

## Summary of Federal and Minnesota Laws

### Federal Laws

#### **False Claims Act (FCA)**

Title 31 United States Code (USC) Section 3729-33 is a Federal law that prohibits knowingly presenting or causing to be presented to the Federal government a false claim for payment or approval, knowingly making or using or causing to be made or used a false record or statement to have a false or fraudulent claim paid or approved by the government, and knowingly making or 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 government, or conspiring to commit any such violation. The FCA defines 'knowingly' to mean that a person, with respect to the information: 1) has actual knowledge of the information; 2) acts in deliberate ignorance of the truth or falsity of the information; or 3) acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The Federal government may impose harsh penalties under the FCA. These penalties include 'treble damages' (damages equal to three times the amount of the false claims) and civil penalties of up to \$11,000 per claim. Individuals or organizations violating the FCA may also be excluded from participation in Federal programs.

#### **Deficit Reduction Act of 2005 (DRA)**

Section 6304 of the DRA established the Medicaid Integrity Program, which increased the Centers for Medicare & Medicaid Services' (CMS) resources to prevent and respond to Medicaid fraud and abuse.

#### **Whistleblower Protections and Prohibition on Retaliation**

To encourage individuals to come forward and report misconduct involving false claims, the FCA contains a *qui tam*, or whistleblower, provision (31 USC 3730). This provision permits individuals with knowledge of false claims activity to file a lawsuit on behalf of the Federal government. These individuals are referred to as 'relators'. The relator's lawsuit is filed under seal, which means it is kept confidential until the U.S. Justice Department reviews the case and decides whether to take over prosecution of the matter. If a relator's lawsuit is successful, the relator may receive an award ranging from 15 to 30 percent of the government's recovery, plus reasonable expenses and attorneys' fees.

The FCA prohibits retaliation against employees, contractors, or agents for filing a *qui tam* lawsuit or otherwise assisting in the prosecution of an FCA claim. Under the FCA, individuals who are the subject of such retaliation may be awarded reinstatement, back pay, and other compensation.

## Minnesota Laws

Under Minnesota law, a person who commits any of the following acts is liable for a civil penalty of not less than \$5,500\* and not more than \$11,000\* per false or fraudulent claim, plus three times the amount of damages sustained for:

1. Knowingly presenting or causing to be presented a false or fraudulent claim for payment or approval;
2. Knowingly making or using or causing to be made or used a false record or statement to get a false or fraudulent claim paid or approved;
3. Knowingly conspiring to either present a false or fraudulent claims for payment or approval or making, using or causing to be made or used a false record or statement to obtain payment or approval of a false or fraudulent claim;
4. Having possession, custody, or control of public property or money used, or to be used and knowingly delivering or causing to be delivered less money or property than the amount for which the person receives a receipt;
5. Being authorized to prepare or deliver a receipt for money or property and knowingly prepares or delivers a receipt that falsely represents the money or property;
6. Knowingly buys, or receiving as a pledge of an obligation or debt, public property who lawfully may not sell or pledge the property; or
7. Knowingly making or 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.

In limited circumstances, the penalty may be reduces to two times the amount of the damages. In addition, a person violating this section is also liable to the state or political subdivision for the costs of civil action brought to recover any penalty or damages. A person is not liable under this section for mere negligence, inadvertence, or mistake with respect to activities involving a false or fraudulent claim.

### **Prohibition on Retaliation**

An employer must not adopt or enforce any rule or policy forbidding an employee to disclose information to the state, a political subdivision, or a law enforcement agency or to otherwise act pursuant to the FCA, including investigation for, bringing a claim, or testifying. An employer must not discharge, demote, suspend, threaten, harass, deny promotion to, or otherwise discriminate against an employee in the terms or conditions of employment because of lawful acts done by the employee, on the employee's behalf or on behalf of others in disclosing information. An employer who violates the prohibition on retaliation is liable to the affected employee in a civil action for damages and other relief, including reinstatement, twice the amount of lost compensation, interest on the lost compensation, any special damage sustained as a result of the discrimination, and punitive damages if appropriate. The employer is also liable for expenses including costs and attorney fees.

\*Effective August 1, 2016, the civil penalties authorized under the Federal False Claims Act increase from \$5,500 to \$11,000 per false claim to a range of \$10,781 to \$21,563 per false claim. Minnesota was granted a grace period, ending December 31, 2018, to amend the Minnesota False Claims Act and resubmit it to OIG for approval.