

Montana

Montana 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 Montana. 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 Montana False Claims Act ("MFCA"), and other Montana 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 Montana laws apply to Medicaid reimbursement and prohibit, among other things:

- Billing Montana's Medicaid program for services not rendered
- Submitting a false claim for payment
- Conspiring to make a false claim or get one paid
- Making or using a false record or statement to conceal, avoid or decrease an obligation to pay the state
- Failure to disclose that a benefit was obtained as a result of a false claim within a reasonable time after discovery of the false claim

Civil Penalties for False Claims or Statements

A violation of these Montana laws may result in civil penalties of not less than two times and not more than three times the amount of damages sustained by the state government, plus a fine of up to \$10,000 for each act.

Civil Lawsuits

Like the federal False Claims Act, Montana law also allows civil lawsuits to be filed by the state government or by private citizens, including employees. If the private citizen 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 a private citizen plaintiff brings a lawsuit and the court finds that the claim was frivolous or brought solely for harassment purposes, then the court may award the defendant its reasonable attorney fees and costs which will be apportioned equitably between the private citizen plaintiff and the governmental plaintiff.

No Retaliation

Federal law and Society policy 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 MFCA.

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 government law or regulation, will be subject to disciplinary action up to and including separation of employment. For additional information, please see the "Fair Treatment Policy" section of the Employee Handbook and section IV "Reporting Compliance Concerns" of The Society's Compliance Program Handbook.

Examples of Montana Laws

Montana laws summarized above include: (1) The Montana False Claims Act, Mont. Code Ann. §§ 17-8-401-412. If you have questions about any of these requirements, you may contact The Society's Compliance Solutions Hotline at 1-800-631-6142.

The Montana False Claims Act

Executive Summary

The Montana False Claims Act ("MFCA") helps the state combat fraud and recover losses resulting from fraud in programs, purchases, or contracts. Mont. Code Ann. §§ 401-412.

Liability and Damages/Statute of Limitations

- Actions that violate the MFCA 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 governmental entity. In addition, anyone who benefits from a false claim that was mistakenly submitted violates the MFCA if he or she does not disclose the false claim soon after he or she discovers it.
- The maximum penalty is \$10,000. The court may also award damages of two to three times the amount that the state sustains because of the violation. The court may waive penalties for MFCA violations if the false claims are voluntarily disclosed. The MFCA does not apply to controversies of less than \$500, tax claims, and certain other claims.
- A civil suit must be filed within three years after the date that the violation was discovered, but no more than ten years after the violation was committed.

Qui Tam Actions/Whistleblower Protections

- A private person (or *qui tam* plaintiff) can sue for violations of the MFCA. Individuals who report fraud receive between 10 and 15 percent of the total amount recovered if the government prosecutes the case, and between 15 and 50 percent (plus reasonable costs and attorney fees) if the *qui tam* plaintiff litigates the case on his or her own. A *qui tam* plaintiff cannot file a lawsuit based on public information, unless he or she is the original source of the information.
- The MFCA contains protections for whistle blowers who are employed by governmental entities.

Summary of Key Provisions

False Claims

Liability § 403

The following actions constitute false claims violations:

- Knowingly submitting (or causing to be submitted) a false claim 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;
- Conspiring to defraud the governmental entity by getting a false claim allowed or paid;
- Delivering (or causing to be delivered) to the governmental entity less property than the

amount of the receipt, where the person has possession or control of the governmental entity's money or property;

- Making or delivering a receipt that falsely represents the property, where the person is authorized to make or deliver the receipt
- Knowingly buying or receiving (as a pledge of an obligation or debt) public property from any person who has no legal right to sell or pledge the property;
- Knowingly making or using a false record to conceal, avoid, or decrease an obligation to pay money or transmit property to the governmental entity or its contractors; and
- Benefiting from the inadvertent submission of a false claim, subsequently discovering its truth, and failing to disclose the false claim to the government within a reasonable period of time.

A person will be liable for:

- A civil penalty of up to \$10,000 for each false claim; and
- Two to three times the amount of damages that the governmental entity sustains because of the violations; and
- The costs of prosecuting the civil suit.

