FALSE CLAIMS ACT ATTACHMENTS

Attachment I

Summary of Federal False Claims Act, as amended by the Fraud Enforcement and Recovery Act of 2009 ("FERA") (collectively "Federal FCA"), Federal Program Fraud Civil Remedies Act of 1986 ("Program Fraud Civil Remedies Act"), and Relevant Provisions of the Patient Protection and Affordable Care Act of 2010 ("PPACA")

I. FEDERAL FCA

1. Overview. The Federal FCA is a key law used to combat fraud involving federal funds, including health care programs. The Federal FCA provides that anyone who "knowingly" submits false claims to the government is liable for damages up to three times the amount of the erroneous payment (often referred to as "treble damages"). The current inflation-adjusted civil penalty range of $14,308 to $28,619 per false claim is accurate for penalties assessed after July 3, 2025, for violations occurring after November 2, 2015, as reflected in 28 CFR 85.5. This could potential administrative remedies, such as exclusion from future participation in government health care programs.

   The Federal FCA defines "knowingly" to mean that a person, with respect to information (1) has 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.

   Specifically, there are several actions that may form the basis for liability under the Federal FCA including, by way of example:

   - Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
   - Knowingly making or using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
   - Conspiring to commit a violation of the False Claims Act;
   - Having possession, custody, or control of property or money used, or to be used, by the government and knowingly delivering, or causing to be delivered, less than all of that money or property; or
   - Knowingly making, using, or causing to be made or used, a false record or statement material to an obligation to pay money or transmit property to the government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the government. That is, merely retaining an overpayment can constitute a false claim. The Patient Protection and Affordable Care Act further requires a person who receives an overpayment to report and return the funds to the appropriate agency or carrier in writing by the later of 60 days after identifying the overpayment or the date any corresponding cost report is due.

   As a result of FERA, false claims or false statements presented to the government, as well as false claims and false statements made to Contractors of the federal government, such as FCHP, can give rise to liability. Not all false statements negate the

validity of the entire claim; rather, the false statement must be "material." FERA interprets materiality by considering if the statement has the natural tendency to influence, or is capable of influencing, the payment or receipt of money or property.

2. Applicability. Among other things, the Federal FCA applies to claims submitted for payment in connection with federal health care programs, including Medicare and Medicaid. A "claim" is broadly defined to include any request or demand, whether under a contract or otherwise, for money or property that is presented to an officer, employee, or agent of the United States. The FCA also applies to claims made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the government's behalf or to advance a government program or interest and if the government has actually provided or will reimburse a portion of the money or property which is requested or demanded.

3. Methods of Enforcement. Both the government and private citizens can bring actions under the Federal FCA in federal court. When private citizens bring actions under the Federal FCA, those actions are referred to as *qui tam* actions and the private citizen is referred to as a Relator. If a Relator brings an action under the Federal FCA, the government has a period of time to investigate the allegations and decide whether to join the lawsuit. If the government elects to join the lawsuit, the Relator is entitled to 15-25% of any recovery. If the government declines to join the lawsuit, the Relator may still proceed with the action and is entitled to 25-30% of any recovery.

4. Employee/Whistleblower Protection. The Federal FCA prohibits discrimination by FCHP against an Employee, Contractor, or Agent for taking lawful actions in furtherance of an action under the Federal FCA. Under the Federal FCA, any Employee, Contractor, or Agent who is discharged, demoted, harassed, or otherwise discriminated against because of lawful acts by the Employee, Contractor, or Agent or associated others in furtherance of other efforts to stop one or more violations of the Federal FCA is entitled to all relief necessary to make the Employee, Contractor, or Agent whole. The individual, often referred to as a "whistleblower," may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorney's fees. It should be noted, that being a participant in the activity in question does not prohibit a Relator from bringing a *qui tam* action.

