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THE OTHER HALF OF FALSE CLAIMS LIABILITY: STATE FALSE CLAIMS ACTS

When faced with allegations of public corruption, Washington has learned to follow the money. Amid ever-present federal budget crises—particularly regarding health care entitlement programs[1]—the feds inevitably direct their attention and resources to combating "fraud, waste, and abuse" as a means of restoring money to the federal treasury. This has proven to be a wise investment from the federal government's perspective. In the last two years, the feds have seen a return of $7.20 for every dollar spent fighting fraud.[2] Recovering more than $2 billion in 2011 from health care-related false claims judgments and settlements alone,[3] the government makes effective use of arguably the most powerful tool in its arsenal—the False Claims Act ("FCA"). In fact, since 1987, more than one-third of the total money recovered under the FCA for health care fraud has come in the last two years, demonstrating the government's "increased focus on fighting fraud."[4]

Corporate counsel whose clients do business with the federal government are undoubtedly familiar with the federal FCA. Moreover, the federal government's increased focus on rooting out fraud and abuse, and recent amendments to the FCA, have resulted in a barrage of legal and scholarly articles, blog posts, and news items concerning the FCA and its application. Equally important, however—and not well examined—are false claims statutes that exist under state law. And yet corporations *should* care about state false claims acts, because the four states that have prosecuted fraud most aggressively—New York, Texas, Florida, and California—averaged $200 million each in recovered funds in 2010 alone.[5]

Georgia is a relative newcomer to the false claims arena. Georgia's statute—the Medicaid False Claims Act—was not enacted until 2007, although the state wasted no time pursuing the power granted it by the statute.[6] In fiscal year 2009, the Department of Community Health's inspector general investigated more than 2,600 cases of alleged Medicaid fraud.[7] A small handful of these cases were referred for criminal investigation and prosecution to the State Medicaid Fraud Control Unit, a partnership between the Attorney General's Office, Georgia Bureau of Investigation,

and the State office of Audits and Accounts.[8] As a result of its zealous pursuit of Medicaid fraud, the state recovered $26 million for fiscal year 2009.[9]

Georgia's General Assembly recently amended its false claims statute in response to pressure from the federal government, and in doing so vastly altered the landscape for those who conduct business with the State of Georgia—especially those outside the health care industry. On April 16, 2012, Governor Nathan Deal signed into law the Georgia Taxpayer Protection False Claims Act, a broad swath that creates new and significant liability for every industry that does business with state or local governments in Georgia. Discussed in detail below, the statute grants the state and localities unprecedented power to investigate and prosecute allegations of fraud.

BACKGROUND ON FALSE CLAIMS STATUTES

The federal FCA was designed to protect the government—and taxpayers who fund government programs—from fraud and abuse by unscrupulous business people claiming a stake in federal outlays. Because federal authorities cannot be in all places at all times, the government relies on private citizens to act as "whistleblowers" when they suspect that a person or an entity is defrauding the federal treasury.[10] Depending on the circumstance, these whistleblowers (known in FCA parlance as "relators," who bring "*qui tam*" actions) are entitled to a portion of any money the government recovers as a result of a successful FCA lawsuit.

Medicare was designed to provide a base level of health care services for all aged individuals, regardless of health status or income, and is funded entirely out of the federal treasury. As a result, where Medicare false claims are at issue, states have little stake in the outcome of the litigation. By contrast, the Medicaid program, which services certain low-income and medically frail individuals, is a joint federal-state partnership. Medicaid funding is based on the Federal Medicaid Assistance Percentage ("FMAP"), a formula inversely proportionate to state income, whereby the federal government "matches" a certain percentage of each state's Medicaid expenditures even though the state programs are administered almost entirely by the states. While states are not required to operate a Medicaid plan, every state does. Although the FMAP formula provides that at least 50 percent (and up to 83 percent) of the costs of serving those enrolled in the Medicaid program are borne by the federal government, states nonetheless maintain a significant economic stake in ensuring that Medicaid disbursements are not subject to fraud and abuse.

