 3730(a)**

The Attorney General is required to investigate false claim violations and is authorized to file civil suits for false claims violations.

**Actions by Private Persons or *Qui Tam* Plaintiffs § 3730(b)**

An individual also has the right to file a civil suit for him or herself and for the Government. The suit must be filed in the name of the Government. The suit is filed and served on the Government. The suit and all information are filed under seal, and most remain under seal for at least sixty days. The suit may be dismissed only if the court and the Attorney General consent to the dismissal in writing.

If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Government. Once the action is filed, no person other than the Government is allowed to intervene or file a lawsuit based on the same facts.

**Rights of the Parties to *Qui tam* Actions § 3730(c)**

If the Government decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Government decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Government can intervene later upon a showing of good cause.

The Health Reform Law significantly increased the rights of whistleblowers to bring False Claims Act actions by materially narrowing the so-called “public disclosure” bar to their False Claims Act actions. Until the Health Reform Law was enacted, a whistleblower was not entitled to pursue publicly disclosed claims unless he or she was a direct and independent source of the information on which his or her allegations of misconduct were based. Under new Health Reform Law provisions:

- It will now be enough that the whistleblower has independent knowledge that materially adds to publicly disclosed allegations.

- Furthermore, the Health Reform Law limits the type of activity that counts as a “public disclosure” to disclosures made in a federal setting; disclosure in state reports or state proceedings will no longer qualify.
- Even if all requirements are met to bar a whistleblower’s suit, the Health Reform Act permits the Department of Justice to oppose a defendant’s motion to dismiss on public disclosure bar grounds, at its discretion so that the whistleblower can proceed with his or her complaint.

The Health Reform Act also provides that a submission of claims for services or items generated in violation of the federal Anti-Kickback Statute constitutes a false or fraudulent claim under the False Claims Act.

**Award to *Qui tam* Plaintiff § 3730(d)**

If the Government prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the award cannot be more than 10 percent of the recovery.

If the Government decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney’s fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

**Certain Actions Barred § 3730(e)**

An individual cannot bring a *qui tam* action against a member of Congress, a member of the judiciary, or a senior executive branch official based on evidence already known to the Government.

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the Government is already a party.

An individual cannot bring an *qui tam* action based on the public disclosure of allegations unless he or she has independent knowledge that materially adds to publicly disclosed allegations.

**Government Not Liable for Certain Expenses § 3730(f)**

The Government is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

**Whistleblower Protection § 3730(h)**

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had but for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the district court for such relief.

**False Claims Procedure § 3731 Statute of Limitations § 3731(b)**

A civil suit must be brought within the later of either: (1) three years of the date that the violation is known or should have been known by the federal official responsible for investigating the action but no more than ten years after the violation occurred; or (2) six years after the violation was committed.

**Burden of Proof § 3731(c)**

The Government or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**TEXAS**

**The Texas Medicaid Fraud Prevention Law**

**Executive Summary**

The Texas Medicaid Fraud Prevention Law (“FPL”) combats fraud and abuse by health care providers participating in the Texas State Medicaid Program. Tex. Hum. Res. Code Ann. §§ 36.001 *et seq*

**Liability and Damages**

- Actions that violate the FPL include: (1) making a false statement or concealing information that affects the right to a Medicaid benefit or payment, (2) submitting a claim for Medicaid payment for a product or service rendered by a person who is not licensed to provide that product or service or fails to indicate the license of the practitioner who actually performed the service, (3) submitting a claim for a service or product that has not been approved by the treating health care practitioner, or (4) conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent.
- The law requires restitution of the value of any Medicaid payment plus interest, damages of two times the value of the payment, and a civil penalty of \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age. If the violation does not result in such an injury, the law requires a civil penalty of \$5,000 to \$10,000 for each violation and damages of two times the value of the payment. A court may waive the civil penalties and award two times the amount of the payment if the defendant voluntarily discloses the violations.

**Whistleblower Provisions**

- Private individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the state prosecutes the case. If the state declines to take over the action, the person bringing the action may proceed without the state’s participation and will be entitled to receive at least 25 percent but not more than 30 percent of the proceeds of the action. The FPL contains important protections for whistleblowers.
- Employees who suffer discrimination because of their involvement in false claims actions may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages they have incurred.

## **Summary of Key Provisions**

### **False Claims**

#### **False Claims § 36.002**

The following actions constitute FPL false claims violations:

- Knowingly making (or causing to be made) a false statement or misrepresentation of facts on an application for a contract, benefit, or payment under the Texas State Medicaid program, or a document that is used to establish a person's eligibility for Medicaid benefits;
- Knowingly concealing or failing to disclose information that affects the right to a Medicaid benefit or payment;
- Knowingly receiving a benefit or payment on behalf of another and using it for something other than that for which it was intended;
- Knowingly making (or causing to be made) or inducing a false statement or misrepresentation on the conditions of operation of a facility so that it may obtain Medicaid certification;
- Knowingly charging, soliciting, or accepting a gift, money, donation as condition to the provision of service to a Medicaid recipient;
- Knowingly submitting a claim for payment under the Medicaid program for a product or service rendered by a person who is not licensed to provide the product or service, or is not licensed as claimed;
- Knowingly making a claim under the Medicaid program for a service or product that has not been approved by the treating health care practitioner, a service or product that is inadequate or inappropriate, or a product that has been debased, mislabeled or is otherwise inappropriate;
- Making a claim and knowingly failing to indicate the type of license and the identify of the health care provider; and
- Conspiring to defraud the state by obtaining an unauthorized payment from the Medicaid program or its fiscal agent.

Managed care providers operating under a contract are also liable for failure to provide Medicaid beneficiaries with the services required under the contract, or engaging in fraudulent activities in connection with the enrollment of individuals.

#### **Liability § 36.052**

The person or entity will be liable for:

- Restitution of the value of any payment provided under the Texas Medicaid program;
- Interest on the value of the payment at the interest rate in effect on the day the payment was received;
- A civil penalty of \$5,000 to \$15,000 for each violation that results in an injury to a disabled person, an elderly person, or a person younger than 18 years of age; or \$5,000 to \$10,000 for each violation that does not result in such an injury; and
- Two times the value of the payment.

