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States, Statutes and Fraud: A Study of
Emerging State Efforts to Combat White
Collar Crime

Pamela H. Bucy

Working Paper

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**STATES, STATUTES AND FRAUD:
A STUDY OF EMERGING STATE EFFORTS TO COMBAT WHITE COLLAR CRIME**

“I don’t care how you do it, but get the damn business.” When his supervisor gave these instructions to Dean Steinke, a sales manager for the pharmaceutical giant, Merck & Company, Steinke told himself, “You know what? They’re not going to get away with it.”¹ “It” was giving payments to physicians and hospitals to prescribe the medicines, Vioxx, Zocor and Pepcid, instead of cheaper generic alternatives. “It” was also giving hospitals up to 92% discounts on these drugs and not offering Medicaid the same discount, as required by law.² In 2000 and 2005, Steinke filed *qui tam* actions under federal and Nevada False Claims Acts. In 2008, these cases settled, with Merck agreeing to pay the United States, forty-nine states and the District of Columbia \$400 million.³ Like many cases brought under the federal False Claims Act (FCA)⁴ and an increasing number of state False Claims Act, the Merck case was initiated by a private citizen not a prosecutor.

The Merck case is notable because of the significant collaborative effort it showed between federal and state authorities. Joint federal-state prosecutions of false claims cases are likely to become more frequent as more states pass their own false claims acts, which Congress has encouraged them to do through financial incentives. This Article addresses the policy issues presented by false claims acts, specifically, the viability of the private-public partnership between

¹ Carrie Johnson, *Merck to Pay \$650 Million in Medicaid Settlement*, WASH. POST, Feb. 8, 2008.

² *Id.*

³ *Id.*

private citizens and public prosecutors created by the FCA model, and the federal-state cooperation FCAs encourage.

The federal False Claims Act has been enormously successful since 1987 when it was revitalized by Congressional amendments. The FCA also is highly controversial because of tensions it creates for law enforcement, businesses, and the courts. Despite the controversy of the FCA model, Congress sought to expand its public/private model by giving financial incentives to the states to pass their own false claims acts.⁵ This expansion of the FCA's privatization of prosecutorial discretion makes the policy questions raised by the FCA all the more pertinent: Does it make sense to privatize prosecutorial powers? Are the interests of private and public prosecutors closely enough aligned to ensure that the public is served by such privatization? Do the costs of recruiting private individuals to assist public officials in fighting fraud outweigh the benefits these individuals bring? Has Congress, by dictating to the states how they must craft their own FCAs, foreclosed opportunities for needed experimentation with different models of law enforcement? Does Congress's attempt to federalize fraud prosecutions through expansion of the FCA harm legitimate business interests?

This Article addresses these questions in two ways. First, it focuses on facts. We have conducted what is to date the most comprehensive empirical study of the states' experience with false claims acts. By interviewing the prosecutors responsible for implementing false claims acts in the states, we are able to compare the states' experiences to each other and to that of the United States Department of Justice which has been actively litigating the federal FCA for twenty years. In

⁴ 31 U.S.C. §3729 et seq.

⁵ Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4 §6032 (2006).

addition, we are able to compare the states' experiences fighting fraud before and after they enacted their own false claims acts. In particular we look at whether the financial incentives in the 2005 Balanced Budget Act have, in fact, encouraged states to pass false claims acts, and if not, why not. Second, we analyze the experience of the states from two perspectives: that of a relator's counsel and that of a defense counsel, both of whom specialize in white collar practice and FCA litigation.

This Article proceeds in five parts. Part I describes the federal FCA, which is the model for the state FCAs. Part I also discusses the private/public partnership the FCA creates, the policy questions this partnership raises, and Congress' effort to incentivize states to pass their own FCAs. Part II describes the methodology of our empirical study; Part III discusses the findings of our study. Part IV analyzes these findings from two perspectives: relator's counsel and defense counsel. Part V concludes with our observations.

**PART I: AN OVERVIEW OF THE
FEDERAL FALSE CLAIMS ACT (FCA)
31 U.S.C. §3729 ET SEQ.**

**A. How the Federal False Claims Act
is Structured**

Diseased mules and defective muskets led to passage of the federal False Claims Act. Passed in 1863,⁶ the FCA provided the federal government with a way to deal with deliveries of defective or nonexistent military supplies to the Union Army.⁷ Today the FCA is used to combat fraud by any

⁶ Act of March 2, 1863, ch. 67, 12 Stat. 696-98.

⁷ S. REP. 99-345, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5273.

and all federal government contractors, including health care providers,⁸ defense contractors,⁹ and oil and gas companies.¹⁰

Since its passage in 1863, the FCA has included a “*qui tam*” provision. “*Qui tam*” comes from the Latin phrase, “*qui tam pro domino rege quam pro se ipso in hac parte sequitur*” which means he “who pursues this action on our Lord the King’s behalf as well as his own.”¹¹ The *qui tam* provision allows a private citizen, as well as the federal government, to file a lawsuit under the FCA.¹² If successful, these *qui tam* plaintiffs (known as “relators”)¹³ collect a percentage of the recovery.¹⁴ The relator need not be personally injured, damaged or affected in any way by the defendant’s

⁸ U.S. Department of Justice fiscal year 2000 statistics indicate that in 1998, 61% of FCA *qui tam* cases filed involved the U.S. Department of Health and Human Services as the client agency. John T. Boese, *Fundamentals of the Civil False Claims Act*, Appendix B, 2001 ABA NATIONAL INSTITUTE ON THE CIVIL FALSE CLAIMS ACT AND *QUI TAM* ENFORCEMENT, Washington, D.C.