The overwhelming majority of FCA recoveries come from the health care industry.[11] This stands to reason, as the two federal programs with the highest reported amounts of improper payments are the Medicare and Medicaid programs.[12] When health care providers submit claims for services rendered through these programs, they are reimbursed out of public funds. The most common problems with health care-related claims include overbilling, billing for services not rendered, and billing for one type of service when in fact a different service (often not reimbursable) was rendered to the patient. As a result, the U.S. Government Accountability Office considers Medicaid a "high-risk" program, "owing to the program's size, growth, diversity, and fiscal management weaknesses."[13]

Unlike the federal government, most states are constrained by balanced budget requirements. In many ways, the pressure to recover misused funds is therefore even greater for states. False claims statutes, particularly those that are broadly written, provide states with a mechanism to compensate for declining state revenue and budget shortfalls.[14]

Some states have had false claims statutes in effect for years. However, as part of the Deficit Reduction Act of 2005[15]—a massive overhaul of the federal Medicaid program designed in no small part to crack down on "fraud, waste, and abuse"[16]—Congress created a financial incentive for states to enact legislation creating liability for false claims submitted to the state Medicaid programs.[17] The goal was to forge "'a new partnership between the states and the federal government in fighting Medicaid fraud.'"[18] While states are entitled to share in any proceeds recovered through Medicaid false claims actions based on the FMAP proportion,[19] states with a "qualifying" false claims law are entitled to an additional 10 percent recovery.[20] This provision alone

was estimated to reduce Medicaid spending by $1.1 billion over a 10-year period.[21]

As of 2099, at least 32 states, the District of Columbia, and at least two municipalities had codified some form of false claims liability.[22] Although some state statutes are limited only to the Medicaid program,[23] most are more broadly written.

REVIEW OF STATE FALSE CLAIMS STATUTES

While a state is free to enact any legislation it chooses, it is entitled only to the 10 percent increase in its share of recovered funds in Medicaid false claims actions if its false claims law meets with the approval of the Department of Health and Human Services Office of the Inspector General ("OIG").[24] OIG has published four principles that govern whether a state statute will qualify for the bonus recovery:

1. The law must establish liability to the state for false or fraudulent claims described in 31 U.S.C. § 3729 with respect to any expenditure described in section 1903(a) of the Act;
2. The law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. §§ 3730-3732;
3. The law must contain a requirement for filing an action under seal for 60 days with review by the state's Attorney General; and
4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. § 3729.[25]

OIG first published this guidance in 2006. The FCA has since been strengthened by amendments under the Fraud Enforcement and Recovery Act of 2009,[26] the Patient Protection and Affordable Care Act of 2010,[27] and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.[28] These acts significantly expanded the bases for liability under the FCA, and also expanded the rights and protections afforded to whistleblowers. In 2011, OIG determined that only two state false claims acts—those in Connecticut and Iowa—complied with the FCA as recently amended.[29]

The most common bases for OIG's determination that the state statutes were no longer compliant include:

- Not expanding the breadth of liability to cover the same conduct as that covered by the amended FCA;[30]
- Failure to provide whistleblowers with the same protection from retaliation as under the amended FCA;[31]
- Not allowing the government's complaint in intervention to "relate back," for statute of limitations purposes, to the date the relator filed his or her original complaint;[32]
- Requiring courts to dismiss a broader category of cases based on public disclosure, and not giving the state an opportunity to oppose the dismissal;[33]
- Having a more restrictive definition of whether an individual qualifies as an "original source" than the federal definition has;[34]
- Restricting relators' ability to pursue cases only if the funds that are the subject of the false claims accusation were presented to an officer, employee, or agent of the state, or a political subdivision within the state (FERA eliminated the so-called "presentment requirement");[35]
- Prohibiting a relator's ability to recover or reducing the relator's share if the relator actively or knowingly participated in the fraudulent activity (under the federal statute, only relators who planned or initiated the violation may see a reduced or no recovery);[36]
- Prohibiting *qui tam* actions based on information that a relator who is either a current or former state employee obtained in the course or scope of his or her state employment;[37]
- Prohibiting *qui tam* actions based on information the relator obtained from a current or former state employee who was not acting within the course or scope of his or her state employment;[38]
- Having a more restrictive statute of limitations than the federal statute has;[39]
- Limiting employer liability over nonmanagerial employee actions to situations where the employer knew, ratified, or recklessly hired or supervised the nonmanagerial employee;[40]
- Requiring a showing of specific intent to defraud, if the person submitting the false claims agrees to repay the money;[41]

