POLICY TITLE **Compliance with Deficit Reduction Act Requirements**	POLICY NUMBER **NATL.EC.019**
ACCOUNTABLE DEPARTMENT **Ethics and Compliance**	EFFECTIVE DATE **02/16/2024**
DOCUMENT OWNER **Vice President, Revenue Management Compliance**	PAGE **1 of 18**

1.0 Policy Statement

Kaiser Permanente (KP) is committed to preventing and detecting health care fraud and abuse, and to complying with the requirements of the Deficit Reduction Act, as well as related federal and state laws as set forth in *Appendix B – Federal and State Statutes*.

2.0 Purpose

The purpose of this policy is to maintain a written policy that provides information to employees, contractors, and agents about the Federal False Claims Act, administrative remedies for false claims and statements, applicable state laws establishing civil or criminal penalties for making false claims and statements, "whistleblower" protections afforded under the law, and the role of applicable laws in preventing and detecting fraud, waste, and abuse in federal health care programs in accordance with Section 6032 of the Deficit Reduction Act of 2005.

3.0 Scope/Coverage

This policy applies to all employees, physicians, and dentists who are employed by or partners of the following entities (collectively referred to as "Kaiser Permanente"):

3.1 Kaiser Foundation Health Plan, Inc. (KFHP);

3.2 Kaiser Foundation Hospitals (KFH);

3.3 KFHP/H's subsidiaries;

3.4 Permanente Medical Groups; including Colorado Permanente Medical Group (CPMG), Hawaii Permanente Medical Group (HPMG), Mid-Atlantic Permanente Medical Group (MAPMG), Northwest Permanente (NWP), Southern California Permanente Medical Group (SCPMG), The Permanente Medical Group (TPMG), The Southeast Permanente Medical Group (TSPMG), and Washington Permanente Medical Group (WPMG);

3.5 The Permanente Federation (TPF); and

3.6 Permanente Dental Associates (PDA).

4.0 Definitions

See *Appendix A – Glossary of Terms.*

5.0 Provisions

5.1 **Deficit Reduction Act of 2005.** In accordance with the Deficit Reduction Act of 2005 (DRA) requirements for health care providers that receive $5 million or more in annual Medicaid payments, KP maintains established written policies that provide information to all employees, contractors, and agents about (1) the

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Federal False Claims Act, (2) applicable state false claims laws, (3) administrative remedies for false claims, (4) comparable state laws pertaining to penalties for false claims and statements, and (5) whistleblower protections.

5.2 **Reporting Fraud, Abuse, and False Claims.** Any illegal, unethical, or improper activities are required to be reported, investigated, and rectified. Employees, management, contractors, and agents have a duty to report suspected fraud, waste, or abuse in federal health care programs. Some examples of activities that should be reported include:

5.2.1 Billing for services or medical tests that were never performed.

5.2.2 Performing inappropriate or medically unnecessary medical procedures to increase reimbursement from the insurer.

5.2.3 Upcoding or inflating a bill to the insurer by using diagnosis codes that increase the reimbursement for that condition.

5.2.4 Double billing or billing twice for the same goods or services.

5.2.5 Inflating the actual work performed or billing for the highest level of service when a lower level of service was delivered.

5.2.6 Falsifying records or statements to get a claim paid or approved.

5.2.7 Failing to obtain the proper physician certifications before a patient is treated with certain therapies.

5.2.8 Billing for unlicensed or unapproved drugs or services.

5.3 **Reporting Channels.** Concerns may be reported via multiple internal reporting channels, including:

5.3.1 Supervisors and managers.

5.3.2 Medical center, regional, PMG, or national compliance officers.

5.3.3 Human Resources.

5.3.4 Permanente Medical Group legal counsel (for Permanente Medical Group employees).

5.3.5 Kaiser Permanente Compliance Hotline at 1-888-774-9100.

5.3.6 Kaiser Permanente Webline at kp.org/compliancehotline.

5.4 **Confidentiality.** Reports, whether verbal or written, remain confidential to the extent permitted by law and applicable Kaiser Permanente policies, as well as to the extent possible and practical.

5.5 **Retaliation and Intimidation.** Employees are prohibited from retaliating against or intimidating employees, members, patients, physicians, students, or any other person or entity who:

5.5.1 Report ethics and compliance concerns in good faith, or

5.5.2 Refuse to participate in wrongdoing.

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5.6 **Investigation.** Reports of suspected retaliation are investigated and subject to corrective/disciplinary action in accordance with *Nonretaliation, NATL.EC.003*.

