

Summary of State Civil False Claims Laws

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¶ 20,376 Deficit Reduction Act of 2005 Incentive to States

In light of the Deficit Reduction Act of 2005 (DRA),¹ enacted February 8, 2006, it is anticipated that states will take steps to enact civil false claims laws, or amend existing laws, to take advantage of the financial incentives provided in the DRA. If a state false claims act is determined to meet certain enumerated requirements, the federal government will reduce the Federal Medicaid assistance percentage (*i.e.*, the percentage of total state Medicaid funding that comes from the federal government rather than the state) by ten percentage points for purposes of calculating the federal government's share of the recovery of amounts under the state's false claims law. In other words, an additional ten percent of the total recovery (that would otherwise have gone to the federal government) would be left to the state.

As enacted by § 6031 of the DRA, § 1909 of the Social Security Act (SSA) provides the HHS Office of Inspector General (OIG), in consultation with the United States Attorney General, with the authority to determine if state false claims laws meet the requirements outlined in the DRA. The OIG published guidelines in the August 21, 2006, *Federal Register* that established four main requirements for state false claims laws to be eligible for the financial incentive provided in the DRA.²

In order for a state to qualify for the financial incentive under § 1909 of the SSA, the state must have in effect a law that meets the following requirements, which are set forth in § 6031(b) of the DRA:³

1. Establishes liability to the state for false or fraudulent claims described in the Federal False Claims Act (FCA) with respect to any

expenditures related to state Medicaid plans described in § 1903(a) of the SSA;

2. Contains provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in the Federal FCA;
3. Contains a requirement for filing an action under seal for 60 days with review by the State Attorney General; and
4. Contains a civil penalty that is not less than the amount of the civil penalty authorized under the Federal FCA.

The Federal FCA provides for penalties and triple damages for anyone who knowingly submits or causes the submission of false or fraudulent claims to the United States for government funds or property. Under the Federal FCA's *qui tam* provisions, a person with evidence of fraud, also known as a whistleblower or relator, is authorized to file a case in federal court, on behalf of the government, against persons engaged in the fraud and to share in any money the government may recover.⁴

In light of the DRA requirements' direct reference to the Federal FCA, states requested an official description of the Federal FCA for purposes of uniformity. The United States Department of Justice provided that description, which can be found as an attachment to the March 22, 2007, State Medicaid Director Letter published by CMS on its web site.⁵

A state may request the OIG's specific review of whether the DRA requirements are met. As of July 13, 2007, the OIG had reviewed the state false claims laws for California, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, Nevada, Tennessee, Texas, and Virginia. Of those 12 states, the OIG determined that the Hawaii, Illinois, Massachu-

¹ The DRA is summarized in Chapter ¶ 10,300.

² *Notice*, 71 Fed Reg 48552, Aug. 21, 2006.

³ 42 U.S.C. § 1396h(b).

⁴ The FCA is summarized in Chapter ¶ 10,130.

⁵ http://www.cms.hhs.gov/SDML;CMS_SMDL_#07-003.

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setts, Tennessee, Texas, and Virginia laws met the requirements of § 6031(b) of the DRA.⁶

¶ 20,377 The Employee Education Requirement

Section 6032 of the DRA provides that any entity receiving or making annual payments of at least \$5 million from or to a state Medicaid plan must inform employees, contractors, and agents about the federal and state false claims laws.⁷ Specific, detailed information must be included in employee handbooks and written policies. Compliance officers should look to the specific requirements of § 6032 of the DRA when addressing these issues, but may also find useful the State Medicaid Director Letters published by CMS on December 13, 2006, and March 22, 2007, on its web site. The State Medicaid Director Letters are used to provide states with guidance and clarification on current information pertaining to Medicaid policy. Compliance Officers also may find useful the “frequently asked questions” attached to the March 22, 2007, letter.⁸

¶ 20,378 Summary of State Civil False Claims Laws

The following is a summary of state civil false claims laws, including a discussion of pending and recently-enacted legislation.⁹ The elements of each law are summarized, along with a description of penalties and whistleblower provisions. For those states that have sought OIG review, the OIG’s findings are also summarized. The summaries contained in this Chapter are current as of July 13, 2007. Compliance officers will find the summaries useful as a general reference and starting point, but should update this material as necessary.

¶ 20,378A Alabama

General. A bill to enact the Alabama False Claims Act, HB 348, was introduced during the 2005 Regular Session, but died in committee at the end of the session. There was no such legislation intro-

duced in the 2006 or 2007 Regular Sessions. Alabama’s 2007 Regular Session adjourned on June 7, 2007. The Alabama Legislature will reconvene on February 5, 2008.

¶ 20,378B Alaska

General. Alaska does not have a civil false claims act and no false claims act legislation was pending as of July 13, 2007.

¶ 20,378C Arizona

General. A person who presents or causes to be presented any of the following is in violation of the Arizona law prohibiting false and fraudulent Medicaid claims (Arizona Act):¹⁰

- A claim for a medical or other item or service that the person knows or has reason to know was not provided as claimed.¹¹
- A claim for a medical or other item or service that the person knows or has reason to know is false or fraudulent.
- A claim for payment that the person knows or has reason to know may not be made by the system because:
 - The person was terminated or suspended from participation in the program on the date for which the claim is being made.
 - 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.
 - The patient was not a member on the date for which the claim is being made.
- 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:
 - Was not licensed as a physician.

⁶ The OIG’s findings are available at: <http://oig.hhs.gov/fraud/falseclaimsact.html>.

⁷ Section 6032 of the DRA is summarized in ¶ 10,340.

⁸ <http://www.cms.hhs.gov/SDML>. CMS SMDL #06-024; CMS SMDL #07-003.

⁹ The reader is advised to also consider criminal false claims statutes, which exist in many states. Criminal false claims stat-

utes are not summarized in this Chapter, but where a civil false claims statute includes criminal penalties, it is noted.

¹⁰ The Arizona law prohibiting false or fraudulent Medicaid claims is codified at Ariz. Rev. Stat. Ann. § 36-2918 (2007).

¹¹ “Reason to know” is defined as acting in deliberate ignorance of the truth or falsity of, or with reckless disregard to the truth or falsity of information. Ariz. Admin. Code § 9-22-1101(C)(6) (2006).

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- Obtained the license through a misrepresentation of material fact.
- 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.
- A request for payment that the person knows or has reason to know is in violation of an agreement between the person and the state or the administration.¹²

Damages. A person who violates the Arizona Act is subject to a civil penalty not to exceed two thousand dollars for each item or service claimed and is subject to an assessment not to exceed twice the amount claimed for each item or service.¹³ The civil penalty shall also include the amount for conducting an investigation, audit, or inquiry.¹⁴

Who may bring an action. The Arizona Act provides for enforcement by the director of the Arizona Health Care Cost Containment System Administration (AHCCCS) and does not provide for *qui tam* actions.¹⁵

Qui tam awards. The Arizona Act does not provide for *qui tam* actions.

Statute of Limitations; burden of proof. An action brought under the Arizona Act must be initiated within six years after the date the claim is presented.¹⁶ AHCCCS has the burden of producing and proving, by a preponderance of the evidence, that a provider or noncontracting provider presented or caused to be presented each claim in violation of the Arizona Act and any aggravating circumstance listed in §R9-22-1105 of the Arizona Administrative Code. A provider or noncontracting provider has the burden of producing and proving, by a preponderance of the evidence, any mitigating circumstance that would justify reducing the

amount of the penalty or assessment as listed in §R9-22-1104 of the Arizona Administrative Code.¹⁷

Whistleblower protection. The Arizona Act protects whistleblowers from civil liability for reporting suspicions of fraud unless that person has been charged with or is suspected of the fraud or abuse reported.¹⁸ Arizona has a separate whistleblower protection statute to generally protect public employees who disclose information regarding potential violations of the law against retaliation.¹⁹

¶20,378D Arkansas

General. A person who commits any of the following acts is in violation of the Arkansas False Claims Act (Arkansas Act):²⁰

- Knowingly makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under the Arkansas Medicaid program.
- At any time knowingly makes or causes to be made a false statement or representation of a material fact for use in determining rights to a benefit or payment.
- Having knowledge of the occurrence of any event affecting his or her initial or continued right to any benefit or any payment or the initial or continued right to any benefit or payment of any other individual in whose behalf he or she has applied for or is receiving a benefit or payment, knowingly conceals or fails to disclose that event with an intent fraudulently to secure the benefit or payment either in a greater amount or quantity than is due or when no benefit or payment is authorized.
- Having made application to receive any benefit or payment for the use and benefit of another and having received it, knowingly converts the benefit or payment or any part thereof to a use

¹² Ariz. Rev. Stat. Ann. §36-2918(A) (2007).

¹³ Ariz. Rev. Stat. Ann. §36-2918(B) (2007).

¹⁴ Ariz. Admin. Code §R9-22-1102(B) (2006).

¹⁵ Ariz. Rev. Stat. Ann. §36-2918(C) (2007).

¹⁶ Ariz. Rev. Stat. Ann. §36-2905.04(G) (2007).

¹⁷ Ariz. Admin. Code §R9-22-1111(A) (2006).

¹⁸ Ariz. Rev. Stat. Ann. §36-2918.01(B) (2007). Arizona also has a separate whistleblower protection statute to generally protect public employees who disclose information regarding potential violations of the law against retaliation. Ariz. Rev. Stat. Ann. §38-531, et. seq. (2007).

¹⁹ Ariz. Rev. Stat. Ann. §38-531, et. seq. (2007).

²⁰ The Arkansas Medicaid False Claims Act is codified at Arkansas Code §20-77-901, et. seq.

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other than for the use and benefit of the other person.

- Knowingly presents or causes to be presented a claim for a physician's services for which payment may be made under the program and knows that the individual who furnished the service was not licensed as a physician.
- Knowingly solicits or receives any remuneration, including any kickback, bribe, or rebate directly or indirectly, overtly or covertly, in cash or kind: (1) to refer patients for items or services reimbursable under the Arkansas Medicaid program, or (2) to purchase, lease, order, or arrange payment for any good, facility, service, or item for which payment may be made under the Arkansas Medicaid Program.
- Knowingly offers or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or kind to any person to induce the person: (1) to refer patients for items or services reimbursable under the Arkansas Medicaid Program, or (2) to purchase, lease, or order any good, facility, service, or item reimbursable under the Arkansas Medicaid Program.²¹
- Knowingly makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact: (1) with respect to conditions or operation of any institution in order that the institution may qualify as an entity for which certification is required, or (2) with respect to information required pursuant to applicable federal and state law, rules, regulations, and provider agreements.
- Knowingly: (1) charges for any service provided to a patient under the program money or other consideration at a rate in excess of the rates established by the state, or (2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under the pro-

gram, any gift, money, donation, or other consideration as a precondition of admitting a patient to a hospital, nursing facility, or intermediate care facility for the mentally retarded or as a requirement for the patient's continued stay in the facility when the cost of the services provided to the patient is paid for in whole or in part under the program.

- Knowingly: (1) participates, directly or indirectly, in the Arkansas Medicaid Program after having pleaded guilty or *nolo contendere* to or been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults, or (2) permits the participation in business activities of the provider, any person who has pleaded guilty or *nolo contendere* to or has been found guilty of a charge of Medicaid fraud, theft of public benefits, or abuse of adults.²²

Damages. Any person who violates the Arkansas Act is liable to the state of Arkansas for full restitution and a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation, plus three times the amount of all payments judicially found to have been fraudulently received from the Arkansas Medicaid program. Damages may be reduced to no less than two times the damages sustained by the state and no civil penalty if the court finds certain mitigating factors relating to cooperation by the person committing the violation.²³

Who may bring an action. An action may be brought by the Arkansas Attorney General.²⁴ The Arkansas Act does not provide for actions brought by *qui tam* plaintiffs.

Qui tam awards. While the Act does not provide for actions brought by *qui tam* plaintiffs, it does authorize the court to pay persons for information such persons may have provided which led to detecting and bringing to trial and punishment persons guilty of violating the Act. The statute authorizes the court to pay sums not exceeding ten percent of the

²¹ The statute provides for specified exceptions that would not constitute a violation of the Act. Ark. Code § 20-77-902(7)(B) (2007).

²² "Knowingly" is defined as having "actual knowledge" of the information, acting in "deliberate ignorance" of the truth or

falsity of information, or acting in "reckless disregard" for the truth or falsity of the information. Ark. Code § 20-77-901(4) (2007).

²³ Ark. Code 20-77-903 (2007).

²⁴ See Ark. Code § 20-77-903, 908 (2007).

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aggregate penalty recovered, but not more than \$100,000.²⁵

Statute of Limitations; burden of proof. A civil action filed under the Arkansas Act may not be brought more than five years after the date on which the violation of the Act is committed.²⁶ In any action brought under the Arkansas Act, the state is required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.²⁷

Whistleblower protection. The Arkansas Act does not provide for whistleblower protection.

2007 legislation. House Bill 2600, introduced March 5, 2007, in the Arkansas House of Representatives, would have established the Arkansas False Claims Act. Among other things, HB 2600 would have provided for actions by *qui tam* plaintiffs and would have added whistleblower protections. HB 2600 also would have amended the Arkansas Medicaid False Claims Act discussed herein and would have renamed it the Civil Medicaid Fraud Act. HB 2600, was introduced March 5, 2007, but died committee. Arkansas' 2007 Regular Legislative Session adjourned in May.²⁸

¶ 20,378E California

General. A person who commits any of the following acts is in violation of the California False Claims Act (California Act):²⁹

- Knowingly presents or causes to be presented to an officer or employee of the state or of any political subdivision thereof, a false claim for payment or approval.
- Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision.
- Conspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or by any political subdivision.

- Has possession, custody, or control of public property or money used or to be used by the state or by any political subdivision 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 or by any political subdivision and knowingly makes or delivers a receipt that falsely represents the property used or to be used.
- 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.
- 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 or to any political subdivision.
- Is a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery of the false claim.³⁰

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Damages. Any person who violates the California Act is liable for three times the amount of damages sustained by the state or political subdivision. The person who commits the act may also be liable for the cost of bringing the civil action and a civil penalty of up to \$10,000 for each false claim.³² The California Act does not provide a floor for its civil penalty provision. The civil penalty will be eliminated and damages may be reduced to no less than two times the damages sustained by the state and no civil penalty if the court finds certain mitigating

²⁵ Ark. Code § 20-77-911 (2007).

²⁶ Ark. Code § 20-77-908(b) (2007).

²⁷ Ark. Code § 20-77-908(c) (2007).

²⁸ HB 2600, 86th Gen. Assem., Reg. Sees. (Ark. 2007).

²⁹ The California False Claims Act is codified at Cal. Gov't Code § 12651, *et seq* (2007).

³⁰ Cal. Gov't Code § 12651(a) (2007).

³¹ "Knowingly" is defined as having actual knowledge, acting in deliberate ignorance of the truth or falsity of information, or acting in reckless disregard for the truth or falsity of the information. Proof of specific intent to defraud is not required. Cal. Gov't Code § 12650(a)(2).

³² Cal. Gov't Code § 12651(a) (2007).

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factors demonstrating cooperation by the person who committed the violation.³³

Who may bring an action. An action may be brought by the California Attorney General or prosecuting attorney. The California Act requires the California Attorney General to investigate all violations of the California Act involving state funds and the prosecuting attorney of a political subdivision to investigate all violations of the California Act involving political subdivision funds.³⁴ The California Act also allows for *qui tam* actions.³⁵

A complaint filed by a *qui tam* plaintiff will be filed in California superior court, *in camera*, with a copy to the California Attorney General. The complaint will remain under seal for up to 60 days, and service will not be made on the defendant until the complaint is unsealed.³⁶ Before the expiration of the 60-day period (plus any extensions granted under § 12652(c)(5)), the California Attorney General must notify the court whether he or she has decided to proceed with the action. If the California Attorney General declines to proceed with the action, the *qui tam* plaintiff has the right to conduct the action.³⁷

Qui tam awards. If the state or political subdivision proceeds with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff will receive at least 15% but not more than 33% of the proceeds of the action or settlement of the claim, “depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action.” If the state or political subdivision chooses not to proceed with a *qui tam* action, the *qui tam* plaintiff will receive an amount not less than 25% and not more than 50% of the proceeds of the action or settlement.³⁸

Statute of Limitations; burden of proof. A civil action filed under the California Act may not be filed more than three years after the date of discovery by the official of the state or political subdivision charged with the responsibility to act in the circum-

stances or, in any event, no more than 10 years after the date on which the violation is committed.³⁹ Whoever brings an action under the California Act — the state, political subdivision or *qui tam* plaintiff — must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.⁴⁰

Whistleblower protection. The California Act forbids employers from adopting, creating or enforcing any regulation or policy that would prevent an employee from disclosing a violation of the California Act to a law enforcement agency or the government.⁴¹ The California Act also provides protection against retaliation from employers for employees who act in furtherance of false claims actions filed pursuant to the California Act.⁴²

Office of Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the California Act does not meet all the requirements of § 6031(b) of the DRA.⁴³ Specifically, the OIG found that the California Act does not meet the requirements of § 6031(b)(4) of the DRA, which provides that the state law must contain a civil penalty that is not less than the amount of the civil penalty authorized under the Federal FCA, 31 U.S.C. § 3729. The Federal FCA provides for civil penalties of not less than \$5,000 nor more than \$10,000. The California Act provides for civil penalties up to \$10,000, but fails to set a floor.⁴⁴

¶ 20,378F Colorado

General. A person who commits any of the following acts is in violation of the Colorado Medical Assistance Act (Colorado Act), which prohibits false Medicaid claims:⁴⁵

- Intentionally or with reckless disregard makes or causes to be made any representation of a material fact in connection with a claim.

³³ Cal. Gov’t Code § 12651(b) (2007).

³⁴ Cal. Gov’t Code § 12652(a) - (b) (2007).

³⁵ Cal. Gov’t Code § 12652(c) (2007).

³⁶ Cal. Gov’t Code § 12652(c)(2) (2007).

³⁷ Cal. Gov’t Code § 12652(6) (2007).

³⁸ Cal. Gov’t Code § 12652(g) (2007).

³⁹ Cal. Gov’t Code § 12654(a) (2007).

⁴⁰ Cal. Gov’t Code § 12654(c) (2007).

⁴¹ Cal. Gov’t Code § 12653(a) (2007).

⁴² Cal. Gov’t Code § 12653(b) (2007).

⁴³ <http://oig.hhs.gov/fraud/falseclaimsact.html>

⁴⁴ See Cal. Gov’t Code § 12651(a) (2007).

⁴⁵ The provisions of the Colorado Medical Assistance Act related to false Medicaid claims are codified at Colo. Rev. Stat. § 25.5-4-304, *et. seq.*

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- Intentionally or with reckless disregard presents or causes to be presented to the state department a false claim for payment or approval.
- Intentionally or with reckless disregard presents or causes to be presented any cost document required by the medical assistance program that the person knows contains a false material statement.
- As to services for which a license is required, intentionally or with reckless disregard makes or causes to be made a claim with knowledge that the individual who furnished the services was not licensed to provide such services.
- Except in circumstances specifically excepted under the Colorado Act, intentionally or with reckless disregard offers, solicits, receives, or pays any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind: (1) in return for referring an individual for the furnishing of any item or service for which payment may be made under the Colorado Medical Assistance Act; or (2) in return for purchasing, leasing, ordering, or arranging for or recommending any good, facility, service, or item for which payment may be made under the Colorado Medical Assistance Act.⁴⁶

Damages. Any person who intentionally violates the provisions of the Colorado Act is liable for: (1) full restitution of all medical assistance found by the court to have been received because of such violation, and (2) a civil penalty of \$5,000 per claim or two times the amount of all medical assistance found by the court to have been received because of such violation or both.⁴⁷

Any person who has, with reckless disregard, violated the provisions of the Colorado Act is liable for: (1) full restitution of all medical assistance found by the court to have been received because of such

violation, and (2) a civil penalty not to exceed \$1,000 per claim, but in no event more than \$50,000 or two times the amount of all medical assistance received because of such violation.⁴⁸

Damages may be limited to not more than the amount of all medical assistance received because of the violation if the court finds certain mitigating factors relating to cooperation by the person committing the violation.⁴⁹

Who may bring an action. An action under the Colorado Act may be brought by the state.⁵⁰ The Colorado Act does not provide for an action by a *qui tam* plaintiff.

Burden of proof. In an action commenced under the Colorado Act, the standard of proof shall be by a preponderance of the evidence.⁵¹

Whistleblower protection. The Colorado Act does not provide for whistleblower protection.

2007 legislation. House Bill 1144, a bill to establish the Colorado False Claims Act, was pending prior to the close of the legislative session in May 2007. HB 1144 was introduced in January 2007 and passed out of the Colorado House of Representatives but was postponed indefinitely by the Senate State Affairs Committee. Colorado's 2007 First Regular Legislative Session adjourned in May. The Legislature will reconvene in January 2008.⁵²

¶ 20,378G Connecticut

General. A bill to establish a Connecticut false claims act, Senate Bill 1428, was introduced in January 2007 but died in committee. Connecticut's 2007 regular legislative session adjourned on June 6, 2007. The Legislature will reconvene in January 2008.⁵³

¶ 20,378H Delaware

General. Any person who commits one of the following acts is in violation of the Delaware False Claims and Reporting Act (Delaware Act):⁵⁴

⁴⁶ Colo. Rev. Stat. § 25.5-4-305. "Intentionally" is defined as having "actual knowledge" of the falsity of the information and acting with specific intent to defraud. Colo. Rev. Stat. § 25.5-4-304(4) (2007).

⁴⁷ Colo. Rev. Stat. § 25.5-4-306(1)(b) (2007).

⁴⁸ Colo. Rev. Stat. § 25.5-4-306(1)(c) (2007).

⁴⁹ Colo. Rev. Stat. § 25.5-4-306(2) (2007).

⁵⁰ Colo. Rev. Stat. § 25.5-4-306(1)(a) (2007).

⁵¹ Colo. Rev. Stat. § 25.5-4-306(3)(b) (2007).

⁵² HB 1144, 66th Gen. Assem., 1st Reg. Sess. (Colo. 2007).

⁵³ Legislation creating a Connecticut false claims act (SB 1428) was pending prior to the close of the legislative session in June 2007. The Act failed to pass out of the Senate. See HB 1428, 2007 Leg., Reg. Sess. (Conn. 2007).

⁵⁴ The Delaware False Claims and Reporting Act is codified at Del. Code Ann. Tit. 6, § 1201 - 1209 (2007).

