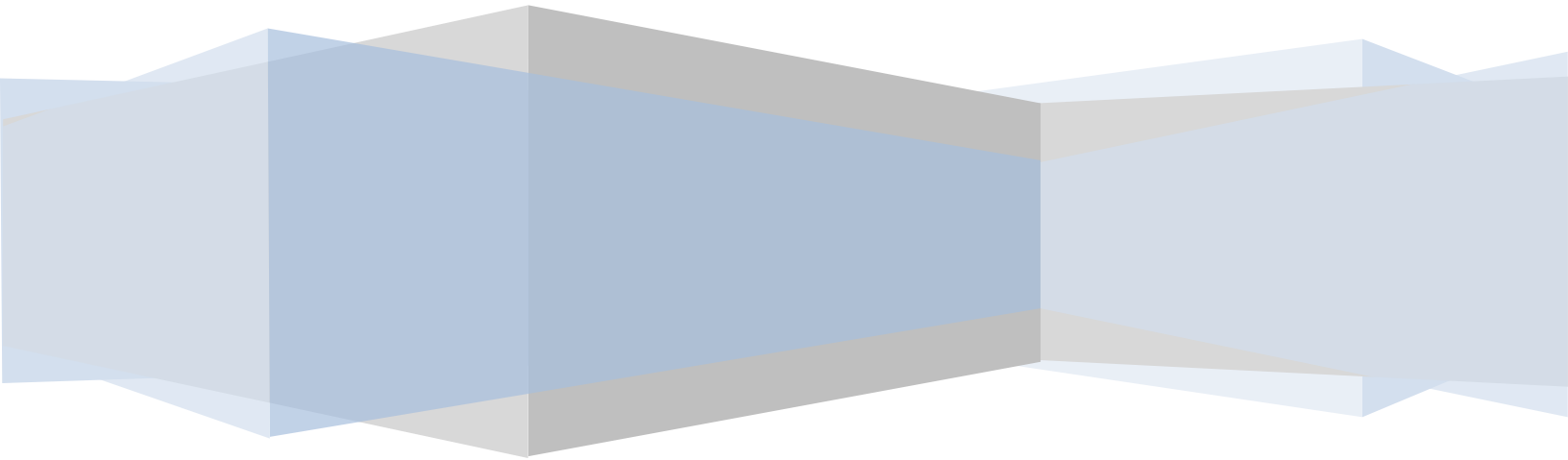
belvedere
HEALTH SERVICES

Corporate Compliance Program Manual



Contents

BELVEDERE HEALTH SERVICES, LLC
CORPORATE COMPLIANCE PROGRAM

The following policies and procedures describe the compliance expectations of Belvedere Health Services, LLC (the "Company"), as embodied in its Code of Conduct; describe the operation of the compliance program; provide guidance to employees and others on dealing with potential compliance issues; identify how to communicate compliance issues to appropriate personnel; and describe how potential compliance problems are investigated and resolved.

A detailed description of the Federal False Claims Act, the Federal Program Fraud Civil Remedies Act, New York State civil and criminal laws pertaining to false claims, and the whistleblower protections afforded under such laws is annexed as an Appendix to these policies and procedures.

I. Written Policies and Procedures

A. Code of Conduct.

All personnel are required to comply with the following standards of conduct and with the compliance program as described in these written policies and procedures.

1. Compliance with Federal and State Laws and Regulatory Requirements. All personnel and others with whom we do business are responsible for complying with the applicable federal and state laws and regulatory requirements.

2. Financial Integrity. All personnel must comply with the federal and state requirements applicable to their respective positions, including the requirements for billing, coding, documentation, including documentation reflecting the medical need for the service provided, and the submission of claims and related information.

3. Compliance with Other Procedural Standards. All personnel are responsible for adhering to the operational and procedural standards of their respective positions, as set forth in the Company's Employee Handbook and other written policies and procedures.

4. Quality of Care. We expect all personnel to use best efforts to deliver quality of care to participants in an atmosphere of consideration, with attention to individual needs and preferences.

5. Confidentiality of Client Information. All personnel are responsible for complying with the federal and state law requirements governing the confidentiality of participant information.

6. Mandatory Reporting. All personnel are responsible for being aware of, and adhering to, the laws and regulations governing mandatory reporting.

7. Corporate Governance. Management will assist and support the President (*i.e.*, the governing authority) in carrying out his responsibilities of care and loyalty in the decision-making process, overseeing the maintenance of quality of care and implementing the compliance program.

8. Company Funds and Assets. All personnel who have access to the Company's funds are responsible for following the established procedures for recording and handling such funds, as set forth in the Company's Employee Handbook and other written policies and procedures. When an employee's position requires spending Company funds or incurring a reimbursable personal expense, the employee is expected to use good judgment on the Company's behalf to ensure the receipt of fair value for every such expenditure. Company funds and Company assets are intended for Company purposes only, and not for personal use or benefit.

9. Misappropriation of Property. All materials and equipment issued to employees for the performance of their job are considered the property of the Company and are not to be removed from the premises without permission from the employee's supervisor.

10. Avoidance of Conflicts. All personnel are responsible for avoiding conflicts of interest and situations in which there is or may be the potential for personal gain or benefit. Employees may not have any direct or indirect financial interest in or personal business relationship with any firm or person that does business with the Company or engage in activities that would conflict with the

interests of the Company. Employees may not borrow money or property from a participant or peers.

11. Participation in Compliance Activities and Non-Retaliation. All personnel are required to participate in good faith in the compliance program, to report suspected compliance issues as they arise and to participate in their resolution. Intimidation of or retaliation against an individual who in good faith participates in the compliance program is prohibited.

12. Non-Discrimination in the Delivery of Services. We do not discriminate in the delivery of services on the basis of race, gender, sexual orientation, religion, color, national origin, citizenship, age, marital status, disability, predisposing genetic characteristics, gender identity or expression, veteran status or any other category protected by law. In accepting and discharging participants and referring them to other providers, we will base the decision on the individual's documented medical need and the provider's ability to meet that need, and we will respect and honor the participant's right to choose.

13. Communicating with Outside Persons and Organizations. When communicating publicly on matters that involve Company business, employees must not presume to speak for the Company on any topic, unless they are certain that the views they express are those of the Company, and it is the Company's desire that such views be publicly disseminated. When communicating on matters that do not involve Company business, employees must take care to separate their personal roles from their positions with the Company.

14. Lawful and Honest Conduct. It is the responsibility of all personnel, including management, affiliated physicians, and others with whom we do business, to comply with this Code of Conduct, to be lawful and honest in their business dealings, and to avoid acting in a way that could create even the appearance of impropriety.

B. Written Policies and Procedures Describing Compliance Expectations.

1. All employees, including executives and the governing authority, are required to comply with the compliance responsibilities in these policies and procedures.

a) Employees are expected to know and to follow the federal and state laws, rules and regulations that apply to their jobs and to comply with the standards in the Code of Conduct, these compliance policies and procedures, and any applicable departmental compliance protocols.

b) Supervisors are responsible for helping to create and maintain a work environment in which ethical concerns can be raised and openly discussed, for reminding staff of the importance of the Code of Conduct and the compliance program and for providing training and information on the reporting procedures for suspected compliance issues.

c) Strict compliance with these legal and compliance standards is a condition of employment, and violation of these standards of conduct will result in disciplinary action.

2. The Company will provide contractors and other persons with whom it contracts with information about federal and state laws pertaining to false claims and whistleblower protection and a summary of the Company's policies and procedures for detecting and preventing fraud, waste and abuse, and will request their cooperation with the implementation and operation of this compliance program.

C. The following policies and procedures describe the operation of the compliance program and provide guidance to employees and others on dealing with potential compliance issues.

II. The Compliance Officer

A. Designation of the Compliance Officer

1. The Company will designate an individual to serve as the Compliance Officer.

a) The Compliance Officer will be an employee of the Company.

b) The Compliance Officer's duties may relate solely to compliance or may be combined with other duties, so long as compliance responsibilities are satisfactorily carried out.

2. The Company has designated the person specified in the Employee Handbook to carry out the responsibilities of Compliance Officer.

B. The Compliance Officer's Responsibilities

1. The Compliance Officer will be responsible for the day-to-day operation of the Compliance Program.

2. In carrying out these responsibilities, the Compliance Officer and/or designee:

a) shall be responsible for knowing and understanding the operation of the compliance program;

b) may delegate responsibilities under the compliance program to persons who, in the Compliance Officer's judgment, have the integrity and capability to make the kinds of decisions called for in the delegation;

c) may consult with counsel, from time to time, to clarify or modify aspects of the compliance program that may require clarification or modification;

d) shall coordinate the development and implementation of training and education about the operation of the compliance program and compliance guidelines and guidance;

e) shall participate in the identification of risk areas and the development and maintenance of monitoring and auditing processes for evaluating whether compliance standards are being met;

f) shall participate in, and or coordinate, the investigation, evaluation, resolution and correction of potential or actual compliance issues as they may arise;

g) shall assist in the development and maintenance of procedures for reporting issues and refunding overpayments; and

h) shall participate in quality assurance meetings;

i) shall review these policies and procedures periodically to evaluate the effectiveness of the Company's compliance efforts and respond to changes in laws, regulations and other requirements;

j) shall take other actions as described in these compliance policies and procedures.

3. The Compliance Officer's Reporting Obligations

a) The Compliance Officer will report directly to the Executive Director of the Company or to such other senior administrator as the Executive Director may designate.

b) The Compliance Officer will provide periodic reports directly to the governing authority on the operations and activities of the compliance program.

III. Training and Education

A. All persons associated with the Company, including executives and the governing authority, shall receive training and education on compliance issues, expectations, and the compliance program operation

B. Orientation and Periodic Training

1. New Employees. The Compliance Officer, or his or her designee, will provide compliance training as part of the orientation for new employees, executives and the governing authority.

2. Existing Employees. The Compliance Officer, or his or her designee, will also provide periodic compliance program training, on at least an annual basis, to employees, executives and the governing authority.

3. Additional Training. The Compliance Officer, or his or her designee, will coordinate the provision of such additional training and education to additional persons as he or she may deem appropriate to carry out the goals of the compliance program.

4. Documentation. The Compliance Officer, or his or her designee, will maintain a record of personnel who have attended such training.

C. Content of Training. The training and education will relate to operation and expectations of the compliance program and other pertinent legal requirements, including:

1. the False Claims Act;

2. Administrative remedies for false claims and statements established under 31 U.S.C. § 3801, *et seq.*;

3. State laws pertaining to civil or criminal penalties for false claims and statements;

4. the Company's Employee Handbook, its Code of Conduct, and its policies and procedures for detecting and preventing fraud, waste, and abuse;

5. other subjects within the scope of the employee's job responsibilities; and

6. such additional information as the Compliance Officer may from time to time deem appropriate.

D. Policies and Procedures. The Compliance Officer will coordinate the distribution of information about the Company's policies and procedures for detecting and preventing fraud, waste and abuse to all personnel, including newly hired personnel, and maintain signed acknowledgments of receipt.

IV. Communication Lines to the Compliance Officer

A. Communicating Actual or Potential Compliance Issues to the Compliance Officer.

1. Any employee may report any actual or potential compliance question or issue to his or her supervisor or manager. Upon such report the supervisor or manager shall report the question or issue to the Compliance Officer within one business day as described below.

2. Any employee or other person associated with the Company, including executives and the governing authority, may contact the Compliance Office with any compliance question or issue.

3. Any person may, at his or her option, raise such a question or issue on an anonymous basis, as described below.

B. Communication Lines to the Compliance Officer:

1. Communications to the Compliance Officer. The following communication lines to the Compliance Officer allow for the reporting of actual or potential compliance issues, at any hour of any day, as they are identified:

Any person may telephone the Compliance Officer confidentially at the following telephone number:

(518) 694-9400 x151 (office)

If the Compliance Officer does not answer the phone, the caller should leave a message providing as much detail as possible regarding the actual or potential compliance issue.

2. Anonymous Communications. The communication lines to the Compliance Officer include the following methods for anonymous and confidential good faith reporting of potential compliance issues.

a) Any person may telephone the Compliance Officer anonymously and confidentially at the following telephone number:

(518) 694-9400 x777

For any person using the Company's Albany phone system, it is necessary to dial "9" first to obtain an outside line, instead of dialing the extension directly, to establish anonymity.

If the Compliance Officer does not answer the phone, the caller should leave a message providing as much detail as possible regarding the actual or potential compliance issue.

b) Any person may also contact the Compliance Officer anonymously in writing by:

i) Placing the writing in the secure drop box located in Belvedere's Albany location's main lobby by the vending machines, or

ii) Mailing the writing to the Compliance Officer in an envelope labeled "Confidential" to the following address:

Belvedere Health Services, LLC

1 Van Tromp Street

Attn: Compliance Officer

Albany, New York, 12207.

The written document should provide as much detail as possible regarding the actual or potential compliance issue.

C. Alternative Method for Communicating Actual or Potential Compliance Questions or Issues. If the nature of the question or issue relates to the Compliance Officer, the information may be communicated directly to the Executive Director or to the President of the Company.

D. Confidentiality. All such reports will be held in the strictest confidence possible, consistent with the need to investigate the matter.

1. In certain circumstances, however, for example, when disclosure is necessary in response to a subpoena, or other legal process and in certain other circumstances, it might not be possible for the Compliance Officer to guarantee complete confidentiality.