- Requiring relators who are also employees of the organization accused of submitting false claims to first exhaust internal reporting procedures;[42]
- Restricting or making discretionary the relators' ability to recover fees, costs, and other expenses, rather than making such recovery mandatory;[43] and
- Containing civil penalties that are less than those under federal law.[44]

When OIG first published its guidance for implementing the 10 percent bonus recovery provision, it stated emphatically that the guidelines were not to be construed as "model statutory provisions," nor would OIG require "any specific language to be included in State false claims acts."[45] OIG's recent review of state false claims legislation suggests the opposite. Where a state's statute did not all but mirror the federal statute, OIG determined the statute noncompliant.

OIG provided a two-year "grace period" for states to bring their false claims statutes in virtual lock-step with the federal FCA, as amended in 2009 and 2010, or else the state will no longer be entitled to the extra 10 percent in its share of recovered money. OIG's two-year grace period ends in March 2013 for some states and on August 31, 2013 for other states.[46]

GEORGIA'S LEGISLATIVE REVISIONS

Georgia's General Assembly was quick to revise Georgia's false claims statute, unanimously passing a massive, bipartisan bill that "aims to combat fraud in government programs and contracts," beyond just those in the health care industry.[47] House Bill 822, the Georgia Taxpayer False Claims Act, expands the scope of "false claims" beyond the limits previously existing under the Medicaid False Claims Act.[48] False claims liability is no longer confined to those who provide Medicaid-reimbursable services, and it extends to any person or entity that submits a false claim to the state or a local government, or to their political subdivisions. The gravity of this new liability cannot be overstated, as every industry that does business with the state or with municipalities is now exposed. The new act also provides Georgia's Attorney General with new investigatory powers and permits the Attorney General to delegate investigative and prosecutorial responsibilities to district attorneys. Information provided by whistleblowers is not a "public record" for purposes of the Georgia Open Records Act. Additionally, the statute provides for "any alternate remedy," including administrative proceedings, to determine civil penalties.

In addition to the law's broad expansion of what constitutes a violation, the penalties for submitting false claims are staggering. Civil penalties range from $5,500 to $11,000 for each violation (which, in any given case, can be thousands of false claims),[49] treble damages, and attorneys' fees and costs for both the state or local government *and* for the *qui tam* relator. Even accused violators who fully cooperate with government investigators are exposed only to double damages. Moreover, if a *qui tam* defendant has been convicted of, or pleaded guilty or *nolo contendere* to, criminal charges of fraud or false statements, the defendant may not deny "the essential elements of the offense" in any *qui tam* proceeding.

The law also expands protections for whistleblowers who provide information in connection with a *qui tam* action. There is no requirement, or even incentive, that employees report internally through their corporate compliance programs before filing a *qui tam* action. One notable provision arguably authorizes employees, contractors, and agents to remove confidential, and perhaps even privileged, internal documents at will and turn them over to the state. Employers may not take any action against the employee that could be construed as retaliatory, as the employee would be entitled to damages as a result. Even filing a *qui tam* complaint has become easier, as relators are relieved of the heightened pleading standard that would otherwise be required of any complaint alleging fraud.