Eligibility for Reduction in Penalty § 403

The court must eliminate the civil penalty if:

- The person committing the violation disclosed all information known to him or her to the government attorney within thirty days of obtaining the information;
- The person fully cooperated with the investigation of the violation; 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.

Exclusion

The MFCA does not apply to controversies of less than \$500, worker's compensation claims, tax claims, or claims made to the department of natural resources and conservation.

Joint and Several Liability

Liability is joint and several for any act committed by two or more persons.

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Certain Actions Barred § 403

A *qui tam* plaintiff cannot file a complaint or civil suit:

- Against a governmental entity or employee of a governmental entity arising from conduct within the scope of the officer's or employee's duties;
- Based on allegations in a civil suit or an administrative proceeding in which the governmental entity is already a party; or
- Based on the public disclosure of allegations unless he or she is the original source, 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 governmental entity before filing a civil action, and whose information was the catalyst for the investigation that led to the public disclosure. Public disclosure includes disclosure in a criminal, civil, or administrative hearing; in an investigation, hearing, or audit conducted by or at the request of a legislative body, the state or legislative auditor, the auditor or legislative body of a political subdivision; or in the news media.

Statute of Limitations § 404

A civil suit must be brought within three years after the violation is discovered, but no more than ten years after the violation was committed.

Definitions § 402

Claim

"Claim" includes any request or demand for money or property made to a governmental entity or its political subdivisions (including those made under contract) or to a contractor, grantee, or other person, if any portion of the requested money or property is funded by or will be reimbursed by a governmental entity.

Governmental Attorney

Governmental Attorney means the chief attorney for a governmental entity or the Attorney General.

Governmental Entity

"Governmental Entity" includes the state; a city, town, county, school district, tax or assessment district, or other political subdivision of the state; or a unit of the Montana University system.

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.

Person

"Person" means any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust.

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Civil Actions for False Claims

Responsibilities of the Government Attorney § 405

The Government Attorney may investigate false claim violations and file civil suits for false claims violations.

Actions by Private Persons § 406-407

A private person also has the right to file a civil complaint alleging a false claims violation. The action may be dismissed for good cause. If a private person alleges a false claims violation, the complaint and a written disclosure of the evidence and information that the person possesses must be served on the government attorney. Once the action is filed, no one other than the government attorney is allowed to intervene or file a lawsuit based on the same facts.

If the governmental attorney decides to file a civil suit, he or she assumes responsibility for prosecuting the action and the private person can join the action as a co-plaintiff. If the government attorney decides not to file a civil suit, the private person still has the right to proceed with a lawsuit. The government attorney can intervene later if the interests of the governmental entity are not being adequately represented. However, the private person or *qui tam* plaintiff retains principal responsibility for the action.

Award to Private Person or Qui Tam Plaintiff §§ 410-411

If the governmental entity prosecutes a case initiated by a private person who decides not to enter the suit as a co-plaintiff, the private person will receive between 10 and 15 percent of the recovery.

If the suit is filed by the private person either as plaintiff or co-plaintiff, he or she will receive between 15 and 50 percent of any damages or civil penalties. If the court finds that the private person participated in the fraudulent activity, he or she is not guaranteed any award.

Governmental Employer Interference with Employee Disclosures § 412

Governmental entities are prohibited from:

- Making or enforcing any type of rule or policy that prevents an employee from disclosing information to a government or law enforcement agency, or from investigating, initiating, testifying, or otherwise assisting in a false claims action; and
- Discharging, demoting, suspending, threatening, harassing, denying promotion to, or in any other manner discriminating against an employee because of his or her involvement in a false claims action.

Liability of Governmental Employer § 412

An employer who interferes with an employee's disclosure of false claims will be liable to the employee for all relief necessary to make the employee whole, including:

- Reinstatement with the same seniority status that the employee would have had except for the discrimination;
- Two times the amount of back pay plus interest; and
- Compensation for any special damage sustained because of the discrimination.

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