**Eligibility for Reduction in Damages § 36.052**

The court must waive the civil penalties if:

- The person committing the violation disclosed all information known to him or her to the attorney general within thirty days of obtaining the information; and
- At the time, the attorney general had not yet begun an investigation.

**Definition of Claim § 36.001**

“Claim” means a written or electronically submitted request or demand that is signed by a provider or fiscal agency and identifies a product or service that was to have been provided to a Medicaid recipient as reimbursable under the Medicaid program, and includes information that is used to determine a rate of payment under the Medicaid program.

**Civil Actions**

**Action by Attorney General § 36.051** The attorney general has the authority to investigate or prosecute a case, or to seek an injunction from the court to restrain a person or entity from committing an unlawful act.

**Actions by Private Persons §§ 36.101-36.107**

A private individual has the right to bring a civil suit on behalf of himself or herself and the state. § 36.101.

If a private person alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the attorney general. § 36.102.

If the state declines to take over the action, the person bringing the action may proceed without the state’s participation. If the person bringing the action proceeds without the state’s participation, the court may permit the state to intervene at a later date on a showing of good cause. § 36.104.

If the state decides to proceed with the civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the private plaintiff. § 36.107

Once a complaint is filed, no person other than the state may intervene or file a suit based on the same facts. § 36.106

**Certain Actions Barred § 36.114**

A private individual cannot bring an action based on allegations that are the subject of a civil suit or administrative proceeding to which the state is already a party.

A private individual cannot bring a suit based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the state before filing a civil action. Public disclosure includes disclosure in a

criminal or civil hearing; a legislative or administrative report, hearing, audit, or investigation; or from the news media.

**Award to Private Plaintiff § 36.110**

If the state prosecutes a case initiated by a private plaintiff and obtains an award or settlement, the private plaintiff will receive between 15 and 25 percent of the recovery. The court will consider the private plaintiff's contribution to the investigations and proceedings in determining the award. If the case is primarily based on public disclosures of information other than those provided by the private plaintiff, the courts may award the to the *qui tam* plaintiff whatever amount they consider appropriate up to seven percent of the proceeds.

If the court finds that the private plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the person is convicted of criminal conduct arising from their role in the fraud or false claims violation, the court must dismiss the person from the civil action and bar him or her from receiving any share of the proceeds.

If the state does not proceed with the action, the person bringing the action is entitled to receive at least 25 percent but not more than 30 percent of the proceeds of the action.

**State Not Liable Expenses § 36.114**

The state is not liable for any expenses incurred by a private person in bringing a civil action.

**Whistleblower Protection**

**Employer Interference with Employee Disclosures § 36.115** Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination, including reasonable costs an attorney fees.

The protected false claims activities include investigating, initiating, testifying, or otherwise assisting in a civil action. An employee is entitled to bring an action in the appropriate district court for damages.

**AWARDS UNDER THE TEXAS GOVERNMENT CODE (Sections 531.101 to 531.108)**

- The Texas Health and Human Services Commission (“Commission”) may grant awards (in amount not less than 10% of the savings to the State) to any individual who reports fraud and abuse of funds in the Texas Medicaid Program if the Commission determines that the disclosure results in the recovery of an overcharge or the termination of fraudulent activity. Awards under this statute are not available for whistleblowers under the Texas Medicaid Fraud Prevention Law. (Section 531.101)

**ILLINOIS**

**The Illinois False Claims Act**

**Executive Summary**

The Illinois False Claims Act (“IFCA”) applies to fraud involving State government, local government, and public educational institution funds, including, without limitation, the Illinois Medicaid program. 740 Ill. Comp. Stat. 175/1-175/8 (as amended through Public Act 096-1304 (2010) )

**Liability and Damages/Statute of Limitations**

- Actions that violate the IFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record or statement to avoid payments owed to the State.
- Penalties of \$5,500 to \$11,000 per claim plus three times the amount of damages to the state government for IFCA violations may be imposed.
- Lawsuits must be filed within the latter of either: (1) three years after the violation is discovered by the State official responsible for investigating violations (but no more than ten years after the violation was committed), or (2) six years after the violation was committed.

***Qui Tam* Actions/Whistleblower Provisions**

- An individual (or *qui tam* plaintiff) can sue for violations of the IFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the State prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The IFCA contains important protections for whistleblowers. Employees, contractors or agents who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages incurred.

## **Summary of Key Provisions**

### **False Claims Liability 175/3**

#### **False Claims 175/3(a)**

The following actions constitute WRPA violations:

- Knowingly submitting (or causing to be submitted) a false claim to the State for payment or approval, including, without limitation, under the Illinois State Medicaid program;
- Knowingly making or using (or causing to be made or used) a false record or statement material to a false claim;
- Conspiring to make a false claim allowed or get one paid;
- Delivering (or causing to be delivered) less money or property, where the person with possession or control of the State money or property intends to deceive the agency or conceal the money or property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the State;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the State or a member of the Illinois National Guard who has no legal right to sell or pledge the property; or
- Knowingly making or using a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the State.

A person will be liable to the State for:

- A civil penalty of \$5,500 to \$11,000 for each false claim; plus
- Three times the amount of damages that the State sustains because of the violations; and
- The costs of a civil suit to recover penalties or damages.

#### **Exclusion 175/3(c)**

The IFCA does not apply to claims, records, or statements made under the Illinois Income Tax Act.

### **Definitions 175/2-175/3**

#### **State 175/2(a)**

“State” means the State of Illinois, any agency of State government, the system of State colleges and universities, any school district, any public community college district, any municipality, municipal corporations, units of local government, or any combination of the above under an intergovernmental agreement that includes provisions for a governing body of the agency created by the agreement.

**Knowing and Knowingly 175/3(b)(1)**

“Knowing” and “Knowingly” means the person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information

No proof of specific intent to defraud is required.

**Claim 175/3(b)(2)**

“Claim” means any request or demand for money or property made to the State (including those made under contract) or to a contractor, grantee, or other recipient, if any portion of the money or property requested is funded by or will be reimbursed by the State.