5.6.1 **Findings.** Findings or outcomes of an investigation may be shared with the individual who reported the concern as appropriate and to the extent permitted by law.

6.0 Appendices/References

6.1 Appendices

6.1.1 Appendix A – Glossary of Terms

6.1.2 Appendix B – Federal and State Statutes

6.1.3 Appendix C – False Claims Laws by State

6.2 Kaiser Permanente Policies

6.2.1 Fraud, Waste, and Abuse Control, NATL.EC.011

6.2.2 Internal Reporting of Ethics and Compliance Concerns, NATL.EC.004

6.2.3 Internal Reporting of Overpayments, Self-Disclosure, and Repayment for Federal Health Program and ACA Funds, NATL.EC.013

6.2.4 Non-Retaliation, NATL.EC.003

6.2.5 Principles of Responsibility, POR

6.3 Federal Statutes

6.3.1 Deficit Reduction Act of 2005 (DRA), 42 U.S.C. §§ 1396a(a)(68), 1396h

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

6.3.3 Program Fraud Civil Remedies Act (PFCRA), 31 U.S.C. §§ 3801-3812

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7.0 Approval

This policy was digitally approved by the following representatives of Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, and their subsidiaries, Permanente Dental Associates, PC, and the Permanente Medical Groups.

Kaiser Foundation Health Plan/Hospital			
Name	**Title**	**Organization**	**Date**
Jacqueline Baratian	Senior Vice President, Chief Compliance and Privacy Officer	Kaiser Foundation Health Plan, Inc., and Kaiser Foundation Hospitals	02/16/2024
Permanente Medical Groups			
Name	**Title**	**Organization**	**Date**
Jeff Krawcek, MD	President and Executive Medical Director	Colorado Permanente Medical Group (CPMG)	8/30/2022
John Yang, MD	President and Medical Director	Hawaii Permanente Medical Group (HPMG)	10/03/2022
Richard J. McCarthy, MD	Associate Executive Director of the Mid-Atlantic States, The Permanente Medical Group	Mid-Atlantic Permanente Medical Group (MAPMG)	10/25/2022
Leong Koh, MD	President and Chief Executive Officer	Northwest Permanente (NWP)	10/26/2022
Cyrus Lee, DMD	Chief Executive Officer & Executive Dental Director	Permanente Dental Associates (PDA)	8/11/2022
Ramin Davidoff, MD	Executive Medical Director and Chairman	Southern California Permanente Medical Group (SCPMG)	10/16/2022
Yi-Fen Chen, MD	Associate Executive Director	The Permanente Medical Group (TPMG)	8/17/2022
Nkem Chukwumerije, MD, MPH, FACP	President and Executive Medical Director	The Southeast Permanente Medical Group (TSPMG)	10/25/2022
Paul Minardi, MD	President and Executive Medical Director	Washington Permanente Medical Group (WPMG)	8/11/2022

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Appendix A – Glossary of Terms

Abuse – Wrongful or improper use of Kaiser Permanente or government assets that is inconsistent with accepted, sound medical, business, or fiscal practices and directly or indirectly results in unnecessary costs to Kaiser Permanente or the government. Abuse may include abuse of position or authority that causes the loss or misuse of Kaiser Permanente assets and may be intentional or unintentional.

Contractor – Contractors include but are not limited to all contract therapists, physicians, pharmacies and vendors who furnish Medicaid health care items and services. Contractors also include all persons or entities who perform billing or coding services, or other administrative functions directly related to Medicaid health care services, as well as those who are involved in monitoring of health care provided by Kaiser Permanente. Contractors who provide business or maintenance services such as copying, shredding or waste disposal are not subject to this policy.

Deficit Reduction Act of 2005 (DRA) – A federal law that requires employers to establish certain policies and to provide its employees, agents, and contractors information regarding federal and state false claims laws and related statutes, the penalties for wrong doing under these laws, and the protections for whistleblowers who report violations of these provisions.

False Claims Act (FCA) – A federal law that prohibits fraud in any federally funded contract or program, including Medicare and Medicaid.

