



## The Federal False Claims Act

It is the policy of Walgreens Family of Companies to educate its officers, directors, employees and agents regarding the provisions of the Federal False Claims Act, including the protections afforded to whistleblowers under the statute.

### Overview

The Federal False Claims Act ("FCA") imposes liability on any person who knowingly presents or causes to be presented a false or fraudulent claim for payment or approval by the Government. (31 U.S.C.A. §§ 3729, et seq.) The purpose of the FCA is to discourage fraud against the government and encourage those with knowledge of fraud to come forward with such information. The FCA allows private individuals ("whistleblowers") to file lawsuits on behalf of the government against persons who have violated the FCA. Under the statute, these "whistleblowers" generally are entitled to receive between 15-30% of the total amount of recovery, and they are protected from any subsequent employer retaliation that may occur as a result of initiating such an action. The FCA does not apply to claims, records, or statements made under the Internal Revenue Code of 1986.

In addition, the Medicare and Medicaid Program Integrity Provisions provide civil monetary penalties for failure to report and return overpayments. (42 U.S.C.A. §§ 1320a-7a to 1320a-7k)

### Key Provisions of the Federal False Claims Act

#### Liability for Certain Acts

Any of the following actions will constitute a violation of the FCA:

- Knowingly presenting (or causing to be presented) a false or fraudulent claim for payment or approval;
- Knowingly making or using (or causing to be made or used) a false record or statement material to a false or fraudulent claim;
- Conspiring to commit a violation of the federal False Claims Act;
- Having possession, custody or control of property or money used, or to be used, by the Government and knowingly delivering (or causing to be delivered) less than all that money or property;
- Having the authority to make or deliver a document certifying receipt of property used, or to be used, by the Government, and with the intent to defraud the Government, making or delivering the receipt without completely knowing that the information on the receipt is true;
- Knowingly buying or receiving as a pledge of an obligation or debt, public property from an officer or employee of the Government, or a member of the Armed Forces, who may not lawfully sell or pledge the property; or
- Knowingly making or using (or causing to be made or used) a false record or statement material to an obligation to pay or transmit money or property to the Government, or knowingly concealing or knowingly and improperly avoiding or decreasing an obligation to pay or transmit money or property to the Government.



## **Penalties**

Any person found to violate the FCA shall be liable to the Government for a civil penalty of not less than \$10,957, but not more than \$21,916 per claim, plus three (3) times the amount of damages which the Government sustains as a result of the violation. Such a person shall also be liable to the Government for the costs of a civil action brought to recover such penalties or damages.

## **Limitation of Liability for Voluntary Disclosure**

The court may reduce the damage award to not less than two (2) times the amount of damages the Government sustains as a result of the violation if the court finds that:

- The person committing the violation voluntarily disclosed all information known to the person about the violation to Government officials responsible for investigating false claims violations within 30 days after the date which the person first obtained the information;
- Such person fully cooperated with any Government investigation of such violation; and
- At the time such person disclosed information about the violation, no criminal prosecution, civil action, or administrative action had commenced and the person did not have actual knowledge of the existence of an investigation into such violation.

## **Definitions**

### **Knowing and Knowingly**

Under the statute, "knowing" and "knowingly" mean that a person, with respect to information:

- 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.

No proof of specific intent to defraud is required.

### **Claim**

Claim includes any request or demand, whether under contract or otherwise, for money or property and whether or not the United States has title to the money or property that:

- Is presented to an officer, employee, or agent of the United States; or
- Is made to a contractor, grantee, or other recipient, if the money or property is to be spent or used on the Government's behalf or to advance a Government program or interest, and if the United States Government:
  - Provides or has provided any portion of the money or property requested or demanded; or
  - Will reimburse the contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

### **Obligation**

Obligation means an established duty, whether or not fixed, arising from an express or implied relationship, from statute or regulation, or from the retention of any overpayment.

### **Material**

Material means having a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property.



## **Civil Actions for False Claims**

### **Responsibilities of the Attorney General**

The Attorney General must diligently investigate any false claims violations and is authorized to bring a civil action against any person who has violated the FCA.

### **Private or Qui Tam Actions**

A private individual (qui tam plaintiff) may bring a civil action on his behalf and on behalf of the Government. The suit is filed and served on the Government, and the complaint and all related information must be filed under seal and must remain under seal for at least 60 days. The action must be brought in the name of the Government and can only be dismissed if the court and Attorney General give written consent and state their reasons for dismissal. Once a qui tam suit is filed, no other person, except the Government, may bring a related action based on the same underlying facts as the pending action.

Before the expiration of the 60-day period, the Government shall: (1) proceed with the action, in which case the action shall be conducted by the Government; or (2) notify the court that it declines to take over the action, in which case the qui tam plaintiff shall have the right to conduct the action.

### **Rights of the Parties to Qui Tam Actions**

If the Government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by any act of the qui tam plaintiff. The qui tam plaintiff will have the right to continue as a party to the action. The Government may elect to pursue its claim through any alternate remedy available, including any administrative proceeding to determine a civil money penalty.