5. Procedural & Other Requirements. The Federal FCA contains a number of procedural and other requirements. For example, in order to be a Relator, the person must be the "original source" of the information reported to the government. Specifically, the Relator must have direct and independent knowledge of the false claims activities and voluntarily provide this information to the government. If the matter disclosed is already the subject of a federal investigation, or if the health care provider or supplier has previously disclosed the problem to a federal agency, the Relator may be barred from obtaining recovery under the Federal FCA.

II. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

The Program Fraud Civil Remedies Act of 1986 (the "PFCRA") is similar to the federal False Claims Act. This law also promulgates penalties for knowingly submitting false claims and statements. A false claim or statement includes submitting a claim or making a written statement that is for services that were not provided, or that asserts a material fact that is false, or that omits a material fact. A violation of the PFCRA results in a maximum civil penalty of $5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim.

Attachment II

Summary of Massachusetts False Claims Act ("Massachusetts FCA")

1. Overview. Massachusetts has state laws similar to the federal FCA which allow both the state attorney general and private citizens to bring suits against individuals and/or corporations who knowingly submit false claims to the commonwealth or a political subdivision thereof, for reimbursement or payment. The Massachusetts FCA defines, "knowing and knowingly," as "possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required." M.G.L. c. 12, § 5A.

   The Massachusetts FCA specifically provides for liability when a person:

   (1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

   (2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

   (3) conspires to commit a violation of this subsection;

   (4) knowingly presents, or causes to be presented, a claim that includes items or services resulting from a violation of the federal FCA;

   (5) has possession, custody, or control of property or money used, or to be used, by the Commonwealth or a political subdivision thereof and knowingly delivers, or causes to be delivered, to the Commonwealth or a political subdivision thereof less than all of that property;

   (6) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Commonwealth or a political subdivision thereof and, with the intent of defrauding the Commonwealth or a political subdivision thereof, makes or delivers the receipt without completely knowing that the information on the receipt is true;

   (7) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Commonwealth or a political subdivision thereof, who may not lawfully sell or pledge such property;

   (8) enters into an agreement, contract or understanding with an official of the Commonwealth or a political subdivision thereof knowing the information contained therein is false;

   (9) knowingly makes, uses or causes to be made or used a false record or statement material to conceal, avoid, or decrease an obligation to pay or to transmit money or property to the Commonwealth or political subdivision thereof; or

   (10) is a beneficiary of an inadvertent submission of a false claim to the Commonwealth or a political subdivision thereof, or is a beneficiary of an overpayment from the commonwealth or a political subdivision thereof, and who subsequently discovers the falsity of the claim, and fails to disclose the false claim or receipt of overpayment to the Commonwealth or a political subdivision by the later of:

      i. the date which is 60 days after the date on which the false claim or receipt of overpayment was identified; or

      ii. the date any corresponding cost report is due, if applicable.

M.G.L. c. 12, § 5B(a).

A person who violates the Massachusetts FCA is liable for a civil penalty of not less than $5,500 and not more than $11,000 per violation. M.G.L. c. 12, § 5B(10). The Massachusetts FCA provides for up to three times the actual damages ("treble damages"), and consequential damages, that the Commonwealth or political subdivision sustains because of the act of that person. M.G.L. c. 12, § 5B(9).

Voluntary Disclosure: However, damages may be reduced to not less than two times the actual and consequential damages where the court finds that the person committing the Massachusetts FCA violation:

- Informed the Attorney General with all information known to the person within 30 days after discovering the information;
- Fully cooperated with any Commonwealth investigation of such violation; and
- No criminal prosecution, civil or administrative action had commenced with respect to the violation, and person did not have actual knowledge of an investigation into such violation.

M.G.L. c. 12, § 5B(b).

