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COMPLIANCE WITH THE FALSE CLAIMS ACT AND OTHER FRAUD, WASTE AND ABUSE LAWS POLICY (DRA 2005 UPDATE)
THE CODE OF CONDUCT, AND THE
TEAMMATE HANDBOOK

This Addendum is intended to supplement the Compliance with the False Claims Act and Other Fraud, Waste and Abuse Laws Policy (DRA 2005 Update) W KPolicy´ R I ' D 9 L WDaVitaÁ Q F 3

PEand procedures identified therein.

SUMMARY OF FEDERAL FALSE CLAIMS A CT (FCA)

The Federal FCA (see 31 U.S.C. §§ 3729 ±3733) was originally enacted in 1863 because Congress was concerned that contracted suppliers of goods to the Union Army during the Civil War were defrauding the Union Army. 7KH ODZ ZDV GHVLJQHG WR HQKDQFH WKH JRYHUQPHQ recover losses it suffers due to fraud. Based on the Federal FCA, the government has recovered billions of dollars through litigation or settlement of allegations that corporations and individuals violated the statute and improperly obtained federal health care program funds. Over the life of the statute, the Federal FCA has been amended several times and interpreted on hundreds of occasions by federal courts. The purpose of this summary is to explain the most significant elements of the Federal FCA and how it works.

Liability under the Federal FCA

In very general terms, the Federal FCA imposes liability on any person who knowingly submits a false claim to the Federal Government, causes another to submit a false claim to the Federal Government, or knowingly makes a false record or statement to get a false claim paid by the Federal Government. The Federal FCA also imposes OLDEL Reverse false claims ´ ZKLFK DUH IDOVH FODLP premised on improper actions taken by a person to avoid having to pay money that is owed to the Federal Government. Additionally, the Federal FCA creates liability for those who conspire to violate the Federal FCA.

Damages, Penalties, and Administrative Remedies

Pursuant to the Federal FCA, a person or entity that is held liable under the Federal FCA must

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submission of, a false claim (or made a false statement or record or concealed or improperly avoided or decreased an obligation to pay, etc.) and have knowledge of the falsity of the claim (or knowingly made the false statement, etc.).

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FCA also provides that, if the Federal Government chooses to obtain a recovery from the defendant in F H U W D L Q W \ S H V R I S U R F H H G L Q J V R W K H U W K D Q W K H U H O D W R U ¶ V) H G H U share of the recovery as if the recovery Z D V R E W D L Q H G W K U R X J K W K H U H O D W R U ¶ V) H G H

Notwithstanding the foregoing, a relator who files and proceeds with a frivolous ***qui tam*** action may incur substantial financial liabilities. If the Federal Government does not proceed with the action an G W K H U H O D W R U F R Q G X F W V W K H D F W L R Q W K H &R X U W P D \ D Z D U G fees and expenses in the event the defendant prevails in the action and the Court finds that the claim of the relator was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. Such fees and expenses can be substantial.

e. Statutory Bars to Qui Tam Actions

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

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

f. Whistleblower Protections

The Federal FCA includes a provision which protects whistleblowers from retaliation from their employers. In general, the Federal FCA entitles any employee, contractor, or agent to all relief necessary to make that employee, contactor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop one or more violations of the Federal FCA. Such relief may include reinstatement, double back pay, and F R P S H Q V D W L R Q I R U D Q \ V S H F L D O G D P D J H V L Q F O X G L Q J O L W L J D W L R Q F

SUMMARY OF THE PROGRAM FRAUD CIVIL REMEDIES ACT

The PFCRA is a separate, but related, statutory scheme that provides for administrative remedies against any person who makes, or causes to be made, a false claim or written statement to certain federal agencies, including the United States Department of Health and Human Services. The PFCRA addresses lower dollar fraud, and generally applies to claims of $150,000 or less. The PFCRA provides that any person who makes, presents or submits, or causes to be made, presented or submitted, a claim or written statement that the person knows or has reason to know is false, fictitious or fraudulent is subject to civil money penalties of up to $5,000 per false claim or statement and up to twice the amount claimed, in lieu of damages sustained by the United States because of such claim or statement. In contrast to the Federal FCA, under PFCRA, the determination of whether a claim is false and the imposition of fines and penalties are made by the federal agency as opposed to the federal court system (with the exception of potential judicial review R I W K H D J H Q F \ V H H 31 U.S.C. §3801, et seq.