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- Knowingly presents, or causes to be presented, directly or indirectly, to an officer or employee of the government 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.
- Conspires to defraud the government 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 government and, intending to defraud the government 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 government and, intending to defraud the government, 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 government who the person knows may not lawfully sell or pledge the property.
- 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 or from the government.⁵⁵

Damages. Any person found in violation of the Delaware Act is liable to the government for a civil penalty of no less than \$5,500 and no more than \$11,000 for each act constituting a violation. Any person found to violate the Delaware Act is also liable for three times the amount of damages sustained by the government because of the violation, plus the costs incurred in bringing the civil action to recover any such penalty or damages, including reasonable attorneys' fees and costs.⁵⁶ Damages may be reduced to no less than two times the amount of damages sustained by the government if the court finds certain mitigating factors demonstrating cooperation by the person who committed the violation.⁵⁷

Who may bring an action. The Delaware Act requires the Delaware Attorney General to investigate all suspected violations of the Delaware Act. If a violation is found, the Delaware Attorney General may bring a civil action against such person.⁵⁸ The Delaware Act also allows *qui tam* actions.⁵⁹

A complaint filed by a *qui tam* plaintiff will be filed *in camera*, will remain under seal for at least 60 days, and a copy will be served on the Delaware Attorney General along with written disclosure of all material evidence. The government is allowed to intervene and proceed with the action within 60 days after it receives the complaint, material evidence and information, and a written determination from the Delaware Attorney General stating whether there is substantial evidence that a violation has occurred.⁶⁰

Before the expiration of the 60-day period (subject to extensions allowed under §1203(b)(3)), the government must either proceed with the action or notify the court that it will not proceed with the

⁵⁵ Del. Code Ann. Tit. 6, §1201(a) (2007). "Knowingly" is defined as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in "reckless disregard" for the truth or falsity of the information. No proof of specific intent to defraud is required. Del. Code Ann. Tit. 6, §1202(4) (2007). "Government" includes all departments, boards or commissions of the executive branch of the state, all political subdivisions of the state, the Delaware Department of Transportation and all state and municipal authorities, all organizations created by or pursuant to a statute which declares in substance that such organization performs or has for its purpose the performance of an essential governmental function, and all organizations, entities or persons receiving funds of the state where the act complained of pursuant to this

chapter relates to the use of such funds of the state. Del. Code Ann. Tit. 6, §1202(3) (2007).

⁵⁶ Del. Code Ann. Tit. 6, §1201(a) - (b) (2007).

⁵⁷ Del. Code Ann. Tit. 6, §1201(b) (2007).

⁵⁸ Del. Code Ann. Tit. 6, §1203(a) (2007).

⁵⁹ The Delaware Act allows "any affected person, entity or organization" to bring a private civil action on behalf of themselves and the government for a violation of the Delaware Act. The Delaware Act does not define or explain when a person is considered "affected" by the violation. Del. Code Ann. Tit. 6, §1203(b)(1) (2007).

⁶⁰ Del. Code Ann. Tit. 6, §1203(b)(2) (2007).

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action. If the government elects not to proceed with the action, the private party has a right to conduct the action *if* the Delaware Attorney General determined that there was substantial evidence that a violation occurred.⁶¹

Qui tam Awards. If the government proceeds with the action brought by the private party, the private party shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, “depending upon the extent to which the party substantially contributed to the prosecution of the action.”⁶² However, if the court finds the action was primarily based on disclosures of specific information from the news media or relating to allegations or transactions in a criminal, civil, or administrative hearing, the court may award no more than 10% of the proceeds, taking into account the role of the private party in bringing and advancing the case.⁶³ If the government elects not proceed with an action under the Delaware Act, the private party shall receive an amount no less than 25% and no more than 30% of the proceeds of the action or settlement, plus reasonable expenses and fees.⁶⁴

Statute of Limitations; burden of proof. A civil action filed under the Delaware Act may not be brought (1) more than six years after the date 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 government official charged with responsibility to act. In no event may a civil action be brought more than 10 years after the date on which the violation is committed.⁶⁵ In any action brought under the Delaware Act, the government or the private party is required to prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.⁶⁶

Whistleblower protection. The Delaware Act provides protection against retaliation from employers for employees who act in furtherance of false claims actions filed under the Delaware Act.⁶⁷

¶ 20,378I District of Columbia

General. The purpose of the District of Columbia law prohibiting false Medicaid claims (D.C. Act) is to deter persons from knowingly causing or assisting in causing the District to pay false claims, and to provide remedies for obtaining treble damages and civil penalties. Any person who commits one of the following acts is in violation of the D.C. Act:⁶⁸

- Knowingly presents, or causes to be presented, to an officer or employee of the District a false claim for payment or approval.
- Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the District.
- Conspires to defraud the District by getting a false claim allowed or paid by the District.
- Has possession, custody, or control of public property or money used, or to be used, by the District 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 District and knowingly makes or delivers a document that falsely represents the property used or to be used.
- 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.
- Knowingly makes or 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 District.
- Is a beneficiary of an inadvertent submission of a false claim to the District, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the District.
- Is the beneficiary of an inadvertent payment or overpayment by the District of monies not due

⁶¹ Del. Code Ann. Tit. 6, § 1203(b)(4)(b) (2007); *see also* Del. Code Ann. Tit. 6, § 1204(d) (2007).

⁶² Del. Code Ann. Tit. 6, § 1205(a) (2007).

⁶³ Del. Code Ann. Tit. 6, § 1205(a) (2007).

⁶⁴ Del. Code Ann. Tit. 6, § 1205(b) (2007).

⁶⁵ Del. Code Ann. Tit. 6, § 1209 (2007).

⁶⁶ Del. Code Ann. Tit. 6, § 1209(b) (2007).

⁶⁷ Del. Code Ann. Tit. 6, § 1208 (2007).

⁶⁸ The District of Columbia law prohibiting false Medicaid claims is codified at D.C. Ann. Code § 2-308.13 *et seq.* (2007). The law has no official title.

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and knowingly fails to repay the inadvertent payment or overpayment to the District.⁶⁹

Damages. In addition to criminal penalties under § 2-308.21, a person found to have violated the D.C. Act shall be liable to the District for a civil penalty of no less than \$5,000 and no more than \$10,000 for each act constituting a violation, plus three times the amount of damages sustained by the District due to the violation.⁷⁰ Damages may be reduced to no more than two times the amount of damages sustained by the government if the court finds certain mitigating factors demonstrating cooperation by the person who violated the D.C. Act.⁷¹

Who may bring an action. The D.C. Act requires the Attorney General for the District of Columbia to investigate all suspected violations of the D.C. Act involving District funds. If a violation is found, the Attorney General may bring a civil action against such person in the Superior Court of the District of Columbia.⁷² The D.C. Act also allows for *qui tam* actions brought in the name of the *qui tam* plaintiff and for the District, or in the name of the District.⁷³ The *qui tam* complaint will be filed *in camera*, shall remain under seal for at least 180 days, and a copy is required to be served on the Attorney General for the District along with written disclosure of all material evidence and information.⁷⁴

Within 180 days after receiving the complaint (subject to extensions allowed under § 2-308.15(b)(5)), the Attorney General for the District must either (1) notify the court that he/she intends to proceed with the action, or (2) notify the court that he/she will not proceed with the action. If the Attorney General for the District elects not to proceed with the action, the *qui tam* plaintiff has the right to conduct the action.⁷⁵ However, the action must be proper pursuant to § 2-308.15(c).⁷⁶ Once a *qui tam*

plaintiff brings an action, no other person may bring an action based on the same facts.⁷⁷

Qui tam awards. If the District elects to proceed with the action brought by the *qui tam* plaintiff, and the *qui tam* action was proper pursuant to § 2-308.15(c), the *qui tam* plaintiff shall receive at least 10% but not more than 20% of the proceeds of the judgment or settlement of the claim, “depending upon the extent to which the party substantially contributed to the prosecution of the action.”⁷⁸ If the court finds the *qui tam* plaintiff was substantially involved in the fraudulent activity on which the action was based, the court may award less than 10%.⁷⁹ If the District elects not to proceed with the action brought by the *qui tam* plaintiff, the *qui tam* plaintiff shall receive at least 25% but no more than 40% of the proceeds of the action or settlement, plus reasonable expenses and fees. If the *qui tam* plaintiff was substantially involved in the fraudulent activity on which the action was based, the court may award less than 25%.⁸⁰ If a defendant prevails in an action conducted by *qui tam* plaintiff, and the court finds the *qui tam* plaintiff’s claim was “frivolous, vexatious, or brought solely for purposes of harassment,” the court may award the defendant reasonable attorneys’ fees and expenses.⁸¹

Statute of Limitations; burden of proof. A civil action may not be filed under the D.C. Act (1) more than six years after the date 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 an official of the Office of the Attorney General for the District. In no event may a civil action be brought more than nine years after the date on which the violation is committed.⁸² In any action brought under the D.C. Act, the District or the *qui tam* plaintiff is required to

⁶⁹ D.C. Ann. Code § 2-308.14(a) (2007). “Knowingly” is defined as having actual knowledge of the falsity of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard for the truth or falsity of the information. No proof of specific intent to defraud is required for an act to be knowing. D.C. Ann. Code § 2-308.13(3) (2007).

⁷⁰ D.C. Ann. Code § 2-308.14(a) (2007).

⁷¹ D.C. Ann. Code § 2-308.14(b) (2007).

⁷² D.C. Ann. Code § 2-308.15(a) (2007).

⁷³ D.C. Ann. Code § 2-308.15(b) (2007).

⁷⁴ *Id.*

⁷⁵ D.C. Ann. Code § 2-308.15(b)(4) (2007).

⁷⁶ D.C. Ann. Code § 2-308.15(e)(1) (2007).

⁷⁷ D.C. Ann. Code § 2-308.15(b)(6) (2007).

⁷⁸ D.C. Ann. Code § 2-308.15(f)(1) (2007).

⁷⁹ *Id.*

⁸⁰ D.C. Ann. Code § 2-308.15(f)(2) (2007).

⁸¹ D.C. Ann. Code § 2-308.15(f)(5) (2007).

⁸² D.C. Ann. Code § 2-308.17(a) (2007).

prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.⁸³

Whistleblower protection. The D.C. Act forbids employers from adopting, creating, or enforcing any regulation or policy that would prevent an employee from disclosing a violation of the D.C. Act to a government or law enforcement agency.⁸⁴ The D.C. Act also provides protection against retaliation from employers for employees acting in furtherance of actions filed pursuant to the D.C. Act.⁸⁵

¶ 20,378J Florida

General. The purpose of the Florida False Claims Act (Florida Act) is to deter persons from knowingly causing or assisting in causing the Florida government to pay false or fraudulent claims, and to provide remedies for obtaining treble damages and civil penalties. A person is in violation of the Florida Act if he or she commits one of the following seven acts:⁸⁶

- Knowingly presents or causes to be presented to an officer or employee of an agency 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 an agency.
- Conspires to submit a false or fraudulent claim to an agency or to deceive an agency for the purpose of getting a false or fraudulent claim allowed or paid.
- Has possession, custody, or control of property or money used or to be used by an agency and, intending to deceive the agency or knowingly 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 an agency and, intending to deceive the agency, 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 an agency who may not sell or pledge the property lawfully.
- 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 an agency.⁸⁷

Damages. A person who violates the Florida Act is liable to the state of Florida for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the state.⁸⁸ Damages may be reduced to no less than two times the amount of damages sustained by the state if the court finds certain mitigating factors demonstrating cooperation by the person who committed the violation.⁸⁹

Who may bring an action. The Department of Legal Affairs is authorized to investigate and file civil suits for violations of the Florida Act.⁹⁰ The Florida Act also allows *qui tam* plaintiffs to bring a civil action in the name of the state of Florida for a violation of the Florida Act.⁹¹ The *qui tam* complaint must be filed in the circuit court of the Second Judicial District, in and for Leon County, and a copy, along with a written disclosure of all material evidence and information, must be served on the Attorney General, as head of the Department, and on the Chief Financial Officer, as head of the Department of Financial Services.⁹² The complaint will remain under seal for 90 days, unless an extension is granted pursuant to chapter 68.083(5).⁹³

⁸³ D.C. Ann. Code § 2-308.17(c) (2007).

⁸⁴ D.C. Ann. Code § 2-308.16(a) (2007).

⁸⁵ D.C. Ann. Code § 2-308.16(b) (2007).

⁸⁶ The Florida False Claims Act is codified at Fl. Stat. ch. 68.081 *et seq.* (2007).

⁸⁷ Fla. Stat. ch. 68.082(2) (2007). “Knowingly” is defined as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard for the truth or falsity of the information.

No proof of specific intent to defraud is required and innocent mistake is a defense to charges brought under the Florida Act. Fla. Stat. ch. 68.082(c) (2007).

⁸⁸ Fla. Stat. ch. 68.082(2) (2007).

⁸⁹ Fla. Stat. ch. 68.082(3) (2007).

⁹⁰ Fla. Stat. ch. 68.083(1) (2007).

⁹¹ Fla. Stat. ch. 68.083(2) (2007).

⁹² Fla. Stat. ch. 68.083(3) (2007).

⁹³ *Id.*

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Within 90 days after receiving the complaint and material evidence (unless an extension is granted pursuant to chapter 68.083(5)), the Department of Legal Affairs or the Department of Financial Services must elect to either (1) intervene and proceed with the action on behalf of the state of Florida, or (2) notify the court that it declines to take over the action.⁹⁴ If the Department of Legal Affairs or the Department of Financial Services chooses not to proceed with the action, the *qui tam* plaintiff has the right conduct the action.⁹⁵

Qui tam awards. If the Department of Legal Affairs proceeds in an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff shall receive between 15% and 25% of the proceeds recovered under the action or settlement. However, if the case is based primarily on disclosures other than those of the *qui tam* plaintiff, the *qui tam* plaintiff will not receive more than 10% of the proceeds recovered under the action or settlement.⁹⁶

If the Department of Legal Affairs does not proceed with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff bringing the action or settling the claim will be awarded between 25% and 30% of the proceeds or settlement recovered.⁹⁷ A *qui tam* plaintiff that planned or initiated the violation will receive a reduced reward.⁹⁸ If the Department of Legal Affairs does not proceed with the action and the defendant prevails, the *qui tam* plaintiff will be responsible for the defendant's reasonable attorneys' fees and costs.⁹⁹

Statute of Limitations; burden of proof. The Florida Act provides that a cause of action may be brought no more than six years after the date of the violation, and no 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 responsible state official; but in no event more than 10 years after the date on which the violation was committed, whichever occurs last.¹⁰⁰ Whomever brings an action under the Florida Act is required to prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.¹⁰¹

Whistleblower protection. The Florida Act provides protection against retaliation from employers for employees who act in furtherance of an action filed pursuant to the Florida Act.¹⁰²

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the then current version of the Florida Act did not meet all the requirements of §§ 6031(b)(1) or 6031(b)(2) of the DRA.¹⁰³ The now current version of the Florida Act (as summarized herein), as amended by legislative bill CS/SB 2312, has not yet been reviewed by the OIG. The purpose of the CS/SB 2312, which became effective on July 1, 2007, was to bring the Florida Act into conformity with the Federal FCA.

¶ 20,378K Georgia

General. A person¹⁰⁴ who commits any of the following acts violates the Georgia State False Medicaid Claims Act (Georgia Act):¹⁰⁵

- Knowingly¹⁰⁶ presents or causes to be presented to the Georgia Medicaid program 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 Georgia Medicaid program.
- Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid.

⁹⁴ Fla. Stat. ch. 68.083(3)-(6) (2007).

⁹⁵ Fla. Stat. ch. 68.083(6) (2007).

⁹⁶ Fla. Stat. ch. 68.085(1)-(2) (2007).

⁹⁷ Fla. Stat. ch. 68.085(3) (2007).

⁹⁸ Fla. Stat. ch. 68.085(6) (2007).

⁹⁹ Fla. Stat. ch. 68.086(6)(3) (2007).

¹⁰⁰ Fla. Stat. ch. 68.089 (2007).

¹⁰¹ Fla. Stat. ch. 68.090 (2007).

¹⁰² Fla. Stat. ch. 68.088 (2007).

¹⁰³ <http://oig.hhs.gov/fraud/falseclaimsact.html>.

¹⁰⁴ "Person" is defined as any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with the capacity to sue or be sued. O.C.G.A. § 49-4-168(3) (2007).

¹⁰⁵ The Georgia State False Claims Act, which became effective May 24, 2007, is codified at O.C.G.A. § 49-4-168.

¹⁰⁶ "Knowingly" is defined as having "actual knowledge" of the information, acting in "deliberate ignorance" of the truth or falsity of the information, or acting in "reckless disregard" of the truth or falsity of the information. O.C.G.A. § 49-4-168(2)(A) - (C) (2007).

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- Having possession, custody, or control of property or money used, or to be used, by the Georgia Medicaid Program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt.
- Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, 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 Georgia Medicaid program, who lawfully may not sell or pledge the property.
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to the state of Georgia.

Damages. Any person who violates the Georgia Act is liable to the state of Georgia for a civil penalty of not less than \$5,500 and not more than \$11,000 for each false or fraudulent claim. Violators are also liable for three times the amount of damages the Georgia Medicaid program sustains.¹⁰⁷ Damages may be reduced to not less than two times the actual damages sustained by the Georgia Medicaid program if the court finds certain mitigating circumstances.

Who may bring an action. The Georgia Attorney General may bring a civil action against a person if the Attorney General finds that the person has violated or is violating the Georgia Act. The Attorney General is authorized to investigate suspected,

alleged, and reported violations of the Georgia Act.¹⁰⁸ The Georgia Act also allows for *qui tam* actions.¹⁰⁹

A *qui tam* plaintiff must serve the Attorney General with a copy of the complaint and written disclosure of substantially all material evidence and information the plaintiff possesses.¹¹⁰ The *qui tam* plaintiff's complaint will be filed *in camera*, will remain under seal for at least 60 days, and service will not be made on the defendant until the court so orders.¹¹¹ While the complaint is under seal, the Attorney General may elect to intervene and proceed with the action.¹¹²

If the Attorney General intervenes and proceeds with the civil action, he or she will have primary responsibility for prosecuting the civil action and will not be bound by an act of the *qui tam* plaintiff.¹¹³ The *qui tam* plaintiff will have a right to continue as a party to the civil action if the Attorney General intervenes.¹¹⁴ If the Attorney General declines to proceed with the action, the *qui tam* plaintiff will have the right to conduct the civil action.¹¹⁵ The court may, however, permit the Attorney General to intervene at a later date for any purpose.¹¹⁶

Qui tam awards. If the Attorney General proceeds with a civil action brought by a private person, the person will receive at least 15% but not more than 25% of the proceeds of the civil action or settlement of the claim, depending on the extent to which the person "substantially contributed to the prosecution of the civil action."¹¹⁷ If the court finds that the civil action is based primarily on disclosures of specific information other than information provided by the person bringing the civil action, the court may award the plaintiff an appropriate sum, not exceeding 10% of the proceeds.¹¹⁸ If the Attorney General does not proceed with a civil action, the person bringing the civil action or settling the claim will receive an amount not less than 25% and not more than 30% of the proceeds of the action or settle-

¹⁰⁷ O.C.G.A. § 49-4-168.1(a)(7) (2007).

¹⁰⁸ O.C.G.A. § 49-4-168.2 (2007).

¹⁰⁹ O.C.G.A. § 49-4-168.2(b) (2007).

¹¹⁰ O.C.G.A. § 49-4-168.2(c)(1) (2007).

¹¹¹ O.C.G.A. § 49-4-168.2(c)(2) (2007).

¹¹² O.C.G.A. § 49-4-168.2(c)(2) (2007).

¹¹³ O.C.G.A. § 49-4-168.2(c)(6)(d)(1) (2007).

¹¹⁴ O.C.G.A. § 49-4-168.2(c)(6)(d)(1) (2007).

¹¹⁵ O.C.G.A. § 49-4-168.2(c)(6)(f) (2007).

¹¹⁶ O.C.G.A. § 49-4-168.2(c)(6)(f) (2007).

¹¹⁷ O.C.G.A. § 49-4-168.2(i)(1) (2007).

¹¹⁸ O.C.G.A. § 49-4-168.2(c)(6)(i)(1) (2007).

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ment.¹¹⁹ If the action is brought by a *qui tam* plaintiff and the Attorney General does not intervene, the court may award the defendant its reasonable attorney's fees and expenses if the defendant prevails and the court finds that the action was "clearly frivolous, vexatious, or brought primarily for purposes of harassment."¹²⁰

Statute of Limitations. A civil action filed under the Georgia State Medicaid False Claims Act must be filed within three years after the date the violation was committed or three years after the date when facts material to the right of action were known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last. A civil action may not, in any event, be filed more than ten years after the date on which the violation was committed.¹²¹

Whistleblower protection. An employee will be entitled to various forms of relief if the employee is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, on behalf of the employee, or others, in furtherance of a civil action under the Georgia Act.¹²²

¶ 20,378L Hawaii

General. Any person who commits one of the following acts is in violation of Hawaii's false claims act (Hawaii Act).¹²³

- 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 pledge of an obligation or debt, public property from any officer or employee of the state who may not lawfully sell or pledge the property.
- 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.
- Is a beneficiary of an inadvertent submission of a false claim to the state, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state within a reasonable time after discovery of the false claim.¹²⁴

Damages. Any person who violates the Hawaii 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 that the state sustained because of that person's act.¹²⁵ Damages may be reduced to no less than two times the amount of damages sustained by the state if the court finds certain mitigating factors demonstrating cooperation by the person who committed the violation.¹²⁶ Any person who violates the Hawaii Act will also be liable to the state for the costs and attorneys' fees incurred to recover the penalty or damages.¹²⁷

¹¹⁹ O.C.G.A. § 49-4-168.2(c)(6)(i)(2) (2007).

¹²⁰ O.C.G.A. § 49-4-168.2(c)(6)(i)(4) (2007).

¹²¹ O.C.G.A. § 49-4-168.5 (2007).

¹²² O.C.G.A. § 49-4-168.4 (2007).

¹²³ Hawaii's false claims statute is codified at Haw. Rev. Stat. §§ 661-21 - 661-29 (2007).

¹²⁴ Haw. Rev. Stat. § 661-21(a) (2007). "Knowingly" is defined as having actual knowledge of the information, acting in delib-

erate ignorance of the truth or falsity of the information; or acting in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Haw. Rev. Stat. § 661-21(e) (2007).

¹²⁵ Haw. Rev. Stat. § 661-21 (a) (2007).

¹²⁶ Haw. Rev. Stat. § 661-21 (b) (2007).

¹²⁷ *Id.*

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Who may bring an action. The Hawaii Act requires the Hawaii Attorney General to investigate any violations of the Hawaii Act. If violations are found, the Hawaii Attorney General is authorized to bring civil actions against the violator.¹²⁸ Private persons (*qui tam* plaintiffs) may also bring a civil action for a violation of the Hawaii Act, for that person and for the state. A copy of the *qui tam* complaint, along with a written disclosure of all known material evidence and information must be served on the state. The *qui tam* complaint will be filed *in camera* and shall remain under seal for at least 60 days.¹²⁹

Before the expiration of the 60-day seal period (subject to extensions granted pursuant to § 661-25(c)), the state must elect to either (1) proceed with the action on behalf of the state, or (2) notify the court that it declines to conduct the action. If the state chooses not to proceed with the action, the private person has a right to conduct a *qui tam* action.¹³⁰

Qui tam awards. If the state proceeds with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff is entitled to receive between 15% and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action. The court may reduce the *qui tam* plaintiff's award to no more than 10% of the proceeds if it finds that the action was primarily based on information from the news media or from disclosures of information other than information provided by the *qui tam* plaintiff.¹³¹

If the state chooses not to proceed with an action, a *qui tam* plaintiff bringing the action or settling the claim is entitled to receive between 25% and 30% of the proceeds of the action or settlement plus reasonable expenses and attorneys' fees and costs. All such expenses, fees, and costs are to be awarded against the defendant.¹³²

Whether or not the state proceeds with the action, if the court finds that the person bringing the action or settling the claim planned and initiated the violation of the Hawaii Act, the court may reduce the person's share of proceeds.

Statute of Limitations; burden of proof. A civil action filed under the Hawaii Act must be brought within 6 years after the false claim is discovered or by reasonable diligence should have been discovered and, in any event, not more than 10 years after the date on which the violation occurred.¹³³ Any determination that a person has violated the Hawaii Act must be based on a preponderance of the evidence.¹³⁴

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the Hawaii Act, along with the Hawaii Whistleblower Protection Act, Haw. Rev. Stat. § 378-61 *et seq.*, meets the requirements of § 6031(b) of the DRA.¹³⁵

¶ 20,378M Idaho

General. A provider who commits the following act is in violation of the Idaho law prohibiting false Medicaid claims (Idaho Act):¹³⁶

- Knowingly with intent to defraud by means of false statement or representation, obtains compensation from public funds greater than that to which he is legally entitled for services or supplies furnished or purportedly furnished.

