

**To: Legislative Health & Human Services Committee**  
**From: Office of the Attorney General**  
**Date: November 17, 2015**  
**Re: 52ND Legislature 2016 Proposed Legislation**

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## **Medicaid False Claims Act Summary of Amendments**

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### **Background**

Section 1909 of the Social Security Act creates a financial incentive for States to enact legislation that establishes liability to the State for false or fraudulent claims to the State Medicaid program. This incentive takes the form of a ten percent decrease in the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under a qualifying law. Currently, if New Mexico obtains a recovery as a result of an action relating to false or fraudulent claims under the Medicaid program, it must share the recovery with the Federal Government in the same proportion as the Federal medical assistance percentage (75% in New Mexico).

For a State to qualify for this incentive, the State law must meet certain requirements listed, as determined by the Inspector General of the Department of Health and Human Services in consultation with the U.S. Attorney General. OIG provides specific guidelines to the States in drafting their false claims legislation. The guidelines are intended to highlight the FCA provisions relevant to OIG's determination of whether a State law meets the requirements of the Act. OIG will closely review any variation from these provisions of the FCA in the State law. To qualify for the financial incentive, a State's false claims act must:

- Establish liability to the State for false or fraudulent claims, as described in the Federal False Claims Act (FCA), with respect to Medicaid spending,
- Contain provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in the FCA,
- Contain a requirement for filing an action under seal for 60 days with review by the State Attorney General, and
- Contain a civil penalty that is not less than the amount of the civil penalty authorized under the FCA.

### **New Mexico Medicaid False Claims Act**

New Mexico's current Act has not passed federal review. The initial draft of the MFCA was submitted and passed OIG's informal review process. It has since been amended during the drafting process and will be submitted again for informal review. The major changes are as follows:

- Attorney general is authorized to prosecute a civil action for violation of the Medicaid False Claims Act.
- Attorney's Fees and Costs provision
- Civil Investigative Demand provision

In addition to the above amendments, the proposed Act incorporates language required by OIG to mirror the Federal False Claims Act. These amendments include the simplification of certain language, such as replacing "private civil action" with "qui tam action," and revisions of the definitions of commonly used terms. The amendments also make the New Mexico Act more relator-friendly by removing the current language which provides for the automatic unsealing of the complaint at the expiration of the seal.