**Civil Actions for False Claims 175/4**

**Responsibilities of the Attorney General and the Department of State Police 175/4(a)**

The IFCA authorizes the Attorney General and the Department of State Police to investigate false claim violations that relate to the State (as defined). The Attorney General has the authority to file a civil suit for false claims violations. The State receives from the defendant the Attorney General’s expenses in the suit, including attorney’s fees and costs.

**Actions by Private Persons or *Qui Tam* Plaintiffs 175/4(b)–175/4(c)**

An individual also has the right to bring a civil suit for IFCA violations for him or herself and for the State. The suit must be filed in the name of the State. The action may be dismissed only if the court and the Attorney General consent to the dismissal in writing. 175/4(b)(1).

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the State. 175/4(b)(2). Once the action is filed, only the State is allowed to intervene or file a lawsuit based on the same facts. 175/4(b)(5).

If the State decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations. 175/4(c)(1).

If the State chooses not to file a civil suit, the *qui tam* plaintiff still has a right to proceed with the action. The State can intervene later upon a showing of good cause. 175/4(c)(3).

**Award to *Qui tam* Plaintiff 175/4(d)**

If the State prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is primarily based on disclosures other than those of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. 175/4(d)(1).

If the State chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees. 175/4(d)(2).

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award. 175/4(d)(3).

If the court finds the defendant not guilty and the claim frivolous in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. 175/4(d)(4).

#### **Certain Actions Barred 175/4(e)**

A legal action cannot be brought against a member of the General Assembly, a member of the judiciary, or an exempt official based on evidence already known to the State. 175/4(e)(2).

An individual cannot bring a *qui tam* action based on allegations in a civil suit or an administrative proceeding in which the State is already a party. 175/4(e)(3).

An individual cannot bring a *qui tam* action based on the public disclosure of allegations unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the State before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative, administrative, or Auditor General's report, hearing, audit, or investigation; or from the news media. 175/4(e)(4).

#### **State Not Liable for Certain Expenses 175/4(f)**

The State is not liable for expenses incurred by a *qui tam* plaintiff in conducting a civil action.

#### **Whistleblower Protection 175/4(g)**

An employee, contractor or agent who is discharged, demoted, suspended, threatened, harassed, or in any way discriminated against because of involvement in a false claims disclosure is entitled to all relief necessary to make the employee, contractor or agent whole, including:

- 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 plus interest; and
- Compensation for any special damage sustained as a result of the discrimination (including litigation costs and reasonable attorney's fees).

The protected false claims activities all lawful acts by the whistleblower to stop false claims. An employee, contractor or agent is entitled to bring an action in the circuit court for such relief.

#### **False Claims Procedure 175/5**

**Statute of Limitations 175/5(b)**

A civil suit must be filed within the latter of either: (1) three years after the violation was discovered or should have been discovered by the state or local governmental entity responsible for prosecuting the action (but no more than ten years after the violation was committed); or (2) six years after the violation was committed.

**Burden of Proof 175/5(d)**

The State or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**ILLINOIS CRIMINAL PROVISION FOR FALSE CLAIMS UPON GOVERNMENTAL ENTITIES (720 ILLINOIS COMPILED STATUTES 5/46-1.1)**

- False claims upon governmental entities are also criminal misdemeanors or felonies depending on the value of the payment or benefit provided, with the dividing line between misdemeanors and felonies set at \$300.

**MASSACHUSETTS**

**The Massachusetts False Claims Act**

**Executive Summary**

The Massachusetts False Claims Act (“MFCA”) is a law designed to help the state government combat fraud and recover losses resulting from fraud in state programs, purchases, or contracts, including, without limitation, under the Massachusetts State Medicaid Program. Mass. Gen. Laws Ann. ch. 12, § 5.

**Liability and Damages/Statute of Limitations**

- Actions that violate the MFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the Commonwealth or a political subdivision. Anyone who enters into an agreement or contract with the Commonwealth or a political subdivision, knowing that the information contained therein is false violates the MFCA. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the MFCA if he or she does not disclose the false claim within a reasonable time after he or she discovers it. Contracts are also subject to the MFCA.
- Penalties of \$5,000 to \$10,000 per claim may be imposed, plus three times the amount of damages to the Commonwealth or political subdivision for MFCA violations.
- A civil suit must be filed within the latter of: (1) six years after the violation was committed, or (2) three years after the date that the violation was discovered (but no more than ten years after the violation was committed).

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

- An individual (or *qui tam* plaintiff) can sue for violations of the MFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MFCA contains important protections for whistleblower. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had but for the discrimination, and (3) compensation for any costs or damages they have incurred.

## **Summary of Key Provisions**

### **False Claims § 5B**

#### **Liability**

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim for payment or approval to the Commonwealth of Massachusetts, including, without limitation, under the Massachusetts State Medicaid program;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by the Commonwealth or any political subdivisions;
- Conspiring to defraud the Commonwealth or a political subdivision by getting a false claim allowed or paid;
- Delivering (or causing to be delivered) to the Commonwealth less property than the amount of the receipt, where the person with possession or control of the Commonwealth or political subdivision's money or property intends to conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to defraud the Commonwealth or a political subdivision;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of the Commonwealth or a political subdivision who has no legal right to sell or pledge the property;
- Entering into an agreement, contract, or understanding with the Commonwealth or a political subdivision, knowing that the information contained therein is false;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the Commonwealth or a political subdivision; and
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery.

A person will be liable for:

- A civil penalty \$5,500 to \$10,000 for each false claim;
- Three times the amount of damages that the Commonwealth or political subdivision sustains because of the violations (including consequential damages); and
- The costs of a civil suit for recovery of damages (including reasonable attorney's fees, reasonable expert's fees, and the costs of the investigation).

**Eligibility for Reduction in Penalty** The court may reduce the damages to the amount of damages that the Commonwealth or a political subdivision sustains because of the acts of a person if:

- The person committing the violation voluntarily disclosed all information known to him or her to an official of the Attorney General responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; an

- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

### **Liability for Action of Agent**

A corporation, partnership, or other person is liable to the Commonwealth for the acts of its agency, where the agent acted with apparent authority.

