

**FEDERAL & CALIFORNIA STATE FALSE CLAIMS LAWS**  
**AND WHISTLEBLOWER PROTECTIONS**

Federal and state false claims laws impose liability on healthcare providers when they knowingly submit false claims.

Federal Laws

Under the federal False Claims Act, any person who knowingly submits – or causes the submission of – a false or fraudulent claim for payment by the United States Government is liable for (i) a penalty of up to three times the government’s damages, (ii) additional civil penalties ranging from \$5,500 to \$11,000 per false claim, and (iii) the costs of the incurred in bringing the case. The federal False Claims Act applies to claims submitted for payment by Medicare, Medicaid, or any other federally-funded program.

Lawsuits may be initiated under the federal False Claims Act in either of two ways. The government may file a suit directly under the Act. Alternatively, a private citizen with knowledge of a false claim may file suit under the Act – on behalf of the federal government – against a health care provider or other party submitting (or causing submission of) a false claim. Such suits by private citizens or often referred to as “qui tam” or “whistleblower” suits. The United States Government may then decide whether to join the suit. If the suit is ultimately successful, the whistleblower bringing the suit may be awarded a percentage of the funds recovered.

Notably for the University of California, when presented with a whistleblower base in which the federal government did not intervene, the United States Supreme Court ruled that state entities are not liable for damages or penalties under the federal False Claims Act.

The federal False Claims Act contains a provision that protects a whistleblower from retaliation by his employer. This applies to any employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in his or her employment as a result of the employee’s lawful acts in furtherance of a false claims action. The whistleblower may bring an action in the appropriate federal district court and is entitled to reinstatement with the same seniority status, two times the amount of back pay, interest on the back pay, and compensation for any special damages as a result of the discrimination, such as litigation costs and reasonable attorney fees.

A similar federal law is the Program Fraud Civil Remedies Act of 1986 (the “PFCRA”). It provides administrative remedies for knowingly submitting false claims and statements. Violations of the PFCRA are punishable by a maximum civil penalty of \$5,000 per claim plus an assessment of up to twice the amount of each false or fraudulent claim. In light of the above-referenced Supreme Court case, the University would likely take the position that it is not subject to liability for penalties under the PFCRA.

California State Laws

California has adopted its own prohibition on false claims. Specifically, the California False Claims Act (“CFCA”) prohibits:

- anyone from submitting a false or fraudulent claim over \$500 to the state or local government; and
- anyone who benefits from a claim, and later discovers the falsity of the claim, from failing to disclose the false claim to the applicable state or local government.

Each violation of the CFCA is punishable by a civil penalty of up to \$10,000, and an assessment of up to three times the value of the false claim. California officials may file a lawsuit against a suspected violator of the CFCA, or alternatively, a private individual, such as an employee, may file a qui tam lawsuit on behalf of the government. California officials may choose to participate in the qui tam lawsuit or allow the individual to proceed alone on the state or local government's behalf. If the case is successful, the individual is entitled to a portion of the government's monetary recovery. Individuals who assist or participate in an action under the CFCA are protected from workplace retaliation.

Notably, the California Supreme Court has ruled that state entities such as the University of California are not subject to liability for damages under the CFCA.

California Welfare & Institutions Code Section 14107 prohibits fraud involving funds of the state's medical assistance programs, including Medi-Cal. This statute establishes grounds for both criminal and civil actions against any person who knowingly defrauds Medi-Cal or other state medical assistance programs by submitting false claims or making false representations. These actions, however, may only be brought by state officials; private individuals cannot file qui tam lawsuits under this provision. Penalties for a violation of this statute include imprisonment and/or a fine not exceeding three times the amount or value of the fraud. The Regents might contend that, as a government entity, the University cannot be held liable in certain actions under the statute.

Lastly, California Insurance Code Section 1871.7 prohibits a person from knowingly presenting a false claim for a health care benefit to a private insurer. Actions under this statute may be brought by the district attorney or California Insurance Commissioner or alternatively, a qui tam lawsuit may be filed on behalf of the state by a private individual. The state or district officials may choose to participate in the qui tam lawsuit or allow the individual to proceed alone on the state's behalf. If the case is successful, the individual is entitled to a portion of the state's monetary recovery. Private individuals who assist or participate in an action under this statute are protected from workplace retaliation. Penalties for a violation of this statute include a civil penalty between \$5,000 to \$10,000, plus an assessment not exceeding three times the amount of each fraudulent claim. In addition, there may be a separate criminal prosecution for violations of this statute. In light of the California Supreme Court's rulings under other statutes, The Regents might contend that, as a government entity, the University cannot be held liable under the statute.