⁹ S. REP. NO. 345, reprinted in 1986 U.S.C.C.A.N. 5266, 5267.

¹⁰ In fiscal year 2000, the second largest category of fraud recoveries (\$230 million) came from “companies alleged to have underpaid royalties on such production, including \$95 million from Chevron, \$56 million from Shell, \$32 million from BP Amoco, \$26 million from Conoco and \$11.9 million from Devon Energy.” *Press Release, United States Department of Justice*, November 2, 2000 at www.USDOJ.Gov, 21 TAF QTRLY. REV. 18 (Jan. 2001) [hereinafter *Press Release, DOJ, Nov. 3, 2000*].

¹¹ Vermont Agency of Natural Resources v. United States ex rel. Stevens, 529 U.S. 765, 768, n.1 (2000); Note, *The History and Development of Qui Tam*, 1972 WASH. U. L. Q. 81, 83 citing 3 W. BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 160 (1st Ed. 1768).

¹² 31 U.S.C. §3730 (2001). There are seven types of conduct covered by the False Claims Act, all involving the submission of false claims to the federal government: the conspiracy to do so; the submission of a false statement in support of a claim; or the making, using or causing to be made or used a “false record or statement to conceal, avoid or decrease an obligation to pay to transmit money or property to the Government. See, e.g., 31 U.S.C. § 3729(a) (2001); Pickens v. Kanawha River Towing, 916 F. Supp. 702, 705 (S.D.Ohio 1996). This is also known as a “reverse false claim.”

¹³ JOHN T. BOESE, CIVIL FALSE CLAIMS AND QUI TAM ACTIONS 1-5 (Aspen, 2001) [hereinafter, BOESE, FALSE CLAIMS]. Boese’s treatise is an excellent resource on The False Claims Act.

¹⁴ Relators may collect up to 30% of the total recovery, and barring a few limited situations set forth in the FCA, are guaranteed at least 15%. 31 U.S.C. § 3730(d). The recoveries are statutorily set treble damages (with double damages in instances of sufficient cooperation) and civil penalties of \$5500 to \$11,000. *Id.* at § 3729(a). The statute specifies penalties of \$5 -10,000 but in 1999, the DOJ increased the penalty amount for all claims specified after September 29, 1999 pursuant to the Debt Collection Improvement Act of 1996, Pub. L. No. 104-134; 64 Fed.

conduct, yet is granted standing on the theory that the federal government, as the injured party, may assign its right to sue to the private plaintiff.¹⁵

After its passage in 1863, the FCA was amended several times¹⁶ in ways that weakened *qui tam* actions,¹⁷ so that they were rarely and ineffectively used.¹⁸ In 1986, however, Congress substantially amended the FCA, invigorating *qui tam* actions.¹⁹ The 1986 amendments increased the amount of recovery a relator could obtain,²⁰ established a generous mandatory minimum

Reg. 47099-47104.

¹⁵ In *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765 (2000), the Supreme Court held “that adequate basis for the relator’s suit . . . is to be found in the doctrine that the assignee of a claim has standing to assert the injury in fact suffered by the assignor. *Id.* at 773. The FCA can reasonably be regarded as effecting a partial assignment of the Government’s damages claim.

¹⁶ Act of March 2, 1863 at ch. 67, 12 Stat. 696-98 (1863) *amended* Rev. Stat. 3490-94 and 5438 (1875), *amended* 89 Cong. Rec. S7606 (Sept 17, 1943), *codified at* 31 U.S.C. §§ 232-35 (1976) *recodified at* 31 U.S. C. §§ 3729-3731, Pub. L. 97-258, 96 Stat. 978 (1982), *amended* Pub. L. 99-562, 100 Stat. 3153 (1986), *amended* Pub. L. 103-272, 108 Stat. 1362 (1994).

¹⁷ For example, the 1943 amendments made it difficult for would-be relators to overcome the jurisdictional bar provision, by prohibiting FCA *qui tam* lawsuits when federal government personnel are already aware of the false claims even if the putative relator was the one who informed the federal government about the fraud. Act of Dec. 23, 1943, ch. 377, 57 Stat. 608 (1944). A number of courts also limited use of the FCA in general through their interpretations of the mens rea requirement in the FCA. By 1986, a number of courts had interpreted the FCA’s requirement of “knowledge” as necessitating proof of “specific intent to defraud,” *see* *United States v. Mead*, 426 F.2d 118, 122 (9th Cir. 1970), or similarly high standard, *see* *United States v. Priola*, 272 F.2d 589, 594 (5th Cir. 1959).

¹⁸ BOESE, FALSE CLAIMS, *supra* note 13 at § 1.03.

¹⁹ *Id.* at §1.04[H]

²⁰ The 1986 amendments increased damages from double to treble and increased penalties from \$2000 per false claim to \$5-10,000 per false claim. 31 U.S.C. § 3729 (2001). The FCA provides no guidance on the amount of penalties within this range to be assessed. Most courts hold, that barring constitutional problems under the Eighth Amendment’s excessive fine clause, assessment of at least \$5000 (now \$5500, *see* note 226 *supra*) is not discretionary. *United States v. Cabrera-Diaz*, No. Civ. 99-2416 (JAF), 2000 WL 1015966 (D.P.R. June 23, 2000); *United States ex rel. Garibaldi v. Orleans Parish School Board*, 46 F. Supp. 2d 546, 565 (E.D. La. 1999); *But see* *United States v. Greenberg*, 237 F. Supp. 439, 445 (S.D.N.Y. 1965); *United States v. Krizek*, 909 F. Supp. 32 (D.D.C. 1995)(two different calculations of the number of claims was used in the same case for purposes of establishing liability and penalties) *rev’d and remanded* 111 F.3d. 934, 939-941 (D.C. Cir. 1997) (insufficient evidence to support the two different standards, but use of two standards implicitly approved). *Cf.* *Hudson v. United States*, 522 U.S. 93, 110-111 (1997).