SUMMARY OF STATE FALSE CLAIMS ACTS

Many states have enacted statutes similar to the Federal FCA that provide a civil remedy for false or fraudulent claims submitted to state health care programs, including primarily Medicaid. Like the Federal FCA, several of the State FCAs include qui tam provisions that allow enforcement through whistleblower actions and protect whistleblowers from retaliation. Moreover, several states have civil and/or criminal laws penalizing the submission of false claims to a state health care program. A summary of those civil and criminal laws is below.

PLEASE NOTE: Although we provide a summary of each of the State FCAs, this does not mean that each State FCA applies directly to the DaVita-affiliated entity with which you work. Generally a particular State FCA applies to a DaVita-affiliated entity only if the DaVita-affiliated entity provides services that are reimbursed or paid for by W K D W V W D W H ¶ V 0 If you have any questions concerning the applicability of a particular State FCA, please contact the Justice League of DaVita (JLD).

The DRA provides a financial incentive for states to enact false claims legislation specifically addressing the Medicaid program. If a State FCA is determined to meet certain requirements, as evaluated by the Office of , Q V S H F W R U * H Q H U D O R I + + 6 ³ 2 , * ´ W K H V W D W H L V H Q W share of any amounts recovered under a State FCA action.

This is a summary only. , I \ R X Z R X O G O L N H W R U H D G W K H I X O O W H [W R I D S D text of such statutes is generally publically available, in electronic form on the respective V W D W H ¶ V governmental website.

Alabama

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Medicaid participation and restit

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Whistleblower Protections: $ O D V N D ¶ V 0 H G L F D O $ V V L V W D Q F H) D O V H & O D L P D Q G 5 H S
protections for employees of medical assistance providers who files a claim under Alaska Stat. §
09.58.070

Arizona

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? No
State enacted statutes have non-retaliation protection? Yes

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

- Is for medical or other services that were not provided as claimed;
- Is false or fraudulent;
- Relates to an individual who was terminated or suspended from participation in the program on the date services were rendered;
- , V I R U D Q L W H P R U V H U Y L F H W K D W L V V X E V W D Q W L D O O \ L Q H [F H V V
  fails to meet established standards of health care;
- Relates to a patient who was not a member on the date listed on the submitted claim;
- Is for services provided by, or under the supervision of, an individual who (1) was not a licensed physician, (2) obtained a medical license through misrepresentations of material fact, or (3) falsely represented to a patient that a physician was certified in a specialty field; or
- Is submitted in violation of an agreement between the provider and the state or administration.

Ariz. Rev. Stat. Ann. §36-2918

Penalties: Violation of the Arizona statute above can result in civil penalties not to exceed $2,000 for each item or service falsely claimed and an assessment not to exceed two times the amount claimed for each item or service. Penalties may include recovery of state monies expended to conduct an investigation,

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Knowingly making false statements in any application for any benefit or payment or in determining rights to a benefit or payment under the Arkansas Medicaid program;

Knowingly makes or causes to be made any false statement or representation of a material fact use in determining rights to a benefit or payment;

Having knowledge of any occurrence of any event affecting initial or continued rights to benefits or payments;

Applying to receive any benefit or payment for the use and benefit of another, and knowingly using the benefit or payment, or any part thereof, for other than the use and benefit of the other person;

Knowingly presenting or cause to be presented, a claim for p D \ P H Q W I R U S K \ V L F L D Q ¶ V V H U Y

False Claims: A person violates the California False Claims Act if he/she:

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False Claims: A person violates W K H & R O R U D G R 0 H G L F D L &RPSDQ\ )DOVH &ODLPV $FW [3]

Knowingly presents, or causes to be presented to the government, a false or fraudulent claim for payment or approval;

Knowingly makes, uses, or causes to be made or used a false record or statement material to a false or fraudulent claim;

Has possession, custody, or control of property or money used, or to be used, by the state in connection with the Colorado Medical Assistance Act and knowingly delivers, or causes to be delivered, less than all of the money or property;

Authorizes the making or delivery of a document certifying receipt of property used, or to be used by the state in connection with the Colorado Medical 1 108.02 628.18 Tm [(c)-5(on)4(ne)4()0(us)-3(e)(t)-154(an)4

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the right of action are known or reasonably should have been known by the official of the state charged with responsibility to act in the circumstances, but in to event more than ten years after the date on which the violation is committed, whichever last occurs.

