

FALSE CLAIMS ACT SUMMARY

In very general terms, the federal False Claims Act (FCA) sets forth liability for any person who knowingly submits a false claim for payment to the government. As a recipient of federal funding from the Medicare program, Senior Whole Health and all of its employees and agents are bound by the federal FCA. Senior Whole Health also receives funding from state Medicaid programs and is therefore subject to similar Fair Claims Act laws at the state level in both Massachusetts and New York.

Penalties vary by jurisdiction and circumstance, but the liable party must usually pay back three times the amount defrauded from the government plus a penalty ranging from about \$5,000 to \$11,000 per false claim.

False Claims Act laws forbid an employer from prohibiting disclosure about false claims to law enforcement agencies and from prohibiting assistance to False Claims actions. They also provide financial incentives for whistleblowers to come forward with information about fraud and protect whistleblowers from retaliatory actions like firings or demotions.

Senior Whole Health encourages you to report fraud or suspected fraud by calling our AlertLine toll free: 1-866-606-3889 or report an issue online, visit: <https://Molinahealthcare.AlertLine.com>

False Claims Act Purpose and Reach

In very general terms, the federal False Claims Act (FCA) sets forth liability for any person who knowingly submits a false claim for payment to the government. As a recipient of federal funding from the Medicare program, Senior Whole Health and all of its employees and agents are bound by the FCA. Senior Whole Health also receives funding from state Medicaid programs and is therefore subject to similar Fair Claims Act laws at the state level in both Massachusetts and New York.

Collectively, these False Claim Act laws extend liability to anyone who knowingly makes a false assertion to get a false claim paid by the government or who causes another person to submit a false claim to the government. The False Claims Acts also cover improper acts designed not to get money from the government but to avoid having to pay money to the government and for those who conspire to violate the law.

Role of Law in Prevention and Detection

The government often lacks the resources to launch intensive monitoring and targeted investigations of fraud. At the same time, employees and agents of privately-run organizations working on the front lines of financial transactions with the government are best positioned to detect fraud. The government recognizes that this puts employees in a tenuous situation.

False Claims Act laws therefore provide incentives for whistleblowers to come forward, while also protecting whistleblowers from retaliatory actions like firings or demotions. The laws empower people with evidence of fraud against the federal government, the State, or any City within the State, to report and file lawsuits on behalf of the government. If successful, the whistleblower stands to recover a percentage of the amount that has been defrauded from the Government plus reimbursement for any expenses incurred in bringing the lawsuit.

Financial incentives and strong whistleblower protections encourage reporting thereby deterring companies from fraudulent activity in the first place. These laws also forbid an employer from prohibiting disclosure about false claims to law enforcement agencies and from prohibiting assistance to False Claims actions.

Whistle Blower Protections

False Claims Act laws provide strong protection for whistleblowers from employer retaliation. For example, in Massachusetts any employee, contractor or agent who has been “discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment” as a result of involvement in a False Claims action is entitled to “all relief necessary to make that employee, contractor or agent whole,” including without limitation “reinstatement with the same seniority status ..., twice the amount of back pay, interest on the back pay and compensation for any special damages.” §§ 5J(2), (3).

Penalties for Violation

Penalties vary by circumstance and judicial discretion, but the liable party must usually pay back three times the amount stolen from the government plus a penalty generally ranging from \$5,000 to \$11,000 per false claim.

	Penalties for violation of law
False Claims Act 31 U.S.C. §§ 3729 (a)(1)	...the statute provides that one who is liable must pay a civil penalty of between \$5,000 and \$10,000 for each false claim (those amounts are adjusted from time to time; the current amounts are \$5,500 to \$11,000) and treble the amount of the government's damages.
Massachusetts §5B(a)(9)(ii)	<p>...shall be liable to the commonwealth or political subdivision for a civil penalty of not less than \$5,500 and not more than \$11,000 per violation, plus 3 times the amount of damages, including consequential damages, that the commonwealth or a political subdivision thereof sustains because of such violation. A person violating sections 5B to 5O, inclusive, shall also be liable to the commonwealth or a political subdivision thereof for the expenses of the civil action brought to recover any such penalty or damages including, without limitation, reasonable attorneys' fees, reasonable expert fees and the costs of investigation, as set forth below.</p> <p>Organizations are bound by employee's behavior 5(c): A corporation, partnership or other person shall be liable to the commonwealth under sections 5B to 5O, inclusive, for the acts of its agent where the agent acted with apparent authority, regardless of whether the agent acted, in whole or in part, to benefit the principal and regardless of whether the principal adopted or ratified the agent's claims, representation, statement or other action or conduct.</p>
New York §189(1)(h)	<p>...shall be liable to the state or a local government, as applicable, for a civil penalty of not less than six thousand dollars (\$6,000) and not more than twelve thousand dollars (\$12,000) plus three times the amount of all damages, including consequential damages, which the state or local government sustains because of the act of that person.</p> <p>Additionally, section 3 reads: A person who violates this section shall also be liable for the costs, including attorneys' fees, of a civil action brought to recover any such penalty or damages.</p>

References:

The False Claims Act (FCA), 31 U.S.C. §§ 3729 - 3733 (1863)

http://www.iustice.gov/civil/docs_forms/C-FRAUDS_FCA_Primer.pdf

Massachusetts False Claims Act; Mass. Gen. Laws ch. 12 §§ 5A - 5O

<https://malegislature.gov/laws/generallaws/parti/titleii/chapter12/section5a>

New York False Claims Act; Senate Finance Law, Art. XIII (2013) §§ 187-194

http://www.ag.ny.gov/sites/default/files/pdfs/bureaus/whistleblowers/NYS_FALSE_CLAIMS_ACT.pdf