2. Applicability. The Massachusetts FCA defines "Claim," as "a request or demand, whether pursuant to a contract or otherwise, for money or property whether or not the commonwealth or a political subdivision thereof has title to the money or property, that: (1) is presented to an officer, employee, agent or other representative of the commonwealth or a political subdivision thereof; or (2) is made to a contractor, subcontractor, grantee or other person, if the money or property is to be spent or used on behalf of or to advance a program or interest of the commonwealth or political subdivision thereof and if the commonwealth or any political subdivision thereof: (i) provides or has provided any portion of the money or property which is requested or demanded; or (ii) will reimburse directly or indirectly such contractor, subcontractor, grantee or other person for any portion of the money or property which is requested or demanded. A claim shall not include requests or demands for money or property that the commonwealth or a political subdivision thereof has paid to an individual as compensation for employment with the commonwealth or a political subdivision thereof or as an income subsidy with no restrictions on that individual's use of the money or property..." M.G.L. c. 12, § 5A. Thus, the Massachusetts FCA applies to the Medicaid program.

   The Massachusetts FCA defines "political subdivision" as "a city, town, county or other governmental entity authorized or created by law, including public corporations and authorities." M.G.L. c. 12, § 5A.

   The Massachusetts FCA defines "person" as "a national person, corporation, partnership, association, trust or other business or legal entity." M.G.L. c. 12, § 5A.

3. Methods of Enforcement/Whistleblower Provisions.

   a) Responsibilities of the Attorney General:

      The Attorney General is required to investigate violations of the Massachusetts FCA, and if a violation has occurred, may bring a civil action in superior court. M.G.L. c. 12, § 5C(1).

   b) Scope of who can be a Relator:

      When a Relator brings an FCA action, only the Attorney General may intervene or bring a related action based on the underlying pending action. M.G.L. c. 12, § 5C(6).

   c) Standing for Relators:

      An individual may bring a civil action in superior court for a violation of the Massachusetts FCA. The action shall be brought in the name of the Commonwealth or the political subdivision thereof. M.G.L. c. 12, § 5C(2).

d) Relator's Rights if Government Intervenes:

If the Attorney General proceeds with the action, he shall have primary responsibility for prosecuting the action and is not be bound by any act of the Relator; however, Relator continues as a party to the action, subject to certain limitations. M.G.L. c. 12, § 5D(1). The Attorney General may dismiss the action notwithstanding Relator's objections, provided Relator has an opportunity for a hearing on the motion to dismiss. M.G.L. c. 12, § 5D(2). The Attorney General may settle the case notwithstanding Relator's objections if the court determines, after a hearing, that the proposed settlement is fair, adequate and reasonable. M.G.L. c. 12, § 5D(3).

e) Limiting Relator's Role

If unrestricted participation by the Relator would interfere with or unduly delay the state Attorney General's prosecution, or would be repetitious or irrelevant or for purposes of harassment, the court may impose limitations on the Relator's participation in the case, such as limiting the number of witnesses, limiting the length of testimony, limiting the person's cross-examination, or otherwise limiting the person's participation in the litigation. M.G.L. c. 12, § 5D(4).

If the defendant shows that unrestricted participation by the Relator would be for harassment or would be an undue burden to the defendant or would cause unnecessary expense, the court may limit the Relator's participation in the litigation. M.G.L. c. 12, § 5D(5).

Whether or not the Attorney General proceeds with the action, upon a showing by the Attorney General that certain acts of discovery by the Relator initiating the action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same or similar facts, the court may stay such discovery. M.G.L. c. 12, § 5D(7).

f) Relator's Rights if Government Declines:

If the Attorney General elects not to proceed with the action, the Relator has the right to conduct the action. M.G.L. c. 12, § 5D(6). The court may permit the Attorney General to intervene at a later date upon showing of good cause. M.G.L. c. 12, § 5D(6).

g) Government's Election of Other Proceeding:

The Attorney General may elect to pursue its claim through any alternative remedy available to it, including any administrative proceeding to determine a civil penalty. M.G.L. c. 12, §5E. During such proceeding, the Relator has the same rights in the proceeding as such person would have had if the original action had continued. Any finding of fact or conclusion of law made in such other proceeding that has become final is conclusive on all parties to the Massachusetts FCA. M.G.L. c. 12, § 5E.

h) Relator's Share of Recovery:

Successful Relators are entitled to 15-25% of the judgment when the Attorney General intervenes; 25-30% if the Attorney General does not intervene. M.G.L. c. 12, §5F. Also, a successful Relator is entitled to reasonable expenses necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees and costs shall be awarded against the defendant.