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material to the right of action are known or reasonably should have been known by the official of the government charged with responsibility to act in the circumstances of the violation was discovered by the relevant agency, but no more than ten years after the violation was committed. Del. Code Ann. Tit. 6, §1209.

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

District of Columbia

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: A person violates

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violation, the qui tam plaintiff shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. If the District does not proceed with the action and the qui tam action and the qui tam plaintiff conducts the action, the court may award to the defendant reasonable D W W R fees and V expenses necessarily incurred if the defendant prevails in the action and the court finds that the claim of the qui tam plaintiff was frivolous, vexatious, or brought solely for purposes of harassment. D.C. Official Code § 2-381.03.

Statute of Limitations: Under the DC False Claims Act, a civil lawsuit must be brought within the later of: (1) six years from when the violation occurred or (2) three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the District charged with the responsibility to act in those circumstances, but no more than ten years after the violation was committed. D.C. Official Code § 2-381.05.

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

Florida

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: A person violates the Florida False Claims Act if he/she:

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

Fla. Stat. § 68.082.

Additionally, a person violates the Florida Medicaid Fraud criminal statute if he/she, knowingly:

> Makes, causes to be made, or aid and abets in the making of any false statement or false representation of a material fact,em 411.91nal4 199.pb59

Whistleblower Protections: Florida law provides that employees who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against because of lawful acts done in furtherance of an action or investigation relating to a false claim will have a cause of action under) O D 6 W D W † - W K H ³ : K L V W O H

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the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed. O.C.G.A. § 49-4-168.5.

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

Hawaii

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? Yes
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: A person violates the Hawaii False Claims Act if he/she:

- Knowingly presents, or causes to be presented to an officer or employee of the State a false or fraudulent claim for payment or approval;
- Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the State;
- Conspires to defraud the State by getting a false or fraudulent claim allowed or paid;
- Has possession, custody, or control of property or money used, or to be used, by the State and, intending to defraud the State or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate or receipt;
- Is authorized to make or deliver a document certifying receipt of property used, or to be used by the State and, intending to defraud the State, makes or delivers the receipt without completely knowing that the information on the receipt is true;
- Knowingly buys, or receives as a pl9(d, 419.g S)-4()-10(a)4(c)-10(the)4obivege uislot leplebiefty irrmpl7(d,)]mof p

Whistleblower Protections + D Z D L L K D W O H³E K O R Z H U 3 U R W H F W L R Q $ F W ´ 8 Q G H U + D Z P D \ Q R W G L V F K D U J H W K U H D W H Q R U R W K H U Z L V H G L V F U L P L Q D W H D J D L Q compensation, terms, conditions, location or privileges of employment because the employee, or a person acting on behalf of the employee, reports or is about to report a violation of any law or contract executed by the State or if the employee is requested by a public body to participate in an investigation, hearing or inquiry held by that public body, or court action. Haw. Rev. Stat. §378-62.

Idaho

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam ptoisions? No
State enacted statutes have non-(to)eetaliation ptoection? Yes

False Claims: A petoon violates Idaho law if he/she knowingly, with intent to def(to)eaud, by means of a

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False Claims: A person violates , Q G L D Q D ¶ V) D O V H & O D L P V D Q G : K L V W O H E O R Z H U 3 U R knowingly or intentionally:

- Presents a false claim to the state for payment or approval;
- Makes or uses a false record or statement to obtain payment or approval of a false claim;
- With the intent to defraud the state, delivers less money or property to the state than the amount recorded on the certificate or receipt the person receives from the state;
- With the intent to defraud the state, authorizes the issuance of a receipt without knowing that the information on the receipt is true;
- Receives public property as a pledge or obligation on a debt from an employee who is not lawfully authorized to sell or pledge the property;
- Makes or uses a false record or statement to avoid an obligation to pay or transmit property to the state;
- Conspires with another person to perform any of the acts set forth above; or
- Causes or induces another person to perform any of the acts set forth above.

IC § 5-11-5.5-2.

In addition to the False Claims and Whistleblower Protection Act, Indiana also criminalizes false Medicaid claims. The statute covers the following actions of any person who knowingly and intentionally:

- Makes, utters, presents, or causes to be presented to the Medicaid program under IC 12-15 a Medicaid claim that contains materially false or misleading information concerning the claim
- Obtains payment from the Medicaid program under IC 12-15 by means of a false or misleading oral or written statement or other fraudulent means
- Acquires a provider number under the Medicaid program except as authorized by law
- Alters with the intent to defraud or falsifies documents or records of a provider that are required to be kept under the Medicaid program
- Conceals information for the purpose of applying for or receiving unauthorized payments from the Medicaid program

IC § 35-43-5-7.1.