Damages. A provider found to violate the Idaho Act is liable for civil damages equal to three times the amount by which any figure is falsely overstated.¹³⁷ A proposed amendment to this section would have awarded costs and attorneys fees to the prevailing party.¹³⁸ The bill died in committee at the end of the 2007 legislative session on March 30, 2007. The Idaho Legislature will reconvene on January 7, 2008.

¹²⁸ Haw. Rev. Stat. § 661-22 (2007).

¹²⁹ Haw. Rev. Stat. § 661-25 (b) (2007).

¹³⁰ Haw. Rev. Stat. §§ 661-25 (d) & 661-26 (c) (2007).

¹³¹ Haw. Rev. Stat. § 661-27 (a) (2007).

¹³² Haw. Rev. Stat. § 661-27 (b) (2007).

¹³³ Haw. Rev. Stat. § 661-24 (2007).

¹³⁴ Haw. Rev. Stat. § 661-23 (2007).

¹³⁵ <http://oig.hhs.gov/fraud/falseclaimsact.html>.

¹³⁶ The Idaho law prohibiting false or fraudulent Medicaid claims is codified at Idaho Code Ann. § 56-227B (2007).

¹³⁷ Idaho Code Ann. § 56-227B (2007).

¹³⁸ HB 166. The bill would also have amended and added to the existing law regarding the Medicaid Fraud Control Unit.

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Basics of the Law

Who may bring an action. The Director of the Department of Health and Welfare has the right to bring actions for the recovery of damages under the Idaho Act.¹³⁹ The Idaho Act does not provide for *qui tam* actions.

Qui tam awards. The Idaho Act does not provide for *qui tam* actions.

Burden of proof. The burden of proof for the recovery of damages under the Idaho Act is the same as that used in other civil actions for the recovery of damages.¹⁴⁰

Whistleblower protection. The Idaho Act does not specifically provide protection to whistleblowers.¹⁴¹

¶20,378N Illinois

General. Any person who commits one of the following acts is in violation of the Illinois Whistleblower Reward and Protection Act (Illinois Act):¹⁴²

- 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.
- 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 lawfully may not sell or pledge the property.
- 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.¹⁴³

Damages. A person who violates the Illinois Act is liable to the state for a civil penalty of not less than \$5,500 and not more than \$11,000, plus three times the amount of damages sustained by the state because of the act. A person violating the Illinois Act is also liable to the state for the costs of a civil action brought to recover any such penalty or damages.¹⁴⁴ Unlike other state false claims acts, the Illinois Act does not have a reduction of damages provision.

Who may bring an action. The Illinois Act requires the Illinois Department of State Policy to diligently investigate civil violations of the Illinois Act. The Illinois Attorney General is authorized to bring civil actions against any person found to be in violation of the Illinois Act.¹⁴⁵ The Illinois Act allows a private person to bring a civil action for a violation of the Illinois Act in the name of the state. The complaint will be filed *in camera*, will remain under seal for at least 60 days, and a copy will be served on the state along with written disclosure of all known material evidence and information.¹⁴⁶

Before the expiration of the 60-day seal period (subject to extensions granted pursuant to §175/4(b)(3)), the state must elect to either (1) conduct the action on behalf of the state, or (2) notify the court that it declines to conduct the action.¹⁴⁷ If the

¹³⁹ Idaho Code Ann. §56-227B (2007).

¹⁴⁰ Idaho Code Ann. §56-227B (2007).

¹⁴¹ Idaho does have a separate whistleblower protection statute to generally protect public employees who disclose information regarding potential violations of the law against retaliation. Idaho Code Ann. §6-2101, et. seq. (2007).

¹⁴² The Illinois Whistleblower Reward and Protection Act is codified at 740 Ill. Comp. Stat 175/1 et seq. (2007).

¹⁴³ 740 Ill. Comp. Stat. 175/3(a) (2007). "Knowingly" is defined as having actual knowledge of the information, acting in

deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard for the truth or falsity of the information. No proof of specific intent to defraud is required. 740 Ill. Comp. Stat. 175/3(b) (2007).

¹⁴⁴ 740 Ill. Comp. Stat. 175/3(a) (2007).

¹⁴⁵ 740 Ill. Comp. Stat. 175/4(a) (2007).

¹⁴⁶ 740 Ill. Comp. Stat. 175/4(b) (2007).

¹⁴⁷ 740 Ill. Comp. Stat. 175/4(b)(4) (2007).

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state chooses not to proceed with the action, the private person has a right to conduct a *qui tam* action.¹⁴⁸ A court will not have jurisdiction over an action brought under the Illinois Act “based upon the public disclosure of allegations or transactions 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, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.”¹⁴⁹

Qui tam awards. If the state proceeds with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff is entitled to receive between 15% and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action.¹⁵⁰ The court may reduce the *qui tam* plaintiff’s award to no more than 10% of the proceeds if it finds that the *qui tam* plaintiff was not an original source of the information.¹⁵¹

If the state chooses not proceed with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff bringing the action or settling the claim is entitled to receive between 25% and 30% of the proceeds of the action or settlement plus reasonable expenses and attorneys’ fees and costs. All such expenses, fees, and costs are to be awarded against the defendant.¹⁵²

Whether or not the state proceeds with the action, if the court finds that the person bringing the action or settling the claim planned and initiated the violation of the Illinois Act, the court may reduce the person’s share of proceeds.¹⁵³

If a defendant prevails in an action conducted by *qui tam* plaintiff, and the court finds the *qui tam* plaintiff’s claim was “frivolous, clearly vexatious, or

primarily brought for purposes of harassment,” the court may award the defendant reasonable attorneys’ fees and expenses.¹⁵⁴

Statute of Limitations; burden of proof. A civil action filed under the Illinois Act may not be filed more than six years after the date on which the violation is committed, 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 the responsibility to act in the circumstances, or, in any event, no more than ten years after the date on which the violation is committed, whichever occurs last.¹⁵⁵

The state must prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.¹⁵⁶

Whistleblower protection. The Illinois Act provides protection for any employee who is retaliated against due to his or her lawful acts committed in furtherance of an action or investigation conducted under the Illinois Act.¹⁵⁷

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the Illinois Act meets the requirements of § 6031(b) of the DRA.¹⁵⁸

¶ 20,378O Indiana

General. The Indiana False Claims and Whistleblower Protection Act (Indiana Act) was enacted to assist the state in combating fraud and recovering losses resulting from fraud against the state.¹⁵⁹ Any person who knowingly or intentionally commits one of the following acts is in violation of the Indiana Act:¹⁶⁰

- Presents a false claim to the state for payment or approval.

¹⁴⁸ 740 Ill. Comp. Stat. 175/4(b)(4) (2007).

¹⁴⁹ 740 Ill. Comp. Stat. 175/4(d)(2) (2007). “Original source” means an individual who has direct and independent knowledge of information on which the allegations are based and has voluntarily provided the information to the state before filing an action under § 175/4 of the Illinois Act. 740 Ill. Comp. Stat. 175/4(e)(4)(B) (2007).

¹⁵⁰ 740 Ill. Comp. Stat. 175/4(d)(1) (2007).

¹⁵¹ 740 Ill. Comp. Stat. 175/4(d)(1) (2007).

¹⁵² 740 Ill. Comp. Stat. 175/4(d)(2) (2007).

¹⁵³ 740 Ill. Comp. Stat. 175/4(d)(2) (2007).

¹⁵⁴ 740 Ill. Comp. Stat. 175/4(d)(4) (2007).

¹⁵⁵ 740 Ill. Comp. Stat. 175/5 (2007).

¹⁵⁶ 740 Ill. Comp. Stat. 175/5 (2007).

¹⁵⁷ 740 Ill. Comp. Stat. 175/4(g) (2007).

¹⁵⁸ <http://oig.hhs.gov/fraud/falseclaimsact.html>.

¹⁵⁹ The Indiana False Claims and Whistleblower Protection Act is codified at Ind. Code § 5-11-5.5-1 *et seq.* (2006).

¹⁶⁰ Unlike other state false claims acts, the Indiana Act does not define “knowingly” to include acting with “deliberate ignorance” or in “reckless disregard” for the truth or falsity of the information. *See* Ind. Code § 5-11-5.5-1.

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Basics of the Law

- Makes or uses a false record or statement to obtain payment or approval of a false claim from the state.
- With 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 intent to defraud the state, authorizes issuance of a receipt without knowing that the information on the receipt is true.
- Receives public property as a pledge of an 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 an act described above.
- Causes or induces another person to perform an act described above.¹⁶¹

Damages. A person who violates the Indiana Act is liable for a minimum civil penalty of \$5,000 per claim, plus three times the amount of damages sustained by the state because of the violation. Unlike other state false claims acts, the Indiana Act does not cap its civil penalty provision. In addition, a person who violates the Indiana Act is liable to the state for the costs of a civil action brought to recover a penalty or damages.¹⁶² The civil penalty will be eliminated and damages can be reduced to not less than two times the amount of damages that the state sustained because of the violation if the court finds certain mitigating factors relating to cooperation by the person who violated the Indiana Act.¹⁶³

Who may bring an action. The Indiana Attorney General or Indiana Inspector General may investigate false claim violations and file civil suits for false claims violations. If the Indiana Attorney General discovers a violation, he or she may bring a civil

action. If the Indiana Inspector General discovers a violation, he or she may certify this finding to the Indiana Attorney General.¹⁶⁴ A private person (*qui tam* plaintiff) also has a right to bring a civil action for a violation of the Indiana Act on behalf of and in the name of the state.¹⁶⁵

The *qui tam* complaint will be filed *in camera*, will remain under seal for at least 120 days, and a copy will be served on the Indiana Attorney General and the Indiana Inspector General along with written disclosure describing all relevant material evidence and information.¹⁶⁶ Before the expiration of the 120 day seal period (subject to extensions granted pursuant to §5-11-5.5-3(d)), the Indiana Attorney General or the Indiana Inspector General must (1) intervene and conduct the action, or (2) decline to conduct the action.¹⁶⁷ If the Indiana Attorney General or the Indiana Inspector General chooses not to proceed with the action, the *qui tam* plaintiff has a right to conduct a *qui tam* action.¹⁶⁸

If the person who filed the complaint planned and initiated the violation of the Indiana Act or has been convicted of a crime related to the violation of the Indiana Act, the court, upon the motion of the Indiana Attorney General or Indiana Inspector General, will dismiss the person as a plaintiff.¹⁶⁹

Qui tam awards. If the state proceeds with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff is entitled to receive between 15% and 25% of the proceeds of the action or settlement of the claim, plus reasonable attorneys' fees and an amount to cover costs and expenses.¹⁷⁰ If the court finds that the *qui tam* plaintiff was not an original source of the information, it may reduce the *qui tam* plaintiff's award to no more than 10% of the proceeds, plus reasonable attorneys' fees and an amount to cover costs and expenses.¹⁷¹

If the state chooses not proceed with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff bringing the action or settling the claim is entitled to

¹⁶¹ Ind. Code § 5-11-5.5-2(b) (2006).

¹⁶² Ind. Code § 5-11-5.5-2(b) (2006).

¹⁶³ Ind. Code § 5-11-5.5-2(c) (2006).

¹⁶⁴ Ind. Code § 5-11-5.5-3(a) - (c) (2006).

¹⁶⁵ Ind. Code § 5-11-5.5-3(a) (2006).

¹⁶⁶ Ind. Code § 5-11-5.5-4(c) (2006).

¹⁶⁷ Ind. Code § 5-11-5.5-3(e) (2006).

¹⁶⁸ Ind. Code § 5-11-5.5-3(e) (2006).

¹⁶⁹ Ind. Code § 5-11-5.5-3(e) (2006).

¹⁷⁰ Ind. Code § 5-11-5.5-6(a)(1) (2006).

¹⁷¹ Ind. Code § 5-11-5.5-6(a)(2) (2006).

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receive between 25% and 30% of the proceeds of the action or settlement plus reasonable expenses and attorneys' fees and costs.¹⁷²

If the person who initially filed the complaint (1) planned and initiated the violation of the Indiana Act, or (2) has been convicted of a crime related to the person's violation of the Indiana Act, the person is not entitled to an award.¹⁷³

If a defendant prevails in an action conducted by *qui tam* plaintiff, the court may award the defendant attorneys' fees plus an amount to cover the expenses of defending the action, if the court finds the action is frivolous.¹⁷⁴

Statute of Limitations; burden of proof. A civil action filed under the Indiana Act may not be filed more than six years after the date on which the violation is committed, more than three years after the date when facts material to the right of action are known or reasonably should have been known by a state officer or employee who is responsible for addressing the false claim, or, in any event, no more than ten years after the date on which the violation is committed.¹⁷⁵ The state is required to prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.¹⁷⁶

Whistleblower protection. The Indiana Act provides relief to any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her objection to a false claims violation or involvement in a false claims action.¹⁷⁷

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the Indiana Act does not meet all the requirements of § 6031(b) of the DRA.¹⁷⁸ Specifically, the OIG noted that the Indiana Act does not meet the requirements of § 6031(b) of

the DRA, which requires a state law to establish liability to the state for false or fraudulent claims similar to that described in the Federal FCA. According to the OIG, the Indiana Act falls short of this requirement because its use of the term "knowingly" is too narrow. The Federal FCA defines "knowingly" to include when a person acts with "deliberate ignorance" or "reckless disregard" to the truth. The Indiana Act does not define "knowingly" to include such standards.

¶ 20,378P Iowa

General. A bill to establish an Iowa false claims act, House File 631, was introduced in March 2007 but died in committee. Iowa's 2007 regular legislative session adjourned on April 29, 2007. The Legislature will reconvene in January 2008.¹⁷⁹

¶ 20,378Q Kansas

General. Kansas does not have a civil false claims act and no false claims act legislation was pending as of July 13, 2007.

¶ 20,378R Kentucky

General. Any provider who knowingly submits, or causes to be submitted, a claim for payment for furnishing treatment, services, or goods to which the provider was not entitled is in violation of the Kentucky false claims act (Kentucky Act).^{180, 181}

Damages. A provider found in violation of the Kentucky Act shall be liable for (1) restitution of any payments received in violation of the Act; (2) civil penalties up to three times the amount of the excess payments; (3) payment of a civil fine of \$500 for each false or fraudulent claim submitted; (4) payment of legal, investigation, and enforcement fees; and (5) removal as a participating provider in the Medical Assistance Program.¹⁸²

¹⁷² Ind. Code § 5-11-5.5-6(a)(3) (2006).

¹⁷³ Ind. Code § 5-11-5.5-6(a)(4) (2006).

¹⁷⁴ Ind. Code § 5-11-5.5-6(b) (2006).

¹⁷⁵ Ind. Code § 5-11-5.5-9(b) (2006).

¹⁷⁶ Ind. Code § 5-11-5.5-9(c) (2006).

¹⁷⁷ Ind. Code § 5-11-5.5-8 (2006).

¹⁷⁸ <http://oig.hhs.gov/fraud/falseclaimsact.html>

¹⁷⁹ Legislation creating an Iowa false claims act (H.F. 631) was pending prior to the close of the legislative session in April 2007. The bill failed to pass out of the House. *See* H.F. 631, 82nd

Leg., 1st Reg. Sess. (Iowa 2007). House Amendment 1787, a proposed amendment to House File 909, the House Appropriations Bill, also sought to establish a Medicaid False Claims Act. House Amendment 1787 failed and was included in the engrossed version of H.F. 909. *See* H.A. 1787, 82nd Leg., 1st Sess. (Iowa 2007).

¹⁸⁰ Kentucky's false claims act is codified at Ky. Rev. Stat. Ann. § 205.8451, et seq. (West 2007).

¹⁸¹ Ky. Rev. Stat. Ann. § 205.8467(1) (West 2007).

¹⁸² Ky. Rev. Stat. Ann. § 205.8467(1) (West 2007).

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Who may bring an action. The Attorney General is responsible for commencing actions under the Kentucky Act.¹⁸³ The Kentucky Act does not provide for *qui tam* actions.

Qui tam awards. The Kentucky Act does not provide for *qui tam* actions.

Statute of Limitations; burden of proof. The Kentucky Act does not specify a statute of limitations for actions. Violations of the Kentucky Act must be proved by a preponderance of the evidence.¹⁸⁴

Whistleblower protection. The Kentucky Act includes special whistleblower protection to protect an employee who reports or testifies regarding potential violations of the Act from discharge, discrimination, or retaliation.¹⁸⁵

2007 legislation. A bill to enact a new Kentucky False Claims Act, HB 477, was introduced in February 2007, but died in committee. Kentucky's 2007 regular legislative session adjourned on March 30, 2007. The Kentucky Legislature will reconvene on January 15, 2008.

¶20,378S Louisiana

General. Louisiana's law prohibiting false or fraudulent Medicaid claims is located within the state's general health care fraud law, the Medical Assistance Programs Integrity Law (Louisiana Act).¹⁸⁶ The Louisiana Act was enacted to combat and prevent fraud and abuse committed by health-care providers participating in medical assistance programs and by other persons, and to negate the adverse effects such activities have on medical program integrity.¹⁸⁷ Any person who commits one of the following acts is in violation of the Louisiana Act:

- Knowingly presents, or causes to be presented, a false claim.
- Knowingly engages in misrepresentation to obtain, or attempt to obtain, payment from medical assistance program funds.
- Conspires to defraud, or attempt to defraud, the medical assistance programs through misrepresentation or by obtaining, or attempting to obtain, payment for a false or fraudulent claim.
- Knowingly submits a claim for goods, services, or supplies which were medically unnecessary or which were of substandard quality or quantity.¹⁸⁸

Damages. Any person found in violation of the Louisiana Act is liable for actual damages incurred by the medical assistance program, plus a civil fine in an amount not to exceed \$10,000 per violation.¹⁸⁹ In addition to the actual damages and civil fine imposed by the Louisiana Act, civil monetary penalties may be imposed on the violator equal to (1) up to \$10,000 for each false or fraudulent claim, or (2) payment of interest on the amount of the civil fine imposed pursuant to the Louisiana Act from the date the damage occurred to the date of repayment.¹⁹⁰

Who may bring an action. The Secretary and the Louisiana Attorney General are authorized to bring civil action for violation of the Louisiana Act.¹⁹¹ The Louisiana Act also allows a private person (*qui tam* plaintiff) to bring an action for violation of the Louisiana Act on his or her own behalf and on behalf of the medical assistance program.¹⁹² The *qui tam* plaintiff must be an original source of the information which provides the basis for the alleged vio-

¹⁸³ Ky. Rev. Stat. Ann. § 205.8469 (West 2007).

¹⁸⁴ Ky. Rev. Stat. Ann. § 205.8467(1) (West 2007).

¹⁸⁵ Ky. Rev. Stat. Ann. § 205.8465 (West 2007).

¹⁸⁶ Louisiana's healthcare anti-fraud law, the Medical Assistance Programs Integrity Law, is codified at La. Rev. Stat. Ann. § 46:437.1 - 440.3 (2007). Among other things, this law prohibits false or fraudulent Medicaid claims.

¹⁸⁷ La. Rev. Stat. Ann. § 46:437.2 (2007).

¹⁸⁸ La. Rev. Stat. Ann. § 46:438.3 (2007). "Knowing" or "knowingly" is defined as having actual knowledge of the information

or acting in deliberate ignorance or reckless disregard of the truth or falsity of the information. La. Rev. Stat. Ann. § 46:437.3 (12) (2007).

¹⁸⁹ La. Rev. Stat. Ann. § 46:438.6 (A) - (B) (2007). Actual damages equal the difference between what the medical assistance program paid, or would have paid, and the amount that should have been paid had a violation not occurred, plus interest from the date the damage occurred to the date of repayment. *Id.*

¹⁹⁰ La. Rev. Stat. Ann. § 46:438.6 (C) (2007).

¹⁹¹ La. Rev. Stat. Ann. § 46:438.2 (2007).

¹⁹² La. Rev. Stat. Ann. § 46:439.1 (A) (2007).

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lation.¹⁹³ The *qui tam* complaint will remain under seal for at least 90 days, and a copy will be served on the Secretary of Louisiana Attorney General along with written disclosure of all known material evidence and information.¹⁹⁴

Before the expiration of the 90-day seal period (subject to extensions granted pursuant to §46:439.2 (4)), the Secretary of Louisiana Attorney General may elect to intervene and conduct the action on behalf of the state.¹⁹⁵ If the state chooses not to proceed with the action, the *qui tam* plaintiff has a right to conduct a *qui tam* action.¹⁹⁶

Qui tam awards. If the Secretary or the Louisiana Attorney General intervenes in the action brought by a *qui tam* plaintiff, the *qui tam* plaintiff is entitled to receive between 10% and 20% of the recovery, excluding of the civil monetary penalty provided in §46:439.6(C). In determining the amount of the *qui tam* award, the court will consider the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action. However, if the court finds the allegations in the *qui tam* action to be based primarily on disclosures of specific information other than information provided by the *qui tam* plaintiff, the court may award less than 10% of recovery, exclusive of the civil monetary penalty provided in §46:438.6(C).¹⁹⁷ If the Secretary or the Louisiana Attorney General chooses not to intervene in the action, the *qui tam* plaintiff shall receive an amount which the court decides is reasonable, not to exceed 30% of recovery.¹⁹⁸ If the *qui tam* plaintiff prevails in the action, he or she will also be entitled to an award against the defendant for reasonable costs, expenses, fees, and attorney fees.¹⁹⁹

Statute of Limitations; burden of proof. A civil action brought under the Louisiana Act may not be brought more than 10 years after the date upon which the alleged violation occurred.²⁰⁰ Any viola-

tions of the Louisiana Act must be proved by a preponderance of the evidence.²⁰¹

Whistleblower protection. The Louisiana Act forbids employers from retaliating or discriminating against employees who bring actions pursuant to the Louisiana Act, unless the court finds that the *qui tam* plaintiff employee instituted an action that is frivolous, vexatious, or harassing.²⁰²

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the Louisiana Act does not meet the requirements of §6031(b) of the DRA.²⁰³ The OIG stated that the Louisiana Act does not meet the requirements of the DRA because it is not at least as effective in rewarding *qui tam* actions for false or fraudulent claims as the Federal FCA. Specifically, the OIG noted that:

- unlike the Federal FCA, which permits a *qui tam* plaintiff to recover between 15% and 25% of the recovery if the government intervenes, the Louisiana Act only allows a *qui tam* plaintiff to recover between 10% and 20% of the recovery in cases where the state intervenes, and
- unlike the Federal FCA, which sets a minimum civil penalty of \$5,000, the Louisiana Act does not set a minimum civil penalty, but instead only authorizes civil penalties up to \$10,000 for each false claim.²⁰⁴

¶20,378T Maine

General. Any person, firm, association, partnership, corporation, or other legal entity who commits any of the following acts is in violation of the Maine false claims act (Maine Act):²⁰⁵

- Makes or causes to be made or presents or causes to be presented for payment or approval any claim upon or against the department or upon any funds administered by the depart-

¹⁹³ La. Rev. Stat. Ann. §46:439.1 (B) (2007). "Original source" is defined as a person who has direct and independent knowledge of the alleged violation. *Id.*

¹⁹⁴ La. Rev. Stat. Ann. §46:439.2 (2007).

¹⁹⁵ La. Rev. Stat. Ann. §46:439.2 (B) (2007).