2. The Company retains the right to take appropriate action against any person who has participated in a violation of federal or state law.

E. How the Company Investigates and Resolves Potential Compliance Problems.

1. Upon receiving a report of an actual or potential compliance issue, the Compliance Officer will conduct an inquiry, as appropriate, in consultation with outside counsel and/or other consultants, to the extent the Compliance Officer may deem necessary.

2. The Company's system for responding to compliance issues is described below.

V. Disciplinary Policies

A. It is the responsibility of all personnel:

1. to participate in good faith in the compliance program and to adhere to the Code of Conduct and to these compliance policies and procedures; and

2. to report suspected compliance issues as they arise and to assist in their resolution.

B. The Company has instituted disciplinary policies to encourage good faith participation in the compliance program by all affected individuals.

1. If the Compliance Officer concludes, after an investigation, that an individual has violated these expectations, then the Company may impose appropriate discipline.

2. Such discipline may include, depending on the seriousness of the issue and the frequency of occurrence, verbal counseling, written warning, suspension and/or termination.

C. The Company may impose such disciplinary action based upon any or all of the following:

1. Failing to report suspected problems;

2. Participating in non-compliant behavior; or

3. Encouraging, directing, facilitating, or permitting non-compliant behavior.

D. These disciplinary policies shall be fairly and firmly enforced.

VI. Identification of Compliance Risk Areas and Actual or Potential Non-Compliance Issues

A. The Company's System for Routine Identification of Compliance Risk Areas Specific to the Company

1. The Compliance Officer will, on an annual or more frequent basis, routinely identify compliance risk areas specific to the Company and keep abreast of federal and state Medicaid requirements.

2. The Compliance Officer, or his or her designee, will use the following reference materials to identify risk areas and to track federal and state Medicaid developments:

a) the New York State Office of the Medicaid Inspector General ("OMIG") work plan, which is available at: http://www.omig.state.ny.us/data/;

b) the United States Office of the Inspector General ("OIG") work plan, which is available at: http://oig.hhs.gov/publications/workplan.asp;

c) to the extent applicable, the OIG's Compliance Program Guidance for Home Health Agencies, published at 63 Fed. Reg. 42,410 (Aug. 7, 1998), which is available at http://oig.hhs.gov/authorities/docs/cpghome.pdf;

d) the Company's experience, including the results of surveys and audits and compliance inquiries and complaints; and

e) such other resources reflecting federal and state Medicaid developments (such as New York State Medicaid provider updates, OIG Special Fraud Alerts, and industry publications) as the Compliance Officer may deem appropriate.

3. The identified risk areas may include the following, among others:

a) billing for services not actually rendered; duplicate billing for services rendered; insufficient documentation for services for which reimbursement is claimed;

b) payment or receipt of financial incentives or remuneration to induce referrals or to submit claims without out regard to

whether they meet coverage criteria for reimbursement or accurately represent the services rendered;

c) knowingly billing for care that is inadequate or substandard or that the recipient does not require;

d) failure to notify Medicaid of a known overpayment or to return overpayments from Medicaid;

e) billing for services rendered by a person who is unqualified or who is unlicensed to render clinical care or who has been excluded from the Medicaid program; and

f) such other areas as the Compliance Officer may reasonably determine.

4. Based on relevant experience and new developments, the Compliance Officer will review the Company's existing policies and procedures to identify risk areas and evaluate compliance with Medicaid program requirements.

B. The Company's System for Self-Evaluation of Risk Areas, including Internal Audits and, as Appropriate, External Audits

1. Ongoing Compliance Reviews. The Compliance Officer, with advice and guidance from such persons as he or she may deem appropriate, will create and revise as necessary an audit or work plan to:

a) monitor identified risk areas through internal audits and such external audits as the Compliance Officer may deem to be appropriate; and

b) evaluate compliance from previous periods, track progress toward compliance goals and identify risks for the coming year.

2. The routine identification and self-evaluation of risk areas shall apply to the following areas:

a) billings;

b) payments;

c) medical necessity and quality of care;

d) governance;

e) mandatory reporting; and

f) credentialing; and

g) such other areas as the Compliance Officer, with advice and guidance from such persons as he or she may deem appropriate, may reasonably determine.

3. Based on the results of the ongoing compliance reviews, the Compliance Officer will review existing policies and procedures to evaluate compliance with federal and state Medicaid requirements and to consider the need for possible change.

4. The Compliance Officer will report to the Administrator and provide reports, at least annually, to the governing authority on the implementation of the compliance program, the results of the ongoing compliance reviews, and progress toward compliance goals.

C. The Company's System for:

1. Evaluating Potential or Actual Non-Compliance as a Result of Self-Evaluations and Internal or (as Appropriate) External Audits

a) The Compliance Officer will, with advice and assistance from such persons as he or she may deem appropriate, review the results of internal or, as appropriate, external audits and reviews to evaluate compliance, identify potential issues and investigate and analyze areas of potential or actual non-compliance.

b) the audit and review process may include some or all of the following elements, among others:

i) sampling of clinical documentation, financial records and other source documents for documentation to support claims for reimbursement and Medicaid cost reports;

ii) assessments of existing relationships with physicians, hospitals and other potential referral sources;

iii) sampling of participant charts for documentation to support medical necessity and quality of care;

iv) staff testing regarding reimbursement coverage criteria and coding guidelines;

v) sampling of staff records to validate the completion of the credentialing process; and

vi) interviews with personnel involved in management, operations, claims development and submission, patient care, and other related activities.

c) Based on the results of the ongoing compliance reviews, the Compliance Officer will review existing policies and procedures to evaluate compliance with federal and state Medicaid requirements and to consider the need for possible change.

d) The Compliance Officer will coordinate with the Executive Director, and affected departments, as appropriate, to formulate corrective measures.

e) The Compliance Officer will monitor efforts, as appropriate, to address issues as identified and to evaluate progress toward compliance goals.

f) The Compliance Officer will report to the Executive Director and provide reports, at least annually to the governing authority on the implementation of the compliance program, the results of the ongoing compliance reviews, and progress toward compliance goals.

2. Conducting Potential Exclusion Reviews

a) Upon hiring new personnel or contracting with new individuals or entities, the Compliance Officer, or his or her designee, will confirm the credentials of the person or entity and conduct a review of the following databases to

confirm that the person or entity has not been excluded from participation in federal healthcare programs:

i) the NYS Office of the Medicaid Inspector General list of Restricted, Terminated or Excluded Individuals or Entities (http://www.omig.state.ny.us/data/content/view/72/52/)

ii) the Office of Inspector General's List of Excluded Individuals/Entities (http://oig.hhs.gov/fraud/exclusions/exclusions_list.asp); and

iii) the General Services Administration's Excluded Parties List System (https://www.epls.gov/).

b) The Compliance Officer or his or her designee will also review these data bases periodically, at least quarterly or at such other frequency as the Compliance Officer may deem appropriate, to confirm that the Company does not employ or contract with any person who, since the time of the initial employment or contract (or prior exclusion review) has not been excluded from participating in federal healthcare programs.

3. Providing Mandatory Reporting Training. The Compliance Officer, or his or her designee, will provide training to all employees, to the extent relevant to their job responsibilities, on:

a) the laws and regulations governing mandatory reporting; and

b) The process for initiating the Company's mandatory reporting processes.

4. Promoting Corporate Governance. The Compliance Officer, or his or her designee, will provide or coordinate the provision of training and resources to assist the governing authority in:

a) carrying out its responsibilities of care and loyalty in the decision-making process,

b) overseeing the maintenance of quality of care and patient safety; and

c) implementing the compliance program.

5. Overseeing Quality of Care of Medicaid Program Beneficiaries. The Compliance Officer, or his or her designee, will:

a) provide or coordinate the provision of training and resources to staff on the delivery of care and services to program participants;

b) conduct or oversee random visits to service delivery locations (*i.e.*, participants' homes), to confirm the delivery of services in accordance with applicable requirements;

c) participate on the quality assurance committee.

VII. Responding to Compliance Issues: How We Investigate and Resolve Potential Compliance Problems

A. The Company's System for Responding to Compliance Issues as They Are Raised

1. If a compliance issue arises, the Compliance Officer and/or his or her designee, depending upon the nature and seriousness of the allegation, will determine the action to take in response to the issue.

2. If an investigation is deemed necessary, the Compliance Officer and/or his or her designee, depending upon the issue, will take steps necessary to conduct an internal investigation as soon as is reasonable.

B. The Company's System for:

1. Investigating Potential Compliance Problems

a) If an investigation is deemed necessary, the Compliance Officer and/or his or her designee, depending upon the issue, will investigate or oversee the investigation.

b) Depending on the nature of the alleged violation, an internal investigation may include (at the Compliance

Officer's discretion), but need not be limited to: interviews of relevant personnel; review of documents; and engagement of such outside counsel, auditors, consultants or health care experts as the Compliance Officer may deem appropriate .

c) The Compliance Officer will take steps, as necessary, to preserve the availability of any privileges (including by way of example but without limitation the attorney-client and quality assurance privileges) that may be applicable to the situation.

d) The Compliance Officer and/or his or her designee will document the investigation.

e) Upon such investigation, the Compliance Officer will determine the steps to take to correct any violation which may have occurred.

f) If the issue implicates current participants, action will be taken, as necessary, to safeguard their health and safety.

2. Responding to compliance problems identified in the course of self-evaluations and audits

a) If a self-evaluation or internal or external audit identifies a compliance problem, the Compliance Officer will investigate the issue, or cause it to be investigated, to clarify the breadth and scope of the problem. Upon such investigation, the Compliance Officer, in consultation with the Executive Director, and such other persons as the Compliance Officer may deem appropriate, determine the steps to take to correct any violation which may have occurred.

b) Such steps may include, depending on the issue, development of a plan to correct the issue promptly and thoroughly; the implementation of policies, procedures and systems, as necessary, to reduce the potential for recurrence; training or retraining regarding applicable standards; disciplinary action; referrals to law enforcement;

reporting to the government; and/or the repayment of overpayments, if any.

c) The Compliance Officer will monitor the progress of corrective action.

d) The Compliance Officer's periodic reports to the Executive Director will include a report on the status of significant issues, including the results of investigations and any subsequent remedial actions taken with respect to such issues.

e) The Compliance Officer will provide reports to the governing authority at least annually on the status of significant issues and corrective action.

3. Correcting compliance problems promptly and thoroughly

a) The Compliance Officer, in conjunction with such additional personnel as he or she may deem appropriate, will develop or oversee the development of a plan of correction which addresses, as appropriate, at least the following:

i) correction of harm, if any, resulting from a compliance issue;

ii) revisions to and/or development of systems to safeguard against future noncompliance of a similar nature;

iii) the need for training or retraining regarding applicable standards;

iv) the need for monitoring systems and auditing tools to evaluate future compliance; and

v) documentation of the corrective actions taken.

b) The Compliance Officer will assign to such personnel as he or she may deem appropriate individual responsibility for each aspect of the corrective action plan.

4. Implementing procedures, policies, and systems as necessary to reduce the potential for recurrence of identified compliance problems

    a) If, based upon the investigation, the Compliance Officer determines that a revision to policies, procedures or systems is warranted to reduce the potential for recurrence of identified compliance issues, the Compliance Officer, upon consultation with the Executive Director and such other persons as he or she may deem appropriate, will recommend such revisions to the governing authority.

    b) The Compliance Officer will take such action as may be appropriate, with the assistance of such individuals as the Compliance Officer may deem appropriate, to convey the new policies, procedures and systems to the pertinent individuals.

    c) The Compliance Officer will oversee the development of monitoring systems and/or auditing tools to evaluate future compliance.

    d) The Compliance Officer will report directly to the Executive Director and provide reports at least annually to the governing authority, on significant issues and corrective action activities.

5. Identifying and Reporting Compliance Issues to the New York State Department of Health or the Office of the Medicaid Inspector General

    a) If the Compliance Officer determines that mandatory reporting to the federal or state authorities is required, the Compliance Officer will make or cause such report to be made. The Compliance Officer will consult with the Executive Director and/or any outside counsel or consultants as may be necessary to determine the need and manner in which to make such reports.

    b) If the Compliance Officer believes that a repayment to a third party payer may be required, the Compliance Officer will consult with the Executive Director and/or any outside

counsel or consultants as may be necessary to determine the need and manner in which to make such repayments.

6. Refunding Overpayments. If the Compliance Officer believes that a repayment to a third party payer may be required, the Compliance Officer will consult with the President and the Executive Director and/or any outside counsel or consultants as may be necessary to determine the need and manner in which to make such repayments.

VIII. Policy of Non-Intimidation and Non-Retaliation

A. Intimidation or retaliation in any form against an individual who in good faith participates in the compliance program, including but not limited to reporting potential issues, investigating issues, self-evaluations, audits, and remedial actions, is prohibited.

1. Any person with a concern regarding possible intimidation or retaliation should report the matter to the Compliance Officer, or to his or her supervisor or to the governing authority.

2. The Compliance Officer will promptly investigate or direct an investigation of the matter in accordance with the policies and procedures described above.

3. If the Compliance Officer determines that the employee or other representative knowingly fabricated, distorted, exaggerated, or minimized a report of misconduct to injure someone else or to protect himself or herself, the employee or other representative will be subject to disciplinary action up to and including discharge or termination of services.