### **Exclusion**

The MFCA does not apply to tax claims, records, or statements.

### **Definitions § 5A**

#### **Knowing and Knowingly**

"Knowing" and "Knowingly" means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

#### **Claim**

"Claim" includes any request or demand for money or property made to the Commonwealth or any political subdivision (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by the Commonwealth or a political subdivision.

#### **Person**

"Person" means any natural person, corporation, partnership, association, trust, or other business or legal entity.

#### **Political Subdivision**

"Political Subdivision" includes any city, town, county, or other governmental entity authorized or created by state law, including public corporations and authorities.

### **Civil Actions for False Claims § 5C-5L**

#### **Responsibilities of the Attorney General § 5C(1)**

The Attorney General is required to investigate false claim violations involving state funds or funds from any political subdivision, and is authorized to file civil suits for false claims violations.

#### **Actions by Private Persons or *Qui Tam* Plaintiffs § 5C(2)**

An individual also has the right to file a civil suit for him or herself and for the Commonwealth or a political subdivision. The action may be dismissed only with the Attorney General's submission of written reasons for consenting and the court's approval.

If a private person (or *qui tam* plaintiff) alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General. Once the action is filed, no person other than Attorney General is allowed to intervene or file a lawsuit based on the same facts.

**Rights of the Parties to *Qui Tam* Actions § 5D**

If the Attorney General decides to file a civil suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Attorney General decides not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Attorney General can intervene later upon a showing of good cause.

**Award to *Qui Tam* Plaintiff § 5E**

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. If the case is based primarily on information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery.

If the Attorney General decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement. In either case, the court will award the *qui tam* plaintiff reasonable expenses and attorney's fees and costs.

If the court finds that the *qui tam* plaintiff planned and initiated the violation upon which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the lawsuit and will not receive any monetary award.

**Certain Actions Barred § 5G**

A *qui tam* plaintiff cannot bring an action against governor, lieutenant governor, the attorney general, the treasurer, secretary of state, auditor, member of the general court, inspector general, or a member of the judiciary, if the suit is based on information already known to the Commonwealth.

A *qui tam* plaintiff cannot file a suit based on allegations in a civil suit or an administrative proceeding in which the Commonwealth or any political subdivision is already a party

A *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the Commonwealth (without public disclosure) before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; a legislative, administrative, auditor's or inspector general's report, hearing, audit, or investigation; or from the news media.

**Liability for Expenses and Attorney Fees § 5I**

If the court finds the defendant not guilty and the claim insubstantial, frivolous, or harassing in a suit conducted by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees.

The Commonwealth is not liable for expenses, costs, or attorney fees incurred by a *qui tam* plaintiff in conducting a civil action for false claims violations.

**Statute of Limitations § 5K**

A civil suit must be brought within the latter of: (1) six years after the violation was committed, or (2) three years after the violation is discovered or should have been discovered (but no more than ten years after the violation was committed).

**Burden of Proof § 5L**

The state, the political subdivision, or the *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**Whistleblower Protection § 5J**

**Employer Interference with Employee Disclosures**

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action;
- Requiring as a condition of employment that any employee agree to, accept, or sign any agreement that limits or denies the employee's rights to bring an action or provide information to a government or law enforcement agency; and
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

**Liability of Employer**

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained as a result of the discrimination.

The protected false claims activities include investigation for, initiation of, testimony for, or assistance in a false claims action that has been or will be filed. An employee is entitled to bring an action in the appropriate superior court for such damages. If the employee does so, the employer is liable for litigation costs and reasonable attorneys' fees.

**Limitations on Eligibility of Employees for Damages**

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she:

- Voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

**MASSACHUSETTS CRIMINAL STATUTE AGAINST FALSE CLAIMS**  
**(MASS. ANN. LAWS, CH.266, SECTION 67B)**

- False claims against governmental entities are crimes under this Section punishable by fines of up to \$10,000 and/or imprisonment for 2-1/2 to 5 years

**INDIANA**

**The Indiana False Claims Act**

**Executive Summary**

The Indiana False Claims Act (“IFCA”) helps the State combat fraud and recover losses resulting from fraud in programs, purchases, or contracts, including, without limitation, in the Indiana State Medicaid program. Ind. Code Ann. §§ 5-11-5.5-5.

**Liability and Damages/Statute of Limitations**

Actions that violate the IFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring with another person to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the governmental entity.

The minimum civil penalty is \$5,000 per claim. Damages of up to three times the amount that the state sustains because of the violation may also be awarded. The courts will waive penalties for IFCA violations and reduce damages if the false claims are voluntarily disclosed.

A civil suit must be filed within six years after the date that the violation was discovered, but no more than ten years after the violation was committed.

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

A private person (or *qui tam* plaintiff) can sue for violations of the IFCA. Individuals who report fraud receive between 10 and 15 percent of the total amount recovered if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the private person litigates the case on his or her own as a *qui tam* action. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

The IFCA contains protections for whistleblowers. Employees who suffer discrimination due to their disclosure of fraudulent activity may be awarded: (1) two times their back pay plus interest, (2) reinstatement at the seniority level they would have had except for the discrimination, and (3) compensation for any costs or damages they have incurred.

## **Summary of Key Provisions**

### **False Claims §§ 5-11-5.5-2 to 5-11-5.5-9**

#### **Liability § 5-11-5.5-2**

The following actions constitute false claims violations:

- Knowingly submitting a false claim for payment or approval to the State, including, without limitation, to the Indiana State Medicaid program;
- Knowingly making or using a false record or statement to get a false claim paid or approved;
- Delivering to the state less property than the amount of the receipt, where the person has possession or control of the governmental state's money or property and intends to defraud the state;
- Making or delivering a receipt without knowing that the information on the receipt is true, where the person is authorized to make or deliver the receipt and intends to defraud the state;
- Knowingly receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to avoid an obligation to pay money or transmit property to the state;
- Conspiring with another person to perform any of the above-mentioned acts; and
- Causing or inducing another person to perform any of the above-mentioned acts.

