

LAWS RELATING TO FILING FALSE CLAIMS

I. Federal False Claims Act

A. The federal False Claims Act (FCA) prohibits any individual or company from knowingly submitting false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to obtain payment from a federally funded program for such a claim, or conspiring to get such a claim allowed or paid.

“Knowing” and “knowingly” mean that a person:

- (1) has actual knowledge of the information;
- (2) acts in deliberate ignorance of the truth or falsity of the information; or
- (3) acts in reckless disregard of the truth or falsity of the information.

Examples of the type of activity prohibited by the FCA include billing for services that were not provided and upcoding, i.e., billing for a highly reimbursed service in lieu of the service actually provided. The FCA applies to billing and claims sent from the provider to any government payor program, including Medicare and Medicaid.

- B. The FCA imposes civil penalties on individuals and companies who knowingly submit a false claim or statement to a federally funded program, or otherwise conspire to defraud the government, in order to receive payment. Any person or company determined to have violated the FCA may be fined between \$5,000.00 and \$10,000.00 for each such claim submitted, regardless of the size of the false claim, plus up to three times the amount of damages sustained by the federal government.
- C. The FCA also protects individuals who report suspected fraud. Any person who lawfully reports information about false claims or suspected false claims that are submitted by others, may not be retaliated against, demoted, suspended, threatened, or harassed for making such a report. The FCA also protects individuals who assist in an investigation, provide testimony, or participate in the government’s handling of a false claim.
- D. The FCA provisions are generally enforced by the U.S. Department of Justice. The FCA provides that an individual may initiate a formal claim if he or she is the “original source” of the information. This means that the person bringing

LAWS RELATING TO FILING FALSE CLAIMS

the claim must have direct and independent knowledge of the alleged fraud. If any funds are recovered, a portion of the funds may be paid to the person who initiated the formal claim, at the discretion of a federal court.

If a person wishes to file a claim regarding fraud or suspected fraud related to a healthcare payment directly with the government, he or she must first present a formal complaint, along with all material evidence relating to the alleged fraud, to the authorities at the U.S. Department of Justice. The authorities have sixty (60) days to investigate, during which time the complaint is kept confidential. Upon completion of the investigation, the government will decide either to pursue the case on its own or decline to proceed with the case.

If the federal government declines the case, the individual may still proceed with the case on his or her own, but without the government's assistance, and at his or her own expense. A private legal action under the FCA must be brought with six (6) years from the date that the false claim was submitted to the government. A government initiated claim may be brought up to ten (10) years after the false claim, depending on the circumstances.

II. Federal Program Fraud Civil Remedies Act

Individuals or companies that commit fraud on the federal government, by false claim or statement, can be assessed monetary penalties in addition to the penalties of the FCA under the Program Fraud Civil Remedies Act (the PFCRA).

Specifically, PFCRA penalties of \$5,000.00 per false claim or statement apply if an individual or company submits or causes to be submitted a claim to the federal government that:

- the person knows or has reason to know is false, fictitious or fraudulent;
- includes or is supported by written statements containing false, fictitious or fraudulent information;
- includes or is supported by written statements that omit a material fact, which causes the statements to be false, fictitious or fraudulent, and the person submitting the statement has a duty to include the omitted fact; or

LAWS RELATING TO FILING FALSE CLAIMS

- is for payment of property or services that were not provided as claimed.

III. Maryland False Health Claims Act of 2015

Maryland has enacted a law similar to the federal False Claims Act that provides for criminal and civil remedies for the submission of false and fraudulent claims to the Medicaid program. Under the Maryland False Health Claims Act, a person may not:

- Knowingly present or cause to be presented a false or fraudulent claim for payment or approval.
- Knowingly make, use, or cause to be made or used a false record or statement material to a false or fraudulent claim against a State health plan or a State health program.
- Conspire to commit a violation under the Maryland False Health Claims Act.

Remedies for violating the Maryland False Claims Act include imprisonment, fines and civil penalties of up to three times the amount of the overpayment.