

Florida

Florida State False Claims Laws

This is a supplement to The Evangelical Lutheran Good Samaritan Society's ("The Society") Employee Handbook for employees who work in Florida. As stated in our Employee Handbook, the federal False Claims Act and similar state laws assist the federal and state governments in combating fraud and recovering losses resulting from fraud in government programs, purchases and/or contracts. These laws are some of the most important laws that govern our business. Like the federal False Claims Act, the Florida False Claims Act ("FFCA"), the Florida Medicaid Provider Fraud law, and other Florida laws impose liability on persons or companies that make or cause to be made false or fraudulent claims to the government for payment or who knowingly make, use or cause to be made or used, a false record or statement to get a false or fraudulent claim paid by the government. These Florida laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Florida's Medicaid program for services not rendered
- Billing Florida's Medicaid program for undocumented services
- Making improper entries on Florida's Medicaid cost reports
- Billing Florida's Medicaid program for medically unnecessary services
- Characterizing non-covered services or costs in a way that secures reimbursement from Florida's Medicaid program
- Failing to seek payment from beneficiaries who may have other primary payment sources; and
- Participating in kickbacks

Civil and Criminal Penalties for False Claims or Statements

A violation of these Florida laws may result in penalties of \$5,000 to \$10,000 per claim, plus three times the amount of damages sustained by the state government. In addition, a person who violates the Florida Medicaid Provider Fraud law, specifically Section 409.920, commits a felony in the third degree.

Civil Lawsuits

Like the federal False Claims Act, Florida law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen (also called a *qui tam* plaintiff) is successful in the lawsuit, he/she may share a percentage of any monetary recovery and receive an award for reasonable attorney's fees and costs. However, if the state chooses not to litigate a case, and the private citizen litigates and loses, then the court will award the defendant its reasonable attorney fees and costs against the private citizen.

No Retaliation

Like federal law and Society policy, various Florida laws, including the FFCA and Florida's Public-Sector and Private Whistle-blower Acts, prohibit employers from retaliating, discriminating or harassing employees because of their lawful participation in a false claims disclosure or their refusal to assist employers in violating laws such as the FFCA. These laws also provide for certain monetary awards and equitable relief to the prevailing plaintiff including compensation for lost wages and reinstatement to a former position.

The Private Whistle-blower Act, unlike the other laws, requires an employee to notify his/her employer in writing of any suspected illegal activity, policy or practice before disclosing it to the appropriate government agency. The purpose of this particular requirement is to give the employer a reasonable opportunity to correct the activity, policy or practice. This notice requirement under the Private Whistle-blower Act does not apply to disclosures or testimony made in response to a government inquiry, investigation, or hearing. It also does not apply to an employee's objection to or refusal to participate in any activity, policy, or practice, which violates a law, rule, or regulation.

Any employee who engages in or condones any form of retaliation against another employee because that employee either (1) reported a potential violation of The Society's Code of Ethics or regulatory violation, or (2) refused to violate The Society's Code of Ethics or a government law or regulation, will be subject to disciplinary action up to and including separation of employment. For additional guidance, please see the "Fair Treatment Policy" section of the Employee Handbook and section IV "Reporting Compliance Concerns" of The Society's Compliance Program Handbook.

Copies of Florida Laws

The Florida laws summarized above include: (1) The Florida False Claims Act, Fla. Stat. §§ 68.081-68.09; (2) Medicaid Provider Fraud, Fla. Stat. § 409.920; (3) The Public-Sector Whistle-blower's Act, Fla. Stat. §§ 112.3187-112.31895; and (4) The Private Whistle-blower's Act, Fla. Stat. §§ 448.101-448.105. If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142.

The Florida False Claims Act

Executive Summary

The Florida False Claims Act ("FFCA") helps prevent fraud and allows the state to recover funds lost because of fraud in state programs, purchases, or contracts. Fla. Stat. §§ 68.081—68.09.

Liability and Damages/Statute of Limitations

The actions that violate the FFCA include: (1) submitting a false claim for payment, (2) making or using a false record to get a false claim paid, (3) conspiring to make a false claim or get one paid, or (4) making or using a false record to avoid payments owed to the state government.

Penalties of \$5,000 to \$10,000 per claim plus three times the amount of damages to the state government for FFCA violations may be imposed.

Lawsuits must be filed within the latter of either: (1) five years after the violation was committed, or (2) two years after the state official responsible for investigating the violation discovered the important facts (but no more than seven years after the violation was committed).

***Qui Tam* Actions/Whistleblower Provisions**

An individual (or *qui tam* plaintiff) can sue for violations of the FFCA. Individuals who report fraud receive between 15 and 25 percent of the total amount recovered if the state prosecutes the case, and between 25 and 30 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. An individual cannot file a lawsuit based on public information, unless he or she is the original source of the information.

Employees who report fraud and consequently suffer discrimination can sue their employers under the Florida Civil Rights Act.

Summary of Key Provisions

False Claims §68.082

The following actions constitute FFCA violations:

- Knowingly submitting (or causing to be submitted) a false claim to an officer or employee of a state agency for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement to get a false claim paid or approved by a state agency;
- Conspiring to get a false claim allowed or paid by a state agency;
- Delivering (or causing to be delivered) less property than the amount of the receipt, where the person with possession or control of the state agency money or property intends to deceive the agency or conceal the property;
- Making or delivering a receipt without completely knowing that the receipt is true, where the person authorized to make or deliver the receipt intends to deceive a state agency;
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from an officer or employee of a state agency who has no legal right to sell or pledge the property; and
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to a state agency. § 68.082(2).