4. Policy of Protecting Individuals Involved in Good Faith in Reporting Potential Issues, Investigating Issues, Self-Evaluations, Audits, Remedial Actions, and Reporting to Appropriate Officials as Provided in Labor Law §§ 740 and 741

5. The Company will protect individuals involved in the good faith reporting of potential issues, investigating issues, self-evaluations, audits, remedial actions, and reporting to appropriate officials as provided in N.Y. State Fin. Law § 191 and N.Y. Labor Law §§ 740 and 741.

6. The whistleblower protections afforded under these laws is discussed in the Summary of Laws annexed as Appendix A to these policies and procedures.

IX. Acknowledgment of Receipt

I _____ hereby acknowledge that I have received a copy of the Belvedere Health Services, LLC Employee Handbook, including its Code of Conduct, its written Corporate Compliance Program policies and procedures, and a description of its policies and procedures for detecting and preventing fraud, waste, and abuse. I understand my responsibility to read these materials, to conduct myself in accordance with their requirements, and to cooperate with management in carrying out their objectives.

Acknowledged and agreed:

By: _____

Position: _____

Date: _____, 20____

APPENDIX I

THE ROLE OF FEDERAL AND STATE LAWS IN PREVENTING AND DETECTING FRAUD, WASTE AND ABUSE IN FEDERAL HEALTH CARE PROGRAMS

I. FEDERAL LAWS

1) Federal False Claims Act (31 USC §§3729-3733)

The False Claims Act ("FCA") provides, in pertinent part, as follows:

§ 3729. False claims

(a) Liability for certain acts.—

2) In general.--Subject to paragraph (2), any person who—

(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 of subparagraph (A), (B), (D), (E), (F), or (G);

(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, is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461) note; Public Law 104-410, plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages.--If the court finds that--

(A) the person committing the violation of this subsection 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, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions.--A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions.--For purposes of this section--

(1) the terms “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) require no proof of specific intent to defraud;

(2) the term “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 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; and

(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;

(3) the term "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 the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure.--Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion.--This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986. While the False Claims Act imposes liability only when the claimant acts "knowingly," it does not require that the person submitting the claim have actual knowledge that the claim is false. A person who acts in

reckless disregard or in deliberate ignorance of the truth or falsity of the information, also can be found liable under the Act. 31 U.S.C. 3729(b).

In sum, the False Claims Act imposes liability on any person who submits a claim to the federal government, or submits a claim to entities administering government funds, that he or she knows (or should know) is false. An example may be a physician who submits a bill to Medicare for medical services she knows she has not provided. The False Claims Act also imposes liability on an individual who may knowingly submit a false record in order to obtain payment from the government. An example of this may include a government contractor who submits records that he knows (or should know) are false and that indicate compliance with certain contractual or regulatory requirements. The third area of liability includes those instances in which someone may obtain money from the federal government to which he may not be entitled, and then uses false statements or records in order to retain the money. An example of this so-called "reverse false claim" may include a hospital which obtains interim payments from Medicare or Medicaid throughout the year, and then knowingly files a false cost report at the end of the year in order to avoid making a refund to the Medicare or Medicaid program.

In addition to its substantive provisions, the FCA provides that private parties may bring an action on behalf of the United States. 31 U.S.C. 3730 (b). These private parties, known as "qui tam relators," may share in a percentage of the proceeds from an FCA action or settlement. Section 3730(d)(1) of the FCA provides, with some exceptions, that a qui tam relator, when the Government has intervened in the lawsuit, shall receive at least 15 percent but not more than 25 percent of the proceeds of the FCA action depending upon the extent to which the relator substantially contributed to the prosecution of the action. When the Government does not intervene, section 3730(d)(2) provides that the relator shall receive an amount that the court decides is reasonable and shall be not less than 25 percent and not more than 30 percent.

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3) <u>Administrative Remedies for False Claims (31 USC Chapter 38. §§ 3801 – 3812)</u>

This statute allows for administrative recoveries by federal agencies. If a person submits a claim that the person knows is false or contains false information, or omits material information, the agency receiving the claim may impose a penalty of up to $5,000 for each claim. The agency may also recover twice the amount of the claim.

Unlike the False Claims Act, a violation of this law occurs when a false claim is submitted rather than when it is paid. Also unlike the False Claims Act, the determination

of whether a claim is false, and the imposition of fines and penalties is made by the administrative agency, not by prosecution in the federal court system.

II. NEW YORK STATE LAWS

New York State False Claim Laws fall under the jurisdiction of both New York's civil and administrative laws as well as its criminal laws. Some apply to recipient false claims and some apply to provider false claims. The majority of these statutes are specific to healthcare or Medicaid. Yet some of the "common law" crimes apply to areas of interaction with the government and so are applicable to health care fraud and will be listed in this section.

A. CIVIL AND ADMINISTRATIVE LAWS

1) New York False Claims Act (State Finance Law §§187-194)

The New York False Claims Act is similar to the Federal False Claims Act. It imposes penalties and fines upon individuals and entities who knowingly file false or fraudulent claims for payment from any state or local government, including health care programs such as Medicaid. It also has a provision regarding reverse false claims similar to the federal FCA such that a person or entity will be liable in those instances in which the person obtains money from a state or local government to which he may not be entitled, and then uses false statements or records in order to retain the money.

The penalty for filing a false claim is six to twelve thousand dollars per claim plus three times the amount of the damages which the state or local government sustains because of the act of that person. In addition, a pers on who violates this act is liable for costs, including attorneys' fees, of a civil action brought to recover any such penalty.

The Act allows private individuals to file lawsuits in state court, just as if they were state or local government parties, subject to various possible limitations imposed by the NYS Attorney General or a local government. If the suit eventually concludes with payments back to the government, the person who started the case can recover twenty-five to thirty percent of the proceeds if the government did not participate in the suit, or fifteen to twenty-five percent if the government did participate in the suit.

2) Social Services Law, Section 145-b - False Statements

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 the local Social Services district may recover three times the amount incorrectly paid. In addition, the Department of Health may impose a civil penalty of up to ten thousand dollars per violation. If repeat violations occur within five years, a penalty of up to thirty thousand dollars per violation may be imposed if the repeat violations involve more serious violations of Medicaid rules, billing for services not rendered, or providing excessive services.

3) Social Services Law, Section 145-c - Sanctions

If any person applies for or receives public assistance, including Medicaid, by intentionally making a false or misleading statement, or intending to do so, the needs of the individual or that of his family shall not be taken into account for the purpose of determining his or her needs or that of his family for six months if a first offense, for twelve months if a second offense (or if benefits wrongfully received are at least one thousand dollars but not more than three thousand nine hundred dollars), for eighteen months if a third offense (or if benefits wrongfully received are in excess of three thousand nine hundred dollars), and five years for any subsequent occasion of any such offense.

B. CRIMINAL LAWS

1) Social Services Law, Section 145 - Penalties

Any person who submits false statements or deliberately conceals material information in order to receive public assistance, including Medicaid, is guilty of a misdemeanor.

2) Social Services Law, Section 366-b - Penalties for Fraudulent Practices.

a. Any person who obtains or attempts to obtain, for himself or others, medical assistance by means of a false statement, concealment of material facts, impersonation or other fraudulent means is guilty of a class A misdemeanor.

b. Any person who, with intent to defraud, presents for payment a false or fraudulent claim for furnishing services, knowingly submits false information 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.

3) <u>Penal Law Article 155 - Larceny</u>

The crime of larceny applies to a person who, with intent to deprive another of his property, obtains, takes or withholds the property by means of trick, embezzlement, false pretense, false promise, including a scheme to defraud, or other similar behavior. This statute has been applied to Medicaid fraud cases.

a. Fourth degree grand larceny involves property valued over $1,000. It is a class E felony.

b. Third degree grand larceny involves property valued over $3,000. It is a class D felony.

c. Second degree grand larceny involves property valued over $50,000. It is a class C felony.

d. First degree grand larceny involves property valued over $1 million. It is a class B felony.

4) <u>Penal Law Article 175 - False Written Statements</u>

Four crimes in this Article relate to filing false information or claims and have been applied in Medicaid fraud prosecutions:

a. §175.05 - Falsifying business records involves entering false information, omitting material information or altering an enterprise's business records with the intent to defraud. It is a class A misdemeanor.

b. §175.10 - Falsifying business records in the first degree includes the elements of the §175.05 offense and includes the intent to commit another crime or conceal its commission. It is a class E felony.

c. §175.30 - Offering a false instrument for filing in the second degree involves presenting a written instrument, including a claim for payment, to a public office knowing that it contains false information. It is a class A misdemeanor.

d. §175.35 - Offering a false instrument for filing in the first degree includes the elements of the second degree offense and must include an intent to defraud the state or a political subdivision. It is a class E felony.

5) Penal Law Article 176 - Insurance Fraud

This law applies to claims for insurance payments, including Medicaid or other health insurance, and contains six crimes.

a. Insurance Fraud in the 5th degree involves intentionally filing a health insurance claim knowing that it is false. It is a class A misdemeanor.

b. Insurance fraud in the 4th degree is filing a false insurance claim for over $1,000. It is a class E felony.

c. Insurance fraud in the 3rd degree is filing a false insurance claim for over $3,000. It is a class D felony.

d. Insurance fraud in the 2nd degree is filing a false insurance claim for over $50,000. It is a class C felony.

e. Insurance fraud in the 1st degree is filing a false insurance claim for over $1 million. It is a class B felony.

f. Aggravated insurance fraud is committing insurance fraud more than once. It is a class D felony.

6) Penal Law Article 177 - Health Care Fraud

This statute, enacted in 2006, applies to health care fraud crimes. It was designed to address the specific conduct by health care providers who defraud the system including any publicly or privately funded health insurance or managed care plan or contract, under which any health care item or service is provided. Medicaid is considered to be a single health plan under this statute. This law primarily applies to claims by providers for insurance payment, including Medicaid payment, and it includes six crimes.

a. Health care fraud in the 5th degree – a person is guilty of this crime when, with intent to defraud a health plan, he or she knowingly and willfully provides materially false information or omits material information for the purpose of requesting payment from a health plan. This is a class A misdemeanor.

b. Health care fraud in the 4th degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receives more than three thousand dollars. This is a class E felony.

c. Health care fraud in the 3rd degree – a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over ten thousand dollars. This is a class D felony.

d. Health care fraud in the 2nd degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over fifty thousand dollars. This is a class C felony.

e. Health care fraud in the 1st degree - a person is guilty of this crime upon filing such false claims on more than one occasion and annually receiving over one million dollars. This is a class B felony.

III. WHISTLEBLOWER PROTECTION

1) Federal False Claims Act (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.

2) New York State False Claim Act (State Finance Law §191)

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.

3) <u>New York State Labor Law, Section 740</u>

An employer may not take any retaliatory action against an employee if the employee discloses 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 is in violation of a law that creates a substantial and specific danger to the public health and safety or which 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 first brought up the matter with a supervisor and gave the employer a reasonable opportunity to correct the alleged violation. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an 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, it may impose a civil penalty of $10,000 on the employer.

4) <u>New York State Labor Law, Section 741</u>

A health care employer 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. Protected disclosures are those that assert that, in good faith, the employee believes constitute improper quality of patient care. 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 the public or patient and the employee believes in good faith that reporting to a supervisor would not result in corrective action. If an employer takes a retaliatory action against the employee, the employee may sue in state court for reinstatement to the same, or an 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, it may impose a civil penalty of $10,000 on the employer.

APPENDIX II

POLICIES AND PROCEDURES FOR DETECTING AND PREVENTING FRAUD, WASTE AND ABUSE

Belvedere Health Services, LLC (the "Company") has put in place written policies and procedures describing the Company's compliance expectations, as embodied in a Code of Conduct; describing the operation of the compliance program; providing guidance to employees and others on dealing with potential compliance issues; identifying how to communicate compliance issues to appropriate personnel; and describing how potential compliance problems are investigated and resolved. We have designated a Compliance Officer who is responsible for the day-to-day operation and oversight of the compliance program. We encourage all personnel and others associated with us to communicate with the Compliance Officer on compliance questions and issues as they arise. Any person may communicate with the Compliance Officer anonymously and confidentially by using the Compliance Hotline, at (518) 694-9400 x777, or in a writing addressed to the Company at 3 E-Comm Square, Attn: Compliance Officer, Albany, New York 12207.

We conduct training and education for employees and other persons associated with us on compliance issues, expectations and the compliance program operation. We also require employees to attend in-service training on subjects within the scope of their responsibilities. We require our personnel to participate in good faith in the compliance program and to report suspected compliance issues as they arise, and to assist in their resolution. We maintain disciplinary policies to encourage good faith participation in the compliance program and maintain a policy of non-intimidation and non-retaliation for such participation.

We have developed a system for the routine identification of compliance risk areas specific to the Company and for self-evaluating risk areas, through internal and, as appropriate, external audits and reviews. We conduct reference checks on prospective employees, criminal background checks, in accordance with state law requirements, on non-licensed prospective employees, and exclusion reviews, upon hire and periodically thereafter, on employees and others with whom we do business. We provide training in mandatory reporting obligations and maintain a quality assurance program, among other things.