A person will be liable for:

- A civil penalty of at least \$5,000 for each false claim;
- Up to three times the amount of damages that the state sustained because of the violations; and
- The costs of a civil suit to recover penalties or damages.

#### **Eligibility for Reduction in Penalty § 5-11-5.5-2**

The court must eliminate the civil penalty and can reduce the damages to two times the amount that the state sustains:

- The person committing the violation disclosed all information known to him or her to state officials within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation.

#### **Statute of Limitations § 5-11-5.5-9**

A civil suit must be brought within six years after the violation was discovered by a state official who is responsible for investigating false claims, but no more than ten years after the date on which the violation is committed.

### **Certain Actions Barred § 5-11-5.5-7**

A private person (or *qui tam* plaintiff) cannot file a complaint or civil suit:

- If he or she is an incarcerated offender;
- Against the state, a state officer, a judge, a justice, a member of the general assembly, a state employee, or an employee of a political subdivision, if the action is based on information already known to the state.
- Based on allegations in a civil suit or an administrative proceeding in which the state is already a party; or
- Based on the public disclosure of allegations unless he or she is the original source, e.g. an individual who has direct and independent knowledge of the information on which the allegations are based and who has voluntarily provided the information to the state before filing a civil action. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; legislative, administrative, or other public report, hearing, audit, or investigation; or a news media report.

### **Definitions § 5-11-5.5-1**

#### **Claim**

"Claim" includes any request or demand for money or property made to the state (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by the state.

#### **Person**

"Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

### **Civil Actions for False Claims § 5-11-5.5-3**

#### **Responsibilities of the Attorney General or Inspector General**

The Attorney General or Inspector General may investigate false claim violations and file civil suits for false claims violations.

#### **Actions by Private Person or *Qui Tam* Actions**

A *qui tam* plaintiff also has the right to file a civil complaint alleging a false claims violation on behalf of the state. The court may dismiss a suit if either the Attorney General or Inspector General files a motion to dismiss and explains why dismissal is appropriate. If a *qui tam* plaintiff alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General and the Inspector General. Once the action is filed, no one other than the Attorney General or Inspector General is allowed to intervene or file a lawsuit based on the same facts.

If the Attorney General or Inspector decides to file a civil suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the private person who initially filed the complaint. If the Attorney General or Inspector General decides not to file a civil suit, the *qui tam* plaintiff still has the right to prosecute the case. The Attorney General or Inspector General can intervene later upon a showing of good cause.

**Award to Private Person or *Qui Tam* Plaintiff**

If the Attorney General or Inspector General prosecutes a case initiated by a *qui tam* plaintiff and the state prevails, the *qui tam* plaintiff will receive between 10 and 15 percent of the recovery plus reasonable costs and attorney fees.

If the *qui tam* plaintiff prosecutes the action on his or her own, he or she will receive between 25 and 30 percent of the proceeds of the amount recovered plus reasonable costs and attorney fees.

If the Attorney General or Inspector General prosecutes a case initiated by a *qui tam* plaintiff and the evidence is based primarily on publicly available information, the *qui tam* plaintiff's recovery will be limited to no more than 10 percent. Publicly available information includes that found in a criminal, civil, or administrative hearing; a legislative, administrative, or other public report, hearing, audit, or investigation; or a news media report.

If the court finds that the private person planned and initiated the fraudulent activity or was convicted of a crime relating to violation of the IFCA, the *qui tam* plaintiff is not guaranteed any award.

If the court finds that a lawsuit brought by a *qui tam* plaintiff is frivolous, the court may require that person to pay the defendant reasonable costs and attorney fees.

The state is not liable for the expenses, costs of attorney fees of a private party for any action brought under the IFCA.

**Employer Interference with Employee Disclosures** Any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her objection to false claims violation or involvement in a false claims action is entitled to all relief necessary to make that person whole including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination

**INDIANA CRIMINAL PROVISION RELATING TO FALSE CLAIMS UPON THE STATE MEDICAID PROGRAM ( INDIANA CODE 35-43-5-7.1)**

- False claims submitted to the Indiana Medicaid Program are felonies under this Section.

**ARIZONA**

As of July 1, 2007, there is no civil statute in Arizona allowing individuals (private individuals or employees) to file false claims actions, in the name of the State, upon health care providers. However, the state has the following civil and criminal statutes allowing the State to take action itself against false claims from health care providers.

**Civil Statute.** Under Section 36-2918 of Title 36, Public Health and Safety, of Arizona Revised Statutes, entitled “Prohibited Acts; penalties; subpoena power”, a health care provider (“HCP”) is liable for a civil penalty not to exceed \$2,000 for each “false claim” to the State or its contractor for medical services and an assessment not to exceed twice the amount claimed for the service. “False claims” under this statute include, without limitation, the following:

1. A claim for a medical or other item or service that the HCP knows or has reason to know was not provided as claimed.
2. A claim for a medical or other item or service that the HCP knows or has reason to know is false or fraudulent.
3. A claim for payment that the HCP or patient knows or has reason to know may not be made because:
  - (a) The HCP or patient was terminated or suspended from participation in the program on the date for which the claim is being made.
  - (b) The item or service claimed is substantially in excess of the needs of the individual or of a quality that fails to meet professionally recognized standards of health care.
  - (c) The patient was not a member on the date for which the claim is being made.
4. A claim for a physician's service or an item or service incidental to a physician's service, by a person who knows or has reason to know that the individual who furnished or supervised the furnishing of the service:
  - (a) Was not licensed as a physician.
  - (b) Obtained the license through a misrepresentation of material fact.
  - (c) Represented to the patient at the time the service was furnished that the physician was certified in a medical specialty by a medical specialty board if the individual was not certified.
5. A request for payment that the HCP knows or has reason to know is in violation of an agreement between the HCP and the State.