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

Under the criminal statute, Medicaid fraud is a Class A misdemeanor generally. If, however, the fair market value of the offense is between $750 and $50,000, the offense is a Level 6 felony. If the fair market value of the offense is greater than $50,000, the offense is a level 5 felony. IC § 35-43-5-7.1.
A level 6 felony is punishable by a term of imprisonment between six months and 2 ½ years and a fine of not more than $10,000. A level 5 felony is punishable by a term of imprisonment between two and eight years and a fine of not more than $10,000. IC § 35-50-2 et seq.

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

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Whistleblower Protections: The Iowa False Claims Act protects whistleblowers from retaliation by their employers. IA Code § 685.3(6).

Kansas

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? No
State enacted statutes have non-retaliation protection? Yes

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

> Knowingly presenting or causing to be presented to any employee, officer or agent of the state or political subdivision thereof or to any contractor, grantee or other recipient of state funds or funds of any political subdivision thereof, a false or fraudulent claim for payment or approval;
> Knowingly making, using or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved;
> Defrauding the state or any political subdivision thereof by getting a false 8(n)-9(y)6(po)4(l)-6(i)5(t)-10(i2(ai)7(m [(

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item, facility or accommodation for which payment may be made, in whole or in part, under the Medicaid program, whether or not the claim in allowed or allowable

Any statement or representation for use by another in obtaining any goods, service, item, facility or accommodation for which payment may be made, in whole or in part, under the Medicaid program, knowing the statement or representation to be false, in whole or in part, by commission or omission, whether or not the claims is allowed or allowable

Any claim for payment, for any goods, service, item, facility or accommodation, which is not medically necess

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for, or assistance in an action filed or to be filed, shall be entitled to all relief necessary to make the employee whole. K.S.A. § 75-7506.

Kentucky

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? No
State enacted statutes have non-retaliation protection? Yes

False Claims . H Q W X F N \ ¶ V & R Q W U R O R I) U D X G D Q G $ E X V H O D Z V V W D W H W K D

Knowingly or wantonly devise a scheme or plan a scheme or artifice, or enter into an agreement, combination or conspiracy to obtain or aid another in obtaining payments from any medical

State enacted statutes have non-retaliation protection? Yes

False Claims:

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disclosing information to a government or law enforcement agency or in furthering claims action. If an employer does so, the employee will be entitled to reinstatement with the same seniority status, two times

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fraudulent activity occurred, whichever occurs later, but in no event more than ten years after the date on which the violation is committed. Minn. Stat. § 15C.11.

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

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State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: $ S H U V R Q P D \ E H O L D E O H X Q G H U W K H Montana FCA D)LD OKVH V&KOHD L P V

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

Mont. Code Ann. § 17-8-403.

Additionally, Montana has enacted a criminal statute penalizing Medicaid fraud. Under the statute, a person commits Medicaid fraud when, among other things, the person purposely or knowingly:

Solicits, accepts, offers, or provides any remuneration, including but not limited to a kickback, bribe, or rebate, other than an amount legally payable under the medical assistance program, for furnishing services or items for which payment may be made under the Medicaid program or in return for purchasing, leasing, ordering, arranging for, or recommending the purchasing, leasing, or ordering of any services or items from a provider for which payment may be made under the Medicaid program
Makes, offers, or accepts a remuneration, a rebate of a fee, or a charge for referring a recipient to another provider for the furnishing of services or items for which payment may be made under the Medicaid program

MCA 45-6-313.

Penalties: A person found to be in violation of the Montana FCA is liable to a governmental entity for a civil penalty of not less than $5,500 and not more than $11,000 for each violation, plus three times the amount of damages that a governmental entity sustains, along with expenses, costs, and attorney fees.

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Under the criminal statute, Medicaid fraud with a value not exceeding $1500 is punishable by a fine not to exceed $1500 and imprisonment not to exceed 6 months, or both. Medicaid fraud in an amount exceeding $1500 is punishable by a fine not to exceed $50,000 and a term of imprisonment not to exceed 10 years, or both.

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

Statute of Limitations: Under Montana law, a civil action must be brought within the later of six years after the date on which the violation was committed or within three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the governmental entity charged with responsibility to act in the circumstances, but no more than 10 years following the violation. Mont. Code Ann. § 17-8-404.