We respond to compliance issues as they arise by conducting investigations as needed, responding to compliance issues identified in the course of self-evaluations and audits, correcting compliance issues, including reporting and repayment where necessary,

and implementing mechanisms to reduce the potential for recurrence. We provide education on federal and state false claims acts and other federal and state civil and criminal laws on false claims, and the whistleblower protections afforded under such laws and on our policies and procedures for detecting and preventing fraud, waste, and abuse.

Federal False Claims Act

31 USC 3729-3733

(As amended March 23, 2010, P.L. 111-148)

§ 3729. False claims

(a) Liability for certain acts.

(1) In general. Subject to paragraph (2), any person who—

(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 of subparagraph (A), (B), (D), (E), (F), or (G);

(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, is liable to the United States Government for a civil penalty of not less than $ 5,000 and not more than $ 10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (*28 U.S.C. 2461* note; Public Law 104-410), plus 3 times the amount of damages which the Government sustains because of the act of that person.

(2) Reduced damages. If the court finds that—

(A) the person committing the violation of this subsection 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, the court may assess not less than 2 times the amount of damages which the Government sustains because of the act of that person.

(3) Costs of civil actions. A person violating this subsection shall also be liable to the United States Government for the costs of a civil action brought to recover any such penalty or damages.

(b) Definitions. For purposes of this section—

(1) the terms "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; an

(B) require no proof of specific intent to defraud;

(2) the term "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 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; and

(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;

(3) the term "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 the retention of any overpayment; and

(4) the term "material" means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.

(c) Exemption from disclosure. Any information furnished pursuant to subsection (a)(2) shall be exempt from disclosure under section 552 of title 5.

(d) Exclusion. This section does not apply to claims, records, or statements made under the Internal Revenue Code of 1986 [*26 USCS §§ 1* et seq.].

(e) [Redesignated]

HISTORY:

(Sept. 13, 1982, P.L. 97-258, § 1, 96 Stat. 978; Oct. 27, 1986, P.L. 99-562, § 2, 100 Stat. 3153; July 5, 1994, P.L. 103-272, § 4(f)(1)(O), 108 Stat. 1362.)
(As amended May 20, 2009, P.L. 111-21, § 4(a), 123 Stat. 1621.)

§ 3730. Civil actions for false claims

(a) Responsibilities of the Attorney General. The Attorney General diligently shall investigate a violation under section 3729. If the Attorney General finds that a person has

violated or is violating section 3729, the Attorney General may bring a civil action under this section against the person.

(b) Actions by private persons.

(1) A person may bring a civil action for a violation of section 3729 for the person and for the United States Government. The action shall be brought in the name of the Government. The action may be dismissed only if the court and the Attorney General give written consent to the dismissal and their reasons for consenting.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Government pursuant to *Rule 4(d)(4) of the Federal Rules of Civil Procedure.* The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The Government may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and information.

(3) The Government may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until 20 days after the complaint is unsealed and served upon the defendant pursuant to *Rule 4 of the Federal Rules of Civil Procedure.*

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the Government shall—

(A) proceed with the action, in which case the action shall be conducted by the Government; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings an action under this subsection, no person other than the Government may intervene or bring a related action based on the facts underlying the pending action.

(c) Rights of the parties to qui tam actions.

(1) If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)

(A) The Government may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the Government of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(B) The Government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(C) Upon a showing by the Government that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of

harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(3) If the Government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the Government so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the Government's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit the Government to intervene at a later date upon a showing of good cause.

(4) Whether or not the Government proceeds with the action, upon a showing by the Government that certain actions of discovery by the person initiating the action would interfere with the Government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the Government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the Government may elect to pursue its claim through any alternate remedy available to the Government, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the United States, if all time for filing\ such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(d) Award to qui tam plaintiff.

(1) If the Government proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal,

civil, or administrative hearing, in a congressional, administrative, or Government [General] Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Government does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section 3729 upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 3729, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the United States to continue the action, represented by the Department of Justice.

(4) If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award to the defendant its reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(e) Certain actions barred.

(1) No court shall have jurisdiction over an action brought by a former or present member of the armed forces under subsection (b) of this section against a member of the armed forces arising out of such person's service in the armed forces.

(2)

(A) No court shall have jurisdiction over an action brought under subsection (b) against a Member of Congress, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the Government when the action was brought.

(B) For purposes of this paragraph, "senior executive branch official" means any officer or employee listed in paragraphs (1) through (8) of section 101(f) of the Ethics in Government Act of 1978 (5 U.S.C. App.).

(3) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the Government is already a party.

(4)

(A) The court shall dismiss an action or claim under this section, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed-

(i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party;

(ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or

(iii) from the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

(B) For purposes of this paragraph, "original source" means an individual who either

(i) prior to a public disclosure under subsection (e)(4)(a), has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, or

(ii) who 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 Government before filing an action under this section.'"

(f) Government not liable for certain expenses. The Government is not liable for expenses which a person incurs in bringing an action under this section.

(g) Fees and expenses to prevailing defendant. In civil actions brought under this section by the United States, the provisions of section 2412(d) of title 28 shall apply.

(h) (h) Relief from retaliatory actions.

(1) In general. Any employee, contractor, or agent shall be entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor, or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee, contractor, or agent on behalf of the employee, contractor, or agent or associated others in furtherance of other efforts to stop 1 or more violations of this subchapter.

(2) Relief. Relief under paragraph (1) shall include reinstatement with the same seniority status that employee, contractor, or agent would have had but for the discrimination, 2 times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An action under this subsection may be brought in the appropriate district court of the United States for the relief provided in this subsection.

HISTORY:

(Sept. 13, 1982, P.L. 97-258, § 1, 96 Stat. 978; Oct. 27, 1986, P.L. 99-562, §§ 3, 4, 100 Stat. 3154, 3157; Nov. 19, 1988, P.L. 100-700, § 9, 102 Stat. 4638; May 4, 1990, P.L. 101-280, § 10(a), 104 Stat. 162; July 5, 1994, P.L. 103-272, § 4(f)(1)(P), 108 Stat. 1362.)

(As amended May 20, 2009, P.L. 111-21, § 4(d), 123 Stat. 1624.)
(As amended March 23, 2010, P.L. 111-148, § 10104.)

§ 3731. False claims procedure

(a) A subpena [subpoena] requiring the attendance of a witness at a trial or hearing conducted under section 3730 of this title may be served at any place in the United States.

(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 is committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

(c) If the Government elects to intervene and proceed with an action brought under 3730(b), the Government may file its own complaint or amend the complaint of a person who has brought an action under section 3730(b) to clarify or add detail to the claims in which the Government is intervening and to add any additional claims with respect to which the Government contends it is entitled to relief. For statute of limitations purposes, any such Government pleading shall relate back to the filing date of the complaint of the person who originally brought the action, to the extent that the claim of the Government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of that person.

(d) In any action brought under section 3730 the United States shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(e) Notwithstanding any other provision of law, the Federal Rules of Criminal Procedure, or the Federal Rules of Evidence, a final judgment rendered in favor of the United States 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 transaction as in the criminal proceeding and which is brought under subsection (a) or (b) of section 3730.

HISTORY:

(Sept. 13, 1982, P.L. 97-258, § 1, 96 Stat. 979; Oct. 27, 1986, P.L. 99-562, § 5, 100 Stat. 3158.)
(As amended May 20, 2009, P.L. 111-21, § 4(b), 123 Stat. 1623.)

§ 3732. False claims jurisdiction

(a) Actions under section 3730. Any action under section 3730 may be brought in any judicial district in which the defendant or, in the case of multiple defendants, any one defendant can be found, resides, transacts business, or in which any act proscribed by section 3729 occurred. A summons as required by the Federal Rules of Civil Procedure shall be issued by the appropriate district court and served at any place within or outside the United States.

(b) Claims under State law. The district courts shall have jurisdiction over any action brought under the laws of any State for the recovery of funds paid by a State or local government if the action arises from the same transaction or occurrence as an action brought under section 3730.

(c) Service on State or local authorities. With respect to any State or local government that is named as a co-plaintiff with the United States in an action brought under subsection (b), a

seal on the action ordered by the court under section 3730(b) shall not preclude the Government or the person bringing the action from serving the complaint, any other pleadings, or the written disclosure of substantially all material evidence and information possessed by the person bringing the action on the law enforcement authorities that are authorized under the law of that State or local government to investigate and prosecute such actions on behalf of such governments, except that such seal applies to the law enforcement authorities so served to the same extent as the seal applies to other parties in the action.

HISTORY:
(Added Oct. 27, 1986, P.L. 99-562, § 6(a), 100 Stat. 3158.)
(As amended May 20, 2009, P.L. 111-21, § 4(e), 123 Stat. 1625.)

§ 3733. Civil investigative demands

(a) In general.

(1) Issuance and service. Whenever the Attorney General, or a designee (for purposes of this section), has reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation, the Attorney General, or a designee, may, before commencing a civil proceeding under section 3730(a) or other false claims law, or making an election under section 3730(b), issue in writing and cause to be served upon such person, a civil investigative demand requiring such person—

(A) to produce such documentary material for inspection and copying,

(B) to answer in writing written interrogatories with respect to such documentary material or information,

(C) to give oral testimony concerning such documentary material or information, or

(D) to furnish any combination of such material, answers, or testimony. The Attorney General may delegate the authority to issue civil investigative demands under this subsection. Whenever a civil investigative demand is an express demand for any product of discovery, the Attorney General, the Deputy Attorney General, or an Assistant Attorney General shall cause to be served, in any manner authorized by this section, a copy of such demand upon the person from whom the discovery was obtained and shall notify the person to whom such demand is issued of the date on which such copy was served. Any information obtained by the Attorney General or a designee of the Attorney General under this section may be shared with any qui tam relator if the Attorney General or designee determine it is necessary as part of any false claims act investigation.

(2) Contents and deadlines.

(A) Each civil investigative demand issued under paragraph (1) shall state the nature of the conduct constituting the alleged violation of a false claims law which is under investigation, and the applicable provision of law alleged to be violated.

(B) If such demand is for the production of documentary material, the demand shall—

(i) describe each class of documentary material to be produced with such definiteness and certainty as to permit such material to be fairly identified;

(ii) prescribe a return date for each such class which will provide a reasonable period of time within which the material so demanded may be assembled and made available for inspection and copying; and

(iii) identify the false claims law investigator to whom such material shall be made available.

(C) If such demand is for answers to written interrogatories, the demand shall—

(i) set forth with specificity the written interrogatories to be answered;

(ii) prescribe dates at which time answers to written interrogatories shall be submitted; and

(iii) identify the false claims law investigator to whom such answers shall be submitted.

(D) If such demand is for the giving of oral testimony, the demand shall—

(i) prescribe a date, time, and place at which oral testimony shall be commenced;

(ii) identify a false claims law investigator who shall conduct the examination and the custodian to whom the transcript of such examination shall be submitted;

(iii) specify that such attendance and testimony are necessary to the conduct of the investigation;

(iv) notify the person receiving the demand of the right to be accompanied by an attorney and any other representative; and

(v) describe the general purpose for which the demand is being issued and the general nature of the testimony, including the primary areas of inquiry, which will be taken pursuant to the demand.

(E) Any civil investigative demand issued under this section which is an express demand for any product of discovery shall not be returned or returnable until 20 days after a copy of such demand has been served upon the person from whom the discovery was obtained.

(F) The date prescribed for the commencement of oral testimony pursuant to a civil investigative demand issued under this section shall be a date which is not less than seven days after the date on which demand is received, unless the Attorney General or an Assistant Attorney General designated by the Attorney General determines that exceptional circumstances are present which warrant the commencement of such testimony within a lesser period of time.

(G) The Attorney General shall not authorize the issuance under this section of more than one civil investigative demand for oral testimony by the same person unless the person requests otherwise or unless the Attorney General, after investigation, notifies that person in writing that an additional demand for oral testimony is necessary.

(b) Protected material or information.

(1) In general. A civil investigative demand issued under subsection (a) may not require the production of any documentary material, the submission of

any answers to written interrogatories, or the giving of any oral testimony if such material, answers, or testimony would be protected from disclosure under—

(A) the standards applicable to subpoenas or subpoenas duces tecum issued by a court of the United States to aid in a grand jury investigation; or

(B) the standards applicable to discovery requests under the Federal Rules of Civil Procedure, to the extent that the application of such standards to any such demand is appropriate and consistent with the provisions and purposes of this section.

(2) Effect on other orders, rules, and laws. Any such demand which is an express demand for any product of discovery supersedes any inconsistent order, rule, or provision of law (other than this section) preventing or restraining disclosure of such product of discovery to any person. Disclosure of any product of discovery pursuant to any such express demand does not constitute a waiver of any right or privilege which the person making such disclosure may be entitled to invoke to resist discovery of trial preparation materials.

(c) Service; jurisdiction.

(1) By whom served. Any civil investigative demand issued under subsection (a) may be served by a false claims law investigator, or by a United States marshal or a deputy marshal, at any place within the territorial jurisdiction of any court of the United States.

(2) Service in foreign countries. Any such demand or any petition filed under subsection (j) may be served upon any person who is not found within the territorial jurisdiction of any court of the United States in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States can assert jurisdiction over any such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by any such person that such court would have if such person were personally within the jurisdiction of such court.

(d) Service upon legal entities and natural persons.