The 1863 FCA gave the relator 50% of any successful judgment. 12 Stat. 698, § 6 (1863). The 1943

recovery for relators,²¹ relaxed provisions that had prevented many relators from filing suit,²² and added a cause of action for relators who suffered retribution for blowing the whistle on their employer's fraud.²³ All FCA cases, whether brought by a relator or by the federal government, were made easier to prove by other 1986 amendments, including a relaxation of the mens rea requirement,²⁴ expansion of the statute of limitations,²⁵ and clarification that the "preponderance"

Amendment reduced this to 10% maximum if the government intervened and 25% if the government did not, with no guaranteed minimum in any case. In addition, there was no provision for attorneys fees and costs. 89 Cong. Rec. S7606. The 1986 Amendments increased the relator's share, guaranteed a minimum recovery in most cases and provided for attorneys fees and costs. A relator is now guaranteed 15-25% of judgment when the government intervenes, 31 U.S.C. § 3730(d)(1)(2001), and 25-30% if the government does not intervene, *id.* § 3730(d)(2). The FCA directs the courts to determine the appropriate percentage within the statutory range based upon "the significance of the information and the role of the person bringing the action in advancing the case to litigation," *id.* § 3730(d)(1). Legislative history to the Senate version of the 1986 Amendments identifies factors to consider in assessing this percentage. S. Rep. No. 99-345 at 28 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5293. In addition, DOJ has promulgated factors to consider. *DOJ Relator's Share Guidelines*. The amount may be reduced to 10% if the FCA case is based on information additional to that provided by the relator. *Id.* § 3730(d)(3). Any relator who is convicted of criminal conduct arising from his or her role in the FCA violation receives nothing, *id.* at § 3730(a)(3) (2001). Reasonable attorneys' fees and costs are also to be awarded under the 1986 Amendments, *id.* §§ 3730(d)(1) and (2) (2001).

²¹ 31 U.S.C. § 3730(d)(1)(2) (2001).

²² Pamela H. Bucy, *Private Justice*, 76 S. CAL. L.REV. 1 (2001) (discussing the FCA's jurisdictional bar provision) [hereinafter Bucy, *Private Justice*].

²³ 31 U.S.C. § 3730(h) (2001).

²⁴ Prior to the 1986 Amendments, the FCA required that any violation be committed "knowingly" without defining "knowingly." Some courts had interpreted the term strictly to require proof of specific intent, *United States v. Mead*, 426 F.2d 118, 122 (9th Cir. 1970), *United States v. Aerodex, Inc.* 469 F.2d 1003,1007 (5th Cir. 1972); *United States v. Ueber*, 299 F.2d 310, 314 (6th Cir. 1962) or similarly high standard, *United States v. Priola*, 272 F.2d 589, 594 (5th Cir. 1959) ("knowingly" in the FCA requires proof of "guilty knowledge of a purpose on the part of [the defendant] to cheat the Government...."). The 1986 Amendments defined "knowingly" to include:

"(1) ... actual knowledge of the information:

(2) ... deliberate ignorance of the truth or falsity of the information; or

(3) ... reckless disregard of the truth or falsity of the information,"

and further specified that "no proof of specific intent to defraud is required." 31 U.S.C. § 3729(b) (2001). The Conference Committee report explained: "The Committee's interest is not only to adopt a more uniform standard, but a more appropriate standard for remedial actions." S. REP. NO. 345, 99th Cong., 2d Sess. 7 (1986) *reprinted in* 1986 U.S.C.C.A.N. 5266, 5272.

²⁵ Prior to the 1986 amendments, the FCA had a six year statute of limitations. The 1986 amendments lengthened the statute of limitations to ten years in instances when the government failed to detect the falsity at the time the claims were submitted. Thus, the FCA currently provides that an action may not be brought:

"(1) more than 6 years after the date on which the violation of section 3729 is committed, or

burden of proof, rather than the “clear and convincing” burden of proof, applies in FCA cases.²⁶

The 1986 amendments made a remarkable difference in the use of the FCA. Before 1986, six *qui tam* cases per year were filed.²⁷ Since the 1986 amendments went into effect, and through 2008, 6,199 *qui tam* cases have been filed and \$1.04 billion has been recovered as a result of the *qui tam* cases.²⁸

The procedure for filing FCA actions is unique. The complaint is filed under seal: it is not even served on the defendant. When a relator (as opposed to the United States Department of Justice) files the complaint the action is stayed while the Department of Justice (DOJ) evaluates the case and determines whether it will intervene.²⁹ If DOJ enters the case, it assumes “primary responsibility” for the lawsuit but the relator is permitted to continue as co-plaintiff.³⁰ The relator

(2) 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.” 31 U.S.C. §3731(b) (2001)..