¹⁹⁶ *Id.*

¹⁹⁷ La. Rev. Stat. Ann. §46:439.4 (A) (2007).

¹⁹⁸ La. Rev. Stat. Ann. §46:439.4 (B) (2007).

¹⁹⁹ La. Rev. Stat. Ann. §46:439.4 (C) (2007).

²⁰⁰ La. Rev. Stat. Ann. §46:438.3 (G) (2007).

²⁰¹ La. Rev. Stat. Ann. §§46:439.2 & 46:439.1 (C) (2007).

²⁰² La. Rev. Stat. Ann. §46:439.1 (G) (2007).

²⁰³ <http://oig.hhs.gov/fraud/falseclaimsact.html>.

²⁰⁴ *Id.*

²⁰⁵ Maine's false claims act is codified at Me. Rev. Stat. Ann. tit. 22, §15 (2006).

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ment, knowing such claim to be false, fictitious, or fraudulent.

- Makes any false written statement or submits a false document that the person does not believe to be true for the purpose of obtaining or aiding another to obtain the payment or approval of such a claim.
- Enters into any agreement, combination, or conspiracy to defraud the department by obtaining the payment or approval of any false, fictitious, or fraudulent claim.²⁰⁶

Damages. Violators of the Maine Act are subject to recovery of civil penalties including: (1) restitution for all excess benefits or payments made plus interest, (2) civil penalties in the amount of three times the amount of such excess benefits or payments but not less than \$2,000 for each false claim or for each document submitted in support of such false claim, whichever is greater, (3) costs, and (4) attorneys' fees.²⁰⁷

Who may bring an action. The Attorney General is responsible for bringing criminal and civil actions against violators of the Maine Act.²⁰⁸ The Maine Act does not provide for *qui tam* actions.

Qui tam awards. The Maine Act does not provide for *qui tam* actions.

Statute of Limitations; burden of proof. The Maine Act does not specify any statute of limitations or burden of proof for actions brought under the Act.

Whistleblower protection. The Maine Act does not specifically provide protection to whistleblowers.²⁰⁹

2007 legislation. A bill to amend and expand the Maine False Claims Act, LD 1187, was introduced in the 2007 regular legislative session, but died in the Senate on May 8, 2007. The Maine Legislature adjourned on June 20, 2007.

²⁰⁶ Me. Rev. Stat. Ann. tit. 22, § 15 (2006).

²⁰⁷ Me. Rev. Stat. Ann. tit. 22, § 15 (2006).

²⁰⁸ Me. Rev. Stat. Ann. tit. 22, § 13 (2006).

²⁰⁹ Maine does have a separate whistleblower protection statute to generally protect public employees who disclose information regarding potential violations of the law against retaliation. Me. Rev. Stat. Ann. tit. 26, § 831, et. seq. (2006).

¶ 20,378U Maryland

General. A bill to enact a Maryland False Claims Act, SB 317, was introduced during the 2002 Regular Session but died in the House. Maryland's 2007 regular legislative session adjourned on April 9, 2007. The Maryland Legislature will reconvene on January 9, 2008.²¹⁰

¶ 20,378V Massachusetts

General. Any person who commits one of the following acts is in violation of the Massachusetts false claims law (Massachusetts Act):²¹¹

- 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 to obtain payment or approval of a claim by the state or any political subdivision thereof.
- Conspires to defraud the state or any political subdivision thereof through the allowance or payment of a fraudulent claim.
- Has possession, custody, or control of property or money used, or to be used, by the state or any political subdivision thereof and knowingly delivers, or causes to be delivered to the state, less property than the amount for which the person receives a certificate or receipt with the intent to willfully conceal the property.
- Is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or any political subdivision thereof and with the intent of defrauding the state or any political subdivision thereof, makes or delivers the receipt without completely knowing that the information on the receipt is true.
- Buys, or receives as a pledge of an obligation or debt, public property from an officer or em-

²¹⁰ Note that Maryland does have a whistleblower protection statute to specifically protect employees who notify the state of potential Medicaid fraud. Md. Code Ann., Health-Gen. § 2-501, et. seq. (LexisNexis 2007).

²¹¹ The Massachusetts law prohibiting false or fraudulent Medicaid claims is codified at Mass. Gen. Laws ch. 12, § 5A (2007).

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ployee of the state or any political subdivision thereof, knowing that said officer or employee may not lawfully sell or pledge the property.

- Enters into an agreement, contract, or understanding with one or more officials of the commonwealth or any political subdivision thereof knowing the information contained therein is false.
- 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 to transmit money or property to the state or political subdivision thereof.
- Is a beneficiary of an inadvertent submission of a false claim to the state or political subdivision thereof, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or political subdivision within a reasonable time after discovery of the false claim.²¹²

Damages. Any person found in violation of the Massachusetts Act is liable to the state or political subdivision for a civil penalty of no less than \$5,000 and no more than \$10,000 for each act constituting a violation. Any person found to violate the Massachusetts Act is also liable for three times the amount of damages sustained by the state or political subdivision because of the violation, plus the expenses incurred in bringing the civil action to recover any such penalty or damages, including reasonable attorneys' fees and the cost of investigation.²¹³ If the court finds certain mitigating factors demonstrating cooperation by the person who committed the violation, the court may reduce damages to the amount of damages, including consequential damages, sustained by the state or political subdivision.²¹⁴

Who may bring an action. The Massachusetts Attorney General is required to investigate viola-

tions of the Massachusetts Act and may bring actions in superior court against persons found in violation of the Massachusetts Act.²¹⁵ A private individual (*qui tam* plaintiff) may also bring a civil action in superior court for a violation of the Massachusetts Act. The *qui tam* plaintiff's complaint will remain under seal for at least 120 days, and a copy will be served on the Massachusetts Attorney General along with written disclosure describing all relevant material evidence and information.²¹⁶

Before the expiration of the 120-day seal period (subject to extensions granted pursuant to § 5(C) (3)), the Massachusetts Attorney General must (1) assume control of the action, or (2) notify the court that it declines to conduct the action.²¹⁷ If the Massachusetts Attorney General chooses not to proceed with the action, the private person has a right to conduct a *qui tam* action.²¹⁸ A court will not have jurisdiction over any action that is based upon information from the news media or public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or inspector general's report, hearing, audit, or investigation, unless the action is brought by the Massachusetts Attorney General or the person bringing the action is an original source of the information.²¹⁹

***Qui tam* awards.** If the Massachusetts Attorney General proceeds with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff is entitled to receive between 15% and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action.²²⁰ The court may reduce the *qui tam* plaintiff's award to no more than 10% of the proceeds if it finds that the action was primarily based on information arising from the news media or from a government hear-

²¹² Mass. Gen. Laws ch. 12, § 5B (2007). "Knowing and knowingly" is defined as possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. Mass. Gen. Laws ch. 12, § 5A (2007).

²¹³ Mass. Gen. Laws ch. 12, § 5B (9) (2007).

²¹⁴ Mass. Gen. Laws ch. 12, § 5B (10) (2007).

²¹⁵ Mass. Gen. Laws ch. 12, § 5C (1) (2007).

²¹⁶ Mass. Gen. Laws ch. 12, § 5C (2) - (3) (2007).

²¹⁷ Mass. Gen. Laws ch. 12, § 5C (3) (2007).

²¹⁸ Mass. Gen. Laws ch. 12, § 5D (6) (2007).

²¹⁹ Mass. Gen. Laws ch. 12, § 5G (3) (2007). "Original source" is defined as an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the Attorney General, without public disclosure, before filing an action under the Massachusetts Act which is based on such information. Mass. Gen. Laws ch. 12, § 5A (2007).

²²⁰ Mass. Gen. Laws ch. 12, § 5F (1) (2007).

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ing.²²¹ If the Massachusetts Attorney General chooses not proceed with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff bringing the action or settling the claim is entitled to receive between 25% and 30% of the proceeds of the action or settlement plus reasonable expenses and attorneys' fees and costs. All such expenses, fees, and costs are to be awarded against the defendant.²²²

Whether or not the Massachusetts Attorney General proceeds with the action, if the court finds that *qui tam* plaintiff planned and initiated the violation of the Massachusetts Act, the court may reduce or eliminate the *qui tam* plaintiff's share of proceeds.²²³

Statute of Limitations; burden of proof. A civil action filed under the Massachusetts Act may not be filed more than six years after the date on which the violation is committed, 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 state official charged with the responsibility to act, or, in any event, no more than ten years after the date on which the violation is committed, whichever occurs last.²²⁴ Whoever brings the action under the Massachusetts Act is required to prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.²²⁵

Whistleblower protection. The Massachusetts Act forbids employers from adopting, creating, or enforcing any regulation or policy that would prevent an employee from disclosing a violation of the Massachusetts Act or from acting in furtherance of the Massachusetts Act.²²⁶ The Massachusetts Act also provides protection against retaliation from employ-

ers for employees acting in furtherance of actions filed pursuant to the Massachusetts Act.²²⁷

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the Massachusetts Act meets the requirements of §6031(b) of the DRA.²²⁸

¶20,378W Michigan

General. Michigan enacted a Medicaid false claims act statute, the Michigan Medicaid False Claim Act (Michigan Act), in July of 1977. A bill containing provisions for *qui tam* actions and whistleblower protection was introduced in 2005 and passed on December 6, 2005. These *qui tam* and whistleblower protection provisions became effective January 3, 2006. A person who commits one of the following acts is in violation of the Michigan Act:²²⁹

- Knowingly²³⁰ makes or causes to be made a false²³¹ statement or false representation of a material fact in an application for Medicaid benefits²³².
- Knowingly makes or causes to be made a false statement or false representation of a material fact for use in determining rights to a Medicaid benefit.
- Having knowledge of the occurrence of an event affecting his initial or continued right to receive a Medicaid benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a benefit,²³³ conceals or fails to disclose that event with intent to obtain a benefit to which the person or any other person is not entitled or in an amount

²²¹ Mass. Gen. Laws ch. 12, § 5F (2) (2007).

²²² Mass. Gen. Laws ch. 12, § 5F (4) (2007).

²²³ Mass. Gen. Laws ch. 12, § 5F (5) (2007).

²²⁴ Mass. Gen. Laws ch. 12, § 5K (1) (2007).

²²⁵ Mass. Gen. Laws ch. 12, § 5L (2007).

²²⁶ Mass. Gen. Laws ch. 12, § 5J(1) (2007).

²²⁷ Mass. Gen. Laws ch. 12, § 5J(2) (2007).

²²⁸ <http://oig.hhs.gov/fraud/falseclaimsact.html>.

²²⁹ The Michigan Medicaid False Claims Act is codified at Mich. Comp. Laws §§ 400.601-400.613 (2007).

²³⁰ "Knowingly" means that a person is in possession of facts under which he or she is aware or should be aware of the

nature of his or her conduct and that his or her conduct is substantially certain to cause the payment of a Medicaid benefit. "Knowingly" does not include conduct which is an error or mistake unless the person's course of conduct indicates a systematic or persistent tendency to cause inaccuracies to be present. Mich. Comp. Laws § 400.602(f) (2007).

²³¹ "False" is defined as wholly or partially untrue or deceptive. Mich. Comp. Laws § 400.602(d) (2007).

²³² "Medicaid benefit" means a benefit paid or payable under a program for medical assistance for the medically indigent under the social welfare act. Mich. Comp. Laws § 400.602(g) (2007).

²³³ "Benefit" means the receipt of money, goods, or anything of pecuniary value. Mich. Comp. Laws § 400.602(a) (2007).

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greater than that to which the person or any other person is entitled.²³⁴

- Solicits, offers, or receives a kickback or bribe in connection with the furnishing of goods or services for which payment is or may be made in whole or in part pursuant to a program established under the social welfare act, or making or receiving the payment, or receiving a rebate of a fee or charge for referring an individual to another person for the furnishing of the goods and services.²³⁵
- Knowingly and willfully makes, or induces or seeks to induce the making of, a false statement or false representation of material fact with respect to the conditions or operation of an institution or facility in order for that institution or facility to qualify, upon initial certification or upon recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.²³⁶
- Enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false claim under the social welfare act.²³⁷
- Makes or presents or causes to be made or presented to an employee or officer of this state a claim under the social welfare act knowing the claim to be false.²³⁸
- Makes or presents or causes to be made or presented a claim under the social welfare act which the person knows falsely represents that the goods or services were medically necessary in accordance with professionally accepted standards.²³⁹

Damages. In addition to criminal penalties, a person shall forfeit and pay to the state a civil pen-

alty equal to the full amount of the benefit received plus triple the amount of damages suffered by the state as a result of the conduct by the person. A criminal action need not be brought against the person for the person to be civilly liable under the Michigan Act.²⁴⁰

Who may bring an action. Under the Michigan Act, the Attorney General or assistant Attorney General may conduct an investigation of an alleged violation of this act.²⁴¹

Any person may bring a civil action in the name of this state under the Michigan Act to recover losses that this state suffers from a violation of this act.²⁴² The complaint shall remain under seal until after the Attorney General's election to intervene expires.²⁴³ Within 90 days (plus any extensions requested by the Attorney General and granted by the court) after service of the complaint, the Attorney General shall notify the court and the *qui tam* plaintiff that the Attorney General will either (a) proceed with the action for the state and have primary responsibility for proceeding with the action or (b) decline to take over the action and the *qui tam* plaintiff has the right to proceed with the action.²⁴⁴ The court may permit the Attorney General to intervene in the action at any time upon a showing of good cause and with affecting the rights or status of the *qui tam* plaintiff.²⁴⁵

A person other than the Attorney General shall not bring an action under this section that is based on allegations or transactions that are already the subject of a civil suit, a criminal investigation or prosecution, or an administrative investigation or proceeding to which this state or the federal government is already a party.²⁴⁶

Unless the person is the original source²⁴⁷ of the information, a person, other than the Attorney General, shall not initiate an action under this section

²³⁴ Mich. Comp. Laws § 400.603(1) to (3) (2007).

²³⁵ Mich. Comp. Laws § 400.604 (2007).

²³⁶ Mich. Comp. Laws § 400.605 (2007).

²³⁷ Mich. Comp. Laws § 400.606 (2007).

²³⁸ Mich. Comp. Laws § 400.607(1) (2007).

²³⁹ Mich. Comp. Laws § 400.607(2) (2007).

²⁴⁰ Mich. Comp. Laws § 400.612 (2007).

²⁴¹ Mich. Comp. Laws § 400.610(1) (2007).

²⁴² Mich. Comp. Laws § 400.610a(1) (2007).

²⁴³ Mich. Comp. Laws § 400.610a(2) (2007).

²⁴⁴ Mich. Comp. Laws § 400.610a(3) (2007).

²⁴⁵ Mich. Comp. Laws § 400.610a(6) (2007).

²⁴⁶ Mich. Comp. Laws § 400.610a(12) (2007).

²⁴⁷ The person is the "original source" if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the Attorney General before filing an action based on that information under this section. Mich. Comp. Laws § 400.610a(13) (2007).

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based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a state or federal legislative, investigative, or administrative report, hearing, audit, or investigation, or from the news media.²⁴⁸

Qui tam awards. If the *qui tam* plaintiff prevails, the court shall award the person necessary expenses, costs, reasonable attorney fees, and, based on the amount of effort involved, 15% to 25% of the monetary proceeds resulting from the action of any settlement of the claim if the Attorney General intervenes. If the Attorney General does not intervene, the court shall award 25% to 30% of the monetary proceeds in addition to the necessary expenses, costs, and reasonable attorney fees.²⁴⁹ The necessary expenses, reasonable attorneys' fees, and costs are payable solely from the proceeds of the action or settlement.²⁵⁰

Where the court finds the action to be based primarily on disclosures of certain specific information, other than information provided by the *qui tam* plaintiff, the court shall award the *qui tam* plaintiff no more than 10% of the monetary recovery in addition to reasonable attorney fees, necessary expenses, and costs.²⁵¹ If the court finds that the person bringing an action under this section planned, initiated, or participated in the conduct upon which the action is brought, the court may reduce or eliminate, as it considers appropriate, the share of the proceeds of the action that the *qui tam* plaintiff would otherwise be entitled to receive.²⁵² A person who is convicted of criminal conduct arising from a violation of this act shall not initiate, nor remain a party to an action brought under this section, nor share in the monetary proceeds resulting from the action or settlement.²⁵³

Statute of Limitations; burden of proof. The Michigan Act does not specify any statute of limitations or burden of proof for actions brought under the Act.

Whistleblower protection. The Michigan Act provides protection against retaliation from employers for employees who initiate, assist in, or participate in an investigation under this act. This prohibition does not apply to an employment action against an employee who the courts finds brought a frivolous claim, or who planned, initiated, or participated in the conduct upon which the action is brought, or who is convicted of criminal conduct arising from violation of this act.²⁵⁴

Office of Inspector General review. The Michigan Act was reviewed by the OIG on December 21, 2006. According to a letter published on its web site, the OIG determined that the Michigan Act did not meet the requirements of § 6031(b) of the DRA.²⁵⁵

¶ 20,378X Minnesota

General. A bill for an act establishing a Minnesota False Claims Act, S.F. No. 540, and companion legislation, H. F. No. 483, were introduced in February 2007, but died in committee. Minnesota's 2007 regular legislative session concluded on May 21, 2007. The Legislature will reconvene on February 12, 2008.

¶ 20,378Y Mississippi

General. A person who commits any of the following acts is in violation of the Mississippi Medicaid Fraud Control Act (Mississippi Act):²⁵⁶

- Knowingly makes or causes to be made a false representation of material fact in an application for Medicaid benefits.²⁵⁷
- Knowingly makes or causes to be made a false statement of a material fact for use in determining rights to a Medicaid benefit.²⁵⁸
- Knows of the occurrence of an event affecting his initial or continued right to receive a Medicaid benefit, and conceals or fails to disclose that event with intent to obtain a Medicaid benefit to

²⁴⁸ Mich. Comp. Laws § 400.610a(13) (2007).

²⁴⁹ Mich. Comp. Laws § 400.610a(9) (2007).

²⁵⁰ Mich. Comp. Laws § 400.610a(14) (2007).

²⁵¹ Mich. Comp. Laws § 400.610a(10) (2007).

²⁵² Mich. Comp. Laws § 400.610a(11) (2007).

²⁵³ Mich. Comp. Laws § 400.610a(11) (2007).

²⁵⁴ Mich. Comp. Laws § 400.610c (2007).

²⁵⁵ See <http://oig.hhs.gov/fraud/falseclaimsact.html>.

²⁵⁶ The provisions of the Mississippi Medicaid Fraud Control Act are codified at Miss. Rev. Stat. § 43-13-201, *et. seq.*

²⁵⁷ Miss. Code Ann. § 43-13-205(1) (2007). "Knowingly" means that the person is aware of the nature of his conduct and that such conduct is substantially certain to cause the intended result. Miss. Code Ann. § 43-13-203(c) (2007).

²⁵⁸ Miss. Code Ann. § 43-13-205(2) (2007).

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which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.²⁵⁹

- Solicits, offers, or receives a kickback or bribe in the furnishing of goods or services for which payment is or may be made pursuant to the Medicaid program, or makes or receives any such payment, or receives a rebate of a fee or charge for referring an individual to another person for the furnishing of such goods or services.²⁶⁰
- Knowingly and willfully makes, or induces or seeks to induce, the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order that the institution or facility may qualify, upon initial certification or upon recertification, to receive Medicaid benefits as a hospital, skilled nursing facility, intermediate care facility, or home health agency.²⁶¹
- Enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for Medicaid benefits.²⁶²
- Makes, presents, or causes to be made a claim for Medicaid benefits, knowing the claim to be false, fictitious, or fraudulent.²⁶³

Damages. In addition to criminal sanctions not summarized here, any person who violates the Mississippi Act is liable for a civil penalty equal to the full amount received, plus an additional civil penalty equal to triple the full amount received.²⁶⁴

Who may bring an action. An action under the Mississippi Act may be brought by the Attorney General. The Attorney General may conduct an in-

vestigation or prosecution of any case involving alleged violations of the Mississippi Act.²⁶⁵ The Mississippi Act does not provide for an action by a *qui tam* plaintiff.

Qui tam awards. The Mississippi Act does not provide for an action by a *qui tam* plaintiff.

Whistleblower protection. The Mississippi Act does not provide for whistleblower protection.

2007 legislation. Two bills proposing to establish a false claims act, HB 112 and HB 230, were introduced during the 2007 legislative session. Both bills died in committee in the House. The Mississippi 2007 regular legislative session adjourned on March 30, 2007. The Legislature will reconvene in January 2008.²⁶⁶

¶ 20,378Z Missouri

General. (1) No health care provider shall knowingly make or cause to be made a false statement or false representation of material fact in order to receive a health care payment, including but not limited to:²⁶⁷

- Knowingly presenting to a health care payer a claim for health care payment that falsely represents that the health care for which the health care payment is claimed was medically necessary, if in fact it was not.
- Knowingly concealing the occurrence of any event affecting an initial or continued right under a medical assistance program to have a health care payment made by a health care payer for providing health care.
- Knowingly concealing or failing to disclose any information with the intent to obtain a health care payment to which the health care provider or any other health care provider is not entitled, or to obtain a health care payment in an amount

²⁵⁹ Miss. Code Ann. § 43-13-205(3) (2007).

²⁶⁰ Miss. Code Ann. § 43-13-207 (2007).

²⁶¹ Miss. Code Ann. § 43-13-209 (2007).

²⁶² Miss. Code Ann. § 43-13-211 (2007).

²⁶³ Miss. Code Ann. § 43-13-213 (2007).

²⁶⁴ Miss. Code Ann. § 43-13-225 (2007).

²⁶⁵ Miss. Code Ann. § 43-13-221 (2007).

²⁶⁶ HB 112, 2007 Reg. Sess. (Miss. 2007); HB 230, 2007 Reg. Sess. (Miss. 2007).

²⁶⁷ The Missouri statutes related to Medicaid fraud enforcement are codified at Missouri Revised Statutes § 191.900, *et. seq.* On April 11, 2007, the Missouri General Assembly passed Senate Bill 577, the Missouri Health Care Improvement Act of 2007, which, among other things, increases penalties for Medicaid fraud, provides whistleblower protections, and provides incentives for people to come forward with information about Medicaid fraud. The Governor signed Senate Bill 577 into law on July 2, 2007.

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greater than that which the health care provider or any other health care provider is entitled.

- Knowingly presenting a claim to a health care payer that falsely indicates that any particular health care was provided to a person or persons, if in fact health care of lesser value than that described in the claim was provided.²⁶⁸

(2) No person shall knowingly solicit or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind in return for:

- Referring another person to a health care provider for the furnishing or arranging for the furnishing of any health care; or
- Purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any health care.²⁶⁹

(3) No person shall knowingly offer or pay any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in kind, to any person to induce such person to refer another person to a health care provider for the furnishing or arranging for the furnishing of any health care.²⁷⁰

Civil penalties. In addition to criminal penalties, any person who violates § 191.905 is liable for a civil penalty of not less than \$5,000 and not more than \$10,000 for each violation, plus three times the amount of the damages which the state and federal government sustained because of the act. Damages may be reduced to no less than two times the damages sustained by the state and no civil penalty if the court finds certain mitigating factors relating to cooperation by the person committing the violation.²⁷¹

Who may bring an action. The Attorney General may bring an action against any person who shall receive a health care payment as a result of a false statement or false representation of material fact made or caused to be made by that person.²⁷² Missouri law does not provide for actions brought by *qui tam* plaintiffs.