**Criminal Statutes.**

- Under Section 13-1802 of Title 13, Criminal Code, of Arizona Revised Statutes, entitled “Theft; classification”, a person who knowingly obtains services or property of another person commits theft and is guilty of a felony, except where the amount involved is less than \$1,000 in which the theft is generally a misdemeanor.
- Under Section 13-2002 of Title 13, Criminal Code, of Arizona Revised Statutes, entitled “Forgery; classification”, a person commits forgery and is guilty of a felony if, with intent to defraud, a person:
  1. Falsely makes, completes or alters a written instrument; or
  2. Knowingly possesses a forged instrument; or
  3. Offers or presents, whether accepted or not, a forged instrument or one that contains false information.
- Under Section 13-2310 of Title 13, Criminal Code, of Arizona Revised Statutes, entitled “Fraudulent schemes and artifices; classification; definition”, a person who knowingly obtains any benefit by means of false or fraudulent pretenses, representations, promises or material omissions upon any other person is guilty of a felony.
- Under Section 13-2311 of Title 13, Criminal Code, of Arizona Revised Statutes, entitled “Fraudulent schemes and practices; willful concealment; classification”, in any matter related to the business conducted by any department or agency of the State or any political subdivision thereof, any person who, pursuant to a scheme to defraud or deceive, knowingly falsifies, conceals or covers up a material fact by any trick, scheme or device or makes or uses any false writing or document knowing such writing or document contains any false, fictitious or fraudulent statement or entry is guilty of a felony.

**CALIFORNIA**

**The California False Claims Act**

**Executive Summary**

The California False Claims Act (“CFCA”) applies to fraud involving state, city, county or other local government funds including, without limitation, under the California State Medicaid program. Cal. Gov’t Code §§ 12650-12655 (as amended in October 2009 by Assembly Bill No. 1196). The CFCA encourages voluntary disclosure of fraudulent activities by rewarding individuals who report fraud and allowing courts to waive penalties for organizations that voluntarily disclose false claims.

**Liability and Damages/Statute of Limitations**

- The actions that violate the CFCA include: (1) presenting a false claim for payment, (2) making or using a false record material to a false claim, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state or local government. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the CFCA if he or she does not disclose the false claim to the state or local government within a reasonable time after discovery of the false claim.
- A mandatory civil penalty is from \$5,000 to \$10,000, per claim. Persons who violate the CFCA may be liable to the state for three times the amount of damages that the state sustains because of the violation. The court can waive penalties and reduce damages for CFCA violations if the false claims are voluntarily disclosed. The CFCA does not apply to false claims of less than \$500.
- Lawsuits must be filed within three years after the violation was discovered by the Attorney General or local official who is responsible for investigating the false claim (but no more than ten years after the violation was committed).

**Private or *Qui Tam* Actions/Whistleblower Provisions**

- Individuals (called *qui tam* plaintiffs) can sue for violations of the CFCA. Individuals who bring an action under the CFCA receive between 15 and 33 percent of the amount recovered (plus reasonable costs and attorney’s fees) if the state prosecutes the case, and between 25 and 50 percent (plus reasonable costs and attorney’s fees) if the *qui tam* plaintiff litigates the case on his or her own.
- An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The CFCA bars employers from interfering with an employee’s disclosure of false claims. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement at the seniority

**EXHIBIT G**  
**CALIFORNIA**

level they would have had except for the discrimination, (3) compensation for any costs or damages they have incurred, and (4) punitive damages, if appropriate.

## **Summary of Key Provisions**

### **False Claims Liability**

#### **Actionable Conduct § 12651(a)**

The following acts constitute CFCA violations:

- Knowingly presenting (or causing to be presented) a false claim for payment or approval to the State, including, without limitation, to the State Medicaid program;
- Knowingly making or using (or causing to be made or used) a false record or statement material to a false claim;
- Conspiring to get a false claim allowed or paid by the state or by any political subdivision;
- Benefiting from an inadvertent submission of a false claim, subsequently discovering the falsity of the claim, and failing to disclose to the state or political subdivision within a reasonable time after discovery;
- Delivering less property than the amount of the receipt, where the person has possession or control of public property;
- Knowingly making or delivering a false receipt, where the person is authorized to deliver a document;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property; and
- Knowingly making or using a record to conceal, avoid, or decrease an obligation to pay money or transmit property to the state or local government.

#### **Liability to the State or Political Subdivision § 12651(a)**

A person will be liable to the state or political subdivision for:

- Three times the amount of damages that the state or local government sustains because of the false claims violations;
- The costs of a civil suit for recovery of damages; and
- A mandatory civil penalty of from \$5,000 to \$10,000 for each false claim.

**Eligibility for Reduction in Penalty § 12651(b)** The court may reduce the damages to not less than two times that which the state or the political subdivision sustains and waive the civil penalty, if the person committing the violation (i) provided all information about the violation to the entity responsible for investigation such violation within 30 days of obtaining the information, (ii) fully cooperated in the investigation, and (iii) at the time the person provided the information to the investigating entity, the prosecution, civil action, or administrative action had not been commenced and the person had no actual knowledge of the investigation.

#### **Joint and Several Liability § 12651(c)**

Liability is joint and several for any act committed by two or more persons.

**Exclusion § 12651(d)-(f)**

The CFCA does not apply to false claims involving less than \$500; workers' compensation claims; claims made under the Government Code; or claims, records, or statements made under the Revenue and Taxation Code.

**Statute of Limitations § 12654(a)**

A civil suit must be filed within three years after the violation is discovered by the Attorney General or local governmental entity responsible for investigating the action (but no more than ten years after the violation was committed).

**Definitions**

**Claim § 12650(b)(1)** "Claim" means any request for money, property, or services made to the state or any political subdivision (or to any contractor, grantee, or other recipient), where any portion of the money, property, or services requested was funded by the state or any political subdivision.

**Knowingly § 12650(b)(3)** "Knowingly" means the organization:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

**Person § 12650(b)(8)**

"Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

**Political Subdivision § 12650(b)(5)**

A "political subdivision" includes any city, city and county, county, tax or assessment district, or other legally authorized local governmental entity.

**Prosecuting Authority § 12651(b)(7)**

"Prosecuting authority" refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings.