(1) Legal entities. Service of any civil investigative demand issued under subsection (a) or of any petition filed under subsection (j) may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering an executed copy of such demand or petition to any partner, executive officer, managing agent, or general agent of the partnership, corporation, association, or entity, or to any agent authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering an executed copy of such demand or petition to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt requested, addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(2) Natural persons. Service of any such demand or petition may be made upon any natural person by—

(A) delivering an executed copy of such demand or petition to the person; or

(B) depositing an executed copy of such demand or petition in the United States mails by registered or certified mail, with a return receipt

requested, addressed to the person at the person's residence or principal office or place of business.

(e) Proof of service. A verified return by the individual serving any civil investigative demand issued under subsection (a) or any petition filed under subsection (j) setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such demand.

(f) Documentary material.

(1) Sworn certificates. The production of documentary material in response to a civil investigative demand served under this section shall be made under a sworn certificate, in such form as the demand designates, by—

(A) in the case of a natural person, the person to whom the demand is directed, or

(B) in the case of a person other than a natural person, a person having knowledge of the facts and circumstances relating to such production and authorized to act on behalf of such person. The certificate shall state that all of the documentary material required by the demand and in the possession, custody, or control of the person to whom the demand is directed has been produced and made available to the false claims law investigator identified in the demand.

(2) Production of materials. Any person upon whom any civil investigative demand for the production of documentary material has been served under this section shall make such material available for inspection and copying to the false claims law investigator identified in such demand at the principal place of business of such person, or at such other place as the false claims law investigator and the person thereafter may agree and prescribe in writing, or as the court may direct under subsection (j)(1). Such material shall be made so available on the return date specified in such demand, or on such later date as the false claims law investigator may prescribe in writing. Such person may, upon written agreement between the person and the false claims law investigator, substitute copies for originals of all or any part of such material.

(g) Interrogatories. Each interrogatory in a civil investigative demand served under this section shall be answered separately and fully in writing under oath and shall be submitted under a sworn certificate, in such form as the demand designates, by—

(1) in the case of a natural person, the person to whom the demand is directed, or

(2) in the case of a person other than a natural person, the person or persons responsible for answering each interrogatory. If any interrogatory is objected to, the reasons for the objection shall be stated in the certificate instead of an answer. The certificate shall state that all information required by the demand and in the possession, custody, control, or knowledge of the person to whom the demand is directed has been submitted. To the extent that any information is not furnished, the information shall be identified and reasons set forth with particularity regarding the reasons why the information was not furnished.

(h) Oral examinations.

(1) Procedures. The examination of any person pursuant to a civil investigative demand for oral testimony served under this section shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer before whom the testimony is to be taken shall put the witness on oath or

affirmation and shall, personally or by someone acting under the direction of the officer and in the officer's presence, record the testimony of the witness. The testimony shall be taken stenographically and shall be transcribed. When the testimony is fully transcribed, the officer before whom the testimony is taken shall promptly transmit a copy of the transcript of the testimony to the custodian. This subsection shall not preclude the taking of testimony by any means authorized by, and in a manner consistent with, the Federal Rules of Civil Procedure.

(2) Persons present. The false claims law investigator conducting the examination shall exclude from the place where the examination is held all persons except the person giving the testimony, the attorney for and any other representative of the person giving the testimony, the attorney for the Government, any person who may be agreed upon by the attorney for the Government and the person giving the testimony, the officer before whom the testimony is to be taken, and any stenographer taking such testimony.

(3) Where testimony taken. The oral testimony of any person taken pursuant to a civil investigative demand served under this section shall be taken in the judicial district of the United States within which such person resides, is found, or transacts business, or in such other place as may be agreed upon by the false claims law investigator conducting the examination and such person.

(4) Transcript of testimony. When the testimony is fully transcribed, the false claims law investigator or the officer before whom the testimony is taken shall afford the witness, who may be accompanied by counsel, a reasonable opportunity to examine and read the transcript, unless such examination and reading are waived by the witness. Any changes in form or substance which the witness desires to make shall be entered and identified upon the transcript by the officer or the false claims law investigator, with a statement of the reasons given by the witness for making such changes. The transcript shall then be signed by the witness, unless the witness in writing waives the signing, is ill, cannot be found, or refuses to sign. If the transcript is not signed by the witness within 30 days after being afforded a reasonable opportunity to examine it, the officer or the false claims law investigator shall sign it and state on the record the fact of the waiver, illness, absence of the witness, or the refusal to sign, together with the reasons, if any, given therefor.

(5) Certification and delivery to custodian. The officer before whom the testimony is taken shall certify on the transcript that the witness was sworn by the officer and that the transcript is a true record of the testimony given by the witness, and the officer or false claims law investigator shall promptly deliver the transcript, or send the transcript by registered or certified mail, to the custodian.

(6) Furnishing or inspection of transcript by witness. Upon payment of reasonable charges therefor, the false claims law investigator shall furnish a copy of the transcript to the witness only, except that the Attorney General, the Deputy Attorney General, or an Assistant Attorney General may, for good cause, limit such witness to inspection of the official transcript of the witness' testimony.

(7) Conduct of oral testimony.

(A) Any person compelled to appear for oral testimony under a civil investigative demand issued under subsection (a) may be accompanied, represented, and advised by counsel. Counsel may advise such person, in confidence, with respect to any question asked of such person. Such person or counsel may object on the record to any question, in whole or in part, and shall briefly state for the record the reason for the

objection. An objection may be made, received, and entered upon the record when it is claimed that such person is entitled to refuse to answer the question on the grounds of any constitutional or other legal right or privilege, including the privilege against self-incrimination. Such person may not otherwise object to or refuse to answer any question, and may not directly or through counsel otherwise interrupt the oral examination. If such person refuses to answer any question, a petition may be filed in the district court of the United States under subsection (j)(1) for an order compelling such person to answer such question.

(B) If such person refuses to answer any question on the grounds of the privilege against self-incrimination, the testimony of such person may be compelled in accordance with the provisions of part V of title 18 [*18 USCS §§ 6001* et seq.].

(8) Witness fees and allowances. Any person appearing for oral testimony under a civil investigative demand issued under subsection (a) shall be entitled to the same fees and allowances which are paid to witnesses in the district courts of the United States.

(i) Custodians of documents, answers, and transcripts.

(1) Designation. The Attorney General shall designate a false claims law investigator to serve as custodian of documentary material, answers to interrogatories, and transcripts of oral testimony received under this section, and shall designate such additional false claims law investigators as the Attorney General determines from time to time to be necessary to serve as deputies to the custodian.

(2) Responsibility for materials; disclosure.

(A) A false claims law investigator who receives any documentary material, answers to interrogatories, or transcripts of oral testimony under this section shall transmit them to the custodian. The custodian shall take physical possession of such material, answers, or transcripts and shall be responsible for the use made of them and for the return of documentary material under paragraph (4).

(B) The custodian may cause the preparation of such copies of such documentary material, answers to interrogatories, or transcripts of oral testimony as may be required for official use by any false claims law investigator, or other officer or employee of the Department of Justice. Such material, answers, and transcripts may be used by any such authorized false claims law investigator or other officer or employee in connection with the taking of oral testimony under this section.

(C) Except as otherwise provided in this subsection, no documentary material, answers to interrogatories, or transcripts of oral testimony, or copies thereof, while in the possession of the custodian, shall be available for examination by any individual other than a false claims law investigator or other officer or employee of the Department of Justice authorized under subparagraph (B). The prohibition in the preceding sentence on the availability of material, answers, or transcripts shall not apply if consent is given by the person who produced such material, answers, or transcripts, or, in the case of any product of discovery produced pursuant to an express demand for such material, consent is given by the person from whom the discovery was obtained. Nothing in this subparagraph is intended to prevent

disclosure to the Congress, including any committee or subcommittee of the Congress, or to any other agency of the United States for use by such agency in furtherance of its statutory responsibilities.

(D) While in the possession of the custodian and under such reasonable terms and conditions as the Attorney General shall prescribe—

(i) documentary material and answers to interrogatories shall be available for examination by the person who produced such material or answers, or by a representative of that person authorized by that person to examine such material and answers; and

(ii) transcripts of oral testimony shall be available for examination by the person who produced such testimony, or by a representative of that person authorized by that person to examine such transcripts.

(3) Use of material, answers, or transcripts in other proceedings. Whenever any attorney of the Department of Justice has been designated to appear before any court, grand jury, or Federal agency in any case or proceeding, the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony received under this section may deliver to such attorney such material, answers, or transcripts for official use in connection with any such case or proceeding as such attorney determines to be required. Upon the completion of any such case or proceeding, such attorney shall return to the custodian any such material, answers, or transcripts so delivered which have not passed into the control of such court, grand jury, or agency through introduction into the record of such case or proceeding.

(4) Conditions for return of material. If any documentary material has been produced by any person in the course of any false claims law investigation pursuant to a civil investigative demand under this section, and—

(A) any case or proceeding before the court or grand jury arising out of such investigation, or any proceeding before any Federal agency involving such material, has been completed, or

(B) no case or proceeding in which such material may be used has been commenced within a reasonable time after completion of the examination and analysis of all documentary material and other information assembled in the course of such investigation, the custodian shall, upon written request of the person who produced such material, return to such person any such material (other than copies furnished to the false claims law investigator under subsection (f)(2) or made for the Department of Justice under paragraph (2)(B)) which has not passed into the control of any court, grand jury, or agency through introduction into the record of such case or proceeding.

(5) Appointment of successor custodians. In the event of the death, disability, or separation from service in the Department of Justice of the custodian of any documentary material, answers to interrogatories, or transcripts of oral testimony produced pursuant to a civil investigative demand under this section, or in the event of the official relief of such custodian from responsibility for the custody and control of such material, answers, or transcripts, the Attorney General shall promptly—

(A) designate another false claims law investigator to serve as custodian of such material, answers, or transcripts, and

(B) transmit in writing to the person who produced such material, answers, or testimony notice of the identity and address of the successor so designated. Any person who is designated to be a successor under this paragraph shall have, with regard to such material, answers, or transcripts, the same duties and responsibilities as were imposed by this section upon that person's predecessor in office, except that the successor shall not be held responsible for any default or dereliction which occurred before that designation.

(j) Judicial proceedings.

(1) Petition for enforcement. Whenever any person fails to comply with any civil investigative demand issued under subsection (a), or whenever satisfactory copying or reproduction of any material requested in such demand cannot be done and such person refuses to surrender such material, the Attorney General may file, in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of the civil investigative demand.

(2) Petition to modify or set aside demand.

(A) Any person who has received a civil investigative demand issued under subsection (a) may file, in the district court of the United States for the judicial district within which such person resides, is found, or transacts business, and serve upon the false claims law investigator identified in such demand a petition for an order of the court to modify or set aside such demand. In the case of a petition addressed to an express demand for any product of discovery, a petition to modify or set aside such demand may be brought only in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the demand to comply with the provisions of this section or upon any constitutional or other legal right or privilege of such person. During the pendency of the petition in the court, the court may stay, as it deems proper, the running of the time allowed for compliance with the demand, in whole or in part, except that the person filing the petition shall comply with any portions of the demand not sought to be modified or set aside.

(3) Petition to modify or set aside demand for product of discovery.

(A) In the case of any civil investigative demand issued under subsection (a) which is an express demand for any product of discovery, the person from whom such discovery was obtained may file, in the district court of the United States for the judicial district in which the proceeding in which such discovery was obtained is or was last pending, and serve upon any false claims law investigator identified in the demand and upon the recipient of the demand, a petition for an

order of such court to modify or set aside those portions of the demand requiring production of any such product of discovery. Any petition under this subparagraph must be filed—

(i) within 20 days after the date of service of the civil investigative demand, or at any time before the return date specified in the demand, whichever date is earlier, or

(ii) within such longer period as may be prescribed in writing by any false claims law investigator identified in the demand.

(B) The petition shall specify each ground upon which the petitioner relies in seeking relief under subparagraph (A), and may be based upon any failure of the portions of the demand from which relief is sought to comply with the provisions of this section, or upon any constitutional or other legal right or privilege of the petitioner. During the pendency of the petition, the court may stay, as it deems proper, compliance with the demand and the running of the time allowed for compliance with the demand.

(4) Petition to require performance by custodian of duties. At any time during which any custodian is in custody or control of any documentary material or answers to interrogatories produced, or transcripts of oral testimony given, by any person in compliance with any civil investigative demand issued under subsection (a), such person, and in the case of an express demand for any product of discovery, the person from whom such discovery was obtained, may file, in the district court of the United States for the judicial district within which the office of such custodian is situated, and serve upon such custodian, a petition for an order of such court to require the performance by the custodian of any duty imposed upon the custodian by this section.

(5) Jurisdiction. Whenever any petition is filed in any district court of the United States under this subsection, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry out the provisions of this section. Any final order so entered shall be subject to appeal under section 1291 of title 28. Any disobedience of any final order entered under this section by any court shall be punished as a contempt of the court.

(6) Applicability of Federal Rules of Civil Procedure. The Federal Rules of Civil Procedure shall apply to any petition under this subsection, to the extent that such rules are not inconsistent with the provisions of this section.

(k) Disclosure exemption. Any documentary material, answers to written interrogatories, or oral testimony provided under any civil investigative demand issued under subsection (a) shall be exempt from disclosure under section 552 of title 5.