Damages. A person against whom a civil action is brought by the Attorney General is liable for up to double the amount of all payments received by that person based upon the false statement or false representation of material fact, and the reasonable costs attributable to the prosecution of the civil action. No civil action may be brought if civil penalties have previously been ordered against the same person for the same cause of action.²⁷³

Qui tam awards. Missouri law does not provide for actions by *qui tam* plaintiffs. It does, however, provide that any person who is the original source of the information used by the Attorney General to bring a civil action shall receive 10% of any recovery by the Attorney General. An "original source" is not entitled to any percentage of the recovery obtained if he or she planned, initiated, or participated in the conduct upon which the action is brought.²⁷⁴

Whistleblower protection. The Missouri law provides relief to 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. Such relief is not available to an employee who: (1) brought a frivolous or clearly vexatious claim; (2) planned, initiated, or participated in the conduct upon which the action is

²⁶⁸ Mo. Rev. Stat. § 191.905.1 (2007). "Health Care" is defined as "any service, assistance, care, product, device or thing provided pursuant to a medical assistance program, or for which payment is requested or received, in whole or part, pursuant to a medical assistance program. Mo. Rev. Stat. § 191.900(4) (2007).

"Health Care Payer" is defined as "a medical assistance program, or any person reviewing, adjusting, approving or otherwise handling claims for health care on behalf of or in connection with a medical assistance program. Mo. Rev. Stat. § 191.900(5) (2007).

"Knowingly" is defined as having "actual knowledge of the information," acting in "deliberate ignorance of the truth or falsity of information," or acting in "reckless disregard for the truth or falsity of the information." Mo. Rev. Stat. § 191.900(8) (2007).

²⁶⁹ Mo. Rev. Stat. § 191.905.2 (2007). The statute provides for specified exceptions that would not constitute a violation of this subsection. *See* Mo. Rev. Stat. § 191.905.4, 191.905.5 (2007).

²⁷⁰ Mo. Rev. Stat. § 191.905.3 (2007). The statute provides for specified exceptions that would not constitute a violation of this subsection. *See* Mo. Rev. Stat. § 191.905.4, 191.905.5 (2007).

²⁷¹ Mo. Rev. Stat. § 905.12 (2007).

²⁷² Mo. Rev. Stat. § 191.905.14 (2007).

²⁷³ *Id.*

²⁷⁴ Mo. Rev. Stat. § 191.907.1 (2007). "Original Source" means "information no part of which has been previously disclosed to or known by the government or public."

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brought; or (3) is convicted of criminal conduct in violation of the provisions discussed above.²⁷⁵

¶ 20,378AA Montana

General. Montana enacted a false claims act statute, the Montana False Claims Act (Montana Act), in April of 2005.²⁷⁶ A bill containing provisions that would have amended the penalties and *qui tam* awards in actions pertaining to Medicaid was introduced in 2006.²⁷⁷ The bill passed in April 26, 2007, but without the provisions related to false Medicaid claims.

A person causing damages in excess of \$500 to a governmental entity is liable under the Montana Act for any of the following acts:

- Knowingly presenting or causing to be presented to an officer or employee of the governmental entity a false claim for payment or approval.²⁷⁸
- Knowingly making, using, or causing to be made or used a false record or statement to get a false claim paid or approved by the governmental entity.
- Conspiring to defraud the governmental entity by getting a false claim allowed or paid by the governmental entity.
- Having possession, custody, or control of public property or money used or to be used by the governmental entity and knowingly delivering or causing to be delivered less property than the amount for which the person receives a certificate or receipt.
- Being authorized to make or deliver a document certifying receipt of property used or to be used by the governmental entity and knowingly making or delivering a receipt that falsely represents the property used or to be used.

- Knowingly buying, or receiving 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 making, using, or causing 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 governmental entity or its contractors.
- As a beneficiary of an inadvertent submission of a false claim to the governmental entity, subsequently discovering the falsity of the claim and failing to disclose the false claim to the governmental entity within a reasonable time after discovery of the false claim.²⁷⁹

Damages. The court shall assess not less than two times and not more than three times the amount of the damages that a governmental entity sustains for a violation of the Montana Act, along with costs and attorney fees. The court may also impose a civil penalty of up to \$10,000 for each act. The Montana Act does not provide a floor for its civil penalty provision. The court may not assess a civil penalty if the court finds certain mitigating factors relating to cooperation by the person committing the violation.²⁸⁰ The Montana Act makes liability joint and several for any act committed by two or more persons that violates the Montana Act.²⁸¹

Who may bring an action. Under the Montana Act, a government attorney may investigate an alleged violation of the Montana Act and file a civil action.²⁸² The Montana Act also allows for *qui tam* actions to be brought by private citizens.²⁸³

A complaint filed by a private citizen must be filed with the government attorney. Within 60 days (plus any extensions granted for good cause shown) after receiving a notice of the alleged violation and

²⁷⁵ Mo. Rev. Stat. § 191.908 (2007).

²⁷⁶ The Montana False Claims Act is codified at Mont. Code Ann. §§ 17-8-401-17-8-412 (2005).

²⁷⁷ HB No. 77.

²⁷⁸ "Governmental entity" is defined as (a) the state; (b) a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or (c) a unit of the Montana university system. Mont. Code Ann. § 17-8-402 (2005).

²⁷⁹ "Knowingly" is defined as having "actual knowledge", acting in "deliberate ignorance" of the truth or falsity of infor-

mation, or acting in "reckless disregard" for the truth or falsity of the information. Proof of specific intent to defraud is not required. Mont. Code Ann. §§ 17-8-402 (2005).

²⁸⁰ Mont. Code Ann. §§ 17-8-403(2) (2005).

²⁸¹ Mont. Code Ann. §§ 17-8-403(3) (2005).

²⁸² Mont. Code Ann. §§ 17-8-405 (2005); "Government attorney" is defined as the chief attorney for a governmental entity or the Attorney General with respect to the state, except a unit of the university system. Mont. Code Ann. § 17-8-402 (2005).

²⁸³ Mont. Code Ann. § 17-8-406 (2005).

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the complaint, the government attorney may elect to file a civil action. If the government attorney files a civil action, the private citizen may enter the action as a co-plaintiff. If the government attorney declines to file a civil action, the private citizen may file a civil action.²⁸⁴

Qui tam awards. If the action is filed by a governmental entity and the private citizen elected not to enter the action as a co-plaintiff, the private citizen is entitled to between 10% and 15% of any damages and civil penalty awarded the governmental entity in the settlement of judgment of the claim. If the action is filed by a private citizen either as plaintiff or as co-plaintiff, the private citizen is entitled to between 15% and 50% of the proceeds awarded the governmental entity.²⁸⁵

Statute of Limitations; burden of proof. A complaint or civil action filed under the Montana Act may not be filed more than three years after the date of discovery by the official of the governmental entity charged with the responsibility to act in the circumstances or, in any event, no more than 10 years after the date on which the violation is committed.²⁸⁶ Whoever brings an action under the Act — the governmental entity or *qui tam* plaintiff — must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.²⁸⁷

Whistleblower protection. The Montana Act forbids employers from adopting, creating, or enforcing any regulation or policy that would prevent an employee from disclosing information to a government or law enforcement agency related to a violation of the Act in furtherance of an investigation of the violation or action brought pursuant to the Act.²⁸⁸ The Montana Act also provides protection against retaliation from employers for employees who disclose information to a government or law

enforcement agency pertaining to a violation of the Act.²⁸⁹

¶ 20,378BB Nebraska

General. A person who commits any of the following acts is in violation of the Nebraska False Medicaid Claims Act (Nebraska Act):²⁹⁰

- Knowingly presents, or causes to be presented, to an officer or employee of the state, a false or fraudulent claim for payment or approval.²⁹¹
- Knowingly makes or uses, or causes to be made or used a false record or statement to obtain payment or approval by the state of a false or fraudulent claim.
- Conspires to defraud the state by obtaining payment or approval by the state of a false or fraudulent claim.
- Has possession, custody, or control of property or money used, or that will be used, by the state and, intending to defraud the state or willfully 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 such 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 claim to the state, and subsequently discovers and, knowing the claim is false, fails to report the claim to the department within 60 days of such discovery.²⁹²

²⁸⁴ Mont. Code Ann. §§ 17-8-406 (2005).

²⁸⁵ Mont. Code Ann. §§ 17-8-410 (2005).

²⁸⁶ Mont. Code Ann. §§ 17-8-404 (2005).

²⁸⁷ Mont. Code Ann. §§ 17-8-409 (2005).

²⁸⁸ Mont. Code Ann. §§ 17-8-412(1) (2005).

²⁸⁹ Mont. Code Ann. §§ 17-8-412(2) (2005).

²⁹⁰ The Nebraska False Medicaid Claims Act is codified at Neb. Rev. St. § 68-934, et. seq. (2007).

²⁹¹ “Knowingly” is defined as having “actual knowledge,” acting in “deliberate ignorance of the truth or falsity” of information, or acting in “reckless disregard of the truth or falsity” of information. Neb. Rev. St. § 68-935(4) (2007).

²⁹² The beneficiary is not obligated to report to the department if more than six years have passed since submission of the claim. Neb. Rev. St. § 68-937 (2007).

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- 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 a recipient knowing that such charge, solicitation, acceptance, or receipt is not legally payable.²⁹³
- Knowingly fails to maintain such records as are necessary to disclose fully the nature of all goods or services for which a claim was submitted or payment was received, or such records as necessary to disclose fully all income and expenditures upon which rates of payment were based, for a period of at least six years after the date on which payment was received, or knowingly destroys such records within six years from the date payment was received.²⁹⁴

Damages. Any person found to violate the Nebraska Act may be subject to damages in the amount of three times the amount of the false claim submitted to the state and is subject to a civil penalty of not more than \$10,000. Additionally, if the state is the prevailing party, the defendant shall pay the state's costs and attorney's fees for the civil action brought to recover penalties or damages.²⁹⁵ Damages may be reduced to no more than two times the amount of the false claim submitted if the defendant falls within certain exceptions (mitigating factors) and is also liable for the state's costs and attorneys' fees.²⁹⁶

A person who knowingly fails to maintain or destroys records within six years from the date payment of the claim was received shall be subject to damages in the amount of three times the amount of the claim submitted. Additionally, if the state is the prevailing party, the defendant shall pay the state's costs and attorneys' fees.²⁹⁷

Who may bring an action. In any case involving allegations of civil violations or criminal offenses under the Nebraska Act, the Attorney General may take full charge of any investigation or prosecution

of the case.²⁹⁸ The Nebraska Act does not provide for *qui tam* actions.

Qui tam awards. The Nebraska Act does not provide for *qui tam* actions.

Statute of Limitations; burden of proof. A civil action filed under the Nebraska Act must be brought within six years after the date the claim was 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. The state has the burden of proving all essential elements of the cause of action, including damages, by a preponderance of the evidence.²⁹⁹

Whistleblower protection. The Nebraska Act does not specifically provide protection to whistleblowers.³⁰⁰

¶ 20,378CC Nevada

General. Any person who commits one of the following acts is in violation of the Nevada law prohibiting false Medicaid claims (Nevada Act):³⁰¹

- Knowingly presents or causes to be presented a false claim for payment or approval.
- Knowingly makes or uses, or causes to be made or used a false record or statement to obtain payment or approval of a false claim.
- Conspires to defraud by obtaining allowance or payment of a false claim.
- Has possession, custody or control of public property or money and knowingly delivers or causes to be delivered to the state or a political subdivision less money or property than the amount for which he receives a receipt.
- Is authorized to prepare or deliver a receipt for money or property to be used by the state or a political subdivision and knowingly prepares or delivers a receipt that falsely represents the money or property.

²⁹³ Neb. Rev. St. § 68-938 (2007).

²⁹⁴ Neb. Rev. St. § 68-939 (2007).

²⁹⁵ Neb. Rev. St. § 86-936(2)-(3) (2007).

²⁹⁶ Neb. Rev. St. § 68-940 (2007).

²⁹⁷ Neb. Rev. St. § 68-939(2) (2007).

²⁹⁸ Neb. Rev. St. § 68-942 (2007).

²⁹⁹ Neb. Rev. St. § 68-941 (2007).

³⁰⁰ Nebraska has a separate whistleblower protection statute to generally protect public employees who disclose information regarding potential violations of the law against retaliation. Neb. Rev. St. § 81-2701, et. seq. (2007).

³⁰¹ The Nevada law prohibiting false Medicaid claims is codified at Nev. Rev. Stat. §§ 357.010 - 357.250 (2007). The law has no official title.

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- Knowingly buys, or receives as security for an obligation, public property from a person who is not authorized to sell or pledge the property.
- Knowingly makes or 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 or a political subdivision.
- Is a beneficiary of an inadvertent submission of a false claim and, after discovering the falsity of the claim, fails to disclose the falsity to the state or political subdivision within a reasonable time.³⁰²

Damages. A person who is found to have violated the Nevada Act is liable to the state or political subdivision (whichever is affected) for three times the amount of damages sustained by the state or political subdivision because of the violation. In addition, the violator is liable for a minimum civil penalty of not less than \$2,000 per claim and not more than \$10,000 per claim and for the costs of a civil action brought to recover a penalty or damages.³⁰³ The civil penalty can be eliminated and damages can be reduced to not less than two times the amount of damages that the state sustained because of the violation if the court finds certain mitigating factors relating to cooperation by the person who violated the Nevada Act.³⁰⁴

Who may bring an action. The Nevada Attorney General may investigate violations of the Nevada Act and bring civil actions against persons found to have violated the Nevada Act.³⁰⁵ The Nevada Act also allows for private plaintiffs to maintain actions for violations. The Nevada Act also allows a private person (*qui tam* plaintiff) to bring a civil action for a violation of the Nevada Act. The *qui tam* complaint will be placed under seal until the

Nevada Attorney General has decided whether to intervene, and a copy will be served on the Nevada Attorney General along with written disclosure of all known material evidence and information.³⁰⁶ A public employee may not maintain an action under the Nevada Act based on information discovered during his or her employment unless he or she first exhausted internal procedures for reporting and seeking recovery proceeds of the fraudulent activity through official channels and the employer failed to act on the information provided for at least six months.³⁰⁷

Before the expiration of 120 days after receiving the *qui tam* complaint (subject to extensions granted pursuant to § 357.110(1)), the Nevada Attorney General may elect to proceed with the action on behalf of the state. If the state chooses not to proceed with the action, the private person has a right to conduct a *qui tam* action.³⁰⁸ A court will not have jurisdiction over an action brought under the Nevada Act that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a report, hearing, audit, or investigation requested by the state legislature, an auditor or a governing body, or from the news media, unless the action is brought by the Nevada Attorney General or the person bringing the action is an original source of the information.³⁰⁹

Qui tam awards. If the Nevada Attorney General intervenes in an action brought under the Nevada Act, the *qui tam* plaintiff is entitled to receive not less than 15% or more than 33% of any recovery, taking into account the extent of his or her contribution to the conduct of the action. If the Nevada Attorney General does not intervene, the *qui tam* plaintiff may receive not less than 25% or more than 50% of any recovery, as the court determines reason-

³⁰² Nev. Rev. Stat. § 357.040 (1) (2007). “Knowingly” is defined as having knowledge of the information, acting in deliberate ignorance of whether the information is true or false or acting in reckless disregard of the truth or falsity of the information. Nev. Rev. Stat. § 357.040 (2) (2007). Specific intent to defraud is not required.

³⁰³ Nev. Rev. Stat. § 357.040 (1) (2007).

³⁰⁴ Nev. Rev. Stat. § 357.050 (2007).

³⁰⁵ Nev. Rev. Stat. § 357.070 (2007).

³⁰⁶ Nev. Rev. Stat. § 357.080 (2007).

³⁰⁷ Nev. Rev. Stat. § 357.090 (2007).

³⁰⁸ Nev. Rev. Stat. § 357.110 (2007) and Nev. Rev. Stat. § 357.130 (2007).

³⁰⁹ Nev. Rev. Stat. § 357.100 (2007). “Original source” is defined as a person who has direct and independent knowledge of the information on which the allegations were based, who voluntarily provided the information to the state or political subdivision before bringing an action based on the information, and whose information provided the basis or caused the making of the investigation, hearing, audit or report that led to the public disclosure.

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able.³¹⁰ If the *qui tam* plaintiff is a present or former employee of the state or political subdivision and financially benefited from the fraudulent activity, he or she is not entitled to any minimum percentage of recovery, but the court may award no more than 33% of the recovery if the Nevada Attorney General intervenes and no more than 50% of the recovery if the Nevada Attorney General does not intervene.³¹¹

Statute of Limitations; burden of proof. An action filed under the Nevada Act may not be filed more than five years after the date on which the violation is committed or more than three years after the date of discovery of the fraudulent activity by the Nevada Attorney General, whichever is earlier. The standard of proof for any action brought under the Nevada Act is a preponderance of the evidence.³¹²

Whistleblower protection. The Nevada Act forbids employers from adopting or enforcing any rule or policy that would prevent an employee from disclosing a violation of the Nevada Act to a law enforcement agency or to act in furtherance of the Nevada Act. The Nevada Act also provides protection against retaliation from employers for employees who act in furtherance of false claims actions filed pursuant to the Nevada Act.³¹³

Office of the Inspector General review. In a letter dated December 21, 2006, and published on its web site, the OIG determined that the Nevada Act does not meet the requirements of § 6031(b) of the DRA.³¹⁴ The OIG stated that the Nevada Law does not meet the requirements of the DRA because it is not at least as effective in rewarding *qui tam* actions for false or fraudulent claims as the Federal FCA. Specifically, the OIG noted that:

- The statute of limitations period in the Nevada Act is shorter than the Federal FCA statute of limitations period, and

- Unlike the Federal FCA, which sets a minimum civil penalty of \$5,000, the Nevada Act sets a minimum civil penalty of only \$2,000.³¹⁵

¶ 20,378DD New Hampshire

General. Any person who commits one of the following acts is in violation of the New Hampshire law prohibiting false and fraudulent Medicaid claims (New Hampshire Act).³¹⁶

- Knowingly presents or causes to be presented, to an officer or employee of the department, 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 department.
- Conspires to defraud the department by getting a false or fraudulent claim paid or approved by the department.
- Has possession, custody, or control of property or money used or to be used, or to be used, by the department and, intending to defraud the department 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.
- 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 department.
- Is a beneficiary of an inadvertent submission of a false claim to the department, who subsequently discovers the falsity of the claim, and fails to disclose the false claim to the department within a reasonable time after discovery of the false claim.³¹⁷

³¹⁰ Nev. Rev. Stat. § 357.210 (2007).

³¹¹ Nev. Rev. Stat. § 357.220 (2) (2007).

³¹² Nev. Rev. Stat. § 357.170 (2007).

³¹³ Nev. Rev. Stat. § 357.240 (2007).

³¹⁴ <http://oig.hhs.gov/fraud/falseclaimsact.html>.

³¹⁵ *Id.*

³¹⁶ The New Hampshire law prohibiting false and fraudulent Medicaid claims is codified at N.H. Rev. Stat. Ann. § 167:61-b, *et seq.* (2007). This law does not have an official title.

³¹⁷ N.H. Rev. Stat. Ann. § 167:61-b (I) (2007). “Knowingly” is defined as having actual knowledge of the information, acting in deliberate ignorance of the truth or falsity of the information, or acting in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required. N.H. Rev. Stat. Ann. § 167:61-b (V)(b) (2007)

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Damages. A person who violates the New Hampshire 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 because of the violator's actions.³¹⁸ The violator will also be liable for the cost of bringing the civil action, including attorneys' fees. The New Hampshire Act allows the civil penalty to be eliminated, and damages to be reduced to no less than two times the amount of damages sustained by the state, if the court finds certain mitigating factors demonstrating cooperation by the person who committed the violation.³¹⁹

Who may bring an action. The New Hampshire Act requires the New Hampshire Attorney General to investigate civil violations of the New Hampshire Act. If the New Hampshire Attorney General finds a violation of the New Hampshire Act, he or she may bring a civil action in superior court against the violator.³²⁰ The New Hampshire Act also allows a private person to bring a civil action for a violation of the New Hampshire Act in the name of the state. The complaint will be filed *in camera*, will remain under seal for at least 60 days, and a copy will be served on the state along with written disclosure of all known material evidence and information.³²¹

Before the expiration of the 60-day seal period (subject to extensions granted pursuant to § 167:61-c (II)(d)), the state must elect to either (1) proceed with the action on behalf of the state, or (2) notify the court that it declines to take over the action.³²² If the state chooses not to proceed with the action, the private person has a right to conduct a *qui tam* action. A court will not have jurisdiction over an action brought under the New Hampshire Act that is based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative or administrative report,

hearing, audit, or investigation, or from the news media, unless the action is brought by the New Hampshire Attorney General or the person bringing the action is an original source of the information.³²³

Qui tam awards. If the state proceeds with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff is entitled to receive between 15% and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action.³²⁴ The court may reduce the *qui tam* plaintiff's award to no more than 10% of the proceeds if it finds the action was primarily based on disclosures of specific information from the news media or relating to allegations or transactions in a criminal, civil, or administrative hearing.³²⁵ Also, if the court finds that person bringing the action or settling the claim planned and initiated the violation of the New Hampshire Act, the court may reduce the person's share of proceeds.³²⁶

If a defendant prevails in an action conducted by a *qui tam* plaintiff, and the court finds the *qui tam* plaintiff's claim was "frivolous, clearly vexatious, or primarily brought for purposes of harassment," the court may award the defendant reasonable attorneys' fees and expenses.

Statute of Limitations; burden of proof. An action filed under the New Hampshire Act may not be filed more than six years after the date on which the violation is committed, 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 office of the New Hampshire Attorney General who is responsible for addressing the false claim, or, in any event, no more than ten years after the date on which the violation is committed.³²⁷ The state is required to prove all the

³¹⁸ N.H. Rev. Stat. Ann. § 167:61-b (I) (2007).

³¹⁹ N.H. Rev. Stat. Ann. § 167:61-b (II) (2007).

³²⁰ N.H. Rev. Stat. Ann. § 167:61-c (I) (2007).

³²¹ N.H. Rev. Stat. Ann. § 167:61-c (II) (2007).

³²² N.H. Rev. Stat. Ann. § 167:61-c (II)(e) (2007).

³²³ N.H. Rev. Stat. Ann. § 167:61-e (III) (2007). "Original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action that is based on the information, and

whose information provided the basis or catalyst for the investigation, hearing, audit, or report that led to the public disclosure. N.H. Rev. Stat. Ann. § 167:61-b (V)(c) (2007).

³²⁴ N.H. Rev. Stat. Ann. § 167:61-e (I) (2007). Unlike other state false claims acts, the New Hampshire Act does not contain a section providing for an increased award to the *qui tam* plaintiff if the state chooses not to proceed with the action.

³²⁵ *Id.*

³²⁶ N.H. Rev. Stat. Ann. § 167:61-e (II) (2007).

³²⁷ N.H. Rev. Stat. Ann. § 167:61-b (VII) (2007).

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essential elements of the cause of action, including damages, by a preponderance of the evidence.³²⁸

Whistleblower protection. The New Hampshire Act provides protection for any employee who is retaliated against due to his or her lawful acts committed in furtherance of an action or investigation conducted under the New Hampshire Act.³²⁹

¶ 20,378EE New Jersey

General. Several bills to establish a New Jersey false claims act have been introduced. A2186 was introduced on January 30, 2006, S1829 was introduced on May 8, 2006, A3025 was introduced on May 15, 2006, and A3428 was introduced on July 4, 2006. None of the bills to establish a false claims act have been voted on by either the New Jersey House or Senate.³³⁰ The New Jersey legislative session began in January 2006 and will end on the second Tuesday of January 2008. If no action is taken on a pending bill prior to the end of the session, the bill will be considered “dead.”

