

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 ranging from \$13,946 to \$27,894 per claim. Individuals or organizations violating the FCA may also be excluded from participating in Federal programs.

Deficit Reduction Act of 2005 (DRA)

Section 6034 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 United States 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. PrimeWest Health Policy and Procedure C04: Non-Retaliation/Non-Retribution strictly prohibits any form of retaliation against anyone reporting suspected compliance violations.

Minnesota Laws

Pursuant to MN Stat. sec. 15C.02, a person who commits any of the following acts is liable for a civil penalty per false or fraudulent claim, plus three times the amount of damages sustained:

1. Knowingly presents or causes to be presented a false or fraudulent claim for payment or approval
2. Knowingly makes or uses or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved
3. Knowingly conspires to either present a false or fraudulent claim for payment or approval or makes, uses, or causes to be made or used a false record or statement to obtain payment or approval of a false or fraudulent claim
4. Has possession, custody, or control of public property or money used, or to be used and knowingly delivers or causes to be delivered less money or property than the amount for which the person receives a receipt
5. Is 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 receives as a pledge of an obligation or debt, public property who lawfully may not sell or pledge the property; or
7. Knowingly makes or uses or causes 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 reduced to two times the amount of the damages. In addition, a person violating MN Stat. sec. 15C.02 is also liable to the State or the political subdivision for the costs of a civil action brought to recover any penalty or damages. A person is not liable under MN Stat. sec. 15C.02 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.