



# The False Claims Act: What to Know, What to Do

By: Julie Sheppard, BSN, JD, CHC

Originally enacted during the Civil War, the federal False Claims Act (FCA), also known as Lincoln's Law, is one of the five major fraud and abuse laws. Although its original intent was to protect the government from fraud related to selling supplies to the Union Army, today it protects against charges to federal Healthcare programs for inadequate or unnecessary care. While the law has evolved over its 150 years existence, it was strengthened in 2009 leading to a record breaking \$2.3 billion brought in by whistleblower settlements and judgments in 2011.

This law is important for medical practices to understand because violations can result in exclusion from federal programs such as Medicare and Medicaid, loss of medical licensure, or hefty fines. The FCA imposes treble damages (three times the programs' loss) on the reimbursement received and up to \$11,500 in fines for each claim submitted or retained.

False Claims Act liability does not require actual knowledge of the false claim but instead defines "knowing" as acting in deliberate ignorance or reckless disregard for the truth. The False Claims Act may also come into play when a Stark or Anti-Kickback violation occurs if the provider had knowledge of non-compliance at the time of submission or if the knowledge of non-compliance was received after the improper reimbursement was received.

The FCA allows a private citizen to sue on behalf of the government. A qui tam provision allows a whistleblower (also known as a relator) to share in the monetary rewards of the case providing incentive for citizens to aid the government in anti-fraud efforts. Whistleblowers may be current or previous business partners, patients, or competitors. Typically, whistleblowers are employees or past employees who have tried to report within the organization and felt frustration if they perceived continued fraud.

It is imperative that medical practices first understand the FCA and take action to ensure compliance to avoid the substantial risks associated with this Act.

**Julie Sheppard, BSN, JD, CHC**, is President and Founder of First Healthcare Compliance. First Healthcare Compliance (<http://1sthcc.com/>) addresses the challenges created by the recent compliance mandates of the Affordable Care Act (ACA) for healthcare providers, specifically for private physician practices, by developing a timely, comprehensive and practical solution to meet their ongoing compliance needs.

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