

## Part IV State and Local Government False Claims Acts

### The Development of State False Claims Act Legislation

It is important that not only the Federal Government but also the State and Local Governments are enlisted in this public-private partnership to ferret out, uncover and prosecute fraud against the Government at all levels. As the False Claims Act came to be the most effective tool for fighting fraud against the Government, it came to be realized that the tool was needed at the State and Local levels. This is particularly true where there are extensive programs of joint Federal and State spending on medical or education programs.

The passage of state legislation has been accretive since 1986. The various acts have either been, like the pioneering California False Claims Act of 1987, virtual replicas of the Federal legislation, or they have been crafted to meet only certain types of fraud against the Government such as frauds on the delivery of medical services.

When the Federal False Claims Act was amended in 1986, the California legislature in 1987 passed the California False Claims Act (see IX The California False Claims Act). Slowly, a number of other pioneering state legislatures began to enact comprehensive State False Claims Act modeled on the Federal Act. Now there are also a number of cities which have their own False Claims Acts.

See X. List of States that Enacted the False Claims Act for a list of all the States and Local Governments that have enacted False Claims Acts. And whether it is comprehensive or only with regard to Medicaid fraud.

#### THE NEW YORK FALSE CLAIMS ACT

As mentioned previously, the New York statutory scheme has been recently enacted and deals with a number of the procedural aspects of the programs that have been problematic in the past. See XI for the full text of the New York False Claims Act.

One of the largest joint expenditures for the Federal and State Governments occurs in the medical area where medical and related benefits are provided to low income families and individuals. This program is called Medicaid. After 20 years of experience with the Amended Federal False Claims Act Congress came to realize that the States should be encouraged to pass State False Claims Acts which are based on the same type of private actions, rewards and protections of whistleblowers. The Deficit Reduction Act of 2005<sup>\*\*\*</sup> created a financial incentive for States to enact legislation that established liability to the State for frauds under the State Medicaid program. The incentive was to give the State that has such a

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<sup>\*\*\*</sup> The Deficit Reduction Act of 2005 appends s.1909 to 42 U.S.C. 1396 et seq., a portion of the Social Security Act describing the Medicaid program.

program a larger percentage of any recoveries under the State False Claims Act case payable out of the federal share of such recovery. To date 28 States have met the requirements to qualify for this incentive by enacting State False Claims Acts that are certified by the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG HHS).<sup>†††</sup>

### **Impact of Legislative Changes of the False Claims Act at the State and Local Level**

Each State and Local Government statutory scheme has proved to be both additive in terms of stopping more fraud and more fraudulent practices, and inventive in terms of developing different or pioneering approaches to stopping fraud. The following is a list of some of the innovations developed at the State and Local level:

#### RELATOR SHARE INCENTIVES

The various State FCA schemes have developed different approaches to the incentives for Relators.

- For instance in California the Relator in an intervened case receives from 15 to 33 percent and in the non-intervened case from 25 to 50 percent.<sup>‡‡‡</sup> Under the California Insurance Frauds Prevention Act the incentive is 30 to 40 percent if intervened and 40-50 percent if not intervened.<sup>§§§</sup>

#### PROSECUTION AT DIFFERENT LEVELS OF GOVERNMENT

Various State schemes have either delegated the prosecution and intervention to local Government authorities or delegated the authority to create false claims systems at the local Government level.

In New York any local Government defined as any “county, city town, village, school district, board of cooperative educational services, local public benefit corporation, or other municipal corporation or political subdivision of the state” or the State can have primary authority to prosecute the action.<sup>\*\*\*\*</sup>

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<sup>†††</sup> “State False Claims Act Reviews.” Office of Inspector General, U.S. Department of Health and Human Services, 2013. Web. 27 Jan 2014.

<sup>‡‡‡</sup> Cal. Gov. Code § 12650 et seq. (2006).

<sup>§§§</sup> Cal. Ins. Code § 1871.7 et seq. (2006).

<sup>\*\*\*\*</sup> New York State Finance Law § 189 et seq. (2007).

## EXPANSION OF THE FALSE CLAIMS ACT SYSTEM TO FRAUDS AGAINST INSURANCE SYSTEMS

Two states have also taken the Qui Tam concept developed in prosecuting frauds against the Government and applied them to prosecuting frauds against private insurers:

- The California Commissioner of Insurance can institute proceedings there under the Insurance Frauds Protection Act.<sup>†††</sup>
- The California Insurance Frauds Protection Act allows privately initiated litigation against anyone defrauding either the Workers' Compensation insurance program or any private insurance company.<sup>###</sup>
- In Illinois the Insurance Claims Fraud Prevention Act extends to any claim against any insurance fraud.<sup>§§§§</sup>

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<sup>†††</sup> Cal. Ins. Code § 1871.7 et seq. (2006).

<sup>###</sup> Cal. Ins. Code § 1871.7 et seq. (2006).

<sup>§§§§</sup> 740 Ill. Comp. Stat. Ann § 92/1 et seq. (2006).