Fraud – Deception or misrepresentation made intentionally or with reckless disregard of the truth, with knowledge or indifference that the deception or misrepresentation could result in some unauthorized or improper benefit for the perpetrator, another individual, or an entity. Fraud occurs when an entity or individual uses deception or misrepresentation to acquire something that does not belong to them. Examples of fraud include embezzlement, false claims, kickbacks, bribery, false financial reporting, software piracy, credit card fraud, expense account fraud, identity theft, check fraud, false Workers' Compensation claims, fraudulent vendor billing, member fraud, identity fraud and mail fraud.

Good Faith – Acting in "good faith" means acting with honest and sincere intentions.

Office of Inspector General (OIG) – The agency within the Department of Health and Human Services charged with investigating fraud and abuse.

Program Fraud Civil Remedies Act (PFCRA) – A federal law that creates administrative remedies for making false claims separate from, and in addition to, the judicial or court remedy for false claims provided by the False Claims Act.

Qui Tam Relator Suit – An action brought under the False Claims Act by a person on behalf of the government.

Retaliation – Intentional and unwarranted harm to an individual's standing with Kaiser Permanente. Examples include taking action to discharge, demote, suspend, threaten, coerce, harass, penalize, or discriminate in any other manner against a person or entity for making good faith reports covered by this policy.

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Waste – Extravagant, careless, or needless expenditure of Kaiser Permanente or government funds or the consumption of Kaiser Permanente assets that results from deficient or negligent practices, system controls, or decisions.

Whistleblower – A person who reports fraud, waste, abuse, or other inappropriate, unethical, or illegal conduct with the aim of ending such conduct. Under the FCA, a whistleblower (the more modern term for "relator") may bring an action on behalf of the government (see definition of Qui Tam Relator Suit and *Appendix B – Federal and State Statutes*).

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Appendix B – Federal and State Statutes

Federal and State Law Prohibiting False or Fraudulent Claims for Payment. Federal and state governments have enacted criminal and civil laws pertaining to the submission of false or fraudulent claims for payment. These false claims laws, which provide for criminal, civil, and administrative penalties, provide governmental authorities with broad authority to investigate and prosecute potentially fraudulent activities, and provide antiretaliation provisions for individuals who make good faith reports of fraud, waste, and abuse.

1. **Federal Civil False Claims Act (FCA).** The FCA prohibits any individual or company from knowingly submitting false or fraudulent claims, causing such claims to be submitted, making a false record or statement in order to secure payment from the federal government for such a claim, or conspiring to get such a claim allowed or paid. Under the statue the terms "knowing" and "knowingly" mean that a person has (1) 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. Specific intent to defraud is not required for there to be a violation of the law.

   a) **Enforcement.** The FCA is enforced by the filing and prosecution of a civil complaint. Under the FCA, civil actions must be brought within six years of a violation, or, if brought by the government, within three years of the date when material facts are known or should have been known to the government, but in no event more than ten years after the date on which the violation was committed.

   b) **Penalties.** Individuals or companies found to have violated the statute are liable for a civil penalty for each claim of an amount specified by law, plus up to three times the amount of damages that the federal government sustains because of the false claim. When a person who has violated the FCA reports the violation to the government under certain conditions, the person is liable for reduced damages not less than double the amount of damages the government sustains because of the false claim. A person who violates the FCA is also liable to the government for the costs of a civil action brought to recover any such penalty or damages.

   c) **Qui Tam Provisions.** One of the unique aspects of the FCA is the qui tam provision, commonly referred to as the whistleblower provision. This provision allows a private person with knowledge of a false claim (a "relator") to bring a civil action on behalf of the United States Government. The propose of bringing a qui tam suit is to recover the funds paid as a result of the false claims. If the suit is ultimately successful, the whistleblower that initially brought the suit may be awarded a percentage of the funds recovered. Sometimes the Government decides to join the qui tam suit. In such cases, the Government assumes responsibility for all expenses associated with the suit and the percentage received by the whistleblower will be lower than if the Government had not joined.

      i. **Whistleblower Proceeds.** Regardless of whether the Government participates in the lawsuit, the court may reduce the whistleblower's share of the proceeds if this court finds that the whistleblower planned and initiated the false claims violation. Further, if the whistleblower is convicted of

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criminal conduct related to their role in the preparation or submission of false claims, the whistleblower will be dismissed from the civil action without receiving any portion of the proceeds.

ii. **Whistleblower Protection Provisions.** Whistleblowers are offered certain protections against retaliation for bring an action under the FCA. Employees who are discharged, demoted, harassed, or otherwise confront discrimination in furtherance of such an action or as a consequence of whistleblowing activity are entitled to all relief necessary to make the employee whole. Such a relief may include reinstatement, double back pay, and compensation for any special damages including litigation costs and reasonable attorneys' fees.