As other states struggle to reformulate their false claims acts over the next year, we can expect to see these statutes—like Georgia's—become increasingly aggressive and relator-friendly, mirroring the amendments to the federal FCA. Jones Day will continue to monitor these developments.

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ENDNOTES

1 *See* Jeffrey T. Sprung, "State Could Recoup Millions Under Fraud False Claims Act," *The Olympian* (Mar. 3, 2012) (noting that the "U.S. Government Accountability Office estimates that 10% of government health care dollars are lost to fraud"); *see also* Kelly Kennedy, "$4.1B Recovered in Fight Against Health Care Fraud," *USA Today* (Feb. 14, 2012).

2 Kennedy, *supra* note 1.

3 *Id; see generally* U.S. Dep't of Health and Human Services and U.S. Dep't of Justice, "Health Care Fraud and Abuse Control Program: Annual Report for Fiscal Year 2011" (2012).

4 Kelly Kennedy, "Whistle-blowers Key in Health Care Fraud Fight," *USA Today* (Feb. 23, 2012).

5 *Id.*

6 Craig Schneider, "Data Aids Medicaid Detectives," *Atlanta J. Const.* (Apr. 23, 2010).

7 *Id.*

8 *Id.*

9 *Id.* It is not clear if this represents money recovered only from enforcement of the Medicaid False Claims Act or if it includes Georgia's share of money recovered from federal FCA lawsuits.

10 Sprung, *supra* note 1 (estimating that as many as "80 percent of the [federal] government's fraud cases were instigated by whistle-blowers").

11 *See* Press Release, U.S. Dep't of Justice, "Department of Justice Recovers $3 Billion in False Claims Cases in Fiscal Year 2010" (Nov. 22, 2010) (noting that $2.5 billion of the total $3 billion recovered in 2010 came from health care fraud recoveries).

12 Beryl H. Davis, "Improper Payments: Moving Forward With Governmentwide Reduction Strategies," U.S. Government Accountability Office, p. 7 (Feb. 7, 2012) (estimating that there were $28.8 billion in improper Medicare Fee-for-Service payments in 2011, an additional $12.4 billion in improper Medicare Advantage payments, and $21.9 billion in improper Medicaid payments).

13 National Conference of State Legislatures, "Incentivising Passage of State False Claims Acts" (Apr. 5, 2006).

14 For example, Georgia's former Attorney General Thurbert Baker described the ability to recover under the state's Medicaid false claims statute as "welcome, … especially this year as the state faces a $608 million Medicaid funding gap." Schneider, *supra* n. 6.

15 Pub. L. 109-171 (2005).

16 United States House of Representatives, Conference Report to S. 1932, at 72 (Dec. 19, 2005).

17 Pub. L. 109-171; *see also* Publication of OIG's Guidelines for Evaluating State False Claims Acts, 71 Fed. Reg. 48,552 (Aug. 21, 2006); National Conference of State Legislatures, "Incentivising Passage of State False Claims Acts" (Apr. 5, 2006) (noting that then-Chairman of the Senate Finance Committee Charles Grassley (R-NE) added provisions to the bill to "provide states with an additional tool to fight fraud and abuse in the Medicaid system").

18 National Conference of State Legislatures, "Incentivising Passage of State False Claims Acts" (Apr. 5, 2006) (quoting Senator Charles Grassley).

19 And correspondingly, the federal government is entitled to recover its proportionate share of the recovery in any successful state false claims litigation. See Letter to State Health Officials, SHO #08-004, Herb B. Kuhn, Dep. Admin. and Acting Dir., Ctr. for Medicaid and State Operations, Ctrs. for Medicare and Medicaid Servs., U.S. Dep't of Health and Human Servs. (Oct. 28, 2008).