¶ 20,378FF New Mexico

General. New Mexico enacted a Medicaid false claims act statute, the New Mexico Medicaid False Claim Act (New Mexico Act), on May 19, 2004.^{331, 332}

A person who commits one of the following acts is in violation of the New Mexico Act:

- Presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing that such claim is false or fraudulent.
- Presents, or causes to be presented, to the state a claim for payment under the Medicaid program knowing that the person receiving a Medicaid

benefit or payment is not authorized or is not eligible for a benefit under the Medicaid program.

- Makes, uses, or causes to be made or used a record or statement to obtain a false or fraudulent claim under the Medicaid program paid for or approved by the state knowing such record or statement is false.
- Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing that such claim is false or fraudulent.
- Makes, uses, or causes to be made or used a record or statement to conceal, avoid or decrease an obligation to pay or transmit money or property to the state, relative to the Medicaid program, knowing that such record or statement is false.
- Knowingly applies for and receives a benefit or payment on behalf of another person, except pursuant to a lawful assignment of benefits, under the Medicaid program and converts that benefit or payment to his own personal use.
- Knowingly makes a false statement or misrepresentation of material fact concerning the conditions or operation of a health care facility in order that the facility may qualify for certification or recertification required by the Medicaid program.
- Knowingly makes a claim under the Medicaid program for a service or product that was not provided.³³³

Damages. A person shall pay to the state a civil penalty equal to triple the amount of damages suf-

³²⁸ N.H. Rev. Stat. Ann. § 167:61-b (VI) (2007).

³²⁹ N.H. Rev. Stat. Ann. § 167:61-c (IV) (2007).

³³⁰ New Jersey recently passed the Medicaid Program Integrity and Protection Act, which establishes an Office of the Medicaid Inspector General. The Medicaid Program Integrity and Protection Act is codified at N.J. STAT. ANN. 30:4D-53, et. seq. The law became effective March 16, 2007. The Office will primarily be responsible for preventing fraud and abuse in the Medicaid system.

³³¹ The New Mexico Medicaid False Claims Act is codified at N.M. Stat. §§ 27-14-1 - 27-14-15 (2007).

³³² It is noteworthy that effective July 1, 2007, New Mexico enacted a statute, very similar to the New Mexico Medicaid

False Claims Act, entitled the New Mexico Fraud Against Taxpayers Act (New Mexico FATA Act). The main difference between the two statutes is that the New Mexico FATA Act is not exclusive to the Medicaid program like the New Mexico Act. The New Mexico FATA Act statute has not officially been placed within the New Mexico statutes. Currently, it is located at N.M. Stat. §§ 41-1-1 - 41-1-10 (2007). The New Mexico FATA Act provides (i) a private civil action on behalf of the state against a person who makes a false claim for payment by the state, (ii) for intervention by the Attorney General, (iii) *qui tam* awards, (iv) civil penalties, and (v) whistleblower protection. HB 770. The reader is advised to review this new statute in conjunction with the statute summarized herein.

³³³ N.M. Stat. § 27-14-4 (2007).

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ferred by the state as a result of the conduct by the person.³³⁴

Who may bring an action. Under the New Mexico Act, the department³³⁵ may conduct an investigation of an alleged violation of this act.³³⁶

Any affected person may bring a civil action in the name of the state, on behalf of the person bringing the suit or for the state.³³⁷ The complaint shall be served on the department and remain under seal for at least 60 days. The complaint shall not be served on the defendant until the expiration of 60 days or any extension approved by the court for good cause shown.³³⁸

Within 60 days after service of the complaint, the department shall conduct an investigation of the factual allegations and legal contentions made in the complaint, shall make a written determination of whether there is substantial evidence that a violation has occurred and shall provide the defendant with a copy of the determination. If the department determines that there is not substantial evidence that a violation occurred, the complaint shall be dismissed.³³⁹

Within 60 days after service of the complaint or any extensions obtained for good cause shown, the department shall (a) proceed with the action, in which case the action shall be conducted by the department or (b) notify the court and the *qui tam* plaintiff that it declines to take over the action, in which case the *qui tam* plaintiff has the right to proceed with the action if the department determined that there is substantial evidence that a violation occurred.³⁴⁰

The department shall notify the Attorney General prior to filing a civil action under the New Mexico Act and shall not proceed with the action

unless it has written approval from the Attorney General. The Attorney General has 20 days to notify the department of its determination. Failure by the Attorney General to notify the department within the specified 20 days shall be construed as consent to proceed.³⁴¹

If the department proceeds with the action, it shall have the exclusive responsibility for prosecuting the action and shall not be bound by the *qui tam* plaintiff. The *qui tam* plaintiff has the right to continue as a normal party to the action and shall not have the right to participate in the litigation except as a witness.³⁴²

The department may dismiss or settle the action notwithstanding the objections of the *qui tam* plaintiff.³⁴³

A court shall not have jurisdiction of an action brought under the New Mexico Act against a department official if the action is substantially based on evidence or information known to the department when the action was brought.³⁴⁴

A person shall not bring an action under this section that is substantially based on allegations or transactions that are the subject of a civil suit or an administrative proceeding in which the department is already a party.³⁴⁵

Unless the person is the original source³⁴⁶ of the information, a court shall not have jurisdiction over an action under the New Mexico Act substantially based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, or from the news media.³⁴⁷

Qui tam awards. If the department proceeds with an action, the court shall award the *qui tam* plaintiff 15% to 25% of the proceeds of the action or settlement of the claim, depending on the extent to

³³⁴ N.M. Stat. § 27-14-4 (2007).

³³⁵ "Department" means the human services department. N.M. Stat. § 27-14-3(B) (2007).

³³⁶ N.M. Stat. § 27-14-7 (2007).

³³⁷ N.M. Stat. § 27-14-7(B) (2007).

³³⁸ N.M. Stat. § 27-14-7(C) (2007).

³³⁹ N.M. Stat. § 27-14-7(C) (2007).

³⁴⁰ N.M. Stat. § 27-14-7(E) (2007).

³⁴¹ N.M. Stat. § 27-14-7(F) (2007).

³⁴² N.M. Stat. § 27-14-8(A) (2007).

³⁴³ N.M. Stat. § 27-14-8(B) and (C) (2007).

³⁴⁴ N.M. Stat. § 27-14-10(A) (2007).

³⁴⁵ N.M. Stat. § 27-14-10(B) (2007).

³⁴⁶ The person is the "original source" if he or she had independent knowledge, including knowledge based on the person's own investigation of the defendant's conduct, of the information on which the allegations are based and voluntarily provided or verified the information to the department before filing an action based on that information under this section. N.M. Stat. § 27-14-10(C) (2007).

³⁴⁷ N.M. Stat. § 27-14-10(C) (2007).

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which the *qui tam* plaintiff substantially contributed to the prosecution of the action. If the department does not proceed with an action, the *qui tam* plaintiff shall receive an amount that the court decides is reasonable. The amount shall be between 25% to 30% of the proceeds of the action or settlement. The *qui tam* plaintiff is also entitled to reasonable expenses, costs, and reasonable attorneys' fees necessarily incurred.³⁴⁸

Where the court finds the action to be based primarily on disclosures of certain specific information, other than information provided by the *qui tam* plaintiff, the court shall award the *qui tam* plaintiff no more than 10% of the proceeds of the action.³⁴⁹ If the court finds that the person bringing an action under this section planned and initiated the conduct upon which the action is brought, the court may reduce, as it considers appropriate, the share of the proceeds of the action that the *qui tam* plaintiff would otherwise be entitled to receive. A person who is convicted of criminal conduct arising from a violation of this act shall be dismissed from the civil action and may not share in the proceeds of the action.³⁵⁰

Statute of Limitations; burden of proof. A civil action shall be brought within 4 years.³⁵¹ The department or the *qui tam* plaintiff must establish each element of the action, including damages, by a preponderance of the evidence.³⁵²

Whistleblower protection. The New Mexico Act provides protection against retaliation from employers for employees who initiate, assist in, or participate in an investigation under this act. This prohibition does not apply to an employment action against an employee who the courts finds brought a frivolous claim, or who planned, initiated, or partici-

pated in the conduct upon which the action is brought, or who is convicted of criminal conduct arising from violation of this act.³⁵³

¶ 20,378GG New York

General. A person who commits any of the following acts is in violation of the New York False Claims Act (New York Act):³⁵⁴

- Knowingly³⁵⁵ presents, or causes to be presented, to any employee, officer or agent of the state or a local 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 to get a false or fraudulent claim paid or approved by the state or a local government³⁵⁶.
- Conspires to defraud the state or local government 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 or a local government and, intending to defraud the state or local government or willfully to conceal the property or money, delivers, or causes to be delivered, less property or money, 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 or local government and, intending to defraud the state or a local government, 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 of-

³⁴⁸ N.M. Stat. § 27-14-9(A) and (B) (2007).

³⁴⁹ N.M. Stat. § 27-14-9(A) (2007).

³⁵⁰ N.M. Stat. § 27-14-9(C) (2007).

³⁵¹ N.M. Stat. § 37-1-4 (2007).

³⁵² N.M. Stat. § 27-14-13(B) (2007).

³⁵³ N.M. Stat. § 27-14-12 (2007).

³⁵⁴ The New York False Claims Act is codified at N.Y. State Fin. § § 187 - 194. The Act was signed into law on April 16, 2007, but is deemed effective as of April 1, 2007.

³⁵⁵ "Knowingly" means that with respect to a claim, or information relating to a claim, a person (a) has actual knowledge of

such claim or information; (b) acts in deliberate ignorance of the truth or falsity of such claims or information; or (c) acts in reckless disregard of the truth or falsity of such claim or information. Proof of specific intent to defraud is not required, provided, however that acts occurring by mistake or as a result of mere negligence are not covered by this law. N.Y. State Fin. § 188.3 (2007).

³⁵⁶ "Local government" means any county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state. N.Y. State Fin. § 188.4 (2007).

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ficer or employee of the state or a local government knowing that the officer or employee lawfully may not sell or pledge the property.

- 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 or local government.³⁵⁷

Damages. Any person who violates the New York Act is liable to the state for three times the amount of damages which the state sustains because of that person's actions plus no less than \$6,000 or more than \$12,000.³⁵⁸ The person who commits the act is also liable to the local government for three times the amount of damages sustained by the local government because of the person's actions. Damages may be reduced to no less than two times the amount of damages sustained by the state because of the person's actions if the court finds certain mitigating factors relating to cooperation by the person committing the violation.³⁵⁹

Who may bring an action. An action may be brought by the state Attorney General. A local government may also investigate violations that may have resulted in damages to the local government and may bring a civil action on its own. The Attorney General must consult with the Medicaid Inspector General prior to filing any action related to the Medicaid program.³⁶⁰ The New York Act also allows for *qui tam* actions.³⁶¹

A complaint and written disclosure of material evidence and information filed by a *qui tam* plaintiff will be filed in the Supreme Court of New York, *in camera*, with a copy to the state. If the complaint alleges damages to the local government, the Attorney General may provide a copy of the complaint and written disclosure to the Attorney General for the local government, provided that, if the allegation in the complaint involves damages only to a city with a population of one million or more, or only the

state and such a city, the Attorney General will provide the complaint and written disclosure to the Corporation Counsel of the city within 30 days. The state may elect to supersede or intervene with the action or authorize the local government to do so, but if the complaint involves damages only to a city with a population of one million or more, the Attorney General may not supersede or intervene in such action without the consent of the Corporation Counsel of that city.³⁶² The complaint will remain under seal for 60 days. Before the expiration of 60 days (plus extensions granted under §190(2)(C)), the Attorney General must notify the court that he or she intends to file a complaint against the defendant, thereby converting the action from a *qui tam* civil action to a civil enforcement action.³⁶³ If the state notifies the court that it intends to file a complaint against the defendant and thereby substitute itself as the plaintiff, or to permit the local government to do so, the complaint must be filed within 30 days after the notification to the court.³⁶⁴ If the state notifies the court that it intends to intervene in the action, or to permit a local government to do so, the motion for intervention must be filed within 30 days of notification.³⁶⁵ If the state declines to bring an action or to authorize the local government to do so, the *qui tam* action may proceed subject to judicial review.³⁶⁶ The state and local government will not be bound by an act of the person bringing a *qui tam* action.³⁶⁷

***Qui tam* awards.** If the Attorney General elects to convert the *qui tam* civil action into an Attorney General enforcement action, or to permit a local government to convert the action into a civil enforcement action by such local government, or if the Attorney General or local government elects to intervene in the *qui tam* civil action, then the *qui tam* plaintiff will receive between 15% and 25% of the proceeds recovered in the action or in settlement of the action. Where the court finds that the action was based primarily on disclosures of specific information (other than information provided by the person

³⁵⁷ N.Y. State Fin. § 189(1)(A) - (G).

³⁵⁸ N.Y. State Fin. § 189(1)(G) (2007).

³⁵⁹ N.Y. State Fin. § 190(1) (2007).

³⁶⁰ N.Y. State Fin. § 190(1) (2007).

³⁶¹ N.Y. State Fin. § 190(2)(C) (2007).

³⁶² N.Y. State Fin. § 190(2)(B) (2007).

³⁶³ N.Y. State Fin. § 190(2)(C) (2007).

³⁶⁴ N.Y. State Fin. § 190(2)(D) (2007).

³⁶⁵ N.Y. State Fin. § 190(2)(E) (2007).

³⁶⁶ N.Y. State Fin. § 190(2)(F) (2007).

³⁶⁷ N.Y. State Fin. § 190(5)(B) (2007).

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bringing the action) relating to allegations or transactions in other proceedings, hearings, audits, investigations, or from the news media, the court may award such sum as it considers appropriate, but not more than 10% of the proceeds.³⁶⁸ If the Attorney General or local government does not elect to intervene or convert the action, and the action is successful, the *qui tam* plaintiff will receive between 25% and 35% of the proceeds recovered in the action or settlement.³⁶⁹ The court may award the Attorney General, on behalf of the people of the state, reasonable expenses incurred, plus reasonable attorneys' fees, plus costs if the state, local government, or *qui tam* civil action plaintiff prevails.³⁷⁰ The court may reduce the *qui tam* award if the action was brought in violation of the New York Act and the court may dismiss the *qui tam* plaintiff from the action if he or she is convicted of criminal conduct arising from his or her role in the violation of the Act.³⁷¹

Statute of Limitations; burden of proof. A civil action under the New York Act must be brought no later than six years after the date on which the violation is committed or 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 or local government charged with responsibility to act in the circumstance or, in any event, no more than ten years after the date on which the violation is committed.³⁷² Whoever brings a civil action under the New York Act must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.³⁷³

Whistleblower protection. The New York Act forbids employers from discharging, demoting, suspending, threatening, harassing, or in any manner discriminating against an employee in terms and conditions of employment because of lawful acts done by the employee on behalf of the employer in

furtherance of an action brought under the New York Act.³⁷⁴

¶ 20,378HH North Carolina

General. A person who commits any of the following acts is in violation of the North Carolina Medical Assistance Provider False Claims Act (North Carolina Act):³⁷⁵

- Knowingly presents, or causes to be presented, to the Medical Assistance Program 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 Medical Assistance Program.³⁷⁶

Legislation currently pending in the North Carolina General Assembly (House Bill 1473)³⁷⁷ would also make it unlawful to:

- (3) Conspire to defraud the Medical Assistance Program by getting a false or fraudulent claim allowed or paid.
- (4) Knowingly make, use, or cause 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 Medical Assistance Program.³⁷⁸

Damages. Under existing law, any person who violates the North Carolina Act is liable for: a civil penalty of not less than \$5,000 and not more than \$10,000 plus three times the amount of damages which the Medical Assistance Program sustained. A provider violating the Act is also liable for the cost of the civil action brought to recover any penalty or damages, interest, and the costs of the investigation.³⁷⁹ Damages may be reduced to not more than two times the amounts of all payments found to have been fraudulently received from the state if the

³⁶⁸ N.Y. State Fin. § 190(6)(A) (2007).

³⁶⁹ N.Y. State Fin. § 190(6)(B) (2007).

³⁷⁰ N.Y. State Fin. § 190(7) (2007).

³⁷¹ N.Y. State Fin. § 190(8) (2007).

³⁷² N.Y. State Fin. § 192(1) (2007).

³⁷³ N.Y. State Fin. § 192(2) (2007).

³⁷⁴ N.Y. State Fin. § 191(1) (2007).

³⁷⁵ The North Carolina Medical Assistance Provider False Claims Act codified at N.C.G.S. § 108A-7010, *et. seq*

³⁷⁶ "Knowingly" is defined as having actual knowledge of the information; acting in deliberate ignorance of the truth or falsity of the information, or (c) acting in reckless disregard to the truth or falsity of the information. Proof of specific intent to defraud is not required. N.C.G.S. § 108A-70.11(4).

³⁷⁷ HB 1473, 2006-2007 Leg. Sess. (N.C. 2007). At the time of publication, House Bill 1473, the House Appropriations Bill, had not been ratified by the General Assembly.

³⁷⁸ *Id.* at § 15.8(b).

³⁷⁹ N.C. Gen. Stat. § 108A-70.12(b) (2007).

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court finds certain mitigating factors relating to cooperation by the person committing the violation.³⁸⁰

House Bill 1473, if passed, would increase the damages for a violation of the Act to not less than \$5,500 and not more than \$11,000 plus three times the amount of all damages.³⁸¹

Who may bring an action. The existing law vests all authority to bring an action to enforce the North Carolina Act in the state Attorney General. The Attorney General has the authority to investigate, institute proceedings, compromise and settle any investigation or action and perform all duties in connection with any civil action to enforce the Act. The North Carolina Act does not provide for an action by a private plaintiff.³⁸²

Though the existing law does not provide for an action by a private plaintiff, House Bill 1473, if passed, would provide for an action by a *qui tam* plaintiff on behalf of the state. Under House Bill 1473, if the state elected to proceed with an action brought by a *qui tam* plaintiff, the *qui tam* plaintiff would be entitled to receive between 15% percent and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action. If the state chose not to proceed with an action brought by the *qui tam* plaintiff, the *qui tam* plaintiff would be entitled to an amount not less than 25% and not more than 30% of the proceeds of the action or settlement.³⁸³

Statute of Limitations; burden of proof. A civil action brought under the North Carolina Act may not be brought more than six years after the date of the violation, or 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 state, but in no event more than ten years after the date on which the violation is committed, whichever occurs

last. In any action brought under the North Carolina Act, the state shall be required to prove all essential elements of the cause of action, including damages, by the greater weight of the evidence.³⁸⁴

Whistleblower protection. In the absence of fraud or malice, no person who furnishes information to the state shall be liable for damages in a civil action for any oral or written statement made or any other action that is necessary to supply information acquired pursuant to the North Carolina Act. The North Carolina Act provides relief to 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.³⁸⁵

Public disclosure. House Bill 1473 would preclude jurisdiction for an action brought by a *qui tam* plaintiff if the allegations had been publicly disclosed unless the *qui tam* plaintiff was an original source of the information.³⁸⁶

¶ 20,378II North Dakota

General. A bill to establish an act similar to the Federal FCA, SB 2126, was introduced in January 2007 in the North Dakota Senate. The bill passed out of the Senate, but failed to pass the House. North Dakota's regular session adjourned on April 25, 2007. The Legislature, which meets biennially, will reconvene in regular session on January 6, 2009.

¶ 20,378JJ Ohio

General. Ohio law provides criminal and civil penalties for the submission of false claims to the Medicaid program.³⁸⁷ Ohio law on Medicaid fraud makes it a criminal offense to knowingly make or cause to be made a false or misleading statement or representation for use in obtaining reimbursement from the medical assistance program.³⁸⁸ Ohio law on medical assistance programs also provides civil rem-

³⁸⁰ N.C. Gen. Stat. § 108A-70.12 (2007).

³⁸¹ HB 1473 § 15.8(c), 2006-2007 Leg. Sess. (N.C. 2007).

³⁸² N.C. Gen. Stat. § 108-70.13 (2007).

³⁸³ HB 1473 § 15.8(d), 2006-2007 Leg. Sess. (N.C. 2007).

³⁸⁴ N.C. Gen. Stat. § 108A-70.13(b), (c) (2007).

³⁸⁵ N.C. Gen. Stat. § 108A-70.15 (2007).

³⁸⁶ HB 1473 § 15.8(d), 2006-2007 Leg. Sess. (N.C. 2007). "Original Source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action. *Id.*

³⁸⁷ Ohio law on medical assistance programs is codified at Oh. Rev. Code Ann. § 5111.03.

³⁸⁸ Oh. Rev. Code Ann. § 2913.40(B) (2007).

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edies for the state against providers³⁸⁹ who attempt to engage in Medicaid fraud.

Under Ohio law on medical assistance programs, a service provider who commits any of the following acts may be found civilly liable:

- Obtains or attempts to obtain payments, by deception,³⁹⁰ to which the provider is not entitled pursuant to the provider agreement, the rules of the federal government or the Department of Job and Family Services relating to the program.
- Willfully receives payments to which the provider is not entitled.
- Willfully receives payments in a greater amount than that to which the provider is entitled.
- Falsifies any report or document required by state or federal law, rule, or provider agreement relating to Medicaid payments.

Damages. In addition to criminal penalties, providers who violate Ohio law on medical assistance programs are liable for three times the amount of the excess payments, payment of a sum of not less than \$5,000 and not more than \$10,000 for each deceptive claim or falsification, interest on the amount of any excess payments, and all reasonable expenses which the court determines have been necessarily incurred by the state.³⁹¹ A provider will also have his or her agreement for services terminated for a period of up to five years from the date of the conviction or entry of judgment.³⁹²

Who may bring an action; Statute of Limitations. An action may be brought by the Attorney General on behalf of the state. The Attorney General may commence an action to enforce Ohio law on medical assistance programs any time within six

years after the conduct in violation of the section terminates.³⁹³

Qui tam awards. Ohio law on medical assistance programs does not contain an express provision for *qui tam* actions brought by whistleblowers.

Whistleblower protection. The Ohio law on medical assistance programs does not contain a whistleblower protection provision. Ohio law does, however, contain a general prohibition, not summarized here, prohibiting an employer from retaliating against an employee who has reported the employer for suspected criminal behavior.³⁹⁴

¶ 20,378KK Oklahoma

General. A person who commits any of the following acts is in violation of the Oklahoma Medicaid False Claims Act (Oklahoma Act):³⁹⁵

- Knowingly presents, or causes to be presented, to an officer or employee of the state or of any political subdivision thereof, a false 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 in 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

³⁸⁹ Under Ohio law on medical assistance programs, only providers of services or goods who contract with the Department of Job and Family Services pursuant to the Medicaid program can be found civilly liable. Oh. Rev. Code Ann. § 5111.03(A) (2007).

³⁹⁰ A provider engages in “deception” when the provider, acting with actual knowledge or the representation or information involved, or acting in reckless disregard of the truth or falsity of the representation or information involved, deceives another or causes another to be deceived by any false or misleading representation, by withholding information, by preventing another from acquiring information, or by any other conduct, act, or omission that creates, confirms, or perpetuates a false impression of another. No proof of specific intent to de-

fraud is required to show deception. Oh. Rev. Code Ann. § 5111.03(A) (2007).

³⁹¹ Oh. Rev. Code Ann. § 5111.03(B) (2007).

³⁹² Oh. Rev. Code Ann. § 5111.03(C) (2007).

³⁹³ Oh. Rev. Code Ann. § 5111.03(E) (2007).

³⁹⁴ Oh. Rev. Code Ann. § 4113.52(B) (2007).