(l) Definitions. For purposes of this section—

(1) the term "false claims law" means—

(A) this section and sections 3729 through 3732; and

(B) any Act of Congress enacted after the date of the enactment of this section [enacted Oct. 27, 1986] which prohibits, or makes available to the United States in any court of the United States any civil remedy with respect to, any false claim against, bribery of, or corruption of any officer or employee of the United States;

(2) the term "false claims law investigation" means any inquiry conducted by any false claims law investigator for the purpose of ascertaining whether any person is or has been engaged in any violation of a false claims law;

(3) the term "false claims law investigator" means any attorney or investigator employed by the Department of Justice who is charged with the duty of enforcing or carrying into effect any false claims law, or any officer or employee of the United States acting under the direction and supervision of such attorney or investigator in connection with a false claims law investigation;

(4) the term "person" means any natural person, partnership, corporation, association, or other legal entity, including any State or political subdivision of a State;

(5) the term "documentary material" includes the original or any copy of any book, record, report, memorandum, paper, communication, tabulation, chart, or other document, or data compilations stored in or accessible through computer or other information retrieval systems, together with instructions and all other materials necessary to use or interpret such data compilations, and any product of discovery;

(6) the term "custodian" means the custodian, or any deputy custodian, designated by the Attorney General under subsection (i)(1);

(7) the term "product of discovery" includes—

(A) the original or duplicate of any deposition, interrogatory, document, thing, result of the inspection of land or other property, examination, or admission, which is obtained by any method of discovery in any judicial or administrative proceeding of an adversarial nature;

(B) any digest, analysis, selection, compilation, or derivation of any item listed in subparagraph (A); and

(C) any index or other manner of access to any item listed in subparagraph (A); and

(8) the term "official use" means any use that is consistent with the law, and the regulations and policies of the Department of Justice, including use in connection with internal Department of Justice memoranda and reports; communications between the Department of Justice and a Federal, State, or local government agency, or a contractor of a Federal, State, or local government agency, undertaken in furtherance of a Department of Justice investigation or prosecution of a case; interviews of any qui tam relator or other witness; oral examinations; depositions; preparation for and response to civil discovery requests; introduction into the record of a case or proceeding; applications, motions, memoranda and briefs submitted to a court or other tribunal; and communications with Government investigators, auditors, consultants and experts, the counsel of other parties, arbitrators and mediators, concerning an investigation, case or proceeding.

HISTORY:

(Added Oct. 27, 1986, P.L. 99-562, § 6(a), 100 Stat. 3159.)
(As amended May 20, 2009, P.L. 111-21, § 4(c), 123 Stat. 1623.)

New York False Claims Act

(current through August 2010 Amendments)

§ 187. Short title

This article shall be known and may be cited as the "New York false claims act".

§ 188. Definitions

As used in this article, the following terms shall mean:

1. "Claim"
   (a) means any request or demand, whether under a contract or otherwise, for money or property that
      (i) is presented to an officer, employee or agent of the state or a local government; or
      (ii) is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the state or a local government's behalf or to advance a state or local government program or interest, and if the state or local government
         (A) provides or has provided any portion of the money or property requested or demanded; or 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 state or a local government has already paid to an individual as compensation for government employment or as an income subsidy with no restrictions on that individual's use of the money or property.
2. "False claim" means any claim which is, either in whole or part, false or fraudulent.
3. "Knowing and knowingly"
   (a) means 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) require no proof of specific intent to defraud provided, however that acts occurring by mistake or as a result of mere negligence are not covered by this article.
4. "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 the retention of any overpayment.
5. "Material" means having a natural tendency to influence, or be capable of influencing the payment or receipt of money or property.
6. "Local government" means any New York county, city, town, village, school district, board of cooperative educational services, local public benefit corporation or other municipal corporation or political subdivision of the state, or of such local government.
7. "Original source" means a person who
   (a) prior to a public disclosure under paragraph (b) of subdivision nine of section one hundred ninety of this article has voluntarily disclosed to the state or a local government the information on which allegations or transactions in a cause of action are based, or

(b) who 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 state or a local government before or simultaneous with filing an action under this article.

8. "Person" means any natural person, partnership, corporation, association or any other legal entity or individual, other than the state or a local government.
9. "State" means the state of New York and any state department, board, bureau, division, commission, committee, public benefit corporation, public authority, council, office or other governmental entity performing a governmental or proprietary function for the state.

§ 189. Liability for certain acts

1. Subject to the provisions of subdivision two of this section, any person who:
   (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 of para-graph (a), (b), (d), (e), (f) or (g) of this subdivision;
   (d) has possession, custody, or control of property or money used, or to be used, by the state or a local 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 state or a local government and, intending to defraud the state or a local 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 state or a local government knowing that the officer or employee violates a provision of law when selling or pledging such 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 state or a local government shall be liable to the state or a local government, as applicable, for a civil penalty of not less than six thousand dollars and not more than twelve thousand dollars, 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
2. The court may assess not more than two times the amount of damages sustained because of the act of the person described in subdivision one of this section, if the court finds that:
   (a) the person committing the violation of this section had furnished all information known to such person about the violation, to those officials responsible for investigating false claims violations on behalf of the state and any local government that sustained damages, within thirty days after the date on which such person first obtained the information;
   (b) such person fully cooperated with any government investigation of such violation; and
   (c) at the time such person furnished information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation.

3. 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.
4.
    (a) This section shall apply to claims, records, or statements made under the tax law only if
        (i) the net income or sales of the person against whom the action is brought equals or exceeds one million dollars for any taxable year subject to any action brought pursuant to this article; and
        (ii) the damages pleaded in such action exceed three hundred and fifty thousand dollars.
    (b) The attorney general shall consult with the commissioner of the department of taxation and finance prior to filing or intervening in any action under this article that is based on the filing of false claims, records or statements made under the tax law. If the state declines to participate or to authorize participation by a local government in such an action pursuant to subdivision two of section one hundred ninety of this article, the qui tam plaintiff must obtain approval from the attorney general before making any motion to compel the department of taxation and finance to disclose tax records.

§ 190. Civil actions for false claims

1. Civil enforcement actions. The attorney general shall have the authority to investigate violations under section one hundred eighty-nine of this article. If the attorney general believes that a person has violated or is violating such section, then the attorney general may bring a civil action on behalf of the people of the state of New York or on behalf of a local government against such person. A local government also shall have the authority to investigate violations that may have resulted in damages to such local government under section one hundred eighty-nine of this article, and may bring a civil action on its own behalf to recover damages sustained by such local government as a result of such violations. No action may be filed pursuant to this subdivision against the federal government, the state or a local government, or any officer or employee thereof acting in his or her official capacity. The attorney general shall consult with the office of Medicaid inspector general prior to filing any action related to the medicaid program.
2. Qui tam civil actions.
    (a) Any person may bring a qui tam civil action for a violation of section one hundred eighty-nine of this article on behalf of the person and the people of the state of New York or a local government. No action may be filed pursuant to this subdivision against the federal government, the state or a local government, or any officer or employee there-of acting in his or her official capacity. For purposes of subparagraphs (i) and (iv) of paragraph (a) of subdivision eight of section seventy-three of the public officers law, any activity by a former government employee in connection with the securing of rights, protections or benefits related to preparing or filing an action under this article shall not be deemed to be an appearance or practice before any agency.
    (b) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the state pursuant to subdivision one of section three hundred seven of the civil practice law and rules. Any complaint filed in a court of the state of New York shall be filed in supreme court in camera, shall remain under seal for at least sixty days, and shall not be served on the defendant until the court so orders. The seal shall not preclude the attorney general, a local government, or the qui tam plaintiff

from serving the complaint, any other pleadings, or the writ-ten disclosure of substantially all material evidence and information possessed by the person bringing the action, on relevant state or local government agencies, or on law enforcement authorities of the state, a local government, or other jurisdictions, so that the actions may be investigated or prosecuted, except that such seal applies to the agencies or authorities so served to the same extent as the seal applies to other parties in the action. If the allegations in the complaint allege a violation of section one hundred eighty-nine of this article involving damages to a local government, then the attorney general may at any time provide a copy of such complaint and written disclosure to the attorney for such local government; provided, however, that if the allegations in the complaint involve damages only to a city with a population of one million or more, or only to the state and such a city, then the attorney general shall provide such complaint and written disclosure to the corporation counsel of such city within thirty days. The state may elect to supersede or intervene and proceed with the action, or to authorize a local government that may have sustained damages to supersede or intervene, within sixty days after it receives both the complaint and the material evidence and information; provided, however, that if the allegations in the complaint involve damages only to a city with a population of one million or more, then the attorney general may not supersede or intervene in such action without the consent of the corporation counsel of such city. The attorney general shall consult with the office of the medicaid inspector general prior to superseding or intervening in any action related to the medicaid program. The attorney general may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under this subdivision. Any such motions may be supported by affidavits or other submissions in camera.

(c) Prior to the expiration of the sixty day period or any extensions obtained under paragraph (b) of this subdivision, the attorney general shall notify the court that he or she:

(i) intends to file a complaint against the defendant on behalf of the people of the state of New York or a local government, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a qui tam civil action brought by a private person into a civil enforcement action by the attorney general under subdivision one of this section;

(ii) intends to intervene in such action, as of right, so as to aid and assist the plaintiff in the action; or

(iii) if the action involves damages sustained by a local government, intends to grant the local government permission to:

(A) file and serve a complaint against the defendant, and thereby be substituted as the plaintiff in the action and convert the action in all respects from a qui tam civil action brought by a private person into a civil enforcement action by the local government under subdivision one of this section; or

(B) intervene in such action, as of right, so as to aid and assist the plaintiff in the action. The attorney general shall provide the local government with a copy of any such notification at the same time the court is notified.

(d) If the state notifies the court that it intends to file a complaint against the defendant and thereby be substituted as the plain-tiff in the action, or to permit a local government to do so, such complaint must be filed within thirty days after

the notification to the court. For statute of limitations purposes, any such complaint filed by the state or a local government shall relate back to the filing date of the complaint of the qui tam plaintiff, to the extent that the cause of action of the state or local government arises out of the conduct, transactions, or occurrences set forth, or attempted to be set forth, in the prior complaint of the qui tam plaintiff.

(e) If the state notifies the court that it intends to intervene in the action, or to permit a local government to do so, then such motion for intervention shall be filed within thirty days after the notification to the court.

(f) If the state declines to participate in the action or to authorize participation by a local government, the qui tam action may proceed subject to judicial review under this section, the civil practice law and rules, and other applicable law. The qui tam plaintiff shall provide the state or any applicable local government with a copy of any document filed with the court on or about the date it is filed, or any order issued by the court on or about the date it is issued. A qui tam plaintiff shall notify the state or any applicable local government within five business days of any decision, order or verdict resulting in judgment in favor of the state or local government.

3. Time to answer. If the state decides to participate in a qui tam action or to authorize the participation of a local government, the court shall order that the qui tam complaint be unsealed and served at the time of the filing of the complaint or intervention motion by the state or local government. After the complaint is unsealed, or if a complaint is filed by the state or a local government pursuant to subdivision one of this section, the defendant shall be served with the complaint and summons pursuant to article three of the civil practice law and rules. A copy of any complaint which alleges that damages were sustained by a local government shall also be served on such local government. The defendant shall be required to respond to the summons and complaint within the time allotted under rule three hundred twenty of the civil practice law and rules.
4. Related actions. When a person brings a qui tam action under this section, no person other than the attorney general, or a local government attorney acting pursuant to subdivision one of this section or paragraph (b) of subdivision two of this section, may intervene or bring a related civil action based upon the facts underlying the pending action, unless such other person has first obtained the permission of the attorney general to intervene or to bring such related action; provided, however, that nothing in this subdivision shall be deemed to deny persons the right, upon leave of court, to file briefs amicus curiae.
5. Rights of the parties of qui tam actions.

(a) If the attorney general elects to convert the qui tam civil action into an attorney general enforcement action, then the state shall have the primary responsibility for prosecuting the action. If the attorney general elects to intervene in the qui tam civil action then the state and the person who commenced the action, and any local government which sustained damages and intervenes in the action, shall share primary responsibility for prosecuting the action. If the attorney general elects to permit a local government to convert the action into a civil enforcement action, then the local government shall have primary responsibility for investigating and prosecuting the action. If the action involves damages to a local government but not the state, and the local government intervenes in the qui tam civil action, then the local government and the person who commenced the action shall share primary responsibility for prosecuting the action. Under no circumstances shall the state or a local government be bound by an act of the person bringing the original action. Such person shall have the right to continue

as a party to the action, subject to the limitations set forth in paragraph (b) of this subdivision. Under no circumstances shall the state be bound by the act of a local government that intervenes in an action involving damages to the state. If neither the attorney general nor a local government intervenes in the qui tam action then the qui tam plaintiff shall have the responsibility for prosecuting the action, subject to the attorney general's right to intervene at a later date upon a showing of good cause.

(b)

(i) The state may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard on the motion. If the action involves damages to both the state and a local government, then the state shall consult with such local government before moving to dismiss the action. If the action involves damages sustained by a local government but not the state, then the local government may move to dismiss the action notwithstanding the objections of the person initiating the action if the person has been served with the motion to dismiss and the court has provided the person with an opportunity to be heard on the motion.