Questions regarding the statute of limitations abound, such as whether the statute begins running on the date the claim is submitted, *see, e.g.,* United States *ex rel.* Cantekin v. University of Pittsburgh, 192 F.3d 402, 410 (3rd Cir. 1999), or the date on which the claim is paid, *see, e.g.,* United States *ex rel.* Kriendler & Kriendler v. United Technologies Corp. 985 F.2d 1148, 1156-57 (2d Cir.1993); whether the statute begins running on the date the government guarantees a debt or when the mortgage or lender (the innocent party) makes a claim for reimbursement, *see, e.g.,* United States v. Rivera, 55 F.3d 703, 707-09 (1st Cir. 1995); United States *ex rel.* Sanders v. East Alabama Healthcare Auth., 953 F. Supp. 1404, 1412-13 (M.D.AL 1996); the amount of due diligence the government must exercise to toll the statute, *see, e.g.,* United States v. Incorporate Village of Island Park, 791 F. Supp. 354 (E.D.N.Y. 1992).

²⁶ 31 U.S.C. § 3731(c) (2001).

²⁷ Steve France, *The Private War on Pentagon Fraud*, 76 ABA JOURNAL 46, 47 (Mar. 1990).

²⁸ U.S. Dept. of Justice, Civil Division, “Fraud Statistics-Overview,” <http://www.usdoj.gov/opa/pr/2008/November/fraud-statistics1986-2008.htm>.

²⁹ BOESE, FALSE CLAIMS, *supra* note 13 at § 4.05.

³⁰ 31 U.S.C. §3730(c)(1)(2001). This dual-plaintiff system creates interesting dynamics. When the government intervenes, *qui tam* actions become three-party lawsuits. The co-plaintiffs (the federal government and the relator) are united on some aspects of the litigation (gathering information of fraud, opposing most defense strategies and motions). But the government and relator become pitted against each other when, for example, the

retains certain rights when the government intervenes, including the right to object and be heard on a motion to limit the relator's role, to dismiss, or to settle the case.³¹ If the federal government elects not to intervene, the *qui tam* relator may proceed with the action as the sole plaintiff.³²

If the government intervenes in the lawsuit, the relator is guaranteed at least 15% of any judgment or settlement and the court may award more -- up to 25%. If the government elects not to intervene, the relator is guaranteed 25% and could get up to 30%. Only in cases where evidence is based on publicly disclosed information, or the relator is partially at fault for the violations, does the relator get less.³³ FCA's damages and penalty provisions tend to generate exceptionally large judgments such as a \$900 million settlement with Tenet Healthcare, a \$745 million settlement with HCA, a \$650 million settlement with Merck.³⁴ At an average of 16.84% of the settlement, relators'

government seeks to have the relator jurisdictionally barred, *see, e.g.*, *United States ex rel. Fine v. Chevron*, 72 F.3d 740, 745 (9th Cir. 1995), or disagrees with the award the relator seeks upon conclusion of the case, *see, e.g.*, *United States ex rel. Merena v. SmithKline Beecham Corp.*, 52 F. Supp. 2d 420, 429-30 (E.D. Pa. 1998); *United States v. General Electric*, 808 F. Supp. 580, 583-84 (S.D. Ohio 1992).

³¹ 31 U.S.C. § 3730(c)(2)(2001). During the litigation, the relator's role may be restricted by the court "[u]pon a showing by the Government that the unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the Government's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment..." *Id.* at §3730(a)(2)(C), or "[u]pon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense..." *Id.* at §3730(a)(2)(D). Some relators have successfully objected to proposed settlements between the government and *qui tam* defendants, *see, e.g.*, *Gravitt v. General Elec. Co.*, 680 F. Supp. 1162, 1165 (S.D. Ohio) *dismissed*, 848 F.2d 190 (6th Cir. 1988).

³² 31 U.S.C. § 3730(c)(3) (2001). The federal Government may request to receive copies of all pleadings filed and deposition transcripts (at the Government's expense). Upon a showing of "good cause," the court may permit the Government to intervene "at a later date." 31 U.S.C. § 3730(c)(3).

³³ 31 U.S.C. §§ 3730(d)(3) (2001) ("[I]f 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 of the action which the person would otherwise receive").

³⁴ TAXPAYERS AGAINST FRAUD, <http://www.taf.org/top20.htm>.

shares in FCA cases involve large sums.³⁵

B. Why the FCA Has Been Successful

The FCA statute has proven extraordinarily successful as a regulatory and prosecutorial tool,³⁶ in part because it encourages “insiders” who know about fraud to come forward. Complex economic wrongdoing cannot be detected or deterred effectively without the help of those who are intimately familiar with it. “Inside information” about fraud alerts the government and the public to ongoing or inchoate wrongdoing, before extensive harm has occurred. Insiders can also guide law enforcement officials as the officials investigate fraud. This can be enormously helpful since fraud generally is complex, hidden within an organization and concealed by false documentation. Insiders can direct investigators where to look, what documents to obtain, what witnesses to talk to, how to decipher documents and other efforts to conceal, obstruct and coverup.³⁷ Government officials confirm the importance of insiders: “Whistleblowers are essential to our operation. Without them, we wouldn’t have cases.”³⁸

In addition, the federal FCA has proven highly effective in recruiting legal talent who

³⁵ *Id.*

³⁶ Pamela H. Bucy, *Private Justice*, *supra* note 22 at 53-54 (2002).

³⁷ Pamela H. Bucy, *Information as a Commodity in the Regulatory World*, 39 HOUS. L.REV. 905, 940-941 (2002).