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

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

<u>Penalties</u>: Any person violating the NE Act is liable for damages in the amount of three times the amount of the false claim submitted to the state, a civil penalty of not more than $10,000, court costs and DWWRUQH\¶V IHHV The court can reduce the penalty to two times the amount of damages if it finds that the person furnished state officials with all information known to the person about the violation not later than thirty days after the date on which the person obtained the information, fully cooperated with the investigation of the violation, and did not have knowledge of the existence of an investigation, a criminal prosecution, a civil action, or an administrative action concerning the violation at the time the person provided information to state officials. A person who knowingly destroys records is subject to damages in WKH DPRXQW RI WKUHH WLPHV WKH DPRXQW RI WKH FODLP SOXV FRXU 68-936, 68-939 and 68-940.

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

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

Whistleblower Protections: The NE Act does not provide

Knowingly presents, or causes to be presented a false or fraudulent claim for payment or approval;
Knowingly makes or uses, or causes to be made or used, a false record or statement that is material to a false or fraudulent claim;
Has possession, custody or control of public property or money used or to be used by the State or a political subdivision and knowingly delivers or causes to be delivered to the State or a

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including reinstatement with the same seniority status, two times the amount of back pay with interest, DQG FRPSHQVDWLRQ IRU DQ\ VSHFLDO GDPDJHV LQFOXGLQJ HOLWLJDWL
Rev. Stat. Ann. § 167:61-c.

New Jersey

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: A person violates New Jersey False Claims Act if he/she:

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

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

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

Bringing an Action: The New Jersey False Claims Act requires the NJ Attorney General to investigate any violations and bring an action. New Jersey law provides for

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Whistleblower Protections: An employer may not discharge, discipline, threaten, discriminate or penalize an employee with regard to compensation, work conditions, location or privileges of employment because the person, or a person acting on their behalf, in good faith reported a violation or suspected violation of a state or federal rule or law, or refused an order to perform an act that the em

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disciplined or retaliated against for reporting a violation of state or federal statute or rule or a misuse of public resources. Employees may be disciplined for reporting false information. $ Q D J J U L H Y H G H P S O R \ H H sole and exclusive remedy is to file an appeal with the state personnel board of review within thirty (30) days after alleged discriminatory action. Oh. Rev. Code Ann. § 4113.52(A)(1) et seq. and §124.341.

Oklahoma

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? Yes
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: A person violates W K H 2 N O D K R P D 0 H G L F D L G) D O V H &R &O D L P V $ F W ³2 . $ F

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

63 Okl. St. § 5053.1.

Penalties: A person who violates the OK Act is liable to the state for a civil penalty of not less than $5,000 and not more than $10,000, plus three times the amount of damages sustained by the state, the costs of the D F W L R Q D Q G D W W R U Q H \ ¶ V I H H V 0 L W L J D W L Q J I D F W R U V F D Q U H G X F H damages sustained by the state. 63 Okl. St. § 5053.1.

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

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

Whistleblower Protections: The OK Act provides relief to employees who have been discharged, demoted, suspended, threatened, harassed or discriminated against because of his/her lawful actions under the OK Act. Such person icm4 Act pmina-9(tDr)-3(t)-use of

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convicted could also be excluded from participation in the medical assistance program. 62 P.S. § 1407(b)(1), (2), and (3), 62 P.S. § 1408, 55 Pa. Code §§ 1101.76, 1101.92.

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

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

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

Rhode Island

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? Yes
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes

False Claims: A person violates the State False Claims Act if he/she:

> Knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;
> Knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;
> Has possession, custody, or control of property or money used, or to be used, by the State and

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primarily on disclosures of specific information, the Court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. In addition to an amount for reasonable expenses which the Court finds to have been necessarily incurred, plus U H D V R Q D E O H D W W R U Q H \ V ¶ I H H V &RQGXFW &RQWUROOHG &DUH &RQWUDFWV &RPSOLDQFH &RQWUDFWV If the State does not intervene, the person bringing the action or settling the claim shall receive between 25% and 30% of the proceeds. Such person shall also receive an amount for reasonable expenses which the Court finds to have been necessarily incurred, plus U H D V R Q D E O H D W W R U Q H \ V ¶ I H H V &RQGXFW &RQWUROOHG &DUH &RQWUDFWV &RPSOLDQFH &RQWUDFWV If the Court finds the action was brought by a person who planned and initiated the violation upon which the action was brought, the Court may reduce the share of the proceeds. If the person bringing the action is convicted of criminal conduct arising from his/her role in the violation, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. If the State does not proceed with the action and the person bringing the action F R Q G X F W V W K H D F W L R Q W K H F R X U W P D \ D Z D U G W R W K H G H I H Q G D Q W L the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. R.I. Gen. Laws § 9-1.1-4