Where action is based on certain disclosures of specific information in a criminal, civil or administrative hearing, or legislative, administrative, auditor or inspector general hearing, audit, investigation or from the news media, the court may award sums it finds appropriate up to 10% of the proceeds. M.G.L. c. 12, § 5F(2). If a court finds that Relator planned and initiated the FCA violation, the court may reduce or eliminate the Relator's share of proceeds. M.G.L. c. 12, § 5F(5). If a Relator is convicted of criminal

conduct arising from his/her role in the violation, the Relator shall be dismissed from the civil action and not receive any share of proceeds. M.G.L. c. 12, § 5F(5).

4. Employee Protection.

The Massachusetts FCA prohibits employers from making, adopting or enforcing "any rule, regulation, or policy preventing an employee, contractor or agent from disclosing information to a government or law enforcement agency or from acting to further efforts to stop" violations of the Massachusetts FCA. M.G.L. c. 12, § 5J(1). Employment agreements that limit or deny the employee's right to bring an FCA action is void. M.G.L. c. 12, § 5J(1).

In addition, the Massachusetts FCA prohibits an employer from discharging, demoting, suspending, threatening, harassing, or in any other manner discriminating against an employee for disclosing information to a government or law enforcement agency or in furthering a false claims action, including investigation, initiation of, testimony for or assistance in the action filed or to be filed under the Massachusetts FCA. M.G.L. c. 12, § 5J(2). Any employer who violates Section 5J(2) shall be liable for such damages or equitable relief as a court shall deem appropriate, including reinstatement with same seniority status, two (2) times the amount of back pay, interest on the back pay, and compensation for any special damage sustained as a result of the employer's violation plus litigation costs and reasonable attorney's fees. M.G.L. c. 12, § 5J(3).

5. Procedural & Other Requirements.

(a) Burden of Proof:

Under the Massachusetts FCA, all essential elements including damages must be proved by a preponderance of the evidence. M.G.L. c. 12, § 5L.

(b) Public Disclosure/Original Source:

A Massachusetts FCA action can only be brought by the state Attorney General or by a Relator who is an "original source" of the information, where the action is based on public disclosure of the allegations or transactions in a criminal, civil or administrative hearing; in a legislative, administrative, auditor's or inspector general's report, hearing, audit or investigation; or from the news media. M.G.L. c. 12, § 5G(c). "Original source" means "an individual who: (1) prior to a public disclosure [ ], has voluntarily disclosed to the commonwealth or any political subdivision thereof the information on which allegations or transactions in a claim are based; or (2) has knowledge that is independent of and materially adds to the publicly-disclosed allegations or transactions, and who has voluntarily provided the information to the commonwealth or any political subdivision thereof before filing a false claims action M.G.L. c. 12, § 5A.

(c) Statute of Limitations:

A civil action may not be brought under the Massachusetts FCA (1) more than six years after the date on which the violation occurred, or (2) more than three years after the date when material facts are known or should have been known by the Attorney General, but in no event more than ten years after the date on which the violation is committed, whichever occurs last. M.G.L. c. 12, § 5K(1).

(d) Collateral Estoppel:

A final judgment rendered in favor of the Commonwealth in any criminal proceeding charging fraud or false statements, whether upon a verdict after trial or upon a plea of guilty or *nolo contendere*, shall estop the defendant from denying the essential elements of the offense in any action which involves the same act, transaction or occurrence which is brought under the Massachusetts FCA. M.G.L. c. 12, § 5K.