³⁸ Justin Gillis, *Whistleblowing: What Price Among Scientists?*, WASH. POST, Dec. 28, 1995, at A21 (quoting Lawrence J. Rhoades, a division director at the U.S. Department of Health and Human Services, which polices federal health research for scientific misconduct); *see also Health Care Initiatives Under the False Claims Act that Impact Hospitals: Hearing Before the House Subcomm. On Immigration & Claims of the Comm. On the Judiciary*, 105th Cong. 15 (1998) (statement by Lewis Morris, Assistant Inspector General for Legal Affairs, U.S. Department of Health and Human Services) (indicating that the FCA, a purpose of which is to encourage whistleblowing, has been an essential tool in combating fraud).

possesses both the skill and resources to handle complex, time-consuming, and expensive cases. Because of the large recoveries available to relators under the FCA, relators' counsel may receive significant fees, usually a combination of court-awarded attorneys fees and a percentage of the recovery as negotiated pre-trial with their clients.³⁹ These large fees incentivize top legal talent to undertake the challenging, innovative and time-consuming FCA cases under what may be circumstances of significant financial risk.

Because of its ability to attract knowledgeable insiders and recruit skilled legal talent, the federal FCA has proven to be a strong, fraud-fighting tool for the federal government. Law enforcement officials extol its virtue: “[T]he public-private partnership encouraged by [the FCA] works and is . . . effective . . . in our continuing fight against fraudulent use of public funds.”⁴⁰

Citing the success of the federal FCA, Congress passed legislation in 2006 that offers financial rewards to states that enact statutes patterned after the federal FCA.⁴¹ If a state passes a false claim act that is “at least as effective in rewarding and facilitating *qui tam* actions” as the federal FCA, the state receives a ten percent reduction in the amount it owes to the federal government for the federal portion of any Medicaid fraud recovery the state obtains. This provision

³⁹ For example, in *United States ex rel. Taxpayers Against Fraud v. Gen. Elec.*, relators' counsel and relator agreed that counsel would receive 25% of the relator's share. 41 F.3d 1032, 1036 (6th Cir. 1994). This percentage was in addition to attorney fees and costs awarded by the court pursuant to 31 U.S.C. § 3730(d)(1). The total amount awarded to relator's counsel in this case was \$4 million. *Id.* at 1036.

⁴⁰ TAXPAYERS AGAINST FRAUD, THE 1986 FALSE CLAIMS ACT AMENDMENTS, TENTH ANNIVERSARY REPORT 15 (1996) (quoting Frank W. Hunger, Assistant Attorney General, Civil Division, U.S. Dept. of Justice); *see also Subcomm. on Immigration and Claims*, 105th Cong., 2d Sess. 14 (1998) [hereinafter *Subcomm. on Claims Hearings*] (Donald K. Stern, U.S. Attorney, Mass. Dist. and Chair, Attorney General's Advisory Comm., U.S. Dept. of Justice, stating that “the False Claims Act...is a critical [civil enforcement] tool in fighting and deterring.”); *Id.* at 15. “[T]he False Claims Act has been an essential tool to protect the integrity of the Medicare program.” *Id.* (quoting Lewis Morris, Assistant Inspector General for Legal Affairs, Office of Inspector General, United States Dept. of Health and Human Services).

⁴¹ *See* Deficit Reduction Act of 2005, Pub. L. No. 109-171, § 6031 (2006) (to be codified in amendments to the Social Security Act, 42 U.S.C. § 1909(a)).

went into effect on January 1, 2007.⁴²

C. Problems Presented by the FCA

The FCA's model of recruiting private individuals to help rout out fraud by giving them prosecutorial power and financial rewards, is not a panacea, however. Experience with the FCA has shown that there are costs when delegating prosecutorial power to private persons. For example, law enforcement has to spend considerable time and effort reviewing cases brought by relators, monitoring cases that go forward, and providing guidance to would-be and existing relators. Because law enforcement has scarce resources, diverting resources to relators' efforts means that law enforcement can not pursue other, perhaps more meritorious, enforcement activities.⁴³ The prospect that vindictive or ill-informed relators may file nonmeritorious suits has stymied regulators' interactions with regulated industries. For example, even when government officials may prefer to draft broad, hortatory, ambitious, flexible goals for industry, they opt not do so because such broad goals subject industry to expansive liability at the hands of private litigants.⁴⁴ Also, law enforcement is bound by adverse precedent created in cases in which it has not joined but which relators have pursued. Some of this precedent has been generated because of bad facts or bad lawyering by relators. In these cases, DOJ loses its usual ability to select cases and frame issues with a long-term view of the precedent it is likely to generate by pursuing a particular case on

⁴² *Id.*

⁴³ Bucy, *Private Justice*, *supra* note 22 at 64.

⁴⁴ *Id.* at 64-65.

appeal.⁴⁵

FCA actions brought by relators also impose costs on the judicial system. Courts are called upon to resolve conflicts between law enforcement officials, defendants and private litigants in FCA cases. This refereeing creates separation of powers tensions⁴⁶ when, for example, DOJ and a relator disagree on how to proceed in a case. Courts become involved in questions regarding discovery, conduct of a trial, resolution of a case, who contributed what to the case's success, or failure. Resolving these disagreements between relators and DOJ can thrust the courts into micro-managing the executive branch's exercise of its prosecutorial discretion.⁴⁷

FCA actions can also hurt legitimate businesses. It is extremely costly for a company to respond to an FCA action. Employees have to gather records subpoenaed or requested in interrogatories; respond to inquiries of investigators, and in some instances, testify at hearings or depositions.⁴⁸ When a fraud investigation becomes public, business expansions, corporate borrowing, mergers and acquisitions may be put on hold, or lost as opportunities. Stock prices may fall and lay-offs may result.