20 For example, if a state's share of Medicaid costs under its governing FMAP is 40 percent (meaning the federal government pays $0.60 of every dollar spent on Medicaid services and the state pays $0.40), the state would receive 40 percent of the successful FCA recovery. However, under the new law, if the state has a qualifying false claims law, it would now be entitled to 50 percent of the recovery.

21 National Conference of State Legislatures, "Incentivising State False Claims Acts" (2012), last accessed Apr. 24, 2012, *available at* http://www.ncsl.org/issues-research/health/clarifying-requirements-for-a-state-false-claims-a.aspx.

22 Kaiser Family Foundation, "State Health Facts: States That Have Enacted a False Claims Act, 2009" (last accessed Apr. 24, 2012), *available at* http://statehealthfacts.org/comparetable.jsp?ind=260&cat=4&print=1; Taxpayers Against Fraud Education Fund, "State False Claims Acts" (last accessed Apr. 24, 2012), *available at* http://www.taf.org/statefca.htm. The states include: Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Kansas, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Rhode Island, Tennessee, Texas, Utah, Virginia, Washington, and Wisconsin. The municipalities are Chicago and New York City. Note, however, that the recent amendments to Georgia's statue, which are discussed in this *Commentary*, expanded Georgia's statute from a Medicaid-only statute to one that covers any claims submitted to the state or to localities from any industry and for any reason.

23 These include Colorado, Connecticut, Georgia, Iowa, Louisiana, Maryland, Michigan, Texas, and Wisconsin.

24 OIG is required to consult with the Attorney General in making any determination of whether a state's false claims statute is compliant. See 42 U.S.C. § 1396h.

25 Publication of OIG's Guidelines for Evaluating State False Claims Acts, 71 Fed. Reg. 48,552, 48,553 (Aug. 21, 2006).

26 Pub. L. 111-21 (2009).

27 Pub. L. 111-148 (2010).

28 Pub. L. 111-203 (2010).

29 *See* Letter from Daniel R. Levinson, Inspector General, Department of Health and Human Services, to Hon. George C. Jepsen, Attorney General, State of Connecticut (Nov. 15, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Joshua J. Happe, Dir., Iowa Medicaid Fraud Control Unit (Dec. 29, 2011).

30 *See,* e.g., Letter from Daniel R. Levinson, Inspector General, Department of Health and Human Services, to Hon. Kamala D. Harris, Att'y Gen., State of California (Mar. 21, 2011) (hereinafter "OIG California Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Christina Showalter, Dir., Delaware Medicaid Fraud Control Unit (Mar. 21, 2011) (hereinafter "OIG Delaware Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to David Lewis, Dir., Florida Medicaid Fraud Control Unit, (Mar. 21, 2011) (hereinafter "OIG Florida Review"); Letter from Daniel R. Levinson, Insp. Gen., Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Robert M. Finlayson III, Inspector General, Georgia Dep't of Cmty. Health (Mar. 21, 2011) (hereinafter "OIG Georgia Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. David M. Louie, Att'y Gen., State of Hawaii (Mar. 21, 2011) (hereinafter "OIG Hawaii Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Allen K. Pope, Dir., Indiana Medicaid Fraud Control Unit (Mar. 21, 2011) (hereinafter "OIG Indiana Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Nicholas J. Diez, Asst. Att'y Gen., State of Louisiana (Nov. 15, 2011) (hereinafter "OIG Louisiana Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Martha Coakley, Att'y Gen., Commonwealth of Massachusetts (Mar. 21, 2011) (hereinafter "OIG Massachusetts Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Mike Cox, Att'y Gen., State of Michigan (Mar. 21, 2011) (hereinafter "OIG Michigan Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Deborah R. Peterson, Dir., Minnesota Medicaid Fraud Control Unit (Aug. 21, 2011) (hereinafter "OIG Minnesota Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Steve Bullock, Montana Dep't of Justice (Mar. 21, 2011) (hereinafter "OIG Montana Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Catherine Cortez Masto, Nevada Dep't of Justice (Mar. 21, 2011) (hereinafter "OIG Nevada Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Paula T. Dow, Att'y Gen., State of New Jersey (Mar. 21, 2011) (hereinafter "OIG New Jersey Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Monica J. Hickey-Martin, Medicaid Fraud Control Unit, Office of Att'y , State of New York (Mar. 21, 2011) (hereinafter "OIG New York Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Lynn Rambo-Jones, Dep. Gen. Counsel, Oklahoma Health Care Auth. (Mar. 21, 2011) (hereinafter "OIG Oklahoma Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Gerald J. Coyne, Dep. Att'y Gen., State of Rhode Island (Mar. 21, 2011) (hereinafter "OIG Rhode Island Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Robert E. Cooper, Jr., Att'y Gen., State of Tennessee (Mar. 21, 2011) (hereinafter "OIG Tennessee Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Greg Abbott, Att'y Gen., State of Texas (Mar. 21, 2011) (hereinafter "OIG Texas Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Kenneth T. Cuccinelli II, Att'y Gen., Commonwealth of Virginia (Mar. 21, 2011) (hereinafter "OIG Virginia Review"); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Thomas Storm, Dir., Wisconsin Medicaid Fraud Control Unit (Mar. 21, 2011) (hereinafter "OIG Wisconsin Review").

