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States Continue to Develop False Claims Act Analogs

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On February 6, 2015, both houses of the ***Maryland*** legislature introduced bills that would add Maryland to the growing list of states with their own version of the ***False Claims Act (FCA)***. If signed into law, Maryland will, effective October 1, 2015, impose a $10,000 civil penalty and triple damages for, *inter alia*, "knowingly present[ing] or caus[ing] to be presented a false or fraudulent claim for payment or approval." Act of Feb. 6, 2015, § 8-102, 2015 Md. Senate Bill No. 374 (establishing Maryland False Claims Act); Act of Feb. 6, 2015, § 8-102, 2015 Md. House Bill No. 405 (same). Maryland already has a *False Health Claims Act*, which imposes similar liability only for false claims submitted to Maryland state health plans or programs (including Medicaid). *See* Md. Code, Health–Gen. § 2-602 (2010).

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At present, 20 states (plus the District of Columbia) have their own versions of the federal FCA: California, Delaware, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Massachusetts, Minnesota, Montana, Nevada, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Rhode Island, Tennessee and Virginia. Note that several of these (*e.g.*, New Mexico and Virginia) style their versions as Fraud Against Taxpayer Acts. Eight additional states have narrower versions that, like Maryland (for the time being), address only fraud in the health care context: Colorado, Connecticut, Louisiana, Michigan, New Hampshire, Texas, Washington and Wisconsin.

Because of the obvious financial incentives represented by civil penalties and multiple damages, the number of states with their own FCAs is likely to continue growing. Furthermore, federal law provides other financial incentives for states to establish FCAs. *See* 42 U.S.C. § 1396h (2007) (states with FCA-like statutes meeting certain requirements entitled to 10 percent increase with respect to amounts recovered under state action brought pursuant to such a law). Indeed, state lawmakers have pitched FCAs as effective means for narrowing budget deficits.

State law FCA claims are routinely brought alongside federal FCA claims. Given that state law claims typically mirror claims under the federal statute, all such claims will usually be subject to dismissal on the same or similar grounds. However, defense practitioners should familiarize themselves with any differences or nuances that may exist between the federal FCA and the state law analog at issue in a given case, particularly if such differences give rise to additional grounds to dispose of a complaint. For example, Florida bars actions under its version of the FCA by relators who are former state employees if the action is based in part on information obtained in the course of state employment. *Compare* Fla. Stat. 68.087(4)(b) (2013) *with* 31 U.S.C. § 3730(e) (2010). Potential, additional grounds such as this for dismissal of state law FCA claims should not be overlooked.