When an investigation or lawsuit is nonmeritorious, the tangible and intangible costs to the targeted company are not only substantial, they are unnecessary. To the extent that FCA lawsuits filed by relators are more likely than those filed by DOJ to be nonmeritorious, relators become

⁴⁵ *Id.* at 66.

⁴⁶ *Id.* at 67-68; Pamela H. Bucy, *Private Justice and the Constitution*, 69 TENN. L.REV. 939, 959-961 (2002); Pamela H. Bucy, *Games and Stories: Game Theory and the civil False Claims Act*, 31 FL. ST. L.REV. 603, 619-624 (2004).

⁴⁷ Bucy, *Private Justice and the Constitution*, *supra* note 46 at 959-961.

⁴⁸ *See, e.g.*, ROBERT FABRIKANT, PAUL E. KALB, MARK D. HOPSON, PAMELA H. BUCY, HEALTH CARE FRAUD, ENFORCEMENT AND COMPLIANCE § 6.05; Pamela H. Bucy, *The Path From Regulator to Hunter*, 44 ST. L. U. L. J. 3, 12-14, 40 - 48 (2000).

harmful to business. The threat of nonmeritorious actions, brought by any of thousands of potential relators, creates uncertainty for businesses and often causes businesses to engage in unnecessarily extensive and expensive preventative programs. Even meritorious actions, if brought separately by public and private enforcers who have not coordinated their efforts, result in unnecessary costs and uncertainty for industry. As William Kovacic has noted in a survey of firms subject to the False Claims Act, these firms regard the FCA “as a costly, substantial burden of doing business with the government.”⁴⁹ Kovacic suggests that the FCA “is likely to impede efforts to induce commercial firms to expand their relationships with government purchasing agencies.”⁵⁰

D. Summary

In short, despite its enormous success as a regulatory tool, the federal False Claims Act, because of its unique private-public partnership, creates tensions and costs for law enforcement, the courts, and businesses.

PART II: STUDY METHODOLOGY

In 2004,⁵¹ several of the current authors⁵² conducted a study of the states' experience to date

⁴⁹ William E. Kovacic, *The Civil False Claims Act as a Deterrent to Participation in Government Procurement Markets*, 6 SUP. CT. ECON. REV. 201, 205 (1998).

⁵⁰ *Id.*

⁵¹ Interviews were conducted between December, 2003 and February, 2005 of individuals in the thirteen states with qui tam FCAs who were responsible for enforcing the statutes.

⁵² Pamela H. Bucy and Marc S. Raspanti, two of this article's authors, along with co-authors James F. Barger and Melinda M. Eubanks.

with false claims acts by interviewing the prosecutors in each state responsible for enforcing that state's False Claims Act. During this initial study, nineteen states had some type of false claim statute that provided civil or criminal liability for those who present false claims to the state (or conspire to do so).⁵³ Of these, thirteen statutes contained *qui tam* provisions.⁵⁴ Our 2004 study focused on these thirteen states, and collected data on the investigative resources allocated to false claims cases, the effectiveness these FCAs, the impact of federal cases upon the state cases, and the coordination efforts between federal and state offices.⁵⁵

In our current study, conducted in 2008, we again interviewed prosecutors. In this study, however, we interviewed prosecutors in all fifty states⁵⁶ to re-examine these issues and to delve into the new issues created by Congress's effort to encourage all fifty states to pass false claims acts mirroring the federal FCA. As we discuss *infra*, while some states have had great success with their FCAs, others have not, and others have opted not to pass FCAs despite Congress' financial inducement to do so.

For our current study, we interviewed 51 individuals, some multiple times, in 50 states (and the District of Columbia), for a total of 153 interviews. Two states declined to participate, thus, our data is complete for 48 states and the District of Columbia. We interviewed the attorneys in each

⁵³ States with false claims statutes were: Arkansas, California, Colorado, Delaware, Florida, Hawaii, Illinois, Louisiana, Michigan, Montana, Nevada, North Carolina, Oklahoma, Tennessee, Texas, Utah, Virginia, Washington, and the District of Columbia.

⁵⁴ States that included *qui tam* provisions in false claims statutes were: California, Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, New Mexico, Tennessee, Texas, Virginia, and the District of Columbia.

⁵⁵ James F. Barger, Jr., Pamela H. Bucy, Melinda M. Eubanks, and Marc S. Raspanti, *States, Statutes and Fraud: An Empirical Study of Emerging State False Claims Acts*, 80 TULANE L. REV. 465 (2005) [hereinafter *States, Statutes and Fraud*].

⁵⁶ Although two states declined to cooperate (North Dakota and Pennsylvania). See Appendices B and C.

state's AG's office who were responsible for enforcing the state's FCA or otherwise responsible for prosecuting white collar frauds. Appendix A summarizes the *qui tam* FCAs currently existing in each state. Appendix B includes our survey questions and the responses from the states that have adopted *qui tam* false claims acts. Appendix C includes our survey questions and the responses from states that have not adopted *qui tam* false claims acts.

PART III: STUDY FINDINGS

A. General Observations

Whereas in 2004, 19 states had civil or criminal false claims acts and of those only 13 had statutes with *qui tam* provisions, by January 1, 2009, 23 states and the District of Columbia had civil or criminal false claims acts and all twenty-four had statutes with *qui tam* provisions. As noted *supra*,⁵⁷ *qui tam* provisions allow any person who is aware of false claims submitted to the government to bring a civil lawsuit alleging such conduct.⁵⁸ This *qui tam* plaintiff, known as a "relator," need not be personally harmed.⁵⁹ Standing to the relator is granted on an "assignment" theory --- that the victim of the false claim, the government, may assign its right to bring suit.⁶⁰ California was the first state to pass a false claims act with a *qui tam* provision, passing its statute in

⁵⁷ See text and accompanying notes _____ *supra*.