2. **Program Fraud Civil Remedies Act (PFCRA).** The PFCRA is similar to the FCA in many respects but with differing penalties. The PFCRA provides for additional administrative remedies against any person who presents or causes to be presented a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission to certain federal agencies, including the Department of Health and Human Services. One key difference is that the PFRCA can extend to a false statement even in the absence of a claim.

    a) **Enforcement.** Violations are investigated by the applicable agency's Inspector General and enforcement actions are approved by the Attorney General. PFCRA enforcement can begin with a hearing before an administrative law judge.

    b) **Penalties.** A violation of this prohibition carries a civil penalty for each such wrongfully-filed claim or statement of an amount specified by law and up to twice the amount claimed in lieu of damages.

3. **State False Claims Acts.** Many states have enacted statutes like the FCA to provide civil remedies for the submission of false and fraudulent claims to the state health care programs, including primarily Medicaid. Like the FCA, most state false claims acts include whistleblower provisions that allow enforcement from retaliation. Summaries of the state false claims laws for all states in which KP operates are included in *Appendix C – False Claims Laws by State.*

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Appendix C – False Claims Laws by State

California

- California law prohibits conduct similar to that addressed under the federal FCA.
- California Government Code Sections 12650-12656 (commonly known as the California False Claims Act or CFCA)
    - Prohibits any person from knowingly submitting a false or fraudulent claim totaling over $500 to the state or local government. The CFCA also makes it illegal for any person who benefits from a false claim, and later discovers the falsity of the claim, to fail to disclose the false claim to the applicable state or local government. The CFCA does not apply to workers' compensation claims, tax claims, or claims against public entities and employees.
    - The CFCA permits the Attorney General to file a lawsuit against a suspected violator of the CFCA, or alternatively, a private individual, such as an employee whistleblower, may file a qui tam lawsuit on behalf of the government.
    - Allows California officials to choose to participate in the qui tam lawsuit or allow the individual to proceed alone on the state or local government's behalf. If the case is successful, the individual is entitled to a portion of the government's monetary recovery. Employees who assist or participate in an action under the CFCA are protected from workplace retaliation.
    - The CFCA imposes a civil penalty for each separate violation of the law of an amount specified by law, and violators must repay the applicable state or local government an amount equal to three times the value of the false claim.
- California Welfare & Institutions Code Section 14107
    - Prohibits fraud involving funds of the state's medical assistance programs, including Medi-Cal. This statute establishes grounds for both criminal and civil actions against any person who knowingly defrauds Medi-Cal or other state medical assistance programs by submitting false claims or making false representations.
    - Actions under this statute may only be brought by state officials. Private individuals cannot file quit tam lawsuits under this provision, although pursuant to Welfare & Institutions Code Section 14107.12, the state may offer a monetary reward of an amount specified by law to individuals who provide information leading to recovery of fraudulently obtained funds.
    - Penalties for a violation of this statute include imprisonment and/or a fine not exceeding three times the amount or value of the fraud.

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- California Insurance Code Section 1871.7 (a section of what is commonly known as the California Insurance Frauds Prevention Act, Insurance Code Sections 1871-1871.9)
    - Imposes civil penalties for violations of California Penal Code Section 550, which prohibits knowingly presenting a false claim for a health care benefit to a private insurer. Actions under this statute may be brought by the district attorney or California Insurance Commissioner.
    - Alternately, a qui tam lawsuit may be filed on behalf of the state by a private individual or entity, such as an employee or insurer. The state or district officials may choose to participate in the qui tam lawsuit or allow the individual to proceed alone on the state's behalf. If the case is successful, the individual is entitled to a portion of the state's monetary recovery.
    - Employees who assist or participate in an action under this statute are protected from workplace retaliation.
    - Penalties for a violation of this statute include a civil penalty of an amount specified by law, plus an assessment not exceeding three times the amount of each fraudulent claim. In addition, there may be a separate criminal prosecution for the violation of California Penal Code Section 550. Penalties for violation of Penal Code Section 550 include imprisonment of up to five years and a fine of an amount specified by law or double the amount of the fraud, whichever is greater.

