

NEW YORK ENACTS FALSE CLAIMS ACT: NEW REMEDIES FOR RECOVERY OF FRAUDULENT PAYMENTS

Health Alert
July 2007

Effective April 1, 2007, New York State passed legislation aimed at assisting local governments in recovering fraudulent payments made to individuals or corporations. The New York State False Claims Act (FCA) applies to false claims of any kind made to the state or any municipality, school district, or public benefit corporation within the state, or to any contractor whose funding comes even in part from the state or a local government. The FCA provides a new remedy and financial incentives for actions seeking recovery of false claims. (New York State Local Finance Law, Article 13, §§ 187, et. seq.)

The FCA is not limited to any category of public expenditure. It applies to any request or demand made, under a contract or otherwise, for money or property to an employee, officer, or agent of the state or local government. The FCA also applies to any request or demand made to a contractor, grantee, or other recipient if the state or local government provides any portion of the money or property that is requested or demanded. Any person who knowingly presents or causes to be presented a “false or fraudulent claim for payment or approval” or a “false record or statement to get a false or fraudulent claim paid or approved” by the state or local government is subject to civil liability. Actual knowledge, reckless disregard, or deliberate ignorance of the truth is required; no liability attaches in situations involving a mistake or mere negligence.

The monetary relief that can be awarded against a responsible party is substantial. The state will be awarded a civil penalty of between \$6,000 and \$12,000 per false claim, plus three times the amount of damages the state sustains because of the act of that individual. Any local government will be awarded three times the amount of damages sustained by the local government because of the act of that person. A person who violates the FCA will also be liable for the costs, including attorneys’ fees, of a civil action brought to recover the civil penalty and damages. A court may also award “an amount for reasonable expenses which the court finds to have been necessarily incurred” and court costs. All such expenses, fees, and costs will be awarded directly from the defendant and will not be charged from the proceeds recovered.

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The FCA is modeled after the federal False Claims Act and is expected to be enforced in similar fashion. (31 U.S.C. § 3729, et. seq.) Private citizens are encouraged to bring a qui tam lawsuit on behalf of the state or local government. The key incentive for qui tam plaintiffs is the potential personal recovery by the whistleblower of between 10% and 30% of the proceeds recovered in the action or settlement of the action.

The attorney general is empowered by the statute with oversight authority in FCA lawsuits. Whistleblowers are provided with protection against retaliation as a result of bringing a qui tam action. A whistleblower who is retaliated against is entitled to relief in the form of reinstatement, full fringe benefits and seniority rights, payment of two times back pay, plus interest, and special damages, including litigation costs and attorneys' fees.

In summary, the FCA provides new remedies for the state government and local governments to recover fraudulent payments made by the government or entities receiving public monies. In addition to existing traditional civil and criminal remedies, an FCA lawsuit allows recovery of treble damages, attorneys' fees, litigation expenses, and costs. Moreover, private citizens can bring actions to recover amounts paid as a result of fraudulent claims. The FCA will greatly increase the ability of governments to recover from responsible parties amounts fraudulently paid.

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