⁵⁸ See *supra* notes 33-38 and accompanying text.

⁵⁹ See *supra* notes 33-38 and accompanying text.

⁶⁰ See *supra* notes 33-38 and accompanying text.

1987.⁶¹ Many of the state false claims statutes, however, are of very recent vintage: 10 of the 24 have been passed or significantly amended since 2005 when Congress provided a financial incentive for states to pass FCAs that mirror the federal FCA.⁶² Massachusetts's *qui tam* provision is typical. It provides: "An individual, hereafter referred to as relator, may bring a civil action...for a violation of [the act] on behalf of the relator and the commonwealth or any political subdivision thereof. The action shall be brought in the name of the commonwealth or the political subdivision thereof."⁶³

The twenty-four jurisdictions with *qui tam* provisions are geographically dispersed, stretching from Hawaii to the District of Columbia.⁶⁴ Of the 24 states with *qui tam* statutes, 15 statutes apply to any type of false claim against the state; the remaining 9 statutes are specifically limited to health care or Medicaid fraud. Regardless whether the statute is specifically limited to a type of fraud such as health care, most states reported in our survey that they use their statute primarily to pursue health care cases.⁶⁵ States also reported in our survey that they increasingly are using their FCAs for a greater variety of cases such as environmental, defective product, and mining royalty claims.⁶⁶

All 24 state statutes with *qui tam* provisions provide that relators will share in any recovery obtained. Most statutes provide that relators may obtain up to 33% of the recovery; two jurisdictions

⁶¹ See *infra* Appendices A-B.

⁶² See *infra* Appendices A-B.

⁶³ MASS. GEN. LAWS ANN. ch. 12, § 5C(2) (West 2002).

⁶⁴ See *id.*

⁶⁵ In 2005, only Virginia identified use of its false claims act for non-health care cases. By 2008, four states (California, Delaware, the District of Columbia and Florida) identified broader use of their false claims statute.

⁶⁶ See Appendix B.

provide that relators may obtain up to 50%.⁶⁷ All statutes provide the opportunity for state authorities to intervene and continue the case as co-plaintiff with the relator.

Every state *qui tam* false claims statute grants state officials the authority to monitor a relator's case even if the state opts not to intervene as co-plaintiff. All but one jurisdiction, Texas, provide that the relator may continue to pursue the case if the state (or relevant political subdivision) chooses not to intervene.⁶⁸ All of the statutes provide a sealing procedure similar to the federal FCA statute: *qui tam* complaints are filed under seal and the action is stayed, remaining secret, while the Attorney General investigates and decides whether to intervene.⁶⁹

All 24 of the statutes have a jurisdictional bar provision, preventing relators from going forward if the information is public.⁷⁰ All but one statute (New Mexico)⁷¹ include some sort of "original source" provision, allowing a relator to go forward even if the information in the complaint is public if the relator was the "original source" of the information.⁷²

⁶⁷ California, Nevada. See Appendix A.

⁶⁸ See *infra* Appendix A.

⁶⁹ See *id.*

⁷⁰ See *id.*

⁷¹ Fraud Against Taxpayers Act, House Bill 770.

⁷² The "jurisdictional bar" provision (31 U.S.C. § 3130(e)(4)(2001)) was included in the 1943 amendments to the federal False Claims Act in an effort to ensure that relators did not simply file an FCA action that alleges only information already available to the government regulators. BOESE, FALSE CLAIMS, *supra* note 13 at §1.02. In 1986, the jurisdictional bar provision was again amended to allow relators to go forward, even if government officials are aware of the fraud at issue, if the relator is an "original source" of the information concerning the fraud. 31 U.S.C. § 3730(e)(4) (2001). As one might imagine, numerous interpretative difficulties arise regarding the jurisdictional bar provision.

In 2007, the Supreme Court resolved at least one of these interpretative difficulties. In *Rockwell Int'l Corp. v. United States ex rel. Stone*, 549 U.S. 321, 127 S.Ct. 1397 (2007), the Court addressed the question what the relator must contribute to the case, and how that contribution is to be measured. The Court held that a relator may recover only if the relator presented to the DOJ the facts upon which judgment was ultimately rendered.

From a practical standpoint, this interpretation presents problems. Many FCA cases take years to resolve after the relator initially presents information to the DOJ. Tracing the relators' information through a lengthy route

B. Investigative Resources

The 24 states with *qui tam* FCAs employ similar methods for investigating *qui tam* actions. Most cases enter through the states' AG offices and are assigned to specific units such as the Medicaid Fraud Control Unit, or Economic Crimes Division, or Anti-Trust or Consumer Fraud divisions.⁷³ Depending on the type of case, other state and local enforcement authorities often play a role in investigating the *qui tam* cases, including investigators with state Departments of Transportations, Insurance, Education or Medicaid.⁷⁴

Currently, 8 of the 24 jurisdictions have investigators dedicated to *qui tam* FCA cases filed with their state offices.⁷⁵ Most AG offices report that a substantial portion of their budget for *qui tam* investigations is federally funded.⁷⁶ For example, the District of Columbia and Tennessee both reported that 75% of their budget for investigating and prosecuting Medicaid *qui tam* fraud cases comes directly from the federal government.⁷⁷

to determine if it meets the *Rockwell* test is laborious if not at times unrealistic. Also, by focusing on what ultimately is proven in a case, *Rockwell* creates additional tensions between relators and DOJ. Linking relators' recoveries to the claims that remain in the case all the way to judgment may well cause DOJ and relators to battle over what claims stay in a case, or which and how, claims are litigated during a trial. In addition, DOJ may be tempted to leverage the decision about what claims stay in the case into a decision about what percentage of the recovery relators will get. Because disagreements between DOJ and relators require refereeing of such disputes by the courts, an additional source of disagreements will add to the separation of powers tensions already existing in FCA cases.

