

False Claims Act [31 U.S.C. § § 3729-3733]

The civil FCA protects the Government from being overcharged or sold shoddy goods or services. **It is illegal to submit claims for payment to Medicare or Medicaid that you know or should know are false or fraudulent.** Filing false claims may result in fines of up to three times the programs' loss plus \$11,000 per claim filed. Under the civil FCA, each instance of an item or a service billed to Medicare or Medicaid counts as a claim, so fines can add up quickly. The fact that a claim results from a kickback or is made in violation of the Stark law also may render it false or fraudulent, creating liability under the civil FCA as well as the AKS or Stark law.

Under the civil FCA, no specific intent to defraud is required. The civil FCA defines "knowing" to include not only actual knowledge but also instances in which the person acted in deliberate ignorance or reckless disregard of the truth or falsity of the information. Further, the civil FCA contains a whistleblower provision that allows a private individual to file a lawsuit on behalf of the United States and entitles that whistleblower to a percentage of any recoveries. Whistleblowers could be current or ex-business partners, hospital or office staff, patients, or competitors.

There also is a criminal FCA (18 U.S.C. § 287). Criminal penalties for submitting false claims include imprisonment and criminal fines. Physicians have gone to prison for submitting false health care claims.

Tennessee Medicaid False Claims Act & Tennessee False Claims Act

Tennessee has two false claims acts.

The Tennessee Medicaid False Claims Act ("TMFCA") (Tenn. Code Ann. §§ 71-5-181 to 71-5-185) combats fraud and recovers losses but applies only to false claims under the Tennessee Medicaid program, and was recently amended to mirror the federal law.

The Tennessee False Claims Act ("TFCA") (Tenn. Code Ann. §§ 4-18-101 to 4-18-103) helps the state combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. It applies to claims that involve funds of the state or any political subdivision. Examples of violations of both the TFCA and TMFCA can include:

- Knowingly submitting a false claim for payment or approval
- Knowingly making or using a false record or statement to get a false claim paid or approved
- Conspiring to defraud the state by getting a false claim allowed or paid
- Knowingly making or using a false record to conceal or avoid payments owed

Anyone who benefits from a false claim that was mistakenly submitted violates the TFCA if he or she does not disclose the false claim soon after he or she discovers it.

Case Examples of Fraudulent Billing

- A psychiatrist was fined \$400,000 and permanently excluded from participating in the Federal health care programs for misrepresenting that he provided therapy sessions requiring 30 or 60 minutes of face-to-face time with the patient, when he had provided only medication checks for 15 minutes or less. The psychiatrist also misrepresented that he provided therapy sessions when in fact a non-licensed individual conducted the sessions.
- A dermatologist was sentenced to 2 years of probation and 6 months of home confinement and ordered to pay \$2.9 million after he pled guilty to one count of obstruction of a criminal health care fraud investigation. The dermatologist admitted to falsifying lab tests and backdating letters to referring physicians to substantiate false diagnoses to make the documentation appear that his patients had Medicare-covered conditions when they did not.
- A cardiologist paid the Government \$435,000 and entered into a 5-year Integrity Agreement with OIG to settle allegations that he knowingly submitted claims for consultation services that were not supported by patient medical records and did not meet the criteria for a consultation. The physician also allegedly knowingly submitted false claims for E&M services when he had already received payment for such services in connection with previous claims for nuclear stress testing.
- An endocrinologist billed routine blood draws as critical care blood draws. He paid \$447,000 to settle allegations of upcoding and other billing violations.