Attachment III

Summary of New York False Claims Act ("New York FCA")

State Finance Law, Art. 13, §§187-194

Overview. New York has state laws similar to the federal FCA which allow both the state attorney general and private citizens to bring suits against individuals and/or corporations who knowingly submit false claims to the commonwealth or a political subdivision thereof, for reimbursement or payment. The New York FCA allows for three times the damages (two times the damages for voluntary and immediate self-reporting of fraud) and civil penalties of $6,000 to $12,000 per violation in addition to attorney's fees and costs.
The New York FCA defines, "knowing and knowingly," as "possessing actual knowledge of relevant information, acting with deliberate ignorance of the truth or falsity of the information or acting in reckless disregard of the truth or falsity of the information and no proof of specific intent to defraud is required." Art. 13, §188.

The New York FCA specifically provides for liability when a person:

(1) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval;

(2) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim;

(3) conspires to commit a violation of this subdivision;

(4) knowingly presents, or causes to be presented, a claim that includes items or services resulting from a violation of the federal FCA;

(5) has possession, custody, or control of property or money used, or to be used, by the state or local government of New York and knowingly delivers, or causes to be delivered, less than all of that money or property;

(6) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the state or local government of New York and, intending to defraud the state or local government of New York, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(7) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of New York or a political subdivision thereof, who may not lawfully sell or pledge such property;

(8) knowingly makes, uses or causes to be made or used a false record or statement material to conceal, avoid, or decrease an obligation to pay or to transmit money or property to state or local government of New York; or

PART 400. PROCEDURAL REGULATIONS OF THE FALSE CLAIMS ACT

Section 400.1 General Provisions

(a) The State Finance Law, sections 187-194, shall be referred to herein as the "False Claims Act".

(b) Definition of Person: The term "person" as used herein shall mean any natural person, partnership, corporation, association or any other legal entity or individual, other than the state or a local government.

(c) Definition of Attorney General: The term “Attorney General” as used herein shall mean the Attorney General or his or her deputies, designees, assistants or special assistants.

(d) Severability: If any provision herein or the application of such provision to any persons or circumstances shall be held invalid, the validity of the remainder of the provisions and/or the applicability of such provisions to other persons or circumstances shall not be affected thereby.

Section 400.2 Civil Enforcement by the Attorney General

(a) Whenever it shall appear to the Attorney General that any person has engaged or is engaging in conduct that might amount to a violation of the False Claims Act, the Attorney General is authorized to investigate such violations by taking proof and making a determination of the relevant facts and issuing subpoenas in accordance with the Civil Practice Law and Rules. Such authorization shall not abate or terminate by reason of any action or proceeding brought under the False Claims Act by the Attorney General, a local government, or any person, including a qui tam plaintiff.

(b) If a person subpoenaed to attend an inquiry related to a violation of the False Claims Act fails to obey the command of a subpoena without reasonable cause, or if a person in attendance upon such inquiry shall without reasonable cause refuse to be sworn or to be examined or to answer a question or to produce a book or paper or data when ordered so to do by the officer conducting such inquiry, or if a person fails to perform any act required to be performed, the Attorney General may institute civil contempt proceedings under section 2308(b) of the Civil Practice Law and Rules or make a motion to compel pursuant to that section or take any other action authorized by law.

Section 400.3 Civil Enforcement by Local Governments

(a) A local government shall consult with the Attorney General prior to filing any action under section 190(1) of the False Claims Act related to the Medicaid program.

(b) A local government filing an action under section 190(1) of the False Claims Act shall provide the Attorney General with a copy of the complaint on or about the date such complaint is filed.

(c) Under no circumstances shall the state be bound by the act of a local government that files an action involving damages to the state.

Section 400.4 Qui Tam Actions

(a) All qui tam actions shall be served on the Attorney General by the personal delivery of the qui tam complaint and accompanying evidence to a person designated to receive service at the Managing Clerk’s Office on the 16th Floor at the Office of the Attorney General at 28 Liberty Street, New York, New York 10005, unless otherwise authorized by the Attorney General.

