

FALSE CLAIM

A "false claim" is a claim for payment for services or supplies that were not provided specifically as presented or for which the provider is otherwise not entitled to payment. Examples of false claims for services or supplies that were not provided specifically as presented include, but are not limited to:

- A claim for service or supply that was never provided.
- A claim indicating a higher level of service than was actually provided.

CLAIMS-RELATED LIABILITY

A. Civil Liability

1. False Claims Act (31 U.S.C. & 3729)

- (a) Prohibits presenting a false claim, making a false statement to get paid
- (b) Level of intent required for liability: actual knowledge, reckless disregard of truth, deliberate ignorance of truth
- (c) Exposure: three times amount of damage plus \$5,000 - \$ 10,000 per claim

2. Civil Monetary Penalties Act (42 U.S.C. & 1320a-7a)

- (a) Imposes penalties for filing or causing to be filed a false claim
- (b) Requires knowledge, reckless disregard, or deliberate ignorance
- (c) Penalty of up to \$10,000 per violation plus three times amount of false claim

3. Qui Tam (Whistle Blower) Actions (31 U.S.C. & 3730)

- (a) Allows any person to bring False Claims Act case on behalf of the United States
- (b) Bars cases on information that has been publicly disclosed unless the person bringing action is original source of the information (direct and independent knowledge of information and voluntarily provided the information to government before filing the action)
- (c) Qui Tam plaintiff receives 15% - 25% of recovery if government proceeds with action, 25% - 30% if government does not proceed with action

B. Criminal Liability

1. Medicare and Medicaid fraud and abuse provisions (42 U.S.C. & 1320A-7B)
 - (a) Bars knowing and willful making of a false statement of material fact in a claim for payment to federal health care program
 - (b) Penalty: up to \$25,000 fine and five years imprisonment
2. False Claims (18 U.S.C. & 287)
 - (a) Makes criminal the submission of false claims to United States
 - (b) Penalty: up to 5 years imprisonment plus fine
3. False Statements (18 U.S.C. & 1001)
 - (a) Prohibits making knowing and willful false statements, concealing a material fact, and using a false writing
 - (b) Penalty: up to 5 years imprisonment plus fine
4. Mail Fraud and Wire Fraud (18 U.S.C. §§ 1341 and 1343)
5. Money Laundering (18 U.S.C. §§ 1956, 1957)
6. Conspiracy to Defraud the United States or to Submit False Claims (18 U.S.C §§ 2386 and 371)

C. Administrative Sanctions

1. Exclusion from program participation (42 U.S.C. & 1320A-7)
2. Mandatory Exclusions
 - (a) Conviction of criminal offense relating to delivery of item or service under Medicare or a state health care program, neglect or abuse of patient, health care fraud or other financial misconduct, unlawful manufacture or distribution of controlled substance
 - (b) Five year minimum exclusion

3. Permissive exclusions

- (a) Fifteen different grounds
- (b) Examples include excessive charges, unnecessary services, submission of false claims, kickback violations, failure to disclosure ownership information, failure to grant immediate access to records