31 *See*, e.g., OIG California Review; Letter from Daniel R. Levinson, Inspector General, Department of Health and Human Services, to Joan Henneberry, Ex. Dir., Colorado Dep't of Health Care Pol. and Planning (Mar. 21, 2011) (hereinafter "OIG Colorado Review"); OIG Delaware Review; OIG Florida Review; OIG Georgia Review; OIG Hawaii Review (concluding that, even though Hawaii has a separate whistleblower statute as well, that statute is not as protective as the amended FCA); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Patrick J. Keenan, Bureau Chief, Illinois Medicaid Fraud Bureau (Mar. 21, 2011) (hereinafter "OIG Illinois Review"); OIG Indiana Review; OIG Massachusetts Review; OIG Michigan Review; OIG Minnesota Review; OIG Montana Review; OIG Nevada Review; OIG New Jersey Review; OIG Oklahoma Review; OIG Rhode Island Review; OIG Tennessee Review; OIG Texas Review; OIG Virginia Review; OIG Wisconsin Review.

32 *See,* e.g., OIG California Review; OIG Delaware Review; OIG Florida Review; OIG Georgia Review; OIG Hawaii Review; OIG Indiana Review; OIG Massachusetts Review; OIG Michigan Review; OIG Minnesota Review; OIG Montana Review; OIG Nevada Review; OIG New Jersey Review; OIG New York Review; OIG Oklahoma Review; OIG Rhode Island Review; OIG Tennessee Review; OIG Texas Review; OIG Virginia Review; OIG Wisconsin Review.

33 *See,* e.g., OIG California Review; OIG Colorado Review; OIG Delaware Review; OIG Florida Review; OIG Georgia Review; OIG Hawaii Review; OIG Illinois Review; OIG Indiana Review; OIG Louisiana Review (note, too, that OIG's rejection of the Louisiana law, regarding this provision, is based solely on the way the Louisiana statute is punctuated); OIG Massachusetts Review; OIG Michigan Review; OIG Minnesota Review; OIG Montana Review; OIG Nevada Review; OIG New Jersey Review; Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Charles H. Hobgood, Dir. North Carolina Medicaid Investigations Unit (Mar. 21, 2011) (hereinafter "OIG North Carolina Review"); OIG Oklahoma Review; OIG Rhode Island Review; OIG Tennessee Review; OIG Texas Review; OIG Virginia Review; OIG Wisconsin Review.

