Introduction

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Since 1986, more than 30 states, along with several municipalities, have enacted their own versions of a False Claims Act that is modelled in some manner after the federal False Claims Act, 31 U.S.C. §§ 3729–33. This publication is intended to provide a general overview of the various state false claims laws. It does not cover similar laws enacted by municipalities.

Because this area of law is dynamic, with different state legislatures enacting new false claims laws or amending existing ones, a practitioner should use this publication only as a starting point. If someone needs to know the current provisions of any particular state false claims law, there is no substitute for reading the statute itself.

To understand why so many states have enacted their own false claims laws, and why those laws have become increasingly important, it is helpful to look at the history of the federal False Claims Act (“FCA”) on which these state laws are modelled. Originally passed into law in 1863, the FCA is often said to be the United States government’s primary tool for recovering monies lost as the result of fraud. See S. Rep. No. 345, 99th Cong., 2d Sess., at 2 (1986), reprinted in 1986 U.S.C.C.A.N. 5266. The current version of the FCA provides, among other things, that persons who knowingly submit or cause the submission of false claims for payment of federal funds are liable to the government for treble damages plus civil penalties of between $5,500 and $11,000 per false claim. 31 U.S.C. § 3729; see 64 FR 47099, 47104 (Aug. 30, 1999).

Since it was enacted in 1863, the FCA has always contained “qui tam” provisions enabling a private citizen, known as a “relator,” to enforce the Act’s provisions by filing a lawsuit as a private attorney general. Despite their lengthy history, the FCA and its qui tam provisions were little used before 1986. In that year, however, responding to a widespread perception that defense contractors were committing rampant fraud against the public fisc, Congress overhauled the FCA and strengthened its qui tam provisions. See Pub. L. No. 99-562, 100 Stat. 3153 (1986).

In the current version FCA, one initiates a lawsuit alleging violations of the FCA by filing of a complaint with the federal district court. The complaint can be filed either by the Attorney General, 31 U.S.C. § 3730(a), or by a private qui tam relator, § 3730(b); the case is known as a qui tam action only if the lawsuit is initiated by a relator. The relator must file a qui tam case under seal and cannot serve the defendant with the pleadings; instead, the relator must serve a copy of the complaint, along with a written disclosure of substantially all material evidence and information possessed by the relator, on the United States. While the complaint remains under seal for an initial 60-day time period that can be extended for “good cause,” the Department of Justice is given an opportunity to investigate the allegations and either intervene in the case and become the lead plaintiff, or decline to intervene, in which case the relator may conduct the litigation on behalf of the federal government. If the government is successful in recovering in a qui tam case
through a judgment or settlement, the relator can be entitled to an award of between 15% and 25% of the proceeds if the Department of Justice has intervened, or between 25% and 30% of the proceeds if the relator has conducted the action on her own.

Since the 1986 amendments, the federal government has recovered billions of dollars in settlements and judgments in cases filed under the FCA, usually under the *qui tam* provisions. Between the mid-1980s and the mid-1990s, most FCA cases involved allegations of procurement fraud by defense contractors. From the mid-1990s to the present time, however, the majority of FCA cases have involved allegations of health care fraud involving the federal Medicare program and the joint federal-state Medicaid program.

As the federal government began to collect larger and more frequent recoveries under the federal FCA, several state governments realized that the federal Treasury was not the only victim of procurement or health care fraud, and that the states could also benefit from their own versions of a false claims act. In 1987, California enacted its own version of a false claims act with *qui tam* provisions, modelled closely on the federal FCA. Several other states followed suit and enacted their own versions of the statute.

By far the most prevalent use of the state false claims laws has been in the context of the joint federal-state Medicaid program, which provides medical services for the needy. The federal government and the various state governments share the responsibility for administering the Medicaid program. As for funding, the federal government provides at least half of the funds, but the state government must provide the rest. Consequently, if there is a fraud involving the Medicaid program, the federal government is one of the victims, and the damages to the United States are a significant portion of the losses resulting from the false claims. However, the state governments suffer the remainder of the damages and thus are also victims of Medicaid fraud. Therefore, by enacting false claims laws, the states have created a vehicle through which they, like the federal government, can recover treble damages and penalties for the state portion of losses resulting from false claims involving the Medicaid program.