Upon a showing by the Government that unrestricted participation by the qui tam plaintiff would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may impose limitations on the qui tam plaintiff's participation by limiting the number of witnesses the person may call, limiting the length of the testimony of such witnesses, limiting the person's cross-examination of the witnesses, or by other means.

Upon a showing by the defendant that unrestricted participation by the qui tam plaintiff would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation of the qui tam plaintiff.

If the Government elects not to proceed with the action, the qui tam plaintiff shall have the right to conduct the action. However, the court may permit the Government to intervene at a later date upon a showing of good cause.

### **Award to Qui Tam Plaintiff**

If the Government proceeds with an action brought by a qui tam plaintiff, that individual may receive an award of not less than 15 percent but not more than 25 percent of the proceeds or settlement of the claim (plus reasonable expenses, attorney's fees, and costs).

Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the qui tam plaintiff) relating to allegations or transactions in a criminal, civil, or administrative hearing, in a congressional, administrative, or Government Accounting Office report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the qui tam plaintiff in bringing the action to litigation.

If the Government does not proceed with an action, the qui tam plaintiff shall receive an amount which the court decides is reasonable. The amount shall not be less than 25 percent or more than 30 percent of the proceeds of the action or settlement (plus reasonable expenses, attorney's fees, and costs).

Whether or not the Government proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds which the qui tam plaintiff would otherwise receive, taking into account the role of the qui tam plaintiff in advancing the action to



litigation and any relevant circumstances pertaining to the violation. If the qui tam plaintiff is convicted of criminal conduct arising from his or her role in the violation, that person shall be dismissed from the civil action and shall not receive any share of the proceeds. Such dismissal will not affect the Government's right to continue the action.

### **Frivolous Lawsuits**

If the Government does not proceed with the action and the person bringing the action conducts the action, the court may award the defendant reasonable attorney's fees and expenses if the defendant prevails in the action and the court finds that the claim was clearly frivolous, vexatious, or brought primarily for purposes of harassment.

### **Time Limit to Bring a Civil Action**

A civil action may not be brought more than 6 years after the date on which the violation of the Federal False Claims Act is committed, or more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than 10 years after the date on which the violation is committed, whichever occurs last.

### **Protection for Whistleblowers**

Any employee, contractor, or agent is entitled to all relief necessary to make that employee, contractor, or agent whole, if that employee, contractor or agent is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment because of lawful acts done by the employee or others. Such relief includes reinstatement with the same seniority status that the employee, contractor, or agent would have had but for the discrimination, two (2) times the amount of back pay, interest on back pay, and compensation for any special damages sustained as a result of the discrimination, including reasonable costs and attorney's fees.

## **Administrative Remedies for False Claims and Statements**

### **Liability for False Claims**

Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that that person knows (or has reason to know):

- Is false, fictitious, or fraudulent;
- Includes or is supported by any written statement which asserts a material fact which is false, fictitious, or fraudulent;
- Includes or is supported by any written statement that:
  - Omits a material fact;
  - Is false, fictitious, or fraudulent as a result of such omission; and
  - Is a statement in which the person making, presenting, or submitting such a statement has a duty to include such material fact; or
- Is for payment for the provision of property or services which the person has not provided as claimed;

shall be subject to, in addition to any other remedy prescribed by law, a civil penalty of not less than \$10,957 for each claim. Except in cases where the Government has not made payment on a false claim, any person who submits a false claim is subject to an assessment, in lieu of damages sustained as a result of such claim, of not more than twice the amount of such claim or portion of such claim, to be determined by the court.



## **Liability for False Statements**

Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that the person knows (or has reason to know):

- Asserts a material fact which is false, fictitious, or fraudulent; or
- Omits a material fact and the person has a duty to include such a material fact, but instead submits an affirmation of the truthfulness and accuracy of the contents of the statement; and
- Is false, fictitious, or fraudulent as a result of such omission;

shall be subject to, in addition to any other remedy prescribed by law, a civil penalty of not less than \$10,957 for each statement.

## **Medicare and Medicaid Program Integrity Overpayment Provisions**

### **Reporting and Returning of Overpayments**

An "overpayment" is any Medicare or Medicaid funds that a person receives or retains to which the person, after applicable reconciliation, is not entitled. Medicare and Medicaid overpayments must be reported and returned to the appropriate government agency, carrier, intermediary or contractor no later than 60 days after the overpayment was identified, or on the date any corresponding cost report is due, whichever is later. As part of the disclosure, the person must specify in writing the reason for the overpayment. Retention of an identified overpayment after the 60-day period is an "obligation" under the False Claims Act.

### **Civil Monetary Penalties**

Any person that knowingly fails to report and return an overpayment shall be subject, in addition to any other penalties that may be allowed by law, to a civil monetary penalty of not more than \$20,916 for each overpayment. Such person is also subject to a penalty of not more than three (3) times the amount claimed for each item or service. In addition, the person may be excluded from Medicare and Medicaid.

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