(ii) The state or a local government may settle the action with the defendant notwithstanding the objections of the person initiating the action if the court determines, after an opportunity to be heard, that the proposed settlement is fair, adequate, and reasonable with respect to all parties under all the circumstances. Upon a showing of good cause, such opportunity to be heard may be held in camera.

(iii) Upon a showing by the attorney general or a local government that the original plaintiff's unrestricted participation during the course of the litigation would interfere with or unduly delay the prosecution of the case, or would be repetitious or irrelevant, or upon a showing by the defendant that the original qui tam plaintiff's unrestricted participation during the course of litigation would be for purposes of harassment or would cause the defendant undue burden, the court may, in its discretion, impose limitations on the original plaintiff's participation in the case, such as:

(A) limiting the number of witnesses the person may call;

(B) limiting the length of the testimony of such witnesses;

(C) limiting the person's cross-examination of witnesses; or

(D) otherwise limiting the participation by the person in the litigation.

(c) Notwithstanding any other provision of law, whether or not the attorney general or a local government elects to supersede or intervene in a qui tam civil action, the attorney general and such local government may elect to pursue any remedy available with respect to the criminal or civil prosecution of the presentation of false claims, including any administrative proceeding to determine a civil money penalty or to refer the matter to the office of the medicaid inspector general for medicaid related matters. If any such alternate civil remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section.

(d) Notwithstanding any other provision of law, whether or not the attorney general elects to supersede or intervene in a qui tam civil action, or to permit a local

government to supersede or intervene in the qui tam civil action, upon a showing by the state or local government that certain actions of discovery by the person initiating the action would interfere with the state's or a local government's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than sixty days. Such a showing shall be conducted in camera. The court may extend the period of such stay upon a further showing in camera that the state or a local government has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

6. Awards to qui tam plaintiff.
   (a) If the attorney general elects to convert the qui tam civil action into an attorney general enforcement action, or to permit a local government to convert the action into a civil enforcement action by such local government, or if the attorney general or a local government elects to intervene in the qui tam civil action, then the person or persons who initiated the qui tam civil action collectively shall be entitled to receive between fifteen and twenty-five percent of the proceeds recovered in the action or in settlement of the action. The court shall determine the percentage of the proceeds to which a person commencing a qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to the prosecution of the action. Where the court finds that the action was based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions in a criminal, civil or administrative hearing, in a legislative or administrative report, hearing, audit or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than ten percent of the proceeds, taking into account the significance of the information and the role of the person or persons bringing the action in advancing the case to litigation.
   (b) If the attorney general or a local government does not elect to intervene or convert the action, and the action is successful, then the person or persons who initiated the qui tam action which obtains proceeds shall be entitled to receive between twenty-five and thirty percent of the proceeds recovered in the action or settlement of the action. The court shall determine the percentage of the proceeds to which a person commencing a qui tam civil action is entitled, by considering the extent to which the plaintiff substantially contributed to the prosecution of the action.
   (c) With the exception of a court award of costs, expenses or attorneys' fees, any payment to a person pursuant to this paragraph shall be made from the proceeds.
7. Costs, expenses, disbursements and attorneys' fees. In any action brought pursuant to this article, the court may award the attorney general, on behalf of the people of the state of New York, and any local government that participates as a party in the action, and any person who is a qui tam plaintiff, an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorneys' fees, plus costs pursuant to article eighty-one of the civil practice law and rules. All such expenses, fees and costs shall be awarded directly against the defendant and shall not be charged from the proceeds, but shall only be awarded if the state or a local government or the qui tam civil action plaintiff prevails in the action.
8. Exclusion from recovery. If the court finds that the qui tam civil action was brought by a person who planned or initiated the violation of section one hundred eighty-nine of this article upon which the action was brought, then the court may, to the extent the court

considers appropriate, reduce the share of the proceeds of the action which the person would otherwise be entitled to receive under subdivision six of this section, taking into account the role of such person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the qui tam civil action is convicted of criminal conduct arising from his or her role in the violation of section one hundred eighty-nine of this article, that person shall be dismissed from the qui tam civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the attorney general to supersede or intervene in such action and to civilly prosecute the same on behalf of the state or a local government.

9. Certain actions barred.
    (a) The court shall dismiss a qui tam action under this article if:
        (i) it is based on allegations or transactions which are the subject of a pending civil action or an administrative action in which the state or a local government is already a party;
        (ii) the state or local government has reached a binding settlement or other agreement with the person who violated section one hundred eighty-nine of this article resolving the matter and such agreement has been approved in writing by the attorney general, or by the applicable local government or
        (iii) against a member of the legislature, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the state when the action was brought.
    (b) The court shall dismiss a qui tam action under this article, unless opposed by the state or an applicable local government, or unless the qui tam plaintiff is an original source of the information, if substantially the same allegations or transactions as alleged in the action were publicly disclosed:
        (i) in a state or local government criminal, civil, or administrative hearing in which the state or a local government or its agent is a party;
        (ii) in a federal, New York state or New York local government report, hearing, audit, or investigation that is made on the public record or disseminated broadly to the general public; provided that such information shall not be deemed "publicly disclosed" in a report or investigation because it was disclosed or provided pursuant to article six of the public officers law, or under any other federal, state or local law, rule or program enabling the public to request, receive or view documents or information in the possession of public officials or public agencies;
        (iii) in the news media, provided that such allegations or trans-actions are not "publicly disclosed" in the "news media" merely because information of allegations or transactions have been posted on the internet or on a computer network.
10. Liability. Neither the state nor any local government shall be liable for any expenses which any person incurs in bringing a qui tam civil action under this article.

§ 191. Remedies

1. Any current or former employee, contractor, or agent of any private or public employer who is discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against in the terms and conditions of employment, or otherwise harmed or penalized by an employer, or a prospective employer, because of lawful acts done by the employee contractor, agent, or associated others in furtherance of an action brought under this article or other efforts to stop one or more violations of this article, shall be entitled

to all relief necessary to make the employee, contractor or agent whole. Such relief shall include but not be limited to:

(a) an injunction to restrain continued discrimination;
(b) hiring, contracting or reinstatement to the position such person would have had but for the discrimination or to an equivalent position;
(c) reinstatement of full fringe benefits and seniority rights;
(d) payment of two times back pay, plus interest; and
(e) compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees.

2. For purposes of this section, a "lawful act" shall include, but not be limited to, obtaining or transmitting to the state, a local government, a qui tam plaintiff, or private counsel solely employed to investigate, potentially file, or file a cause of action under this article, documents, data, correspondence, electronic mail, or any other information, even though such act may violate a contract, employment term, or duty owed to the employer or contractor, so long as the possession and transmission of such documents are for the sole purpose of furthering efforts to stop one or more violations of this article. Nothing in this subdivision shall be interpreted to prevent any law enforcement authority from bringing a civil or criminal action against any person for violating any provision of law.
3. An employee, contractor or agent described in subdivision one of this section may bring an action in the appropriate supreme court for the relief provided in this section.

§ 192. Limitation of actions, burden of proof

1. A civil action under this article shall be commenced no later than six years after the date on which the violation of section one hundred eighty-nine of this article is committed; or ten years after the date on which the violation is committed. Notwithstanding any other provision of law, for the purposes of this article, an action under this article is commenced by the filing of the complaint.
    (a) For purposes of applying rule three thousand sixteen of the civil practice law and rules, in pleading an action brought under this article the qui tam plaintiff shall not be required to identify specific claims that result from an alleged course of misconduct, or any specific records or statements used, if the facts alleged in the complaint, if ultimately proven true, would provide a reasonable indication that one or more violations of section one hundred eighty-nine of this article are likely to have occurred, and if the allegations in the pleading provide adequate notice of the specific nature of the alleged misconduct to permit the state or a local government effectively to investigate and defendants fairly to defend the allegations made.
2. In any action brought under this article, the state, a local government that participates as a party in the action, or the person bringing the qui tam civil action, shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

§ 193. Other law enforcement authority and duties

This article shall not:

1. preempt the authority, or relieve the duty, of other law enforcement agencies to investigate and prosecute suspected violations of law;
2. prevent or prohibit a person from voluntarily disclosing any information concerning a violation of this article to any law enforcement agency; or
3. limit any of the powers granted elsewhere in this chapter and other laws to the attorney general or state agencies or local governments to investigate possible violations of this article and take appropriate action against wrongdoers.

§ 194. Regulations

The attorney general is authorized to adopt such rules and regulations as is necessary to effectuate the purposes of this article. This act shall take effect fourteen days after it shall have become a law and shall apply to claims, records or statements made or used prior to, on or after April 1, 2007.

FEDERAL DEFICIT REDUCTION ACT OF 2005

CHAPTER 3--ELIMINATING FRAUD, WASTE, AND ABUSE IN MEDICAID

SEC. 6031. ENCOURAGING THE ENACTMENT OF STATE FALSE CLAIMS ACTS.

(a) NOTE: 42 USC 1396h. In General.--Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1908A the following:

”state false claims act requirements for increased state share of recoveries”

Sec. 1909.

(a) In General.--Notwithstanding section 1905(b), if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.

(b) Requirements.--For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).
(2) The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.
(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.
(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.

(c) Deemed Compliance.--A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

(d) No Preclusion of Broader Laws.--Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section

3729 of title 31, United States Code, with respect to programs in addition to the State program under this title, or with respect to expenditures in addition to expenditures described in section 1903(a), from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.".

(b) NOTE: 42 USC 1396h note.>> Effective Date.--Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2007.

SEC. 6032. EMPLOYEE EDUCATION ABOUT FALSE CLAIMS RECOVERY.

(a) In General.--Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (66), by striking ``and'' at the end:

(2) in paragraph (67) by striking the period at the end and inserting ``; and''; and

(3) by inserting after paragraph (67) the following: ”(68) provide that any entity that receives or makes annual payments under the State plan of at least $5,000,000, as a condition of receiving such payments, shall--

(A) NOTE: Procedures. establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));

(B) include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and

(C) include in any employee handbook for the entity, a specific discussion of the laws described in subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.".

(b) NOTE: 42 USC 1396a note.>> Effective Date.--Except as provided in section 6035(e), the amendments made by subsection (a) take effect on January 1, 2007.

SEC. 6033. PROHIBITION ON RESTOCKING AND DOUBLE BILLING OF PRESCRIPTION DRUGS.

(a) In General.--Section 1903(i)(10) of the Social Security Act (42 U.S.C. 1396b(i)), as amended by section 6002(b), is amended--

(1) in subparagraph (B), by striking ``and" at the end;

(2) in subparagraph (C), by striking ``; or" at the end and inserting ``, and"; and

(3) by adding at the end the following:

(D) with respect to any amount expended for reimbursement to a pharmacy under this title for the ingredient cost of a covered outpatient drug for which the pharmacy has already received payment under this title (other than with respect to a reasonable restocking fee for such drug); or".

(b) NOTE: 42 USC 1396b note. Effective Date.--The amendments made by subsection (a) take effect on the first day of the first fiscal year quarter that begins after the date of enactment of this Act.

SEC. 6034. MEDICAID INTEGRITY PROGRAM.

(a) Establishment of Medicaid Integrity Program.--Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended--

(1) by redesignating section 1936 <<NOTE: 42 USC 1396v.>> as section 1937; and

(2) by inserting after section 1935 the following:
“medicaid integrity program”

Sec. 1936. NOTE: Contracts. 42 USC 1396u-6.

(a) In General.-- There is hereby established the Medicaid Integrity Program (in this section referred to as the `Program') under which the Secretary shall promote the integrity of the program under this title by entering into contracts in accordance with this section with eligible entities to carry out the activities described in subsection (b).

(b) Activities Described.--Activities described in this subsection are as follows:

(1) Review of the actions of individuals or entities furnishing items or services (whether on a fee-for-service, risk, or other basis) for which payment may be made under a State plan approved under this title (or under any waiver of such plan approved under section 1115) to determine whether fraud, waste, or abuse has occurred, is likely to occur, or whether such actions have any potential for resulting in an expenditure of funds under this title in a manner which is not intended under the provisions of this title.

(2) Audit of claims for payment for items or services furnished, or administrative services rendered, under a State plan under this title, including—

(A) cost reports;
(B) consulting contracts; and
(C) risk contracts under section 1903(m).

(3) Identification of overpayments to individuals or entities receiving Federal funds under this title.

(4) Education of providers of services, managed care entities, beneficiaries, and other individuals with respect to payment integrity and quality of care.

(c) Eligible Entity and Contracting Requirements.—

(1) In general.--An entity is eligible to enter into a contract under the Program to carry out any of the activities described in subsection (b) if the entity satisfies the requirements of paragraphs (2) and (3).

(2) Eligibility requirements.--The requirements of this paragraph are the following:

(A) The entity has demonstrated capability to carry out the activities described in subsection (b).

(B) In carrying out such activities, the entity agrees to cooperate with the Inspector General of the Department of Health and Human Services, the Attorney General, and other law enforcement agencies, as appropriate, in the investigation and deterrence of fraud and abuse in relation to this title and in other cases arising out of such activities.

(C) The entity complies with such conflict of interest standards as are generally applicable to Federal acquisition and procurement.

(D) The entity meets such other requirements as the Secretary may impose.

