

**RIVERSPRING HEALTH PLANS
FALSE CLAIMS ACTS SUMMARY**

FEDERAL

FEDERAL FALSE CLAIMS ACT (FCA), 31 U.S.C. §§ 3729-3733 (FCA)

FCA Imposes liability on persons and companies who defraud government programs. Includes a “qui tam” provision that allow individuals to file actions on behalf of the government (“whistleblower” provisions).

FRAUD ENFORCEMENT AND RECOVERY ACT OF 2009 (FERA)

FERA expands the scope of potential FCA liability, expands the statute of limitations, strengthens the government’s means to combat fraud, reduces procedural hurdles to litigate alleged FCA violations, and strengthens whistleblower protections.

PATIENT PROTECTION AND AFFORDABLE CARE ACT OF 2010 (PPACA)

PPACA continues the expansion of FCA, gives the government new enforcement tools, defines reporting and repayment deadlines for overpayments, mandates compliance programs for certain health care providers, and enhances criminal and administrative penalties for noncompliance.

DEFINITIONS

“Knowing” and “Knowingly”:

- (A) mean that a person, with respect to information
 - (i) has actual knowledge of the information;
 - (ii) acts in deliberate ignorance of the truth or falsity of the information; or
 - (iii) acts in reckless disregard of the truth or falsity of the information; and
- (B) requires no proof of specific intent to defraud.

Note: The FCA does not require that the person has actual knowledge that the claim is false; a person who acts in reckless disregard or deliberate ignorance of the truth or falsity of the information may be found liable.

“Claim”:

- (A) means any request or demand, whether under a contract or otherwise, for money or property and whether or not the United States has title to the money or property, that
 - (i) is presented to an officer, employee, or agent of the United States; or
 - (ii) is 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 United States Government
 - (I) provides or has provided any portion of the money or property which is requested or demanded; or
 - (II) will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.
- (B) does not include requests or demands for money or property that the Government has paid to an individual as compensation for Federal employment or as an income subsidy with no restrictions on that individual’s use of the money or property.

“Obligation” means an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship, from a fee-based or similar relationship, from statute or regulation, or from retention of any over-payment.

“Material” means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

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UNLAWFUL ACTS	<p>Any person who commits any of the following will be liable to the United States Government for a civil penalty:</p> <ul style="list-style-type: none"> (A) knowingly presents, or causes to be presented, a false or fraudulent claim for payment or approval; (B) knowingly makes, uses, or causes to be made or used, a false record or statement material to a false or fraudulent claim; (C) conspires to commit a violation (herein described); (D) has possession, custody, or control of property or money used, or to be used, by the Government and knowingly delivers, or causes to be delivered, less than all of that money or property; (E) is authorized to make or deliver a document certifying receipt of property used, or to be used, by the Government and, intending to defraud the Government, makes or delivers the receipt without completely knowing that the information on the receipt is true; (F) knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who lawfully may not sell or pledge property; or (G) knowingly makes, uses, or causes to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly conceals or knowingly and improperly avoids or decreases an obligation to pay or transmit money or property to the Government.
EXAMPLES	<ul style="list-style-type: none"> ▪ A provider submits a bill to Medicare/Medicaid for services not provided. ▪ A physician creates backdated records to support a claim already submitted. ▪ An individual who submits records that s/he knows or should know is false to obtain payment from the government. ▪ “Reverse false claim” – a plan that obtains payments from Medicaid throughout the year and files a false cost report to avoid making a refund.
ENFORCEMENT & PENALTIES	<p>A person who commits an unlawful act will be liable to the United States government for civil penalties of not less than \$11,665 and not more than \$23,331 for penalties assessed after June 19, 2020, adjusted for inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990, plus three (3) times the amount of damages which the Government sustains because of the act of that person.</p> <p><u>Reduced damages:</u> The court may assess not less than 2 times the amount of said damages if the court finds that:</p> <ul style="list-style-type: none"> (A) the person committing the violation...furnished officials of the United States responsible for investigating false claims violations with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information; (B) such person fully cooperated with any Government investigation of such violation; and (C) at the time such person furnished the United States with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this title with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation. <p><u>Qui Tam Actions by Private Persons:</u> Private parties may bring an action on behalf of the United States. If the Government intervenes in the qui tam action, the private party shall receive at least 15% but not more than 25% of the proceeds of the action; if the Government does not intervene, the private party shall receive at least 25% and not more than 30%.</p>

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PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA), 31 U.S.C. §§ 3801-3812

PFCRA allows for administrative recoveries by federal authorities and agencies. Note: Unlike the FCA, a violation under the PFCRA occurs when a false claim or statement is submitted, not when the claim is paid. The determination of falsity and the imposition of penalties are made by the federal authority or agency, not the federal courts.

UNLAWFUL ACTS

False Claims: A civil penalty of not less than \$11,665 and not more than \$23,331, for penalties assessed after June 19, 2020, may be imposed upon any person who makes, presents, or submits, or causes to be submitted, a claim that the person knows or has reason to know:

- (A) Is false, fictitious, or fraudulent;
- (B) Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- (C) Includes or is supported by any written statement that omits a material fact; is false, fictitious, or fraudulent as a result of such omission; and is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or
- (D) Is for payment for the provision of property or services which the person has not provided as claimed.

False Statements: A civil penalty of not less than \$11,665 and not more than \$23,331, for penalties assessed after June 19, 2020, may be imposed on any person who makes, presents, or submits, or causes to be made, presented or submitted, a written statement that the person knows or has reason to know:

- (A) Asserts a material fact which is false, fictitious, or fraudulent; or
- (B) Omits a material fact; and
- (C) Is false, fictitious, or fraudulent as a result of such omission.

