

# White Collar Update: The Minnesota False Claims Act: Expanded to Conform to Its Federal Counterpart and Maximize Medicaid Fraud Recoveries

April 23, 2013

In a recent article, we predicted the Minnesota Legislature would adopt amendments to the Minnesota False Claims Act (Minn. Stat. § 15C.01, et seq.) that broaden the scope of the Act and provide greater incentives for private whistleblower (i.e., *qui tam*) actions.<sup>[1]</sup> On April 22, 2013, Governor Dayton signed a bill into law that does just that. The expanded provisions of the Minnesota False Claims Act (Minnesota Act) will go into effect on August 1, 2013.<sup>[2]</sup> Among other things, these amendments will modify the Minnesota Act by:

- **Expanding its general liability provisions** to include not only false or fraudulent claims presented directly to a state or local government, but also false or fraudulent claims presented to government intermediaries (e.g., prime government contractors) that dispense state or local government funds to promote government programs or interests.
- **Expanding its employer liability provisions** by rendering employers liable for the acts of their nonmanagerial employees, even if they had no knowledge of the act, did not ratify the act, and did not recklessly hire or supervise the employee.
- **Eliminating a defendant's right to cure violations by repayment** of any damages caused by a violation of the Act within 45 days of being informed of the damage amount.
- **Enhancing the anti-retaliation provisions** by providing greater relief to employees, contractors, and others who are subject to retaliation because of lawful actions taken to report or stop violations of the Act.
- **Mandating the award of attorneys' fees and costs to prevailing plaintiffs.** Under current law, courts have discretion to award fees and costs to prevailing plaintiffs, but these awards are not mandatory.
- **Providing *qui tam* plaintiffs with a greater share of the recovery in *qui tam* actions, even if the government elects to intervene at the beginning of the case.**

By broadening the scope of the Minnesota Act in these ways, and by providing *qui tam* plaintiffs with more incentives and protections, Minnesota likely becomes eligible for financial incentives available to all states in Medicaid fraud cases. Because Medicaid is funded with state and federal dollars, state and federal governments (and *qui tam* plaintiffs in whistleblower cases) generally split any recoveries obtained from defendants in cases involving Medicaid fraud. Under the federal Deficit Reduction Act of 2005 (DRA), Congress provided states with a financial incentive to adopt or beef up their state false claims laws.



Specifically, under the DRA, states are entitled to receive a 10 percent greater recovery than they otherwise are eligible to receive in Medicaid fraud cases, but only if they have adopted state false claims acts that: (1) contain liability and penalty provisions that are at least as broad as those included in the federal False Claims Act; and (2) reward and facilitate qui tam actions at least as effectively as the federal Act. See 42 U.S.C. § 1396h.

The Minnesota legislature initially adopted the Minnesota Act in 2009. Since then, Congress expanded the scope of the federal Act under amendments included in the Fraud Enforcement and Recovery Act of 2009, the Patient Protection and Affordable Care Act of 2010, and the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. Because of these amendments—which are partly responsible for the federal government's increasing recoveries in False Claims Act cases, including a reported \$3.03 billion during the 12-month period ending September 2011<sup>[3]</sup>—states that want to remain eligible for the financial incentives available to them in Medicaid fraud cases must amend their own laws to keep pace. That is precisely what the recent amendments to the Minnesota Act are designed to accomplish.

The Minnesota Act continues to authorize state, county, and local prosecutors, as well private qui tam plaintiffs, to bring lawsuits and recover funds that were falsely or fraudulently obtained from any state or local government program. Any person found to have violated the Act is subject to significant financial penalties—including as much as \$11,000 per violation, plus three times the damages suffered by the state or local government as a result of the violation, plus attorneys' fees and costs.

In order to prevent violations of the Minnesota Act and its federal counterpart, any person doing business with a federal, state, or local government should strongly consider:

1. Implementing a robust ethics and regulatory compliance program;
2. Implementing training programs and internal control systems that are designed to achieve and maintain compliance with applicable laws and regulations, and to monitor, audit, and report suspected wrongdoing;
3. Communicating a strong and meaningful commitment to ethics and regulatory compliance to all employees; and
4. Reviewing and confirming compliance with conditions for payment and reimbursement eligibility under government programs.

If you have any questions about these recent amendments to the Minnesota False Claims Act or compliance with state or federal laws in this area, please contact Brian Dillon at [brian.dillon@lathropgpm.com](mailto:brian.dillon@lathropgpm.com) / 612.632.3313.

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[1] See *The Minnesota False Claims Act: A look back and a look forward*, Minnesota Physician (August 2012).

[2] The text of the amendments can be found at: <https://www.revisor.leg.state.mn.us/laws/?doctype=Chapter&year=2013&type=0&id=16>.

[3] See Justice Dept. Recovers \$3 Billion in False Claims Act Cases in Fiscal Year 2011, available at: <http://www.justice.gov/opa/pr/2011/December/11-civ-1665.html>.)

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