

OIG ISSUES NEW GUIDELINES FOR REVIEW OF STATE FCA STATUTES

The recent amendments to the False Claims Act, the [Fraud Enforcement Recovery Act of 2009 \("FERA"\)](#), the [Patient Protection and Affordable Care Act of 2010 \("PPACA"\)](#), and the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank") continue to generate new rules and guidance. Effective 2007, Congress created incentives for States to pass and enforce mirror FCA statutes that create equal or greater incentives for whistleblowers to bring Medicaid cases as they would have under the federal statute. Those incentives give States a 10% greater recovery in FCA cases than they would if the statute fell short of the Federal requirements. HHS-OIG is responsible for determining whether the state statutes meet the requirements.

States have two years from the time the Federal FCA is amended to adjust their own statutes to keep the increased recovery. Effective today, March 15, 2012, the OIG's new guidelines for evaluating State False Claims Acts can be found [HERE](#).

To receive the increased recovery State FCA statutes must now mirror the changes found in FERA, the PPACA, and Dodd-Frank. They must amend the bases for liability, including the new "identified overpayment" basis for a suit. They must also expand the rights of *qui tam* relators and adjust civil penalties in a way that mirrors the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Pub. L. 104-410).