Legal Citations:

Cal Gov. Code §§ 12650 - 12656; Cal Welf. & Inst. Code § 14107 and § 14107.12;
Cal Ins. Code § 1871.7; Cal Pen. Code § 550

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Colorado

- Colorado has adopted a Medicaid anti-fraud statute that is intended to prevent the submission of false and fraudulent claims to the Colorado Medicaid program.
    - The statute makes it, among other things, unlawful for any person to knowingly make or cause to be made a false record or statement material to a false or fraudulent claim, present or cause to be presented to the state department a false claim for payment or approval, or present or cause to be presented false cost document required by the medical assistance program that the person knows contains a false material statement.
    - Violations of the Colorado anti-fraud statute are civil offenses and are punishable by a significant monetary penalty of an amount specified by law, plus three times the amount of damages sustained by the State because of the person's actions.
- In the State of Colorado, all actions for fraud, misrepresentation, concealment, or deceit must be brought within three (3) years after the cause of action accrues.
- The above Medicaid anti-fraud statute contains qui tam or relator provisions, which allows a person to bring an action on behalf of the State and recover at least fifteen (15) percent but no more than twenty-five (25) percent of the proceeds of the action or settlement, if the Attorney General intervenes. If the Attorney General does not intervene, then the whistleblower bringing the action or settling the claim may be entitled to 25 to 30 percent of the proceeds, as well as reasonable expenses and attorney's fees.
- The Medicaid Anti-Fraud Statute also contains whistleblower provisions which provide a remedy for persons retaliated against for reporting an employer's false claims.

Legal Citations:

Colo. Rev. Stat. § 25.5-4-304 - 310; Colo. Rev. Stat. § 13-80-101;
Colo. Rev. Stat. § 18-5-114; Colo. Rev. Stat. § 26-1-127

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District of Columbia

- The District of Columbia False Claims Act imposes liability on persons who knowingly present false or fraudulent claims for payment to the District, misappropriate District property, or deceptively avoid binding obligations to pay the District, among other violations. A defendant may be ordered to pay up to three times the actual harm to the District, plus a fine of an amount specified by law for each violation.
- A whistleblower who files a successful claim may receive between 15 and 25 percent of any recovery to the District if the District's Attorney General intervenes in the matter. If the whistleblower successfully prosecutes the case on his own, he may receive between 25 and 30 percent of the amount recovered. The court may reduce the value of the award if the whistleblower was substantially involved in the execution of the fraud.
- The District of Columbia False Claims Act also protects whistleblowers from retaliation by their employers for filing a claim or assisting the District with its own claim.

Legal Citations:

District's False Claims Act, DC Code §§ 2-381.02 - 2-381.04

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Georgia

- Georgia's FCA is part of the State's Medicaid laws. Georgia's FCA, called the "State False Medicaid Claims Act," is similar to the federal FCA in that it is actionable to knowingly submit a false claim for payment; make or use a false record or statement to get a claim paid; and conspiring to make a false claim or get one paid; or making or using a false record to avoid repayments to the government. The Georgia FCA applies only to claims submitted to the State Medicaid Program. The actions and events that trigger penalties under the Georgia FCA are very similar to those that trigger penalties under the federal FCA.
- An FCA claim must be brought within six (6) years from when the violation occurred.
- Penalties include treble damages (actual loss to state multiplied by three times) and penalties consistent with those under the Federal False Claims Act, 31 U.S.C. § 3729(a), adjusted for inflation.
- The Georgian FCA also has a whistleblower or *qui tam* provision nearly identical to the federal FCA (whistleblowers may recover up to thirty (30) percent of the state's recovery), as well as a whistleblower protection provision that prohibits employers from retaliating against employees who report their employer's potentially false claims or who assist to bring a FCA action.

Legal Citations:

GA. CODE ANN. §§ 49-4-168 et seq.

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Hawaii

- Hawaii's FCA is nearly identical to the federal FCA with actions and conduct that trigger penalties that are substantially similar to those that trigger penalties under the federal FCA. Specifically, these include, among other things: knowingly submitting a false claim for payment; making or using a false record or statement to get a claim paid; conspiring to make a false claim or get one paid; or making or using a false record to avoid repayments to the government. However, under the Hawaii FCA, a person or entity may also be liable if he or she: is a beneficiary of an inadvertent submission of a false claim to the state; subsequently discovers that the claim is false; and fails to disclose the false claim to the state within a reasonable time after discovery of the false claim.
- Additionally, the Hawaii FCA does not apply to any false claim of less than $500. Civil penalties under the law include treble damages of an amount specified by law per false claim. A civil suit must be brought within six (6) years after the violation is discovered or should have been discovered, but no more than ten (10) years after the violation was committed.
- Hawaii's FCA also has a whistleblower or qui tam provision nearly identical to the FCA as whistleblowers may recover up to thirty (30) percent of the State's recovery.
- Hawaii's FCA contains provisions that prohibit employers from retaliating against employees who report their employer's potentially false claims or who assist to bring an FCA action.