A person will be liable to the State for:

- A civil penalty \$5,000 to \$10,000 for each false claim; and
- Three times the amount of damages that the agency sustains because of the violations. § 68.082(2).

The court may reduce the treble damages if:

- The person committing the violation voluntarily disclosed all information known to him or her to the officials responsible for investigating false claims violations within thirty days of obtaining the information;
- The person fully cooperated with any official investigation; and
- No criminal prosecution, or civil or administrative action had been commenced at the time of the person's disclosure, and the person had no actual knowledge of an investigation into such violation. § 68.082(3).

Definitions §68.082

Agency

"Agency" means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government.

Claim

"Claim" includes any request or demand for money or property made to a state agency (including

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those made under contract) or to a contractor, grantee, or other recipient, if any portion of the requested money or property is funded by or will be reimbursed by the state.

Knowing and Knowingly

"Knowing" and "Knowingly" means a person:

- Has actual knowledge of the information;
- Acts in deliberate ignorance of the truth or falsity of the information; or
- Acts in reckless disregard of the truth or falsity of the information.

No proof of specific intent to defraud is required. Innocent mistake is a defense to charges brought under the FFCA. § 68.082(1).

Civil Actions for False Claims § 68.083

The FFCA authorizes the Department of Legal Affairs and the Department of Banking and Finance to investigate and file civil suits for false claims violations. § 68.083(1).

An individual (or *qui tam* plaintiff) also has the right to file a civil suit for him or herself and for the affected agency. The suit must be filed in the name of the State of Florida. The lawsuit may be dismissed only if the Attorney General gives written consent.

§ 68.083(2).

If a *qui tam* plaintiff alleges false claims violations, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the Attorney General (as head of the Department of Legal Affairs) and the Comptroller (as head of the Department of Banking and Finance). § 68.083(3). Once the action is filed, only the named departments are allowed to intervene or file a lawsuit based on the same facts. § 68.083(7).

Rights of the Parties in Civil Actions § 68.084

If the state decides to file a civil suit, it assumes responsibility for prosecuting the action and is not bound by the acts of the *qui tam* plaintiff. However, the *qui tam* plaintiff has the right to continue as a party to the action, subject to certain limitations. §§ 68.084 (1)-(2).

If the state chooses not to file a civil suit, the *qui tam* plaintiff still has the right to proceed with a lawsuit. The State can intervene later upon a showing of good cause. § 68.084 (3).

Award to Plaintiffs Bringing Actions §§ 68.085-68.086

If the state prosecutes a case initiated by a *qui tam* plaintiff and obtains an award or settlement, the *qui tam* plaintiff will receive between 15 and 25 percent of the recovery, depending on his or her contribution to the case. § 68.085(1). If the case is primarily based on disclosures other than those of the *qui tam* plaintiff, the courts cannot award him or her more than 10 percent of the recovery. § 68.085(2). If the State chooses not to intervene and the *qui tam* plaintiff successfully litigates the action, the *qui tam* plaintiff will receive between 25 and 30 percent of the award or settlement. § 68.085(3). In either case, the court will award the *qui tam* plaintiff reasonable attorney fees and costs. § 68.086.

If the court finds that the *qui tam* plaintiff planned and initiated the violation on which the civil suit was based, it may reduce the share of the recovery that the person would otherwise receive. If the *qui tam* plaintiff is convicted of criminal conduct, he or she will be dismissed from the civil suit and will not receive any monetary award. § 68.085(6).

Exemptions to Civil Actions § 68.087

A legal action cannot be brought against a member of the Legislature, a member of the judiciary, or senior executive branch official based on evidence already known to the state government. § 68.087(1).

An individual cannot bring a *qui tam* action based on allegations in a civil or administrative proceeding in which the State agency is already a party. § 68.087(2).

An individual cannot bring a *qui tam* action based on the public disclosure of allegations, unless he or she is the original source of the information, e.g. an individual with direct and independent knowledge of the information on which the allegations are based who has voluntarily provided the information to the State government before filing a civil suit. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in a legislative, administrative, inspector general, Auditor General, Comptroller, or Department of Banking and Finance report, hearing, audit, or investigation ; or from the news media. § 68.087(3).

A *qui tam* action cannot be brought by a state government attorney or a past or present state employee if the lawsuit is based on information obtained in the course of government employment. § 68.087(5).

A *qui tam* action cannot be brought if the information was obtained from a present or

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former employee of state government who was not acting in his or her scope of employment. § 68.087(5).

An action cannot be brought against a county or municipality. § 68.087(6).

Protection for Participating Employees § 68.088

An employee who has been discharged, demoted, suspended, threatened, harassed, or in any way discriminated against by his or her employer because of involvement in a false claims disclosure can sue the employer under the Florida Civil Rights Act.

Limitations of Actions § 68.089

A civil suit must be brought within the latter of either: (1) five years after the violation was committed; or (2) two years after the important facts are discovered by the state official responsible for investigating the violation (but no more than seven years after the violation was committed).

Burden of Proof § 68.090

The State or *qui tam* plaintiff must prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.