

Summary of Federal and State False Claims and False Statements Laws

The federal False Claims Act (“FCA”) is designed to protect the federal government against fraudulent practices on the part of its contractors. Briefly, the FCA prohibits individuals and organizations from submitting false or fraudulent claims to the government for payment or reimbursement. Additional information about the law and its history is available at the [U.S. Department of Justice](#) Web site.

Many states, including Michigan, have enacted similar laws. The FCA defines a claim as a “request or demand for money or property” made to the government or to a third party that is reimbursed by the government. The following transactions or activities are examples of claims:

- Requests for payment or reimbursement of property, services or money (including grants, loans, insurance, or benefits).
- Requests for approval or authorization to provide property, services or money.
- Statements made in support of requests for payment, reimbursement, approval or authorization.
- Statements of income or expense that are used to determine a rate of payment.
- Statements for use in qualifying as a provider.
- Statements identifying an item or service as reimbursable, whether made directly to the government or to someone else – a contractor or other recipient – who the government will be paying or reimbursing for all or part of the claim.

Any information contained in a claim or statement, or in documentation used to support or complete a claim or statement, must be accurate, correct, and complete. Omission of important information may render a claim or statement inaccurate.

A claim is “false” if the person or organization presenting it has actual knowledge that the claim is false, or if the person or organization acts in “deliberate ignorance” or “reckless disregard” of the truth or falsity of the information. This means that, to allege a false claim, the government is not required to prove that the person making the claim actually intended to defraud the government. For this reason, a person or organization may not, either deliberately or carelessly, ignore questionable information contained in a claim or statement, or in supporting documentation.

Some examples of false claims include:

- False or fraudulent claims for payment or approval.
- False records or statements made or used to get a false or fraudulent claim paid or approved by the government, for example, inaccurate quality data reported in support of pay-for-performance escalators.
- Conspiracy to defraud the government by getting a false or fraudulent claim allowed or paid.

How Does the Government Enforce the False Claims Act?

Civil penalties for FCA violations include \$5500-\$11,000 per false claim submitted, triple the amount of damages suffered by the government, and attorneys' fees and costs. The federal government enforces the FCA directly through the Department of Justice (DOJ) or local US Attorneys' Offices (USAOs), or through qui tam actions, where an individual or organization sues on behalf of the government and is entitled to a portion of any recovery. In egregious cases, false claims violations may serve as a basis for imposing criminal sanctions.

Whistleblower Protection

The FCA includes specific provisions to protect whistleblowers from retaliation by their employers. Any employee who initiates or assists with an FCA case against his or her employer is protected from discharge, demotion, suspension, threats, harassment, and discrimination in the terms and conditions of his or her employment if the employer's actions are taken in response to the employee's efforts on the FCA case. For example, an employee who violates applicable laws or institutional policies may be disciplined or terminated for the violation, even if he or she is also a whistleblower. An employee who does suffer retaliation for his or her initiation or assistance with an FCA case against his or her employer is entitled to reinstatement, back pay, and other compensation.

State Laws

Michigan has enacted state laws prohibiting false claims and false statements in Medicaid and in healthcare more generally. For example, Michigan law prohibits false statements in any report required by the Michigan Department of Community Health under the Michigan hospital licensing statute; false statements in vital records or reports, STD/HIV marriage license certifications, occupational disease reports, and other state-mandated reports and certifications; and false statements in physician certifications used to support life, casualty, or disability insurance applications and claims.

Michigan also has adopted a Medicaid False Claims Act (MiFCA) under the Social Welfare Act. MiFCA:

- Prohibits a person or organization from making false statements or false representations of material facts for use in determining rights to a Medicaid benefit; and requires a person who has knowledge that would affect his initial or continued right to receive a Medicaid benefit.
- Prohibits a person or organization from making or inducing false statements or representations with respect to the conditions or operation of an institution or facility related to its qualifications as a hospital, home health agency, or other facility.
- Prohibits any agreement, combination, or conspiracy to defraud the State by obtaining or helping someone else obtain payment or allowance of a false claim.

- Prohibits the making of any false claim, including any claim that misrepresents the medical necessity of a health care service.

Like the federal FCA, MiFCA allows a private citizen to initiate a case against a person who violates the statute and, if the case is successful, to earn a portion of the recovery. A person who brings a qui tam action that a court later finds was frivolous may be liable for the defendant's attorneys' fees and expenses in defending the case, plus up to \$10,000.00 in fines.

MiFCA also protects whistleblowers with sanctions similar to those provided for under the federal FCA. An employer who retaliates against an employee who initiates or assists in a false claims case against the employer is liable to the employee for reinstatement, back pay, and other compensation.

In addition to MiFCA, Michigan has adopted a broader Health Care False Claims Act, which prohibits similar conduct against private health insurers, but does not include whistleblower provisions:

- False claims, false statements, and false representations made to HMOs, insurers, or other health plans related to a beneficiary's entitlement to health benefits.
- False representations concerning the medical necessity of goods or services provided to a health plan beneficiary.
- Failure to disclose an event affecting a provider's initial or continued right to receive payment for providing a health care service.
- Any agreement, combination, or conspiracy to defraud an HMO, insurer, or health plan by making, presenting, or assisting another in making or presenting a false claim for payment of health care benefits.

In addition to MiFCA, Michigan law protects employees, contractors and others who make good-faith reports to the [Michigan Department of Community Health](#) about licensing or safety concerns or violations.

Links and Resources

[CMS Enrollment Form](#) (see Section 14 on Penalties for Falsifying Information)