Legal Citations:

HAW. REV. STAT. §§ 661-21 - 661-31; HAW. REV. STAT. §§ 378-61 - 378-69;
HAW. REV. STAT. §§ 46-171 - 46-179

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Maryland

- In 2015, the State of Maryland adopted the Maryland False Claims Act ("Maryland FCA"), its own version of the Federal False Claims Act ("FCA"). The Maryland FCA allows private individuals to bring a *qui tam* case against a person or entity for submitting or causing the submission of fraudulent claims to the state government or any political subdivision of the State, such as a county, city, town, or school district.
- Like the federal FCA, the Maryland FCA allows for financial rewards to whistleblowers for bringing an action on behalf of the State. If the State intervenes in the case, the whistleblower may receive 15 to 25 percent of the recovery.
- The Maryland FCA expands upon Maryland's False Health Claims Act, which only imposes liability on people or entities who present false claims related to Maryland state health plans or programs, including Medicaid. The Maryland FCA is not limited to health plans or programs and broadly applies to all types of false claims.
- Key provisions of the Maryland FCA mirror the federal FCA, such as:
    - Liability attaches under the Maryland FCA for: submitting a false claim for payment to the State, making or using a false record or statement material to a false claim, failing to deliver all of the property owed to the State, creating or submitting a false receipt, making a false purchase, or conspiring to do any of these actions.
    - Once an action is brought under the Maryland FCA, it remains under seal for at least 60 days.
    - The Maryland FCA prohibits employers from retaliating against whistleblower employees. Retaliation includes firing, demoting, suspending, threatening, or harassing the employee. If the employer does retaliate, the employee is entitled to the reinstatement of their position, two (2) times the amount of back pay, interest on the back pay, and compensation for any damages sustained because of the discrimination.

Legal Citations:

Maryland Code Ann. Gen. Prov. § 8–101 - § 8–107

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Oregon

- Oregon enacted a state FCA in 2010. There are also several other laws that prohibit false statements associated with health care items or services. Under Oregon law, a person commits the crime of making a false claim for health care payment when the person:
    - Knowingly makes or causes to be made a claim for health care payment that contains any false statement or false representation of a material fact in order to receive a health care payment; or
    - Knowingly conceals from or fails to disclose to a health care payor the occurrence of any event or the existence of any information with the intent to obtain a health care payment to which the person is not entitled, or to obtain or retain a health care payment in an amount greater than that to which the person is or was entitled. Making a false claim for health care payment is a Class C felony punishable by up to five (5) years in prison and a fine of an amount specified by law. There is a 5-year statute of limitations from time of the claim.
- Currently, these Oregon laws do not contain qui tam or relator provisions. Additionally, there are no provisions for a private citizen to share a percentage of any monetary recoveries.
- Like federal law, Oregon law includes whistle-blower protections. Various Oregon laws prohibit public employers and private health care employers from retaliating, discriminating or harassing employees because of their good faith disclosure of information about a violation of a law or rule or a violation that poses a risk to public or patient health, safety or welfare, or their refusal to assist employers in activity that the employee reasonably believes is in violation of a law or rule such as Oregon's False Claims for Health Care Payments law. Oregon law also prohibits employers (public or private) from discriminating against any employee who in good faith reports criminal activity or who cooperates with law enforcement in an investigation or at trial.
- These Oregon employee protection laws provide for both administrative and civil remedies, which may include monetary awards for actual damages and punitive damages. The Oregon Hospital Anti-Retaliation Law requires any nursing staff to notify his/her employer using the established reporting procedures of the health care facility administration any suspected illegal activity, policy, or practice before disclosing it to the appropriate government agency. This notice requirement does not apply to disclosures that the employee reasonably believes patient health or safety is in immediate jeopardy or the employee follows specific filing procedures established by the Department of Human Services, Oregon Health Authority, or other state agency that protect the confidentiality of the employees.

