10 years after the Deficit Reduction Act: a look at state false claims statutes

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A decade has passed since the Deficit Reduction Act of 2005 (DRA) was signed into law. The DRA included a financial incentive designed to encourage states to enact their own false claims acts that were "at least as effective" as the federal False Claims Act (FCA). If the U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) determines that a state's false claims act meets the DRA standard, the state may collect 10 percent of the federal Medicaid funds recovered through an action in addition to all of the state's own share of the recovery, essentially using federal Medicaid dollars as an incentive for state enforcement of false claims actions. In order to be deemed "at least as effective" as the FCA, a state's false claims act must:

- Establish liability to the state for false or fraudulent claims, as described in the FCA, with respect to Medicaid spending,
- Contain provisions that are at least as effective as those described in the FCA in rewarding and facilitating qui tam actions for false or fraudulent claims,
- Contain a requirement for filing an action under seal for 60 days with review by the state's attorney general, and
- Contain a civil penalty that is not less than the amount of the civil penalty authorized under the FCA.

Now, 10 years removed from the DRA's enactment, 18 states have qualified for the 10 percent incentive by enacting false claims acts that have been approved by the OIG.[1] Among these states are California, New York, Illinois and Texas. However, the OIG has not accepted every state false claims act that has been submitted for review. Ten states have submitted statutes to the OIG that were deemed to not meet the DRA "at least as effective" standard.

The reasons for the rejections have varied. Nevada, for example, submitted a statute in 2014 that, in the opinion of the OIG, did not contain retaliation provisions that were as comprehensive as those in the FCA. In 2008, the OIG determined that New Mexico's false claims act was not as effective as the FCA because its public disclosure provision did not include an original source exception.

In all, 33 states and the District of Columbia have enacted false claims acts. Some states, such as Alabama, have false claims acts that have never been submitted to the OIG for review. The Alabama law provides for criminal penalties only and would, therefore, not meet the DRA "at least as effective" standard. One of the states that have not enacted a false claims act is Ohio. While false claims legislation has been proposed in Ohio numerous times, the various bills have never reached the governor's desk.

Given that the U.S. Department of Justice reported FCA recoveries of $5.7 billion in fiscal year 2014, it is likely that more states will enact DRA-compliant false claims acts in order to qualify for the 10 percent incentive. We will continue to monitor the legislation nationwide and will provide updates regarding any newly enacted state false claims acts.

Footnotes

1. This and other figures cited in this bulletin are based on the publicly available information provided on the OIG website at

the following address: https://oig.hhs.gov/fraud/state-false-claims-act-reviews/.

Authors