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Statute of Limitations: Under the State False Claims Act, a civil action may not be brought: (1) more than six years after the date on which the violation is committed, or (2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official of the State charged with responsibility to act in the circumstances, but in no event more than ten years after the date s

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Penalties: Violations represent Class 5 felonies, which could subject the violating individual or entity to five years imprisonment and a $10,000 fine. SDCL § 22-6-1(8). Additionally, any person violating such provisions may be suspended or excluded from participation as a provider or as an employee of a provider. S.D. Codified Laws § 22-45-7. Any person who receives payment for furnishing a good or a service under the Medical Assistance Program, which the person is not entitled to receive may be liable for civil penalties. S.D. Codified Laws § 22-45-7.

Any person who receives payment for furnishing a good or a service under the program which the person is not entitled to receive by reason of offense of the above provisions, may, in addition to any other penalties provided by the law, be liable for civil penalties which include: 1) payment of interest on the amount of the excess payment at the rate provided for from the date on which payment was made to the date upon which repayment is made to the program; and 2) payment of up to three times the amount of damages sustained, including the cost of investigation and litigation; and payment in the sum of $2,000 for each false or fraudulent claim, statement, or representation submitted for providing a good or service. S.D. Codified Laws § 22-45-7.

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

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

Whistleblower Protections:

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Bringing an Action: The Tennessee Attorney General and the person reporting the violation are able to bring an action.

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Penalties: Any person who violates a provision of subsection (a) of this section shall be liable to the State for: (1) a civil penalty of not less than $5,500.00 and not more than $11,000.00 for each act constituting a violation; (2) three times the amount of damages that the State sustains because of the act of that person; and (3) the costs of the investigation and prosecution of such violation.

Bringing Action: A relator may bring a civil action in the Civil Division of the Superior Court in Washington County or in any county where an act prohibited by section 631 of this chapter occurred for a violation of this chapter on behalf of the relator and the State. The action shall be brought in the name of the State. The relator must file the complaint in camera. The complaint must remain under seal for at least 60 days after being served on the Attorney General and must not be served on the defendant until the Court so orders. Vt. Stat. Ann. 32 §632.

Statute of Limitations: A civil action under section 632 of this chapter for a violation of subsection 631(a) of this chapter may not be brought: (1) more than six years after the date on which the violation was committed; or (2) more than three years after the date when facts material to the right of action are known or reasonably should have been known by the official within the Attorney General's office with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed; whichever occurs last.- Vt. Stat. Ann. 32 §639.

Whistleblower Protections: Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, agent, or a person associated with the employee, contractor, or agent in furtherance of an action under this law. - Vt. Stat. Ann. 32 §638

Virginia

Deemed a compliant ne

Sunset Act Application: The Washington Medicaid Fraud False Claims Act is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.419. 5&: WKURXJK DUH VFKHGXOHG IRU IXWXUH UHSHDO XQGH new False Claims act is scheduled for repeal on June 30th, 2023.

West Virginia

Deemed a compliant state False Claims Act by OIG under the Deficit Reduction Act of 2005? No
State enacted statutes have qui tam provisions? Yes
State enacted statutes have non-retaliation protection? Yes, limited to public employees.

False Claims: West Virginia only has a criminal healthcare fraud statute prohibiting:

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

W.Va. Code §§ 9-7-4, 9-7-5.

Penalties: A person or entity that violates West Virginia law may be subject to criminal penalties including imprisonment from one to ten years and a fine up to $10,000. A person or entity may be liable to the department of welfare for civil penalties of three times the amount of benefits or allowances to which the person or entity was not ent LWOHG DQG OLDEOH IRU DWWR W.Va. Code §§ 9-7-4 ±DQG OLWL 9-7-6.

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

Statute of Limitations Any fraud and abuse civil action shall be brought within five years from the time the false, fraudulent, or fictitious claim was made. W.Va. Code § 9-7-6(d).

Whistleblower Protections: West Virginia law pertaining to Medicaid fraud and abuse does not contain a whistleblower provision. However, West Virginia law does protect state employees from state government