**False Claims Actions**

**Civil Actions for False Claims § 12652(a)-(b)**

The Attorney General and the prosecuting authority each have authority to investigate, file, and conduct civil actions.

**Civil Actions by Private Persons or *Qui Tam* Plaintiffs § 12652(c)** An individual has a right to bring a civil action for violation of the CFCA on his or her own behalf and on behalf of the state or a political subdivision. The action may be dismissed only both

with the written consent of the court and with the written consent of the Attorney General or the prosecuting authority, taking into account the best interests of the parties involved and the purpose of the CFCA.

**Procedures for Filing a Complaint § 12652(c), § 12652(e)-(f)**

If a *qui tam* plaintiff alleges a false claims violation, the complaint and disclosure of substantially all material evidence and information that the person possesses must be directed to the State Attorney General. The complaint must be provided to the Attorney General on the same day that it is filed in Superior Court in camera. § 12652(c)(3). Within 60 days of receiving the complaint and written disclosure of the material evidence, the Attorney General may elect to intervene and proceed with the action.

§ 12652(c)(4). Where the complaint alleges violations exclusively involving political subdivision funds, the Attorney General must forward the complaint and the material evidence to the appropriate prosecuting authority and within 45 days of receiving the complaint, the prosecuting authority may elect to intervene and proceed with the action.

§ 12652(c)(7). When a *qui tam* plaintiff brings an action, no other person can bring a related action based on the same facts. § 12652(c)(10).

If the state or political subdivision decides to proceed with the civil suit, it assumes primary responsibility for prosecuting the action. However, the *qui tam* plaintiff has a right to continue as a party to the action, subject to certain limitations. § 12652(e)(1). If the state or political subdivision decides not to proceed with the suit, the *qui tam* plaintiff still has the right to proceed with the action solely by himself/herself. The state or political subdivision can intervene later if its interest is not being adequately represented by the *qui tam* plaintiff. § 12652(f)(1) - (2).

**Burden of Proof § 12654(c)**

The state, the political subdivision, or the *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

**Certain Actions Barred § 12652(d)**

An individual cannot bring a *qui tam* suit based on allegations in a civil suit or an administrative proceeding in which the state or political subdivision is already a party. § 12652(d).

An individual cannot file a lawsuit based on the public disclosure of allegations unless he or she is the original source (e.g., an individual with direct and independent knowledge of the information on which the allegations are based). § 12652(d)(3)(B). Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision; or by the news media. § 12652(d)(3)(A).

**Awards § 12652(g)**

If the state or political subdivision prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff receives between 15 and 33 percent of the recovery (plus reasonable costs and attorney's fees), depending on his or her contribution to the case. § 12652(g)(2). If the state or political subdivision decides not to intervene and proceed with the

lawsuit and the *qui tam* plaintiff successfully litigates the action by himself/herself, the *qui tam* plaintiff receives between 25 and 50 percent of the award or settlement. Employees who participated in fraudulent activities are not guaranteed any recovery. § 12652(g)(3) - (5). If the court finds the defendant not guilty and the claim clearly frivolous, clearly vexatious or brought primarily for the purposes of harassment in a suit conducted solely by a *qui tam* plaintiff, the court may award the defendant reasonable costs and attorney fees. § 12652(g)(9).

## **Whistleblower Protection**

### **Employer Interference with Employee Disclosures § 12653(a)-(b)**

Employers are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; or
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action. § 12653(a)-(b).

### **Liability of Employer § 12653(c)**

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest;
- Compensation for any special damage sustained as a result of the discrimination; and
- Punitive damages, where appropriate.

An employee is entitled to bring an action in the Superior Court for such damages. If the employee does so, the employer is liable for litigation costs and reasonable attorney's fees.

### **Limitations on Eligibility of Employees for Damages § 12653(d)**

If an employee's conduct has resulted in a false claim being submitted to the state or a political subdivision, and the employee has been discriminated against by his or her employer, he or she is entitled to remedies only if he or she:

- Voluntarily disclosed information to a government or law enforcement agency or assisted in a false claims action; and
- Was coerced (either through harassment, threats of termination demotion, or other coercive actions) by the employer or its management into committing the fraudulent activity in the first place.

**CALIFORNIA CRIMINAL STATUTES FOR STATE MEDICAID FRAUD UNDER THE MediCal PROGRAM**

CODE SECTION	DESCRIPTION	PENALTY
<a href="#">WELFARE &amp; INSTITUTIONS CODE § 14107</a> (Fraudulent Claims)	<ul style="list-style-type: none"> <li>- Present claim for payment</li> <li>- With intent to defraud</li> <li>- For goods or services</li> <li>- To obtain greater compensation than legally entitled</li> <li>- Knowing the information is false</li> </ul>	Misdemeanor - one year county jail and \$1,000 fine. Felony - 2, 3, or 5 years and fine not exceeding three times the amount of fraud or improper reimbursement or value of scheme or artifice. If the execution of a scheme or artifice to defraud is committed under circumstances likely to cause or that do cause two or more persons great bodily injury, or serious bodily injury, a term of four years, in addition and consecutive to the term of imprisonment imposed, shall be imposed for each person who suffers great bodily injury or serious bodily injury.
<a href="#">PENAL CODE § 550(a)(5)</a> (Prepare or Make a False Writing)	Knowingly prepare, make, or subscribe any writing with intent to present or use it in support of any false or fraudulent claim	Felony or misdemeanor, depending on amount of fraud under guidelines of Penal Code section 487 (over \$400 felony). Misdemeanor - One year county jail and \$1,000 fine. Felony - 2, 3, or 5 years state prison plus \$50,000 fine or double the amount of fraud, whichever is greater
<a href="#">PENAL CODE § 550(a)(6)</a> (Making a False Claim)	Knowingly make or cause to be made any false or fraudulent claim for health care benefit	Felony or misdemeanor, depending on amount of fraud under guidelines of Penal Code section 487 (over \$400 felony). Misdemeanor - One year county jail and \$1,000 fine. Felony - 2, 3, or 5 years state prison plus \$50,000 fine or double the amount of fraud, whichever is greater

## **The Michigan Medicaid False Claims Act**

### **Executive Summary**

The Michigan Medicaid False Claims Act (“MMFCA”) is a state law that is designed prevent fraud, kickbacks, and conspiracies in connection with the Medical Assistance Program. Mich. Comp. Laws Ann. §§ 400.601-400.613.

