

# Help Stop Government Waste

The federal government recently announced two separate settlements against major pharmaceutical companies. One company had been actively promoting the “off label” use of one of its prescription products leading to the improper expenditure of government funds to reimburse product purchasers. While “off label” use (the use of drugs by physicians in ways not expressly approved by the Food & Drug Administration) is not itself illegal, drug manufacturers are not permitted to promote the use of their products for purposes for which they have not been tested, reviewed, and sanctioned by the FDA. The company’s improper conduct cost it \$600 million. A significant aspect of this case was that it was initiated through private citizen complaints. The four individuals who alerted the federal government to the improper practices shared an incentive fee of over \$37 million. The second settlement for \$750 million involved the marketing of pharmaceuticals that lacked the proper ingredient mix. The whistleblower, a former quality assurance manager for the manufacturer, will receive \$96 million out of the government’s recovery. This is reportedly the largest payment in U.S. history for a single individual involved in alerting the government to fraudulent practices.

These are just two examples of many instances where concerned individuals have been handsomely rewarded when they recognized and reported circumstances in which state or federal agencies have been defrauded, leading to the successful prosecution of claims under the Federal False Claims Act. Commenting on such claims, referred to as *qui tam* actions, Sen. Charles Grassley (R-IA) and Rep. Howard Berman (D-CA) noted:

“Studies estimate the fraud deterred thus far by the *qui tam* provisions (of federal law) runs into the hundreds of billions of dollars. Instead of encouraging or rewarding a culture of deceit, corporations now spend substantial sums on sophisticated and meaningful compliance programs. That change in the corporate culture—and in values-based decisions that ordinary Americans make daily in the workplace—may be the law’s most durable legacy.”

Nevertheless, government alone, with its limited resources, remains overmatched in the fight against fraud. The False Claims Act creates a powerful public-private partnership for uncovering and combating the extensive fraud that still costs American taxpayers billions of dollars every year.

The opportunity for public service and the chance to be financially rewarded for assistance in putting a stop to fraudulent practices that take money out of all our pockets should be strong motivations to step forward when you suspect that the government is the victim of fraud.

## WHO THE LAW APPLIES TO

In general, the False Claims Act covers fraud involving any federally funded contract or program, with the exception of tax fraud.

While many *qui tam* actions in the late 1980’s and early 1990’s involved Department of Defense contracts, in recent years most *qui tam* actions have been used to fight Medicare fraud and fraud against other federally funded health care programs. A broad array of scenarios can constitute FCA violations. Some examples include the following:

- A contractor falsifies test results or other information regarding the quality or cost of products it sells to the government;
- A health care provider bills Medicare for services that were not performed or were unnecessary, or;
- A grant recipient charges the government for costs not related to the grant.

## TYPES OF FRAUD PROSECUTED UNDER THE FCA

The following list gives some idea of the scope of the false claims on the government that have been uncovered to date:

- Billing for goods and services that were never delivered or rendered.
- Billing for marketing, lobbying or other non-contract related corporate activities.
- Submitting false service records or samples in order to show better-than-actual performance.
- Presenting broken or untested equipment as operational and tested.
- Performing inappropriate or unnecessary medical procedures in order to increase Medicare reimbursement.
- Billing for work or tests not performed.
- Billing for premium equipment but actually providing inferior equipment.
- Automatically running a lab test whenever the results of some other test fall within a certain range, even though the second test was not specifically requested.
- Defective testing—Certifying that something has passed a test, when in fact it has not.
- Unbundling—using multiple billing codes instead of one billing code for a drug panel test in order to increase remuneration.
- Bundling—Billing more for a panel of tests when a single test was asked for.

- Double billing—Charging more than once for the same goods or service.
- Upcoding—Inflating bills by using diagnosis billing codes that suggest a more expensive illness or treatment.
- Billing for brand—Billing for brand-named drugs when generic drugs are actually provided.
- Phantom employees and doctored time slips; Charging for employees that were not actually on the job, or billing for made-up hours in order to maximize reimbursements.
- Upcoding employee work: Billing at doctor rates for work that was actually conducted by a nurse or resident intern.
- Failing to report known product defects in order to be able to continue to sell or bill the government for the product.
- Billing for research that was never conducted; falsifying research data that was paid for by the U.S. Government.
- Winning a contract through kickbacks or bribes.
- Prescribing a medicine or recommending a type of treatment or diagnosis regimen in order to win kickbacks from hospitals, labs or pharmaceutical companies.
- Billing for unlicensed or unapproved drugs.
- Forging physician signatures when such signatures are required for reimbursement from Medicare or Medicaid.

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if you believe you may have information that the government is being deceived into paying for goods or services that are not really being provided the way they should be.

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