Legal Citations:

Or. Rev. Stat. §§ 165.690 - 165.698; Or. Rev. Stat. §§ 165.990;
Or. Rev. Stat. Ann. § 161.605; Or. Rev. Stat § 161.625;
Or. Rev. Stat. §§ 659A.199 - 659A.224; Or. Rev. Stat. § 441.057;
Or. Rev. Stat. § 659A.230 - 659A.233; Or. Rev. Stat §§ 180.750 to 180.785

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Virginia

- Virginia's FCA, also known as the "Fraud Against Taxpayers Act," is very similar to the federal FCA and prohibits the knowing submission of false or fraudulent claims to the state government. Actions and events that trigger penalties under the federal FCA are the same as those that trigger penalties under the Virginia FCA. Specifically, these include:
    - Knowingly submitting or causing to be submitted a false claim for payment;
    - Knowingly making or using or causing to be made or used a false record or statement to get a claim paid;
    - Conspiring to make a false claim or get one paid; or
    - Knowingly making or using or causing to be made or used a false record to avoid repayments to the government.
- The Commonwealth may impose a penalty of an amount specified by law per false claim, as adjusted under the Federal False Claims Act for inflation, plus treble damages. The Commonwealth may also recover reasonable attorney fees and costs. A civil lawsuit under the Virginia FCA must be brought within the later of (a) six (6) years from when the violation occurred or (b) three (3) years after the violation was discovered by the relevant agency, but no more than ten (10) years after the violation was committed.
- The Virginia FCA, like the federal FCA, provides for a *qui tam* private right of action where a person may file suit on behalf of the government. The whistleblower may recover between 15 to 25 percent of the award if the government intervenes and between 25 to 30 percent if the government does not intervene. The Virginia FCA also has a whistleblower protection provision that prohibits employers from retaliating against employees who report their employer's potentially false claims or who assist with an FCA action.

Legal Citations:

VA. CODE ANN. §§ 8.01-216.1 - 8.01-216.19

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Washington

- The Washington Medicaid Fraud FCA, like the federal FCA, prohibits the knowing submission of false or fraudulent claims to the Medicaid program. Actions and events that trigger penalties under the Washington Medicaid FCA include, among other actions:
  - Knowingly submitting or causing to be submitted a false claim for payment;
  - Knowingly making or using or causing to be made or used a false record or statement to get a claim paid; conspiring to make a false claim or get one paid;
  - Failing to properly return government property or money; or
  - Knowingly making or using or causing to be made or used a false record to avoid repayments to the government.
- Violators are liable for a civil penalty per false claim, based on amounts specified under the Federal False Claims Act, as adjusted under the Federal False Claims Act for inflation, plus treble damages.
- The Washington Medicaid Fraud FCA provides for *qui tam* private rights of action under which a person may file a lawsuit on behalf of the government and share in the monetary recovery. Where the state proceeds with the action, the *qui tam* relator or whistleblower will receive at least fifteen (15) percent but no more than twenty-five (25) percent of the proceeds of the action or settlement of the claim, depending on his/her contribution to the prosecution of the action. Where the state does not proceed with the action, the relator shall receive not less than twenty-five (25) percent and not more than thirty (30) percent of the proceeds of the action. Whistleblowers are protected under the Washington FCA, which prohibits employers from discriminating or retaliating against an employee who reports alleged false claims or assists in an FCA action. Persons discriminated or retaliated against for their participation in a *qui tam* action may bring a civil action within three years of the date of retaliation.
- Other Washington state laws include provisions that create liability for false claims submitted to a broad range of health care payors, including Medicaid. Any person who knowingly makes a false claim or false representation related to a health care payment or conceals the occurrence of any event affecting the right to a health care payment may be guilty of a class C felony and subject to various sanctions, including disgorgement of funds plus interest, civil penalties in the amount of three times the excess payment, and/or a fine of an amount specified by law. These state laws also afford whistleblower protections to employees under certain circumstances. Washington common law recognizes actions against employers for wrongful discharge in violation of public policy. Additionally, the Washington State Department of Health's laws contain whistleblower protections for those that report fraud in connection with quality of care. Finally, there are several Washington laws that protect state and local employees from retaliation related to whistle blowing.

Legal Citations:

RCW § 74.66.005 et seq.; RCW § 74.09.230; RCW § 74.09.210; RCW §48.80.010; RCW § 43.70.075; See generally RCW § 49.60 et seq. for reprisal and retaliation; RCW § 42.40; RCW § 42.41.

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