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NEW YORK STATE

New York Civil Laws

NEW YORK FALSE CLAIMS ACT, State Finance Law §§ 187-194

The New York False Claims Act (NY FCA) is similar to the federal FCA. It imposes liability for treble damages and penalties on persons and entities that present false claims for payment to the state or local governments, and encourages private parties or whistleblowers to report false claims and file qui tam actions by incentivizing such actions with 15%-30% of any recovery plus attorneys' fees.

NEW YORK FRAUD ENFORCEMENT AND RECOVERY ACT 2010 (NY FERA)

NY FERA amends the NY FCA, expands liability, expands the statute of limitations and relaxes procedural hurdles. Many of the amendments follow the federal FERA.

NEW YORK SOCIAL SERVICES LAW § 145-b

It is a violation to knowingly obtain or attempt to obtain payment for items or services furnished under any social services program, including Medicaid, by use of a false statement, deliberate concealment or other fraudulent scheme or device. The State or local social services district may recover three (3) times the amount incorrectly paid, and the Department of Health may impose a civil penalty of up to \$10,000, per violation. If repeat violations occur within five years or violations involve more serious violations of Medicaid rules, a penalty of up to \$30,000 may be imposed.

NEW YORK SOCIAL SERVICES LAW § 145-c

Any person who applies for or receives public assistance by intentionally making a false or misleading statement, or intentionally concealing or withholding facts, then the person's needs or that of the person's family, will not be taken into account for six months for a first offense, twelve months for a second offense or wrongful receipt of benefits from \$1,000 to \$3,900, eighteen months for a third offense or wrongful receipt of benefits in excess of \$3,900, and five years for any subsequent offenses.

New York Criminal Laws

NEW YORK SOCIAL SERVICES LAW § 145 – Penalties

Any person, who by means of a false statement, deliberate concealment or other fraud obtains, attempts to obtain or aids any person to obtain public assistance, is guilty of a misdemeanor.

NEW YORK SOCIAL SERVICES LAW § 366-b – Penalties For Fraudulent Practices

Any person who knowingly makes a false statement, or by deliberate concealment or other fraud, obtains, attempts to obtain or aids any person to obtain public assistance, including Medicaid, to which that person is not entitled, is guilty of a Class A misdemeanor.

Any person who, with intent to defraud, presents for payment any false or fraudulent claim for furnishing services, knowingly submits false information in order to obtain greater Medicaid compensation, or knowingly submits false information in order to obtain authorization to provide items or services, is guilty of a Class A misdemeanor.

NEW YORK PENAL LAW ARTICLE 155 – Larceny

Any person who, with intent to deprive another of property, wrongfully takes, obtains, or withholds such property by trick, embezzlement, false pretense, false promise, including a scheme to defraud, is guilty of larceny. Larceny applies to Medicaid fraud. Larceny includes petit larceny (Class A misdemeanor) and grand larceny in varying degrees, ranging from Class B felony to Class E felony.

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NEW YORK PENAL LAW ARTICLE 175 – False Written Statements

Falsifying business records or filing false information or claims have been applied to Medicaid fraud prosecutions. These offenses range from Class A misdemeanor to Class D or E felony.

NEW YORK PENAL LAW ARTICLE 176 – Insurance Fraud

This law applies to fraudulent claims for insurance payment, including Medicaid or other health insurance. Insurance fraud range may be a Class A misdemeanor or a felony ranging from a Class B felony to a Class E felony.

NEW YORK PENAL LAW ARTICLE 177 – Health Care Fraud

This law applies to fraudulent claims for payment from a health plan, including Medicaid. Health care fraud may be a class A misdemeanor or range from a Class E felony to a Class B felony.

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WHISTLEBLOWER PROTECTIONS	
FEDERAL	<p>FEDERAL FALSE CLAIMS ACT (FCA), 31 U.S.C. § 3730(h) The Federal False Claims Act provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the FCA. 31 U.S.C. 3730(h). Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.</p>
NEW YORK STATE	<p>NEW YORK FALSE CLAIMS ACT, State Finance Law §§ 187-194 The New York State False Claim Act also provides protection to qui tam relators (individuals who commence a False Claims action) who are discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of their employment as a result of their furtherance of an action under the Act. Remedies include reinstatement with comparable seniority as the qui tam relator would have had but for the discrimination, two times the amount of any back pay, interest on any back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.</p> <p>NEW YORK LABOR LAW § 740 An employer may not take any retaliatory action against an employee if the employee discloses in good faith information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official. Protected disclosures are those that assert that the employer's activity is in violation of law, creates a substantial and specific danger to the public health and safety, or constitutes health care fraud under Penal Law §177 (knowingly filing, with intent to defraud, a claim for payment that intentionally has false information or omissions). The employee's disclosure is protected only if the employee has first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, the court may impose a civil penalty up to \$10,000 on an employer.</p> <p>NEW YORK LABOR LAW § 741 Health care employers may not take any retaliatory action against an employee if the employee discloses certain information about the employer's policies, practices or activities to a regulatory, law enforcement or other similar agency or public official, to a news media outlet or to a social media forum available to the public at large. Protected disclosures are those that the employee asserts in good faith, and reasonably believes to constitute improper quality of patient care or improper quality of workplace safety. The employee's disclosure is protected only if the employee first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation, unless the danger is imminent to public health, a specific patient or specific employee, and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes retaliatory action against the employee, the employee may sue in state court for reinstatement to the same or equivalent position, any lost back wages and benefits and attorneys' fees. If the employer is a health provider and the court finds that the employer's retaliatory action was in bad faith, the court may impose a civil penalty up to \$10,000 on an employer.</p>