Congress recognized the importance of state false claims laws as a means to recoup a significant amount of the states’ losses resulting from Medicaid fraud, and in 2005, Congress enacted legislation designed to reward states for enacting effective false claims laws. In the 2005 Federal Deficit Reduction Act (“DRA’”), 42 U.S.C. § 1396h, Congress included a provision that would give states a financial incentive to enact false claims laws that were “at least as effective” as the federal FCA in recovering losses from Medicaid fraud. The Department of Health and Human Services Office of Inspector General, in consultation with the Department of Justice, was given responsibility for determining whether a state’s false claims law qualified for the financial incentive, *i.e.*, that the state’s law was “at least as effective” as the federal version of the FCA. If the state enacted a law that met this test, *i.e.*, that was DRA-compliant, the state could keep an additional 10% of any Medicaid funds through an action under the false claims act. The enactment of the 2005 DRA was followed by a flurry of state legislative activity resulting in the passage of numerous state false claims acts.
During 2009 and 2010, Congress passed three separate sets of amendments to the federal FCA. The most significant amendments were passed as part of the Fraud Enforcement and Recovery Act of 2009 (“FERA”). As part of that statute, Congress expanded the coverage of the substantive liability provisions of the FCA. In the Affordable Care Act (“ACA”) of 2010, Congress modified the “public disclosure bar” and its “original source” exception, making it easier for qui tam relators to maintain lawsuits. Finally, in the Dodd-Frank Act of 2010, Congress expanded the coverage of the FCA anti-retaliation provision so that, in its current form, it prohibits employers from retaliating against employees and others who assist in the investigation of a potential FCA case or who try to stop a violation of the FCA.

As the result of these three Congressional amendments to the FCA, the States had to re-visit their own false claims laws to make them “at least as effective” as the federal version, i.e., DRA-compliant. The states were given a two-year grace period, which ended in 2013, to modify their laws to make them DRA-compliant. This resulted in another flurry of state legislative activity in the area of false claims laws.

Many of the state false claims laws are now DRA-compliant and, not coincidentally, have a close resemblance to the federal FCA (and, of course, one another). Within this group, however, some state false claims act laws apply only to Medicaid fraud. Many of the other state false claims laws are not DRA-compliant, and among these there tends to be much more variation: for example, several of these statutes do not have qui tam provisions, or they have other restrictions on qui tam plaintiffs that are not found in the current version of the federal FCA.

Generally, one might see two categories of cases arising under a state false claims act. The first category consists of stand-alone cases filed in state court, alleging a violation of a state false claims act in the context of a procurement of goods or services by the state. Those cases must be filed and handled in accordance with the provisions set forth in the state false claims law.

The second category of cases involves combined federal-state lawsuits involving a set of common allegations or transactions, where one or more claims arises under the federal FCA, and one or more claims also arises under one or more state false claims laws. Most often, these cases involve allegations of fraud under the joint federal-state Medicaid program—where the alleged victims include both the federal government and one or more states. Relators typically commence these combined federal-state lawsuits by filing a single complaint under seal in federal district court. In the lawsuit, the relator typically includes one or more counts alleging that the defendant has violated the federal FCA; in addition, for each state that the plaintiff alleges has been defrauded, the plaintiff typically includes one or more separate counts arising under the false claims law of that state.

Although each state false claims law typically has a provision that requires the filing of a state false claims action in a particular state court, there is also a provision of the federal FCA that anticipates and addresses the situation where a relator is filing a lawsuit alleging both violations of the federal FCA and violations of one or more state false claims laws. Section 3732(b) of the federal FCA provides:
Claims under State law. The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.


The federal FCA also incorporates a provision that allows the qui tam relator to serve a copy of the complaint, along with the written disclosure statement, on each of the state or local plaintiffs on whose behalf the qui tam plaintiff may also be filing suit, without violating the seal in the federal court case. Section 3732(c) of the federal FCA states:

Service on State or local authorities. With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

31 U.S.C. § 3732(c).

Because nearly all of the state false claims laws are in some way modeled on the federal FCA, this publication begins with a chapter describing the provisions of the federal FCA. The remainder of the publication discusses each of the state false claims laws, with each chapter corresponding to a single state. Rather than describing in detail all of the provisions of each state false claims law, however, this publication gives an overview of each state false claims law, and then describes how the provisions of each false claims law compare to, and differ from, the analogous provisions in the federal FCA. Again, the reader is advised that this publication is intended to serve merely as a guide to the state false claims laws, and it should not be treated as a substitute for reading the statutes.

This publication is the product of the hard work of several members of the Public Contract Law Section of the American Bar Association. The authors of each of the chapters are listed in the table of contents and at the beginning of each chapter. In addition to those authors, there are three individuals whose contributions made this publication possible. Zachary Sullivan, when he was my colleague in the law firm Vogel, Slade & Goldstein, LLP in 2012–13, wrote some of the early drafts of some of the state chapters, and more importantly, devised the template that was followed in all of the chapters. Patricia Davis, who has taught courses on state false claims laws, edited many of the chapters. Finally, Brad Leneis, who is my colleague in the law firm Vogel, Slade & Goldstein, LLP, did more work than anyone else, writing several of the chapters and editing many of the others.