

THE NATIONAL LAW REVIEW

Part Two of False Claims Act - the Basics Every Provider Should Know

Thursday, June 18, 2015

On [Tuesday](#), we discussed the history and basic elements of a violation of the **False Claims Act**. Today's post will explore the penalties and enforcement of the Act.

FCA penalties are harsh, as they are designed to truly deter attempts to defraud the federal government. The penalty for an FCA violation begins with treble damages, requiring the offender to pay three times the amount of the false claim back to the government. Each violation also incurs civil penalties, which currently range from \$5,500 to \$11,000 and are periodically adjusted for inflation. The statute of limitations for FCA violations can extend to ten years after the violation, so civil penalties incurred per violation can really add up!



Importantly, if an offender catches a false claim early, reports it to the government at least 30 days before an investigation or prosecution commences, and cooperates with any subsequent investigation of the claim, the court will reduce the penalty to only double damages. Such potential relief is no substitute for scrupulous billing practices, however.

While a false claim alone is not sufficient to trigger the provisions of the FCA, the Affordable Care Act requires the return of any overpayment under a federal healthcare program within 60 days of identification of the overpayment. § 1320a-7k(d)

If the overpayment is not returned within that 60-day window, it is considered a violation of the FCA.

Finally, it is important to understand that the FCA is enforced through qui tam lawsuits as well as direct governmental action. Qui tam lawsuits are better known as whistleblower suits, and literally any person can bring such a suit. These suits are not brought merely out of a sense of civic duty - qui tam plaintiffs receive rewards of at least 15 percent and up to 25 percent of the government's proceeds from pursuing the claim. If the government doesn't intervene to pursue the claim, the relator's share then increases to between 25 and 30 percent. This reward means that potential whistleblowers have a true incentive to seek out billing fraud and abuse.

The key to avoiding FCA liability is through effective compliance. Billing staff should be thoroughly trained in all billing practices. Thorough and meticulous records should also support every aspect of billing and be retained for an extended period of time. Internal audits should review regulatory compliance, and any issues discovered should be immediately corrected.

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