³⁹⁵ Senate Bill 889, establishing the Oklahoma Medicaid False Claims Act, passed by both houses of the Oklahoma Legislature and was approved by the Governor on May 14, 2007. The Oklahoma Medicaid False Claims Act becomes effective on November 1, 2007. See S.B. 889, 2007 Reg. Sess. (Okla. 2007). At the time of publication, the Oklahoma Medicaid False Claims Act had not yet been codified in the Oklahoma Statutes.

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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 lawfully may not sell or pledge the property.
- Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease in obligation to pay or transmit the money or property to the state.³⁹⁶

Damages. Any person who violates the Oklahoma Act is liable for a civil penalty of not less than \$5,000 and not more than \$10,000, plus three times the amount of damages which the state sustains because of the Act. Damages may be reduced to not more than two times the amount of all payments found by the court to have been fraudulently received from the state if the court finds certain mitigating factors relating to cooperation by the person committing the violation.³⁹⁷

Who may bring an action. An action may be brought by the state Attorney General. The Attorney General diligently shall investigate a violation under the Oklahoma Act. If the Attorney General finds that a person has violated or is violating the Oklahoma Act, the Attorney General may bring a civil action under the section against the person.³⁹⁸ The Oklahoma Act also allows for *qui tam* actions.³⁹⁹

A *qui tam* plaintiff may bring a civil action for a violation of the Oklahoma Act for the person and for the state of Oklahoma. The action shall be brought in the name of the state. A copy of the complaint and a written disclosure of substantially all material evidence and information the *qui tam* relator possesses shall be served on the state. The complaint shall be filed *in camera*, shall remain under seal for at least 60 days, and shall not be served on the defendant until

the court orders. Before the expiration of the 60-day period (plus any extensions granted by the court), the state must notify the court whether it has decided to proceed with the action. If the state declines to proceed with the action, the *qui tam* plaintiff will have the right to conduct the action.⁴⁰⁰

Qui tam awards. If the state elects to proceed with an action brought by a *qui tam* relator, the *qui tam* relator is entitled to receive between 15% and 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. If the state elects not to proceed with an action, the *qui tam* relator shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall not be less than 25% and not more than 30% of the proceeds of the action or settlement.⁴⁰¹

Statute of Limitations; burden of proof. A civil action filed under the Act may not be brought more than six years after the date on which the violation is committed or more than three years after the date when the facts material to the right of action are known or reasonably should have been known by the state, but in no event more than ten years after the date on which the violation was committed, whichever occurs last. The state shall be required to prove all essential elements of the cause of action including damages, by a preponderance of the evidence.⁴⁰²

Whistleblower protection. The Oklahoma Act provides relief to any employee who has been discharged, demoted, suspended, threatened, harassed, or otherwise discriminated against because of his or her objection to a false claims violation or involvement in a false claims action.⁴⁰³

Public disclosure. The Oklahoma Act precludes jurisdiction for an action brought by a *qui tam* plaintiff if the allegations had been publicly disclosed,

³⁹⁶ *Id.* at Sec. 2. "Knowingly" is defined as having "actual knowledge," acting in "deliberate ignorance" of the truth or falsity of information, or acting in "reckless disregard" to the truth or falsity of information. No proof of specific intent to defraud is required. *Id.* at Sec. 2(A).

³⁹⁷ *Id.* at Sec. 2.

³⁹⁸ *Id.* at Sec. 3(A).

³⁹⁹ *Id.* at Sec. 3(B).

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.* at Sec. 5.

⁴⁰² *Id.* at Sec. 7(B).

⁴⁰³ *Id.* at Sec. 6(F).

unless the *qui tam* plaintiff was an original source of the information.⁴⁰⁴

¶ 20,378LL Oregon

General. Oregon state law on public assistance provides civil remedies for the state against person who submits a claim for payment to which the person is not entitled.⁴⁰⁵, ⁴⁰⁶ A person who commits any of the following acts is in violation of Oregon law on public assistance:

- Knowingly submitting or causing to be submitted to the Department of Human Services any false claim for payment.
- Knowingly submitting or causing to be submitted to the Department of Human Services any claim for payment which has been submitted for payment already unless such claim is clearly labeled as a duplicate.
- Knowingly submitting or causing to be submitted to the Department of Human Services any claim for payment which is a claim upon which payment has been made by the Department or any other source unless clearly labeled as such.
- Knowingly accepting any payment from the Department of Human Services for furnishing any need if the need upon which the payment is based has not been provided.⁴⁰⁷

Damages. Any person found to have violated Oregon state law on public assistance is liable to the Department of Human Services for treble the amount of the payment received as a result of such violation.⁴⁰⁸

¶ 20,378MM Pennsylvania

General. Pennsylvania law on fraud and abuse control prohibits fraud in connection with the medical assistance program.⁴⁰⁹ The law on fraud and abuse control provides criminal penalties for various fraudulent activity, including knowingly or intentionally presenting for payment a false or fraudulent claim for services or merchandise under medical assistance.⁴¹⁰ This law also provides a civil remedy for the Commonwealth against any person convicted under the statute.

Damages. In addition to criminal sanctions, any person who is convicted under the statute shall repay the amount of excess benefits or payments and shall pay an amount not to exceed threefold the amount of excess benefits.⁴¹¹

2007 legislation. Two bills proposing to establish the Pennsylvania False Claims Act, HB 329 and HB 1523, were introduced during the 2007 legislative session. Neither bill had passed out of committee as of July 13, 2007.⁴¹²

¶ 20,378NN Rhode Island

General. The Rhode Island Medical Assistance Fraud Law (Rhode Island Law) prohibits the submission of false claims to the Medicaid program.⁴¹³ The Rhode Island Law provides criminal penalties for various fraudulent activity, including intentionally presenting materially false or fraudulent claims or cost reports for the furnishing of services or merchandise.⁴¹⁴ The Rhode Island Law also provides a civil remedy for any person, including the Rhode Island Medicaid Program, against any person injured by a violation of the statute.⁴¹⁵

⁴⁰⁴ *Id.* at Sec. 6(B). "Original Source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to the state before filing an action. *Id.*

⁴⁰⁵ Oregon law on false claims for health care payments is codified at Or. Rev. Stat. § 165.692. Amendments to the Oregon law of false claims for health care payments (HB 3162) were pending prior to the close of the legislative session in March 2007. The Bill died prior to the close of the legislative session in June 2007. The Legislature will reconvene for a special session in February 2008 and the regular session will reconvene in January 2009.

⁴⁰⁶ Or. Rev. Stat. § 411.675 (2007).

⁴⁰⁷ Or. Rev. Stat. § 411.675 (2007).

⁴⁰⁸ Or. Rev. Stat. § 411.690(2) (2007).

⁴⁰⁹ Pennsylvania law on fraud and abuse control is codified at 62 Pa. Cons. Stat. § 1401 *et seq.*

⁴¹⁰ 62 Pa. Cons. Stat. § 1407(a) (2007).

⁴¹¹ 62 Pa. Cons. Stat. § 1407(b)(2) (2007).

⁴¹² HB 329, 2007-2008 Reg. Sess. (Penn. 2008); HB 230, 2007-2008 Reg. Sess. (Penn. 2008).

⁴¹³ The Rhode Island Medical Assistance Fraud Law is codified at R.I. Gen. Laws § 40-8.2-1 *et seq.*

⁴¹⁴ R.I. Gen. Laws § 40-8.2-3 (2007).

⁴¹⁵ R.I. Gen. Laws § 40-8.2-5 (2007).

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Damages. In addition to criminal sanctions, violators of the Rhode Island Law are liable to any person injured by such violation for three times the amount of the injury.⁴¹⁶

Statute of Limitations. The statute of limitations for any violation of the Rhode Island Law is ten years.

2007 legislation. House Bill 5582, a bill to establish a Rhode Island civil false claims act, was introduced during the 2007 legislative session. HB 5582, was introduced in February 2007, and referred to the House Finance Committee but was held by that Committee for further study. Rhode Island's 2007 Regular Legislative Session adjourned in June. The Legislature will reconvene in January 2008.⁴¹⁷

¶ 20,378OO South Carolina

General. A bill to establish a South Carolina False Claims Act, S. 82, was introduced to the Senate on January 14, 2007. The bill received a favorable committee report but was not voted on by the Senate. South Carolina's first legislative session adjourned on June 7, 2007. The Legislature will reconvene for its second legislative session on January 14, 2008, at which time S.82 may be reconsidered.

¶ 20,378PP South Dakota

General. South Dakota does not have a civil false claims act and no false claim act legislation was pending as of July 13, 2007.

¶ 20,378QQ Tennessee

General. Tennessee enacted a Medicaid false claims act statute, the Tennessee Medicaid False Claim Act (Tennessee Act), in 1993. A person who commits one of the following acts is in violation of the Tennessee Act:⁴¹⁸

- Presents, or causes to be presented, to the state a claim⁴¹⁹ for payment under the Medicaid program knowing⁴²⁰ such claim is false or fraudulent.
- Makes, uses, or causes to be made or used a record or statement to get a false or fraudulent claim under the Medicaid program paid or approved by the state knowing such record or statement is false.
- Conspires to defraud the state by getting a claim allowed or paid under the Medicaid program knowing such claim is false or fraudulent.
- Makes, uses, or causes to be made or used a record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the state, relative to the Medicaid program, knowing such record or statement is false.⁴²¹

Damages. A person found in violation of the Act is liable to the state for a civil penalty of no less than \$5,000 and no more than \$25,000, plus three times the amount of damages sustained by the state due to the act of that person.⁴²² A person is also liable for the costs of a civil action brought to recover any such penalty or damages.⁴²³

The court may assess no less than two times the amount of damages sustained by the state if the court finds that the following conditions are satisfied:

- The person committing the violation furnished officials of the state responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;
- Such person fully cooperated with any state investigation of the violation; and

⁴¹⁶ *Id.*

⁴¹⁷ HB 5582, 2007 Leg. Sess. (R.I. 2007).

⁴¹⁸ The Tennessee Medicaid False Claims Act is codified at Tenn. Code Ann. §§ 75-5-181-71-5-185 (2007).

⁴¹⁹ "Claim" is broadly defined and includes any request or demand for money, property, or services made to any employee, officer, or agent of the state, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or de-

manded issued from, or was provided by, the state.. Tenn. Code Ann. § 71-5-182(c) (2007).

⁴²⁰ "Knowing" and "knowingly" are defined as having "actual knowledge" or acting in "deliberate ignorance" or "reckless disregard" of the truth or falsity of the information. No proof of specific intent to defraud is required. Tenn. Code Ann. § 71-5-182(b) (2007).

⁴²¹ Tenn. Code Ann. § 71-5-182(a)(1) (2007).

⁴²² Tenn. Code Ann. § 71-5-182(a)(1) (2007).

⁴²³ Tenn. Code Ann. § 71-5-182(a)(3) (2007).

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- At the time such person furnished the state with information about the violation, no criminal prosecution, civil action, or administrative action had commenced under the Act with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.⁴²⁴

Any person who engages, or has engaged or proposed to engage in any act under the Tennessee Act may be enjoined in an action brought by the Attorney General if it is clearly shown that the state's rights are being violated and the state will suffer immediate and irreparable injury, loss or damage pending a final judgment in the action, or that the acts or omissions of such person or entity will tend to render such final judgment ineffectual.⁴²⁵

Who may bring an action. If the Attorney General and reporter find that a person has violated or is violating the Tennessee Act, the Attorney General and reporter may bring a civil action against the person.⁴²⁶

The Tennessee Act also provides that a person may bring a civil action for a violation of the Tennessee Act for the person and for the state. The action must be brought in the name of the state of Tennessee. The action may only be dismissed upon written consent from the court and the Attorney General and reporter or the district Attorney General.⁴²⁷ The complaint must be filed *in camera* and shall remain under seal for at least 60 days. A copy of the complaint and written disclosure of all material evidence and information must be served on the state. The state may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.⁴²⁸

Before the expiration of the 60-day period (or any extensions obtained for good cause shown), the state must either proceed with the action, in which case the action will be conducted by the state, or notify the court that it declines to take over the

action, in which case the person bringing the action shall be entitled to conduct the action.⁴²⁹

Qui tam awards. If the state proceeds with an action initiated by a *qui tam* plaintiff, the *qui tam* plaintiff shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action. Where the court finds the action to be based primarily on disclosures of certain specific information, other than information provide by the *qui tam* plaintiff, the court may award such sums as it considers appropriate, but not more than 10% of the proceeds. A *qui tam* plaintiff shall also receive an amount for reasonable, necessary expenses, plus reasonable attorneys' fees and costs, all of which will be awarded against the defendant.⁴³⁰

If the state declines to proceed with the action, the *qui tam* plaintiff shall receive an amount not less than 25% and not more than 30% of the proceeds of the action or settlement. The *qui tam* plaintiff shall also receive an amount for reasonable, necessary expenses, plus reasonable attorneys' fees and costs, all of which will be awarded against the defendant.⁴³¹

The court shall award to the defendant its reasonable attorneys' fees and expenses if defendant prevails and the court finds that the *qui tam* plaintiff's claim was frivolous, vexatious, or brought for purposes of harassment.⁴³²

Whistleblower protection. The Tennessee Act provides protection against retaliation from employers for employees who act in furtherance of an action filed pursuant to the Act.⁴³³

Statute of Limitations; burden of proof. A civil action filed may not be filed more than six years after the date on which the violation of the Tennessee Act was committed; or more than three years after the date when material facts are known or reasonably should have been known by the official of the state charged with responsibility to act in the

⁴²⁴ Tenn. Code Ann. § 71-5-182(a)(2) (2007).

⁴²⁵ Tenn. Code Ann. § 71-5-182(d) (2007).

⁴²⁶ Tenn. Code Ann. § 71-5-183(a) (2007).

⁴²⁷ Tenn. Code Ann. § 71-5-183(b)(1) (2007).

⁴²⁸ Tenn. Code Ann. § 71-5-183(b)(2) (2007).

⁴²⁹ Tenn. Code Ann. § 71-5-183(b)(4) (2007).

⁴³⁰ Tenn. Code Ann. § 71-5-183(d)(1) (2007).

⁴³¹ Tenn. Code Ann. § 71-5-183(d)(2) (2007).

⁴³² Tenn. Code Ann. § 71-5-183(d)(4) (2007).

⁴³³ Tenn. Code Ann. § 71-5-183(g) (2007).

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circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.⁴³⁴

The state must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.⁴³⁵

Office of Inspector General review. The Tennessee Act was reviewed by the OIG on December 21, 2006. According to a letter published on its web site, the OIG determined that the Tennessee Act meets the requirements of § 6031(b) of the DRA.⁴³⁶

¶ 20,378RR Texas

General. Texas enacted a Medicaid false claims act statute, the Texas Medicaid Fraud Prevention Act (Texas Act), in 1995.⁴³⁷ A bill⁴³⁸ adding an additional act as a violation of the Texas Act was passed on March 22, 2007, but takes effect September 1, 2007.⁴³⁹ On January 30, 2007, SB 362 was introduced and passed on April 25, 2007. SB 362 became effective on May 4, 2007. SB 362 increases the minimum civil penalty, establishes the standard of proof needed to establish Medicaid Fraud, allows a *qui tam* plaintiff to proceed with an action even if the state does not intervene, and increases *qui tam* awards.

A person who commits one of the following acts is in violation of the Texas Act:

- Knowingly⁴⁴⁰ makes or causes to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized.
- Knowingly conceals or fails to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized.

- Knowingly applies for and receives a benefit or payment on behalf of another person under the Medicaid program and converts any part of the benefit or payment to a use other than for the benefit of the person on whose behalf it was received.
- Knowingly makes, causes to be made, induces, or seeks to induce the making of a false statement or misrepresentation of material fact concerning:
 - The conditions or operation of a facility in order that the facility may qualify for certification or recertification required by the Medicaid program, including certification or recertification as a hospital, nursing facility or skilled nursing facility, hospice, intermediate care facility for the mentally retarded, assisted living facility, or home health agency.
 - Information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program.
- Except as authorized under the Medicaid program, knowingly pays, charges, solicits, accepts, or receives, in addition to an amount paid under the Medicaid program, a gift, money, a donation, or other consideration as a condition to the provision of a service or product or the continued provision of a service or product if the cost of the service or product is paid for, in whole or in part, under the Medicaid program.
- Knowingly presents or causes to be presented a claim for payment under the Medicaid program for a product provided or a service rendered by a person who:
 - Is not licensed to provide the product or render the service, if a license's required; or
 - Is not licensed in the manner claimed.

⁴³⁴ Tenn. Code Ann. § 71-5-184(b) (2007).

⁴³⁵ Tenn. Code Ann. § 71-5-184(c) (2007).

⁴³⁶ See <http://oig.hhs.gov/fraud/falseclaimsact.html>.

⁴³⁷ The Texas Medicaid Fraud Prevention Act is codified at Texas Hum. Res. Code Ann. § 36.001-36.117 (2007).

⁴³⁸ HB 889.

⁴³⁹ HB 889 makes it a violation of the Texas Act if a person knowingly engages in conduct that constitutes a violation of Sec. 32.039(b).

⁴⁴⁰ "Knowingly" means that a person has knowledge of the information, acts with conscious indifference to the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. Proof of the person's specific intent to commit an unlawful act under the Texas Act is not required in a civil or administrative proceeding to show that a person acted "knowingly." Texas Hum. Res. Code Ann. § 36.011 (2007).

Summary of State Civil False Claims Laws

- Knowingly makes a claim under the Medicaid program for:
 - A service or product that has not been approved or acquiesced in by a treating physician or health care practitioner;
 - A service or product that is substantially inadequate or inappropriate when compared to generally recognized standards within the particular discipline or within the health care industry; or
 - A product that has been adulterated, debased, mislabeled, or that is otherwise inappropriate.
- Makes a claim under the Medicaid program and knowingly fails to indicate the type of license and the identification number of the licensed health care provider who actually provided the service.
- Knowingly enters into a agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent.
- Is a managed care organization that contracts with the Health and Human Services Commission or other state agency to provide or arrange to provide health care benefits or services to individuals eligible under the Medicaid program and knowingly:
 - Fails to provide to an individual a health care benefit or service that the organization is required to provide under the contract;
 - Fails to provide to the commission or appropriate state agency information required to be provided by law, commission or agency rule, or contractual provision; or
 - Engages in a fraudulent activity in connection with the enrollment of an individual eligible under the Medicaid program in the organization's managed care plan or in connection with marketing the organization's services to

an individual eligible under the Medicaid program.

- Knowingly obstructs an investigation by the Attorney General of an alleged unlawful act under this section.
- Knowingly makes, uses, or causes the making or use of a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to this state under the Medicaid program.⁴⁴¹

Damages. In addition to possible administrative penalties, a person shall pay to the state the amount of any payment or the value of any monetary or in-kind benefit provided under the Medicaid program plus interest on that amount from the date the benefit was received or paid to the date the state recovers it. In addition, a person shall pay a civil penalty not less than \$5,000 or more than \$15,000 for each unlawful act resulting in an injury or not less than \$5,000 or more than \$10,000 for each unlawful act that does not result in an injury plus double the amount of damages suffered by the state as a result of the conduct by the person.⁴⁴²

The health and human services agency shall suspend or revoke (i) a provider agreement between the agency and a person, other than a person who operates a nursing facility; or (ii) a permit, license, or certificate granted by the agency to a person, other than a person who operates a nursing facility. With regards to a nursing facility, the health and human services agency may suspend or revoke a provider agreement or a permit, license or certificate. A provider will also be excluded from the Medicaid program for a period of 10 years. The exclusion period may be longer or shorter at the discretion of the executive commissioner of the Health and Human Services Commissioner.⁴⁴³

Who may bring an action. Under the Texas Act, the Attorney General may conduct an investigation of an alleged violation of this act.⁴⁴⁴

Any person may bring a civil action in the name of the person and the state under the Texas Act to

⁴⁴¹ Texas Hum. Res. Code Ann. § 36.002 (2007). Effective September 1, 2007, the following act will also be a violation of the Texas Act: knowingly engages in conduct that constitutes a violation under § 32.039(b).

⁴⁴² Texas Hum. Res. Code Ann. § 36.052 (2007).

⁴⁴³ Texas Hum. Res. Code Ann. § 36.005 (2007).

⁴⁴⁴ Texas Hum. Res. Code Ann. § 36.053 (2007).

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recover losses that this state suffers from a violation of this act.⁴⁴⁵ The petition shall be filed *in camera*, shall remain under seal for at least 180 days or until the state elects to intervene, whichever is earlier.⁴⁴⁶ Within 180 days (plus any extensions requested by the state for good cause shown) after service of the petition, the state shall (a) proceed with the action and have primary responsibility for proceeding with the action; or (b) notify the court that it declines to take over the action and the *qui tam* plaintiff has the right to proceed with the action.⁴⁴⁷ The court may permit the Attorney General to intervene in the action at any time upon a showing of good cause and with affecting the rights or status of the *qui tam* plaintiff.⁴⁴⁸

A person may not bring an action under this section that is based on allegations or transactions that are the subject of a civil suit or an administrative penalty proceeding to which this state is already a party.⁴⁴⁹

Unless the person is the original source⁴⁵⁰ of the information, a person may not initiate an action under this section based upon the public disclosure of allegations or transactions in a criminal or civil hearing, in a legislative or administrative report, hearing, audit, or investigation, or from the news media.⁴⁵¹

Qui tam awards. If the state proceeds with an action, the court shall award the person 15% to 25% of the proceeds of the action,⁴⁵² depending on the extent to which the *qui tam* plaintiff substantially contributed to the prosecution of the action. If the state does not intervene, the court shall award 25% to 30% of the proceeds of the action.⁴⁵³ The *qui tam* plaintiff is also entitled to reasonable expenses, costs, and reasonable attorney fees necessarily incurred.⁴⁵⁴

Where the court finds the action to be based primarily on disclosures of certain specific information, other than information provide by the *qui tam* plaintiff, the court shall award the *qui tam* plaintiff no more than 7% of the proceeds of he action.⁴⁵⁵ If the court finds that the person bringing an action under this section planned and initiated the conduct upon which the action is brought, the court may reduce, as it considers appropriate, the share of the proceeds of the action that the *qui tam* plaintiff would otherwise be entitled to receive.⁴⁵⁶ A person who is convicted of criminal conduct arising from a violation of this act shall be dismissed from the civil action and may not share in the proceeds of the action.⁴⁵⁷

The Attorney General may recover fees, expenses, and costs reasonably incurred in obtaining injunctive relief or civil remedies or in conducting investigations, including court costs, reasonable attorneys' fees, witness fees, and deposition fees.⁴⁵⁸

Statute of Limitations; burden of proof. The Texas Act does not specify a statute of limitations for actions brought under the Act. The state or the *qui tam* plaintiff must establish each element of the action, including damages, by a preponderance of the evidence.⁴⁵⁹

Whistleblower protection. The Texas Act provides protection against retaliation from employers for employees who initiate, assist in, or participate in an investigation under this act.⁴⁶⁰

Office of Inspector General review. The Texas Act was reviewed by the OIG on June 20, 2007. According to a letter published on its web site, the OIG determined that the Texas Act meets the requirements of § 6031(b) of the DRA.⁴⁶¹

⁴⁴⁵ Texas Hum. Res. Code Ann. § 36.101 (2007).

⁴⁴⁶ Texas Hum. Res. Code Ann. § 36.102(b) (2007).

⁴⁴⁷ Texas Hum. Res. Code Ann. § 36.104 (2007).

⁴⁴⁸ Texas Hum. Res. Code Ann. § 36.104(b) (2007).

⁴⁴⁹ Texas Hum. Res. Code Ann. § 36.113(a) (2007).