### **Liability and Damages/Statute of Limitations**

- Actions that violate the MMFCA include: (1) knowingly making (or causing to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; (2) concealing or failing to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled; and (3) conspiring to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violations are punishable by civil and criminal penalties.
- Violation of the MMFCA constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both. A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact is liable to the state for a civil penalty equal to the full amount received plus triple damages plus an amount per claim of not less than \$5,000 or more than \$10,000.

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

- An individual (or *qui tam* plaintiff) can sue for violations of the MMFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the government prosecutes the case and between 25 and 30 percent if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MMFCA contains important protections for whistleblowers. Employees who report fraud and consequently suffer discrimination may be awarded (1) two times their back pay plus interest, (2) reinstatement in their position without loss of seniority, and (3) compensation for any costs or damages they have incurred.

## **Summary of Key Provisions**

### **False Claims §§ 400.603-400.607**

#### **Liability**

Under § 400.603, it is a violation to:

- Knowingly make (or cause to be made) a false statement in an application for benefits or for use in determining Medicaid eligibility; or
- Conceal or fail to disclose an event in order to obtain a benefit greater than that to which the person is otherwise entitled;

Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

Under § 400.604, it is a violation to solicit, offer, or receive a kickback in connection with furnishing goods or services for Medicaid. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$30,000 or less, or both.

Under § 400.605, it is a violation to knowingly make or induce false statements with respect to the conditions of operation in order to obtain certification as a hospital, skilled nursing facility, intermediate care facility, or home health agency. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$30,000 or less, or both.

Under § 400.606, it is a violation to conspire to defraud the state by obtaining (or seeking to obtain) payment of a false claim. Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

Under § 400.607, it is a violation to:

- Knowingly make or present (or cause to be made or presented) to the state a false claim; or
- Knowingly make or present (or cause to be made or presented) to the state a claim that falsely represents the medical necessity of the goods or services.

Violation constitutes a felony punishable by four years or less in prison, or a fine of \$50,000 or less, or both.

If a person is convicted three or more times for an offense under this Act and subsequently convicted of another offense under this Act, he or she may be sentenced to imprisonment for not more than ten years.

#### **Civil Penalties § 400.612**

A person who receives a benefit to which he or she is not entitled, by reason of fraud; makes a fraudulent statement; or knowingly conceals a material fact shall be liable to the state for a civil penalty equal to the full amount received plus triple damages plus an amount per claim of not less than \$5,000 and not more than \$10,000.

## **Definitions § 400.602**

**Knowing and Knowingly** “Knowing” and “Knowingly” means a person is aware or should be aware that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. Knowing or knowingly includes acting in deliberate ignorance of the truth or falsity of facts or acting in reckless disregard of the truth or falsity. Proof of specific intent to defraud is not required.

### **Claim**

“Claim” means an attempt to cause the department of social services to pay out money under the social welfare act, §§ 400.1-400.121.

### **False**

“False” means wholly or partially untrue or deceptive.

### **Benefit**

“Benefit” means the receipt of money, goods, or anything of monetary value.

### **Person**

“Person” means an individual, corporation, association, partnership, or other legal entity.

## **Responsibilities of the Attorney General § 400.610**

The Attorney General may investigate alleged violations of this Act.

### **Civil Actions §400.610(a)**

#### **Actions by Private Persons**

An individual (or *qui tam* plaintiff) also has the right to file a civil suit to recover losses to the state. A suit filed under the MMFCA will be dismissed unless the Attorney General is notified and has an opportunity to oppose the dismissal.

If the Attorney General decides to intervene in the suit, he or she assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations.

If the Attorney General decides not to intervene, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The Attorney General can intervene later upon a showing of good cause and without affecting the rights or status of the *qui tam* plaintiff

Once the action is filed, no one other than the Attorney General is allowed to intervene or file a lawsuit based on the same facts.

### **Award to *Qui Tam* Plaintiff**

If the Attorney General prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery. If the case is based primarily on public information other than the disclosures of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. Public disclosures include information in a civil, criminal, or administrative hearing in a state or federal department or agency; a legislative report, hearing, audit, or investigation; or the news media.

If the Attorney General decides not to intervene and the *qui tam* plaintiff successfully litigates the action, he or she will receive between 25 and 30 percent of the award or settlement.

If the court finds that the *qui tam* plaintiff planned and initiated the conduct upon which the civil suit was based, it may reduce his or her share of the recovery to any amount it considers appropriate. A person convicted of criminal conduct under this Act is not entitled to any share of the proceeds.

If the court finds that the action brought by the *qui tam* plaintiff was frivolous, the court must award the defendant reasonable attorney fees and expenses and impose a civil fine of not more than \$10,000.

#### **Certain Actions Barred**

A *qui tam* plaintiff cannot file a suit based on allegations in a civil suit, criminal investigation or proceeding, or an administrative investigation or proceeding in which the state or federal government is already a party.

A *qui tam* plaintiff cannot bring an action based on the public disclosure of allegations unless he or she is the original source, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the Attorney General before filing a civil action. Public disclosure includes disclosure in an criminal, civil, or administrative hearing; in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation; or from the news media.

The state and attorney general are not liable for any expenses, costs, or attorney fees that a person incurs in bring an action under this section.

#### **Whistleblower Protection § 400.610(c)**

**Employer Interference with Employee Disclosures** Employers are prohibited from discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action. This prohibition does not apply to an employee who: (1) the court finds brought a frivolous claim, (2) planned, initiated, or participated in the conduct upon which the action is based, or (3) is convicted of criminal conduct arising from a violation of this Act.

**Liability of Employer**

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement to the employee's position without loss of seniority;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained as a result of the discrimination.
- Any other relief necessary to make the employee whole.

The protected false claims activities include initiating, participating in, or assisting in a court action, or cooperating in or assisting with an investigation.