(b) A local government, having been authorized by the Attorney General to supersede or intervene in a qui tam action on its own behalf pursuant to section 190(2) of the False Claims Act, shall cooperate with the Attorney General in any subsequent investigation related to the action.

(c) If the state or a local government does not intervene or supersede after the 60 day time period or any extensions obtained under section 190(2)(b) of the False Claims Act, then the qui tam plaintiff has 30 days after such time period or extensions expire to decide whether to proceed with the action.

(1) If the qui tam plaintiff elects to proceed with the action, the qui tam plaintiff shall so advise the court, the state, and applicable local governments, and cause the complaint to be unsealed. After the complaint is unsealed, the qui tam plaintiff shall serve the complaint on any defendant pursuant to the provisions of the Civil Practice Law and Rules and other applicable law.

(2) If the qui tam plaintiff elects not to proceed with the action, the qui tam plaintiff shall either: (i) voluntarily discontinue the action, without an order and without unsealing the action, by filing with the court a notice of discontinuance and serving a copy of this notice on the Attorney General, who may in the Attorney General's discretion make an in camera motion to unseal the complaint; or (ii) seek to voluntarily discontinue the action by order of court by making an in camera motion to unseal the complaint and dismiss the action.

(d) If the state or a local government decides not to intervene or supersede in a qui tam action, the qui tam plaintiff may not pursue the qui tam action on a pro se basis unless the qui tam plaintiff is an attorney eligible to represent a party before the court in which the qui tam action is proceeding.

400.5 Public disclosure bar motions

The state shall not seek to dismiss, and shall oppose the dismissal, of a qui tam action pursuant to paragraph (b) of subdivision nine of section one hundred ninety of the New York False Claims Act in the event that:

(a) any cause of action in the qui tam plaintiff's complaint would be dismissed other than a cause of action alleging substantially the same allegations or transactions that have been publicly disclosed in a manner set forth in such paragraph (b); or

(b) any cause of action in the qui tam plaintiff's complaint would be dismissed pursuant to subparagraph (ii) of such paragraph (b) solely because of an alleged public disclosure in a federal report, hearing, audit, or investigation.

400.6 Application of the damage multiplier

The state or a local government's damages shall be trebled or doubled pursuant to section one hundred eighty-nine of the New York False Claims Act before any subtractions are made for compensatory payments received by the government from any source, including but not limited to the defendant, or before any subtractions are otherwise made because of any offset or credit received by the government from any source, including but not limited to the defendant.

400.7 Obligations

(a) For purposes of paragraph (g) of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly makes, uses, or causes to be made or used, a false record or statement material to such obligation to pay or transmit money or property to the state or a local government.

(b) For purposes of paragraph (h) of subdivision one of section one hundred eighty nine of the New York False Claims Act, an "obligation" can be an obligation of any person and does not have to be an obligation of the person who knowingly conceals or who knowingly and improperly avoids or decreases such obligation to pay or transmit money or property to the state or a local government, or who conspires to do the same.

400.8 Payment of costs and attorneys' fees

A person who violates section one hundred eighty-nine of the New York False Claims Act shall be liable for the costs, including attorneys' fees, of a civil action brought to recover penalties or damages. Such person shall pay all costs borne by the state, a local government, a qui tam plaintiff, or counsel, as may be applicable. All such costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state, local government or a qui tam plaintiff prevails in the action.

Procedure/Process #: 104.03PR	**Original date:** September 1, 2003
	Revision date(s): 3/2/05, 3/1/06, 7/1/08, 12/31/10, 4/24/12, 10/8/12, 2/19/13, 5/21/19, 3/22/20, 7/22/24, 5/26/26
	Review date(s): 8/1/17; 3/23/18, 4/15/19,3/29/23, 7/31/25