

# WORKPLACE FRAUD AND “BLOWING THE WHISTLE”

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Securing a government contract can be both lucrative and essential to a company's profitability and viability. In fact, such a contract can be the very lifeblood of a company. This is especially true for hospitals and medical providers because of the critical nature that Medicare (and Medicaid) play in our healthcare system. However it is because these Medicare contracts can be so lucrative, they are by nature fertile grounds for fraud.

This is where conscientious employees and citizens play a role. People who work in our healthcare system, be they medical assistants, nurses, or physicians, are at the ground level – where fraud commonly takes root, and grows within a company. In this situation, employees can often-times be the first line of defense in “blowing the whistle” when a company decides to bilk the federal government by submitting false claims to Medicare (or more precisely, the Center for Medicare and Medicaid Services, *i.e.*, CMS) for reimbursement. Just a few common examples of this type of fraud include upcoding, billing for unnecessary procedures, paying kickbacks, submitting false cost reports, or engaging in off-label marketing. The types of fraud that occur within the Medicare program are almost limitless.

Employees who suspect government fraud, such as the examples described above, have a powerful tool at their disposal: The False Claims Act. The False Claims Act is one of the oldest whistleblower laws in the United States and has its genesis during the Administration of our 16th President, Abraham Lincoln. It is often called “Lincoln's Law.” The law is a public-private partnership between a whistleblower, their attorney, and the government to ferret out and combat fraud. President Lincoln signed the law during the Civil War because the country was being plagued by war profiteers selling the Union Army shoddy supplies at inflated prices.

So what exactly does the False Claims Act entail? Generally, the False Claims Act allows a person to sue an individual or a business engaged in defrauding the government, and to recover a monetary award. The award can be significant because a successful whistleblower can receive between 15 and 30 percent of the total recovery that the government recovers from the defendant. A defendant (such as a hospital fraudulently billing Medicare) is liable for three times the dollar amount that the government is defrauded, with additional penalties of as much as \$11,000 for each false claim submitted. As an example, if a hospital fraudulently submits 10 claims for carotid stent procedures that Medicare reimburses for \$100,000, then the hospital is potentially liable for \$300,000, plus penalties of up to \$110,000, for a total of \$440,000. A whistleblower who brings this to the government's attention is eligible to receive anywhere from 15 to 30 percent of that total amount (or \$66,000 to \$132,000). Of course this is just an example, and recoveries oftentimes can be significantly higher

because Medicare billings are so common and pervasive in our healthcare system.

Once a person has evidence of fraud committed against the government and they decide to “blow the whistle,” the False Claims Act allows that person to file what is called a *qui tam* lawsuit. The *qui tam* lawsuit is filed under seal, which means that it is kept secret from everyone except the government. This is to allow the government, usually the local U.S. Attorney's Office, time to investigate the fraud without tipping off the individual or entity that is accused of committing the fraud. The government investigates the allegations in the *qui tam* complaint and will decide whether to join, or “intervene,” in the case. The likelihood of a *qui tam* case succeeding increases significantly when a government intervenes. But the government intervenes in very few cases, about 150 to 200 cases a year, and almost none where the whistleblower is not represented by an attorney.

If a person decides to proceed under the False Claims Act, they need to act quickly, but conscientiously. A person needs to gather the evidence of fraud and carefully select an attorney because there are strict time limits on when a *qui tam* lawsuit can be filed (usually six years of the date the fraud is committed). A person who “blows the whistle” also needs to appreciate the great personal and professional risks involved. It is undoubtedly a courageous act to “blow the whistle” and an act that can lead to significant rewards, but it can also be very stressful. Before proceeding, be sure to discuss all ramifications with an experienced attorney. For more information regarding *qui tam* lawsuits please contact Robert K. Lu at [rлу@rgrdlaw.com](mailto:rлу@rgrdlaw.com)