

ADDRESSING PRESCRIPTION DRUG FRAUD WITH A STATE FALSE CLAIMS ACT

States seeking to save money in their Medicaid programs and address vendor fraud should consider enacting a state False Claims Act. The Federal False Claims Act has been used in litigation against pharmacy benefit managers (PBMs), chain drugstores and pharmaceutical manufacturers for fraudulent pricing and billing practices including drug switching, false reporting of Medicaid 'best price', short-filling prescriptions, failure to pay rebates, kickbacks and side deals. States involved in these federal cases, or bringing claims under similar state laws, have recovered millions of dollars. Recent changes in federal law create a financial incentive (an additional share of any recovery based on Medicaid funding formulas) for states to enact false claims laws addressing Medicaid fraud that are as effective as the federal law in key particulars (providing for filing under seal, whistleblower protection and compensation, significant penalties).

Investments in fraud enforcement pay off

A 2006 Taxpayers Against Fraud report concluded that every dollar invested by the government in investigation and prosecution of federal health care fraud returns \$15 back to the American people. The report finds that in the 5-year period from 2000 to 2004, the Federal government spent \$443.8 million to recover \$6.642 billion in health-care fraud related settlements and judgments.¹ States frequently share in these recoveries. For example, in August 2006 the drug manufacturer GlaxoSmithKline agreed to a \$70 million settlement with Arizona, California, Connecticut, Montana, Nevada and New York over allegations that the company artificially inflated average wholesale prices of prescription drugs. Thirty-four other states and the District of Columbia also will be eligible to receive part of the settlement.²

Benefits of a state False Claims Act

Under the Deficit Reduction Act of 2005 (S.1932), if a state has a qualifying False Claims Act, it is eligible for more money when Medicaid False Claims Act cases are decided. The additional recovery could be considerable, and is a reason to enact a qualifying law. For example, in the recent Serono settlement, New York State recovered \$80 million. If New York had had a qualifying False Claims Act at the time however, it would have received \$96 million -- an additional 20% over its initial recovery.³ New York State ultimately joined 19 other states plus the District of Columbia by enacting its version of the False Claims Act in 2007.⁴

Model State False Claims Act

Taxpayers Against Fraud (TAF) has developed a model state false claims act that meets the criteria of the Deficit Reduction Act to qualify for additional Medicaid recoveries. The model bill is posted on the TAF website along with many additional materials on state and federal FCA investigations, cases and recoveries. For more information go to: <http://www.taf.org/statefca.htm/>.

(Updated April 2008)

¹ Accessed at: <http://www.taf.org/FCA-2006report.pdf>

² “*GlaxoSmithKline Settles Civil Suits for \$70 Million*,” REUTERS NEWS SERVICE, August 11, 2006; Wall Street Journal; see this and other articles at

http://www.kaisernetwork.org/daily_reports/rep_index.cfm?DR_ID=39086

³ See Taxpayers Against Fraud materials at <http://www.taf.org/cashbackstatefca.htm>

⁴ See <http://www.taf.org/statefca.htm>