⁴⁵⁰ The person is the "original source" if he or she had direct and independent knowledge of the information on which the allegations are based and voluntarily provided the information to the state before filing an action based on that information under this section. Texas Hum. Res. Code Ann. § 36.113(b) (2007).

⁴⁵¹ Texas Hum. Res. Code Ann. § 36.113(b) (2007).

⁴⁵² "Proceeds of the action" includes proceeds of a settlement of the action. Texas Hum. Res. Code Ann. § 36.110(d) (2007).

⁴⁵³ Texas Hum. Res. Code Ann. § 36.110(a) (2007).

⁴⁵⁴ Texas Hum. Res. Code Ann. § 36.110(c) (2007).

⁴⁵⁵ Texas Hum. Res. Code Ann. § 36.110(c) (2007).

⁴⁵⁶ Texas Hum. Res. Code Ann. § 36.111(a) (2007).

⁴⁵⁷ Texas Hum. Res. Code Ann. § 36.111(b) (2007).

⁴⁵⁸ Texas Hum. Res. Code Ann. § 36.007 (2007).

⁴⁵⁹ Texas Hum. Res. Code Ann. § 36.1021 (2007).

⁴⁶⁰ Texas Hum. Res. Code Ann. § 36.115 (2007).

⁴⁶¹ See <http://oig.hhs.gov/fraud/falseclaimsact.html>.

Summary of State Civil False Claims Laws

¶20,378SS Utah

General. Utah enacted a false claims act statute, the Utah False Claim Act (Utah Act), in 1981.⁴⁶² The 2007 amendment, effective April 30, 2007, among other things, amended the definitions, clarified the required mental state for a civil and criminal prosecution, amended the penalties for a violation under the Utah Act, and provided a statute of limitations period.⁴⁶³

A person who commits any of the following acts is in violation of the Utah Act:

- Makes or causes to be made a false statement or false representation⁴⁶⁴ of a material fact in an application for Medicaid benefits.⁴⁶⁵
- Makes or causes to be made a false statement or false representation of a material fact for use in determining rights to a Medicaid benefit.
- Having knowledge of the occurrence of an event affecting his initial or continued right to receive a Medicaid benefit or the initial or continued right of any other person on whose behalf he has applied for or is receiving a benefit,⁴⁶⁶ conceals or fails to disclose that event with intent to obtain a benefit to which the person or any other person is not entitled or in an amount greater than that to which the person or any other person is entitled.⁴⁶⁷
- Solicits, offers, pays, or receives a kickback or bribe in return for or to induce:
 - the purchasing, leasing, or ordering of any goods or services for which payment is or may be made in whole or in part pursuant to a medical benefit program; or
 - the referral of an individual to another person for the furnishing of any goods or services for which payment is or may be made in whole

or in part pursuant to a medical benefit program.⁴⁶⁸

- Knowingly, intentionally, or recklessly makes, induces, or seeks to induce the making of a false statement or false representation of a material fact with respect to the conditions or operation of an institution or facility in order for that institution or facility to qualify, upon initial certification or recertification, as a hospital, skilled nursing facility, intermediate care facility, or home health agency.⁴⁶⁹
- Enters into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another to obtain the payment or allowance of a false, fictitious, or fraudulent claim for a medical benefit.⁴⁷⁰
- Makes or presents or causes to be made to an employee or officer of this state a claim for a medical benefit (a) which is wholly or partially false, fictitious, or fraudulent; (b) for services which were not rendered or for items or materials which were not delivered; (c) which misrepresents the type, quality, or quantity of items or services rendered; (d) representing charges at a higher rate than those charged by the provider to the general public; (e) for items or services which the person or the provider knew were not medically necessary in accordance with professionally recognized standards; (f) which has previously been paid; (g) for services also covered by one or more private sources when the person or provider knew of the private sources without disclosing those sources on the claim; or (h) where a provider unbundles a product, procedure, or group of procedures (usually and customarily provided or performed as a single billable product or procedure) into artificial components or separate procedures and bills for

⁴⁶² The Utah False Claims Act is codified at Utah Code Ann. §§ 26-20-1 - 26-20-15 (2007).

⁴⁶³ HB 242.

⁴⁶⁴ "False statement" or "false representation" means a wholly or partially untrue statement or representation which is knowingly made and is a material fact with respect to the claim. Utah Code Ann. § 26-20-2(3) (2007).

⁴⁶⁵ "Medicaid benefit" means a benefit paid or payable to a recipient or a provider under a program administered by the state under the federal Social Security Act, the federal Public

Health Services Act, the federal Child Nutrition Act of 1966, and any programs for medical assistance of the state. Utah Code Ann. § 26-20-2(5) (2007).

⁴⁶⁶ "Benefit" means the receipt of money, goods, or anything of pecuniary value. Utah Code Ann. § 26-20-2(1) (2007).

⁴⁶⁷ Utah Code Ann. § 26-20-3 (2007).

⁴⁶⁸ Utah Code Ann. § 26-20-4(2) (2007).

⁴⁶⁹ Utah Code Ann. § 26-20-5 (2007).

⁴⁷⁰ Utah Code Ann. § 26-20-6 (2007).

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each component of the product, procedure, or group of procedures as if they had been provided or performed independently and at separate times and the aggregate billing for the components exceeds the amount otherwise billable for the usual and customary single product or procedure.⁴⁷¹

- Fails to credit the state for payments received from other sources.
- Recovers or attempts to recover payment in violation of the provider agreement from a recipient under a medical benefit program or the recipient's family.
- Falsifies, or alters with intent to deceive, any report or document required by state or federal law, rule, or Medicaid provider agreement.
- Retains any unauthorized payment as a result of acts described by this section.
- Aides or abets the commission of any act prohibited by this section.⁴⁷²

Damages. In addition to criminal penalties, a person shall be required to (a) make full and complete restitution to the state of all damages that the state sustains because of the person's violation of the act; (b) pay the costs associated with enforcing the provisions of the Utah Act, including but not limited to the costs for investigators, attorneys, and other public employees, as determined by the state; and (c) pay a civil penalty equal to three times the amount of damages that the state sustains because of the person's violation of this chapter and not less than \$5,000 or more than \$10,000 for each claim filed or act done in violation of this chapter. A criminal action need not be brought against the person for the person to be civilly liable under the Utah Act.⁴⁷³ The Utah Act makes liability joint and several for any act committed by two or more persons that violates the Utah Act.⁴⁷⁴

Who may bring an action. Under the Utah Act, the state may conduct an investigation of an alleged violation of this act.⁴⁷⁵ The Utah Act does not provide *qui tam* plaintiffs with a right of action.

Qui tam awards. The Utah Act does not provide for *qui tam* actions.

Statute of Limitations; burden of proof. An action under the Utah Act may not be brought after the later of six years after the date on which the violation was committed or three years after the date an official of the state charged with responsibility to act in the circumstances discovers the violation, but in no event more than 10 years after the date on which the violation was committed. In any civil action brought under the Utah Act, the state shall be required to prove all the essential elements of the cause of action, including damages, by a preponderance of the evidence.⁴⁷⁶

Whistleblower protection. The Utah Act does not specifically provide protection to whistleblowers.⁴⁷⁷

¶ 20,378TT Vermont

General. Vermont law on public assistance fraud prohibits fraud in connection with the medical assistance program, including knowingly filing a claim for services to a recipient of benefits under a state or federally-funded assistance program for services which were not rendered, for unauthorized items or services, or for an amount in excess of that provided for by law.^{478, 479}

Damages. A person who violates specified provisions of the Vermont law on public assistance may be subject to a civil suit by the Attorney General for restitution of the amount of assistance wrongfully obtained and a civil penalty of: (1) up to three times the amount of the wrongfully obtained assistance; (2) \$500 per false claim; or (3) \$500 per false docu-

⁴⁷¹ Utah Code Ann. § 26-20-7(1) (2007).

⁴⁷² Utah Code Ann. § 26-20-7(2) (2007).

⁴⁷³ Utah Code Ann. § 26-20-9.5 (2007).

⁴⁷⁴ Utah Code Ann. § 26-20-15(5) (2007).

⁴⁷⁵ Utah Code Ann. § 26-20-13 - § 26-20-14 (2007).

⁴⁷⁶ Utah Code Ann. § 26-20-15 (2007).

⁴⁷⁷ Utah does have a separate whistleblower protection statute to generally protect public employees who disclose information regarding potential violations of the law against retaliation. Utah Code Ann. § 67-21-1 et seq. (2007).

⁴⁷⁸ Vermont law on public assistance fraud is codified at Vt. Stat. Ann. Tit. 33, § 141-144 (2007).

⁴⁷⁹ Vt. Stat. Ann. Tit. 33, § 141 (2007).

ment submitted in support of a false claim, which-ever is greatest.⁴⁸⁰

¶ 20,378UU Virginia

General. Virginia enacted a false claims act statute, the Virginia Fraud Against Taxpayers Act (Virginia Act), in April 2002. A bill, SB 1183, increasing the minimum amount of civil penalties and enhancing the ability of the Office of the Attorney General to investigate and prosecute individuals or entities under contract who obtain funds fraudulently was introduced and passed in 2007.⁴⁸¹

A person⁴⁸² who commits one of the following acts is in violation of the Virginia Act:

- Knowingly⁴⁸³ presents, or causes to be presented, to an officer or employee of the Commonwealth a false or fraudulent claim⁴⁸⁴ 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 Commonwealth.
- Conspires to defraud the Commonwealth 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 Commonwealth and, intending to defraud the Commonwealth 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.
- Authorizes to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth and, intending to defraud the Commonwealth, makes or delivers the re-

ceipt 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 Commonwealth who lawfully may not sell or pledge the property.
- 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 Commonwealth.⁴⁸⁵

Damages. Any person who commits a violation under the Act is liable to the Commonwealth for a civil penalty of no less than \$5,500 and no more than \$11,000, plus three times the amount of damages sustained by the Commonwealth.⁴⁸⁶ A person is also liable to the Commonwealth for the reasonable attorney fees and costs associated with maintaining a civil action brought to recover any such penalty or damages.⁴⁸⁷

The court may assess no less than two times the amount of damages sustained by the Commonwealth if the court finds that the following conditions are satisfied:

- The person committing the violation furnished officials of the Commonwealth responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information;
- Such person fully cooperated with any Commonwealth investigation of the violation;
- At the time such person furnished the Commonwealth with information about the violation, no criminal prosecution, civil action, or administrative action had commenced under with respect to the violation; and

⁴⁸⁰ Vt. Stat. Ann. Tit. 33, § 143a (2007).

⁴⁸¹ The Virginia Fraud Against Taxpayers Act is codified at Va. Code Ann. §§ 8.01-216.1 through 8.01-216.19 (2007).

⁴⁸² "Person" includes any natural person, corporation, firm, association, organization, partnership, limited liability company, business or trust. Va. Code Ann. § 8.01-216.2 (2007).

⁴⁸³ "Knowing" and "knowingly" are defined as having "actual knowledge" or acting in "deliberate ignorance" or "reckless disregard" of the truth or falsity of the information. No proof of specific intent to defraud is required. Va. Code Ann. § 8.01-216.3(C) (2007).

⁴⁸⁴ "Claim" is broadly defined and includes any request or demand, whether under contract or otherwise for money, property that is made to any contractor, grantee, or other recipient if the Commonwealth provides any portion of the money, property, or services requested or demanded or if the Commonwealth will reimburse such contractor, grantee, or other recipient for any portion of the money or property that is requested or demanded. Va. Code Ann. § 8.01-216.2 (2007).

⁴⁸⁵ Va. Code Ann. § 8.01-216.3(A) (2007).

⁴⁸⁶ Va. Code Ann. § 8.01-216.3(A) (2007).

⁴⁸⁷ Va. Code Ann. § 8.01-216.3(B) (2007).

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- The person did not have actual knowledge of the existence of an investigation into the violation.⁴⁸⁸

Who may bring an action. The Virginia Act requires the Attorney General⁴⁸⁹ to investigate any violation of the Virginia Act. If a violation is found, the Attorney General may bring a civil action against such person.⁴⁹⁰

The Virginia Act also provides that a person may bring a civil action for a violation of the Virginia Act for the person and for the Commonwealth. The action must be brought in the name of the Commonwealth. The action may be dismissed only upon written consent from the court and the Attorney General. The complaint must be filed *in camera* and shall remain under seal for at least 120 days. A copy of the complaint and written disclosure of all material evidence and information must be served on the Commonwealth. The Commonwealth may elect to intervene and proceed with the action within 120 days after it receives both the complaint and the material evidence and information.⁴⁹¹

Before the expiration of the 120-day period (or any extensions obtained upon good cause shown), the Commonwealth must proceed with the action, in which case the action will be conducted by the Commonwealth, or notify the court that it declines to take over the action, in which case the person bringing the action shall be entitled to conduct the action.⁴⁹²

No court will have jurisdiction over an action brought under the Virginia Act based upon the public disclosure of allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Auditor of Public Accounts' report, hearing, audit, or investigation, or from the news media, unless the action is brought by the

Attorney General or the person bringing the action is an original source⁴⁹³ of the information.

Qui tam awards. If the Commonwealth proceeds with an action initiated by a private plaintiff, the private plaintiff shall receive at least 15% but not more than 25% of the proceeds of the action or settlement of the claim, depending upon the extent to which the private person substantially contributed to the prosecution of the action. Where the court finds the action to be based primarily on disclosures of certain specific information, other than information provide by the private person bringing the action, the court may award such sums as it considers appropriate, but in no case more than 10% of the proceeds. A private plaintiff shall also receive an amount for reasonable, necessary expenses, plus reasonable attorneys' fees and costs, all of which will be awarded against the defendant.⁴⁹⁴

If the Commonwealth declines to proceed with the action, the private plaintiff shall receive an amount not less than 25% and not more than 30% of the proceeds of the action or settlement. The private plaintiff shall also receive an amount for reasonable, necessary expenses, plus reasonable attorneys' fees and costs, all of which will be awarded against the defendant.⁴⁹⁵ The court shall award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action conducted by a private plaintiff and the court finds that the private plaintiff's claim was frivolous, vexatious, or brought for purposes of harassment.⁴⁹⁶

Whistleblower protection. The Virginia Act provides protection/relief against retaliation by employers for employees who oppose any practice that would constitute a violation of the Virginia Act or who act in furtherance of an action filed pursuant to the Virginia Act.⁴⁹⁷

⁴⁸⁸ Va. Code Ann. § 8.01-216.3(B) (2007).

⁴⁸⁹ "Attorney General" includes the Attorney General of Virginia, the Chief Deputy, other deputies, counsels or assistant Attorney Generals employed by the Office of the Attorney General and designated by the Attorney General to act pursuant to the Act. Va. Code Ann. § 8.01-216.2 (2007).

⁴⁹⁰ Va. Code Ann. § 8.01-216.4 (2007).

⁴⁹¹ Va. Code Ann. § 8.01-216.5(A)-(B) (2007).

⁴⁹² Va. Code Ann. § 8.01-216.5(D) (2007).

⁴⁹³ "Original source" means an individual who has direct and independent knowledge of information on which the allegations are based and has voluntarily provided the information to the Commonwealth before filing an action under the Act. Va. Code Ann. § 8.01-216.8 (2007).

⁴⁹⁴ Va. Code Ann. § 8.01-216.7(A) (2007).

⁴⁹⁵ Va. Code Ann. § 8.01-216.7(B) (2007).

⁴⁹⁶ Va. Code Ann. § 8.01-216.7(D) (2007).

⁴⁹⁷ Va. Code Ann. § 8.01-216.8 (2007).

Summary of State Civil False Claims Laws

Statute of Limitations; burden of proof. A civil action shall be brought (i) within six years of the date on which the violation was committed or (ii) within three years of the date the fraud should have been known or reasonably should have been known by the official of the Commonwealth charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed.⁴⁹⁸

The Commonwealth must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.⁴⁹⁹

Office of Inspector General review. The Virginia Act was reviewed by the OIG on December 21, 2006. According to a letter published on its web site, the OIG determined that the Virginia Act meets the requirements of § 6031(b) of the DRA.⁵⁰⁰

¶ 20,378VV Washington

General. Although Washington has a criminal false health care claims statute,⁵⁰¹ which is not summarized here, Washington does not have a civil false claims act. No false claims act legislation was pending as of July 13, 2007.

¶ 20,378WW West Virginia

General. West Virginia law provides criminal and civil penalties for persons who engage in Medicaid fraud. A person who commits any of the following acts violates West Virginia law against fraud and abuse in the Medicaid program:⁵⁰²

- Knowingly makes or causes to be made a false statement or false representation of any material fact in an application for medical assistance

under the medical programs of the department of welfare.

- Knowingly makes or causes to be made a false statement or false representation of any material fact necessary to determine the rights of any other person to medical assistance⁵⁰³ under the medical programs of the department of welfare.
- Knowingly and intentionally conceals or fails to disclose any fact with the intent to obtain medical assistance under the medical programs of the department of welfare to which the person or any other person is not entitled.
- Solicits, offers, or receives any remuneration, including any kickback, rebate or bribe, directly or indirectly, with the intent of causing an unauthorized expenditure of moneys from the medical services fund.⁵⁰⁴
- Makes, presents, or causes to be made or presented to the department of welfare a claim⁵⁰⁵ under the medical programs department of welfare knowing the claim is false, fraudulent or fictitious.
- Enters into an agreement, combination, or conspiracy to obtain or aid another to obtain the payment or allowance of a false, fraudulent, or fictitious claim under the medical programs of the department of welfare.

Damages. In addition to criminal sanctions, any person, firm, corporation, or other entity that violates the West Virginia law will be liable to the department of welfare in an amount equal to three times the amount of the benefits or allowances to which the person, firm, corporation, or other entity is not entitled and will be liable for the payment of reasonable attorney fees and all other fees and costs

⁴⁹⁸ Va. Code Ann. § 8.01-216.8 (2007).

⁴⁹⁹ Va. Code Ann. § 8.01-216.8 (2007).

⁵⁰⁰ See <http://oig.hhs.gov/fraud/falseclaimsact.html>.

⁵⁰¹ Wash. Rev. Code § 48.80.030 (2007).

⁵⁰² The West Virginia law pertaining to fraud and abuse in the Medicaid program is codified at W. Va. Code § 9-7-1 (2007), *et. seq.* The West Virginia legislature established the Medicaid fraud control unit of the West Virginia department of welfare to investigate and control fraud and abuse of the medical programs of the state department of welfare. W. Va. Code § 9-7-1(a) (2007).

⁵⁰³ "Assistance" is defined as money payments, medical care, transportation and other goods and services necessary for the

health and welfare of individuals, including guidance, counseling and other welfare services and includes all items of any nature contained within the definition of "welfare assistance" in chapter nine, section two, article one. W. Va. Code § 9-7-2 (2007).

⁵⁰⁴ The medical services fund consists of payments made into the fund out of state appropriations for medical services to specified classes of welfare assistance and such special grants-in-aid as are made available for specified classes of welfare assistance. W. Va. Code § 9-4-2 (2007).

⁵⁰⁵ "Claim" is defined as an application for payment for goods or services provided under the medical programs of the department of welfare. W. Va. Code § 9-7-2 (2007).

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Basics of the Law

of litigation.⁵⁰⁶ No criminal action or indictment need be brought against any person, firm, corporation, or other entity as a condition for establishing civil liability under the West Virginia law.

Investigation procedure. When the Medicaid fraud control unit has probable cause to believe that a person has engaged in an act or activity that is subject to prosecution under the West Virginia law against Medicaid fraud and abuse, the unit will investigate to determine if the act has been committed and, to the extent necessary, the commissioner, or an employee of the unit designated by the commissioner, will have the power to administer oaths or affirmations, and issue subpoenas for witnesses and documents relevant to the investigation.⁵⁰⁷

Who may bring an action. A civil action under the West Virginia law may be prosecuted and maintained on behalf of the department of welfare by the Attorney General and his assistants, a prosecuting attorney and his assistants or by any attorney in contact with or employed by the department of welfare to provide such representation.⁵⁰⁸ The Medicaid fraud control unit of the state department of welfare remains the leading entity involved in investigation and referral for prosecutions of all violations of applicable state and federal laws pertaining to the provision of goods or services under the medical programs of the state, including Medicaid.⁵⁰⁹ The West Virginia law on Medicaid fraud and abuse does not contain an express provision allowing a third party to bring an action.

Qui tam awards. The West Virginia law pertaining to fraud and abuse in the Medicare program does not contain an express provision for *qui tam* actions brought by whistleblowers.

Whistleblower protection.⁵¹⁰ West Virginia law pertaining to Medicare fraud and abuse does not contain a whistleblower protection provision. West Virginia law, however, does prohibit employers

from discharging, threatening or otherwise discriminating or retaliating against an employee because the employee made a good faith report or is about to report to the employer or appropriate authority an instance of wrongdoing or waste.⁵¹¹ An employer also may not discriminate or retaliate against an employee because the employee is requested or subpoenaed by an appropriate authority to participate in an investigation, hearing or inquiry held by an appropriate authority or in a court action.⁵¹² A person alleging that he is a victim of wrongful termination under the whistle-blower law may bring an action within 180 days after the occurrence of the alleged violation.⁵¹³

¶ 20,378XX Wisconsin

General. Wisconsin law on medical assistance offenses prohibits fraud in connection with the medical assistance program.⁵¹⁴ The law on medical assistance offenses provides criminal penalties for various fraudulent activity, including knowingly and willfully making or causing to be made any false statement or representation of a material fact in any application for any benefit or payment.⁵¹⁵ Wisconsin law on medical assistance offenses also provides a civil remedy for the state against any person convicted under the statute.

Damages. In addition to criminal penalties, any person who is convicted under the statute is liable for an amount three times the amount of actual damages sustained as a result of any excess payments made in connection with the offense for which the conviction was obtained.⁵¹⁶ Service providers convicted under the statute may also be fined not more than \$25,000.⁵¹⁷ Any other person may be fined not more than \$10,000.⁵¹⁸

¶ 20,378YY Wyoming

General. A bill for an act establishing a Wyoming False Claims Act, HB 0167, was introduced in

⁵⁰⁶ W. Va. Code § 9-7-6(a) (2007).

⁵⁰⁷ W. Va. Code § 9-7-3(a) (2007).

⁵⁰⁸ W. Va. Code § 9-7-6 (c) (2007).

⁵⁰⁹ W. Va. Code § 9-7-(b)(1) (2007).

⁵¹⁰ W. Va. Code § 6C-1-1 (2007), *et seq.* (2007)

⁵¹¹ W. Va. Code § 6C-1-3(a) (2007).

⁵¹² W. Va. Code § 6C-1-3(b) (2007).

⁵¹³ W. Va. Code § 6C-1-4(a) (2007).

⁵¹⁴ Wisconsin law on medical assistance offenses is codified at Wis. Stat. Ann. § 49.49.

⁵¹⁵ Wisc. Stat. Ann. § 49.49(1)(a) (2007).

⁵¹⁶ Wisc. Stat. Ann. § 49.49(1)(c) (2007).

⁵¹⁷ Wisc. Stat. Ann. § 49.49(1)(b) (2007).

⁵¹⁸ Wisc. Stat. Ann. § 49.49(1)(b) (2007).

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Summary of State Civil False Claims Laws

January 2007, but died in committee. Wyoming's 2007 regular legislative session adjourned on March

1, 2007. The Legislature will reconvene in January 2008.⁵¹⁹

[The next page is 24,001.]

⁵¹⁹ The Wyoming False Claims Act (HB 0167) was pending prior to the close of the legislative session in March 2007. The

Act was proposed to the House, but not signed into law prior to the close of the 2007 legislative session.