34 *See,* e.g., OIG California Review; OIG Colorado Review; OIG Delaware Review; OIG Florida Review; OIG Georgia Review; OIG Hawaii Review; OIG Illinois Review; OIG Indiana Review; OIG Massachusetts Review; OIG Michigan Review; OIG Minnesota Review; OIG Montana Review; OIG Nevada Review; OIG New Jersey Review; OIG Oklahoma Review; OIG Rhode Island Review; OIG Tennessee Review; OIG Texas Review; OIG Virginia Review; OIG Wisconsin Review.

35 *See,* e.g., OIG California Review; OIG Colorado Review.

36 *See,* e.g., OIG California Review; OIG Massachusetts Review; OIG Montana Review; OIG Oklahoma Review (although Oklahoma does not require the relator's participation to have been "knowing" or "active").

37 *See,* e.g., OIG Florida Review; OIG Massachusetts Review; OIG New Jersey Review; OIG Hawaii Review (although Hawaii's statute forbids such actions only if the state employee fails to exhaust internal reporting procedures first); OIG Indiana Review (same); OIG Montana Review (same); OIG Nevada Review (same); OIG Virginia Review (same).

38 *See,* e.g., OIG Florida Review; OIG Georgia Review.

39 *See,* e.g., OIG California Review; OIG Minnesota Review.

40 *See,* e.g., OIG Minnesota Review.

41 *See,* e.g., OIG Minnesota Review.

42 *See,* e.g., OIG California Review.

43 *See,* e.g., OIG Minnesota Review; OIG New York Review; OIG Texas Review.

44 *See,* e.g., OIG California Review; OIG Colorado Review; OIG Hawaii Review; OIG Indiana Review; OIG Massachusetts Review; OIG Michigan Review; OIG Montana Review; OIG Nevada Review; OIG Oklahoma Review; OIG Rhode Island Review; OIG Tennessee Review; OIG Texas Review; OIG Wisconsin Review. Note that because the federal statute now ties civil penalties to the Federal Civil Penalties Inflation Adjustment Act of 1990, OIG will deem a state statute noncompliant if it does not also account for inflation or otherwise exceed the federal civil penalty threshold. *See id.*

45 Publication of OIG's Guidelines for Evaluating State False Claims Acts, 71 Fed. Reg. 48,552, 48,553 (Aug. 21, 2006).

46 A few states have subsequently had their grace periods extended until August 31, 2013, because OIG did not address certain issues of noncompliance in its original March 2011 review. *See,* e.g., Letter from Daniel R. Levinson, Inspector General, Department of Health and Human Services, to Hon. Kamala D. Harris, Attorney General, State of California (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Joan Henneberry, Ex. Dir., Colorado Dep't of Health Care Pol. and Planning (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Robert M. Finlayson III, Inspector General, Georgia Dep't of Cmty. Health (Aug. 31, 2011); *See* Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Patrick J. Keenan, Bureau Chief, Illinois Medicaid Fraud Bureau (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Allen K. Pope, Dir., Indiana Medicaid Fraud Control Unit (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Martha Coakley, Att'y Gen., Commonwealth of Massachusetts (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Bill Schuette, Att'y Gen., State of Michigan (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Catherine Cortez Masto, Nevada Dep't of Justice (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Gerald J. Coyne, Dep. Att'y Gen., State of Rhode Island (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Robert E. Cooper, Att'y Gen., State of Tennessee (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Greg Abbott, Att'y Gen., State of Texas (Aug. 31, 2011); Letter from Daniel R. Levinson, Insp. Gen., U.S. Dep't of Health and Human Servs., to Hon. Kenneth T. Cuccinelli II, Att'y Gen., Commonwealth of Virginia (Aug. 31, 2011).

47 Press Release, Georgia Senate Press Office, "Senate Passes Georgia Taxpayer False Claims Act" (Mar. 27, 2012).

48 The Medicaid False Claims Act remains in effect and was strengthened to parallel the federal FCA. False claims actions associated with the Medicaid program must be brought under the Medicaid False Claims Act and not under the new Georgia Taxpayer Protection False Claims Act.

49 Schneider, *supra* note 6.