

Deficit Reduction Act of 2005

(OMRDD Deficit Reduction Act §6032 Policy)

FEDERAL FALSE CLAIMS ACT

The federal False Claims Act (FCA) permits the government and private citizens to sue anyone who submits a false claim to New York's Medicaid program. The purpose of the FCA is to recover taxpayers' money that was fraudulently paid to individuals who deceived the government.

BACKGROUND

The FCA dates back to the Civil War. During the Civil War, some defense contractors defrauded the Union government, and Congress enacted the FCA in response to these scandals. The current FCA can be found in the United States Code, title 31, sections 3729 through 3733.

WHO IS LIABLE?

The FCA makes anyone who submits (or causes someone else to submit) a false or misleading claim liable for penalties and fines.

WHAT IS A CLAIM?

A claim is simply some demand for money or property, where the federal government provides any portion of the money or property requested. Because the federal government funds part of New York's Medicaid program, the FCA covers claims or bills to Medicaid in New York, including claims or bills for Medicaid-funded services or goods provided by OMRDD or provided by OMRDD-funded agencies or persons.

HOW DOES THIS WORK?

If a Medicaid claim or bill is untrue (or "false"), it will bring liability upon the person who said it was true. The penalties and fines under the FCA will be from \$5,500 to \$11,000 for each claim, plus up to three times the amount of the false claims, plus the government's costs in pursuing a lawsuit against the person.

Some of the things included in the FCA are falsifying billing records, billing for services not rendered, billing for goods not provided, billing for a more expensive service than the one actually provided (often called "upcoding") and duplicating billing to obtain double payment. No proof of specific intent to defraud the government is required to be held liable under the FCA. All that is required is that the person has actual knowledge, or has acted with deliberate ignorance or reckless disregard of the truth or falsity of his or her claim. Basically, the defense of "I didn't know it was illegal" does not work.

The FCA also has incentives for employees to come forward and report misconduct. Generally, a person who knows about the false claims (the whistleblower) may sue on behalf of the government for a violation of the FCA. After the whistleblower files a lawsuit, the government can pursue the suit on its own, or decline and allow the whistleblower to continue. The government may elect to move forward with the suit as is, change it to a criminal or administrative case, settle it or request a dismissal. The whistleblower can participate in the lawsuit along with the

government, but the judge can limit who the whistleblower calls as witnesses, how long they testify and how much the whistleblower can cross examine witnesses if the whistleblower is just harassing the defendant or is interfering with or duplicating the government's case.

Depending on the outcome of the case and the whistleblower's involvement in the prosecution of the case, the whistleblower can receive up to 30% of the proceeds of the action or settlement. The whistleblower only gets this money if the government recovers money from the defendant as a result of the FCA lawsuit. The whistleblower's award may be reduced if the judge decides that the whistleblower planned and initiated the violation. A whistleblower who files a frivolous lawsuit can be forced to reimburse the defendant for all the costs of defending the lawsuit, including attorneys' fees.

Under the FCA, a whistleblower also has protection from possible retaliation by his or her employer or fellow employees. For example, after the initial filing of a case, the case remains under seal for sixty days and is not accessible by the public. Moreover, if the employer fires, suspends or demotes the whistleblower, or harasses or discriminates against him or her, because of involvement in a FCA action, the whistleblower has the right to be made whole. The whistleblower can be reinstated to his or her job and receive two times back pay (plus interest) and compensation for any special damages including reasonable litigation expenses and attorneys' fees.

IS THERE A STATUTE OF LIMITATIONS?

Yes. A lawsuit to enforce the FCA must be brought within six years of the violation, or, if the government brings the suit, within three years of when the government knew or should have known the facts about the violation. A suit can never be brought later than ten years after the date the violation was committed.

PROGRAM FRAUD AND CIVIL REMEDIES ACT

A similar federal law is the Program Fraud Civil Remedies Act of 1986. It can be found in the United State Code, title 31, chapter 38. Under this law, anyone who makes, presents or submits (or causes to be made, presented or submitted) a claim that the person knows or has reason to know is false, fictitious or fraudulent, or that omits a material fact, is subject to a penalty of up to \$5,000 per claim, plus an assessment of up to twice the amount of each false or fraudulent claim. The United States Inspector General investigates violations of this law. Enforcement can begin with a hearing before an administrative law judge. The government can recover penalties by a lawsuit or through an administrative offset against "clean" claims.

OMRDD POLICIES

OMRDD acts under the direction of the New York State Office of the Medicaid Inspector General (OMIG) to identify inappropriate Medicaid claims and to maintain Medicaid program integrity.

OMRDD currently performs reviews of Medicaid claims as follows.

- A regular review of Medicaid paid claims for individuals served by OMRDD staff and voluntary provider agencies is conducted by the agency. OMRDD utilizes more than 60 separate review procedures relative to processing Medicaid claims. Based on these reviews OMRDD, in conjunction with the New York State Department of Health and the OMIG, carries out or oversees Medicaid voids for inappropriate claims.
- For the OMRDD not-for-profit provider sector, performance of Medicaid Billing and Claiming audits is conducted as part of Limited Fiscal Reviews. Approximately 170 onsite provider reviews are conducted each year. Where Medicaid claims without adequate supporting documentation are identified, audit disallowances are taken in conjunction with the OMIG.

- Responding to allegations of Medicaid irregularities by staff and the public, OMRDD auditors conduct an initial review and as warranted make referrals to the OMIG.
- For the OMRDD state services sector, OMRDD conducts routine reviews of documentation supporting Medicaid claims.

OMRDD provides training and support of this requirement as follows.

- OMRDD issues Administrative Memoranda that specify the billing standards and service documentation requirements for each Medicaid service and program operated or certified by OMRDD.
- OMRDD conducts training sessions throughout the state on Medicaid billing standards and documentation requirements for state staff and staff of not-for-provider agencies.

Under the direction of the OMIG, OMRDD will further strengthen its efforts to prevent and detect fraud and abuse in the Medicaid program.

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