

# False Claims Act Developments

University of Texas School of Law Continuing Legal Education

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## False Claims Act: 2022 Statistics

- **948 new False Claims Act (FCA) cases were filed last year**
  - 652 (69%) were *qui tam* lawsuits filed by relators
- **Settlements and judgments**
  - Exceeded \$2.2 B for fiscal year ending Sept. 30, 2022
  - \$1.7 B (77%) involved the healthcare and life sciences industry
    - Including drug and medical device manufacturers, home health, managed care providers, hospitals, pharmacies, and physicians
  - \$1.9 B (86%) arose from lawsuits filed by relators (whistleblowers)
    - Under the *qui tam* provisions and pursued by either the government or relators

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# False Claims Act: The Basics

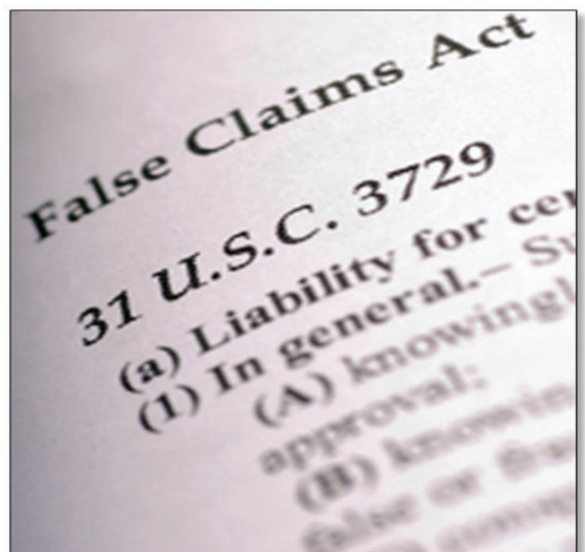
- **Government's primary fraud enforcement tool imposes liability against persons who:**
  - Submit false or fraudulent claims to the government
  - Cause false or fraudulent claims to be submitted
  - Avoiding paying the government or retaining an overpayment by the government (“reverse false claim”)
  - Conspire to submit false or fraudulent claims

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# False Claims Act: The Basics

- **FCA litigation can be commenced by relators**
  - On behalf of the government
  - Receive a portion of recovery
- **Penalties for violation of the FCA**
  - \$13,508 to \$27,018 per fraudulent claim
  - Plus, treble damages caused to the government by each fraudulent claim



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# False Claims Act: State Equivalent FCAs

**At least 30 states have enacted their own versions of the FCA**

- **California**
  - Mirrors the federal FCA
- **District of Columbia**
  - Provides an opportunity for a relator to file a suit regarding virtually any kind of false claim made against the District of Columbia
- **Maryland**
  - Limited to medical health plans
- **New York**
  - Very broad; includes claims for fraud involving any type of government contract or business relationship involving state or local money, as well as the failure to pay state taxes
- **Texas**
  - Relates only to Medicaid claims
- **Virginia**
  - Creates liability for any false claim if the Commonwealth has provided any portion of money

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# False Claims Act: Scienter

- **Negligence is not enough**
- **“Knowing” or “knowingly”**
  - Actual knowledge
  - Deliberate ignorance
  - Reckless disregard
  - No specific intent to defraud required

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