(3) NOTE: Regulations. Contracting requirements.--The entity has contracted with the Secretary in accordance with such procedures as the Secretary shall by regulation establish, except that such procedures shall include the following:

(A) Procedures for identifying, evaluating, and resolving organizational conflicts of interest that are generally applicable to Federal acquisition and procurement.

(B) Competitive procedures to be used-- (i) when entering into new contracts under this section; (ii) when entering into contracts that may result in the elimination of responsibilities under section 202(b) of the Health Insurance Portability and Accountability Act of 1996; and (iii) at any other time considered appropriate by the Secretary.

(C) Procedures under which a contract under this section may be renewed without regard to any provision of law requiring competition if the contractor has met or exceeded the performance requirements established in the current contract. The Secretary may enter into such contracts without regard to final rules having been promulgated.

(4) <<NOTE: Regulations.>> Limitation on contractor liability.--The Secretary shall by regulation provide for the limitation of a contractor's liability for actions taken to carry out a contract under the Program, and such regulation shall, to the extent the Secretary finds appropriate, employ the same or comparable standards and other substantive and procedural provisions as are contained in section 1157.

(d) Comprehensive Plan for Program Integrity.--

(1) 5-year plan.--With respect to the 5-fiscal year period beginning with fiscal year 2006, and each such 5-fiscal year period that begins thereafter, the Secretary shall establish a comprehensive plan for ensuring the integrity of the program established under this title by combatting fraud, waste, and abuse.

(2) Consultation.--Each 5-fiscal year plan established under paragraph (1) shall be developed by the Secretary in consultation with the Attorney General, the Director of the Federal Bureau of Investigation, the Comptroller General of the United States, the Inspector General of the Department of Health and Human Services, and State officials with responsibility for controlling provider fraud and abuse under State plans under this title.

(e) Appropriation.--

(1) In general.--Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to carry out the Medicaid Integrity Program under this section, without further appropriation—

(A) for fiscal year 2006, $5,000,000;

(B) for each of fiscal years 2007 and 2008, $50,000,000; and

(C) for each fiscal year thereafter, $75,000,000.

(2) Availability.--Amounts appropriated pursuant to paragraph (1) shall remain available until expended.

(3) Increase in cms staffing devoted to protecting medicaid program integrity.--From the amounts appropriated under paragraph (1), the Secretary shall increase by 100 the number of full-time equivalent employees whose duties consist solely of protecting the integrity of the Medicaid program established under this section by providing effective support and assistance to States to combat provider fraud and abuse.

(4) Annual report.--Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Secretary shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and

(B) the effectiveness of the use of such funds.".

(b) State Requirement To Cooperate With Integrity Program Efforts.-- Section 1902(a) of such Act (42 U.S.C. 1396a(a)), as amended by section 6033(a), is amended--

(1) in paragraph (67), by striking ``and'' at the end;

(2) in paragraph (68), by striking the period at the end and inserting ``; and''; and

(3) by inserting after paragraph (68), the following:

(69) provide that the State must comply with any requirements determined by the Secretary to be necessary for carrying out the Medicaid Integrity Program established under section 1936.''.

(c) Increased Funding for Medicaid Fraud and Abuse Control Activities.--

(1) In general.--Out of any money in the Treasury of the United States not otherwise appropriated, there are appropriated to the Office of the Inspector General of the Department of Health and Human Services, without further appropriation, $25,000,000 for each of fiscal years 2006 through 2010, for activities of such Office with respect to the Medicaid program under title XIX of the Social Security Act (42 U.S.C. 1396 et seq.).

(2) Availability; amounts in addition to other amounts appropriated for such activities.--Amounts appropriated pursuant to paragraph (1) shall--

(A) remain available until expended; and

(B) be in addition to any other amounts appropriated or made available to the Office of the Inspector General of the Department of Health and Human Services for activities of such Office with respect to the Medicaid program.

(3) Annual report.--Not later than 180 days after the end of each fiscal year (beginning with fiscal year 2006), the Inspector General of the Department of Health and Human Services shall submit a report to Congress which identifies—

(A) the use of funds appropriated pursuant to paragraph (1); and

(B) the effectiveness of the use of such funds.

(d) National Expansion of the Medicare-Medicaid (Medi-Medi) Data Match Pilot Program.—

(1) Requirement of the medicare integrity program.--Section 1893 of the Social Security Act (42 U.S.C. 1395ddd) is amended—

(A) in subsection (b), by adding at the end the following:

(6) The Medicare-Medicaid Data Match Program in accordance with subsection (g).''; and

(B) by adding at the end the following:

(g) Medicare-Medicaid Data Match Program.—

(1) Expansion of program.—

(A) <<NOTE: Contracts.>> In general.--The Secretary shall enter into contracts with eligible entities for the purpose of ensuring that, beginning with 2006, the Medicare-Medicaid Data Match

Program (commonly referred to as the `Medi-Medi Program') is conducted with respect to the program established under this title and State Medicaid programs under title XIX for the purpose of—

(i) identifying program vulnerabilities in the program established under this title and the Medicaid program established under title XIX through the use of computer algorithms to look for payment anomalies (including billing or billing patterns identified with respect to service, time, or patient that appear to be suspect or otherwise implausible);

(ii) working with States, the Attorney General, and the Inspector General of the Department of Health and Human Services to coordinate appropriate actions to protect the Federal and State share of expenditures under the Medicaid program under title XIX, as well as the program established under this title; and

(iii) increasing the effectiveness and efficiency of both such programs through cost avoidance, savings, and recoupments of fraudulent, wasteful, or abusive expenditures.

(B) Reporting requirements.--The Secretary shall make available in a timely manner any data and statistical information collected by the Medi-Medi Program to the Attorney General, the Director of the Federal Bureau of Investigation, the Inspector General of the Department of Health and Human Services, and the States (including a Medicaid fraud and abuse control unit described in section 1903(q)). <<NOTE: Deadline.>> Such information shall be disseminated no less frequently than quarterly.

(2) Limited waiver authority.--The Secretary shall waive only such requirements of this section and of titles XI and XIX as are necessary to carry out paragraph (1).".

(2) Funding.--Section 1817(k)(4) of such Act (42 U.S.C. 1395i(k)(4)), as amended by section 5204 of this Act, is amended—

(A) in subparagraph (A), by striking ``subparagraph (B)" and inserting ``subparagraphs (B), (C), and (D)"; and

(B) by adding at the end the following:

“(D) Expansion of the medicare-medicaid data match program.--The amount appropriated under subparagraph (A) for a fiscal year is further increased as follows for purposes of carrying out section 1893(b)(6) for the respective fiscal year:

(i) $12,000,000 for fiscal year 2006.

(ii) $24,000,000 for fiscal year 2007.

(iii) $36,000,000 for fiscal year 2008.

(iv) $48,000,000 for fiscal year 2009.

(v) $60,000,000 for fiscal year 2010 and each fiscal year thereafter.".

(e) <<NOTE: 42 USC 1396a note.>> Delayed Effective Date for Chapter.--Except as otherwise provided in this chapter, in the case of a State plan under title XIX of the Social Security Act which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by a provision of this chapter, the State plan shall not be regarded as failing to comply with the requirements of such Act solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act. For purposes of the previous sentence, in the case of a State that has a 2-year legislative session, each year of the session shall be considered to be a separate regular session of the State legislature.

SEC. 6035. ENHANCING THIRD PARTY IDENTIFICATION AND PAYMENT.

(a) Clarification of Third Parties Legally Responsible for Payment of a Claim for a Health Care Item or Service.--Section 1902(a)(25) of the Social Security Act (42 U.S.C. 1396a(a)(25)) is amended—

(1) in subparagraph (A), in the matter preceding clause (i)—
(A) by inserting ``, self-insured plans" after ``health insurers"; and
(B) by striking ``and health maintenance organizations" and inserting ``managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service"; and
(2) in subparagraph (G)—
(A) by inserting ``a self-insured plan," after ``1974,"; and
(B) by striking ``and a health maintenance organization" and inserting ``a managed care organization, a pharmacy benefit manager, or other party that is, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service".

(b) Requirement for Third Parties To Provide the State With Coverage Eligibility and Claims Data.--Section 1902(a)(25) of such Act (42 U.S.C. 1396a(a)(25)) is amended—

(1 in subparagraph (G), by striking ``and" at the end;
(2) in subparagraph (H), by adding ``and" after the semicolon at the end; and
(3) by inserting after subparagraph (H), the following:
``(I) that the State shall provide assurances satisfactory to the Secretary that the State has in effect laws requiring health insurers, including self-insured plans, group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), service benefit plans, managed care organizations, pharmacy benefit managers, or other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service, as a condition of doing business in the State, to--

``(i) provide, with respect to individuals who are eligible for, or are provided, medical assistance under the State plan, upon the request of the State, information to determine during what period the individual or their spouses or their dependents may be (or may have been) covered by a health insurer and the nature of the coverage that is or was provided by the health insurer (including the name, address, and identifying number of the plan) in a manner prescribed by the Secretary;

``(ii) accept the State's right of recovery and the assignment to the State of any right of an individual or other entity to payment from the party for an item or service for which payment has been made under the State plan;

``(iii) respond to any inquiry by the State regarding a claim for payment for any health care item or service that is submitted not later than 3 years after the date of the provision of such health care item or service; and

``(iv) agree not to deny a claim submitted by the State solely on the basis of the date of submission of the claim, the type or format of the claim form, or a failure to present proper documentation at the point-of-sale that is the basis of the claim, if--

``(I) the claim is submitted by the State within the 3-year period beginning on the date on which the item or service was furnished; and

``(II) any action by the State to enforce its rights with respect to such claim is commenced within 6 years of the State's submission of such claim;".

(c) <<NOTE: 42 USC 1396a note.>> Effective Date.--Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2006.

SEC. 6036. IMPROVED ENFORCEMENT OF DOCUMENTATION REQUIREMENTS.

(a) In General.--Section 1903 of the Social Security Act (42 U.S.C. 1396b) is amended--

(1) in subsection (i), as amended by section 104 of Public Law 109-91--

(A) by striking ``or'' at the end of paragraph (20);

(B) by striking the period at the end of paragraph (21) and inserting ``; or''; and

(C) by inserting after paragraph (21) the following new paragraph:

``(22) with respect to amounts expended for medical assistance for an individual who declares under section 1137(d)(1)(A) to be a citizen or national of the United States for purposes of establishing eligibility for benefits under this title, unless the requirement of subsection (x) is met."; and

(2) by adding at the end the following new subsection:

``(x)(1) For purposes of subsection (i)(23), the requirement of this subsection is, with respect to an individual declaring to be a citizen or national of the United States, that, subject to paragraph (2), there is presented satisfactory documentary evidence of citizenship or nationality (as defined in paragraph (3)) of the individual.

``(2) The requirement of paragraph (1) shall not apply to an alien who is eligible for medical assistance under this title—

``(A) and is entitled to or enrolled for benefits under any part of title XVIII;

``(B) on the basis of receiving supplemental security income benefits under title XVI; or

``(C) on such other basis as the Secretary may specify under which satisfactory documentary evidence of citizenship or nationality had been previously presented.

``(3) (A) For purposes of this subsection, the term `satisfactory documentary evidence of citizenship or nationality' means—

``(i) any document described in subparagraph (B); or

``(ii) a document described in subparagraph (C) and a document described in subparagraph (D).

``(B) The following are documents described in this subparagraph:

``(i) A United States passport.

``(ii) Form N-550 or N-570 (Certificate of Naturalization).

``(iii) Form N-560 or N-561 (Certificate of United States Citizenship).

``(iv) A valid State-issued driver's license or other identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act, but only if the State issuing the license or such document requires proof of United States citizenship before issuance of such license or document or obtains a social security number from the applicant and verifies before certification that such number is valid and assigned to the applicant who is a citizen.

``(v) Such other document as the Secretary may specify, by regulation, that provides proof of United States citizenship or nationality and that provides a reliable means of documentation of personal identity.

``(C) The following are documents described in this subparagraph:

``(i) A certificate of birth in the United States.

``(ii) Form FS-545 or Form DS-1350 (Certification of Birth Abroad).

``(iii) Form I-97 (United States Citizen Identification Card).

``(iv) Form FS-240 (Report of Birth Abroad of a Citizen of the United States).

``(v) Such other document (not described in subparagraph (B)(iv)) as the Secretary may specify that provides proof of United States citizenship or nationality.

``(D) The following are documents described in this subparagraph:
``(i) Any identity document described in section 274A(b)(1)(D) of the Immigration and Nationality Act.
``(ii) Any other documentation of personal identity of such other type as the Secretary finds, by regulation, provides a reliable means of identification.

``(E) A reference in this paragraph to a form includes a reference to any successor form.".

(b) <<NOTE: 42 USC 1396b note.>> Effective Date.--The amendments made by subsection (a) shall apply to determinations of initial eligibility for medical assistance made on or after July 1, 2006, and to redeterminations of eligibility made on or after such date in the case of individuals for whom the requirement of section 1903(z) of the Social Security Act, as added by such amendments, was not previously met.

(c) <<NOTE: 42 USC 1396b note.>> Implementation Requirement.--As soon as practicable after the date of enactment of this Act, the Secretary of Health and Human Services shall establish an outreach program that is designed to educate individuals who are likely to be affected by the requirements of subsections (i)(23) and (x) of section 1903 of the Social Security Act (as added by subsection (a)) about such requirements and how they may be satisfied.