

## Civil Bounty Hunters: Qui Tam Actions Under The Federal False Claims Act

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**A** bounty has been placed on the heads of health care providers who submit false or fraudulent claims under the Medicare or Medicaid programs. Under the Federal False Claims Act, one of a handful of Federal laws that may be enforced by private citizens, individuals are offered financial incentives to "blow the whistle" on offending providers.

The False Claims Act, which was signed into law by President Abraham Lincoln in 1863, was enacted to combat the then rampant fraud in Federal defense contracts during the Civil War. In 1986, the False Claims Act was amended to ease the requirements for prosecuting a claim under the Act and to create added incentives for private litigants to file claims.

Generally, the False Claims Act prohibits a person from "knowingly" submitting false or fraudulent claims to the Federal government. A person need not have intent to defraud or have actual knowledge of the false or fraudulent claim. A provider who acts in deliberate ignorance or with reckless disregard of the truth or falsity of the claims which it has submitted to the government may have liability under the Act. Courts have not been hesitant to impose liability on providers who have submitted claims without making more than a perfunctory inquiry into whether the billings or claims are legitimate under Medicare or Medicaid regulations.

Damages under the False Claims Act are draconian. A person found to have violated the Act is liable for three times the amount of the damages sustained by the Federal government plus a civil penalty for each claim of between \$5,000 and \$10,000. Except under limited circumstances, a court has no discretion to reduce the penalty per claim. Because the Medicare and Medicaid programs require the submission of multiple bills for small amounts, mandatory penalties can be staggering. In a 1991 case involving a dentist who had submitted false claims to Medicare, the court imposed over \$18 million in penalties even though the dentist's false claims cost the government about \$130,000.

The False Claims Act authorizes enforcement actions—known as qui tam actions—to be brought on behalf of the Federal government by a private party having direct knowledge of the fraud. With only limited

exclusions, any private citizen with knowledge of the fraud may bring a qui tam action. Potential qui tam plaintiffs include employees, patients, contractors, advisors or competitors of a provider. Employees who bring an action may not be discharged or otherwise discriminated against. Employees discharged for bringing a False Claims Act action are entitled to reinstatement, double back pay, special damages, costs and attorneys' fees.

A qui tam action under the False Claims Act is commenced by filing a complaint and back-up documentation "under seal" and serving the documents on the government. Initially, the defendant is not served. The government has 60 days, which may be extended upon a showing of good cause, within which to decide whether to pursue the action itself. During this time, the government will conduct its own investigation of the alleged fraud. If the government elects to pursue the action, it is primarily responsible for prosecuting the claim. If it elects not to pursue the action, it is up to the qui tam plaintiff to pursue the claim.

The rewards to qui tam plaintiffs may be substantial. If the government prosecutes the case, the plaintiff is entitled to between 15% and 25% of the recovery, depending on its contribution to the prosecution of the action. If the qui tam plaintiff prosecutes the case, the plaintiff is entitled to between 25% and 30% of the recovery. In both situations, the plaintiff may recover its reasonable attorneys' fees and costs from the defendant.

Recently, there has been an explosion of qui tam actions in the health care area with some plaintiffs recovering in excess of \$1 million. Given the severity of the penalties under the False Claims Act, the vigor with which the government and private citizens are attempting to root out and prosecute violations of the Act and the fact that a provider may have liability under the Act for less than intentional or knowing conduct, providers would be well advised to evaluate their billing practices to ensure compliance with the Medicare and Medicaid programs. ■