⁷³ See *infra* Appendix B.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

Illinois is the only state that requires that a portion of *qui tam* recoveries be set aside for future fraud investigations: one sixth of all *qui tam* recoveries in Illinois must be placed in the AG's whistleblower fund; the remainder goes into the state's general fund.⁷⁸ Other states have created something akin to "set-aside" provisions, however. For example, although Massachusetts' false claims statute does not require that a portion of *qui tam* recoveries go to future investigations, the statute contains a provision allowing the AG to recover investigation costs and attorneys' fees on FCA cases.⁷⁹

Several states have seasoned investigators dedicated to investigating *qui tam* cases.⁸⁰ For example, California's AG office has three investigative auditors and two analysts assigned to civil false claims cases.⁸¹ In addition, there is a bureau-wide group of investigators that may be called upon on an as-needed basis.⁸² Several states, such as Florida, Oklahoma, Texas and Virginia, have investigators with experience working on *qui tam* cases, but they are not assigned exclusively to *qui tam* cases.⁸³

Most of the states utilize a variety of state investigative agencies to investigate *qui tam* cases brought by relators. Illinois, for example, uses the State Police and the Medicaid Fraud Control Unit, together comprising approximately forty investigators.⁸⁴ Tennessee relies heavily on the

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

Tennessee Bureau of Investigation, made up of approximately twenty-five investigators.⁸⁵ The Virginia AG's office supplements its own investigative resources with investigators "borrowed" from other state agencies and volunteer law students.⁸⁶ It is significant to note that although many of the states have experienced investigators at their disposal, very few states have investigators specifically trained to handle the intricacies associated with *qui tam* cases.⁸⁷ Several states made clear that they rely heavily on the investigative resources and information gathered by relators and their counsel to supplement their resources.⁸⁸

Seven out of 24 states' false claims statutes contain Civil Investigative Demands [CID] or a similar type of subpoena power for investigating *qui tam* cases.⁸⁹ CID provisions grant express authority to an Attorney General to demand evidence (documentary material, answers to interrogatories, or oral testimony) where there is "reason to believe that any person may be in possession, custody, or control of any documentary material or information relevant to a false claims law investigation."⁹⁰ CIDs, unlike discovery tools in most civil cases, are available *prior to* filing suit. In this respect they are similar to grand jury subpoenas, which are used to investigate criminal matters.⁹¹ All of the offices with CID authority agree that CIDs are extremely powerful

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *See id.*

⁸⁹ *See infra* Appendices A-B.

⁹⁰ 31 U.S.C. § 3733(a)(1) (2000); *see also* BLACK'S LAW DICTIONARY 262-63 (8th ed. 2004) (referring to similar CID provision authorized by the International Antitrust Enforcement Assistance Act, 15 U.S.C. § 6202 (2000)). CID authority usually cannot be delegated to relators or their counsel. *See, e.g.*, 31 U.S.C. § 3733(a)(1).

prosecutorial tools.⁹² One assistant AG described CIDs as “a terrific tool.”⁹³

Although they do not have CIDs, an additional 9 states have some type of subpoena power to investigate their FCA cases and only one state, Louisiana, expressed a specific preference for CID authority in addition to its present investigative tools.

C. Effectiveness

In 2008, a substantial majority of states with *qui tam* provisions described their statutes as effective (74%).⁹⁴ Most of the states that did not view their statutes as effective had recently passed statutes and indicated that it was too early to assess their effectiveness.⁹⁵

It is difficult to measure the effectiveness of the states’ *qui tam* statutes because few states have adequate systems for tracking the effectiveness of their FCAs. Anecdotally, a number of states view their statutes as effective, although interestingly, they do not necessarily view them as effective in deterring fraud and false claims. Only 20% (5 out of 24) viewed their statute as deterring false claims.⁹⁶ This raises the question, if deterrence is not what makes a *qui tam* FCA statute effective, what does? The states provided some insight. They described the benefits of their FCA as:

⁹¹ CIDs do not have the breadth of grand jury subpoenas which can be issued to “ensure that no crime has occurred” and thus, without probable cause *United States v. R. Enterprises, Inc.*, 498 U.S. 292 (1991).

⁹² *See infra* Appendix B.

⁹³ *Id.*

⁹⁴ (Seventeen out of 24 states; See Appendix B).

⁹⁵ (Indiana, New Jersey, Oklahoma, Rhode Island, Wisconsin) See Appendix B.

⁹⁶ See Appendix B.

generating publicity, bringing in money for the state from settlements,⁹⁷ improved coordination on national cases,⁹⁸ increased investigative resources,⁹⁹ and greater familiarity by relators' counsel with *qui tam* statutes.¹⁰⁰

If an increase in cases filed is a measure of effectiveness, then the state FCAs appear to be very effective. There have been some dramatic increases in the number of cases filed in the past few years. Tennessee, for example, reported 25 open cases in 2005, and 124 open cases in 2008. Louisiana reported a "few" open cases in 2005 and "150 global cases" in 2008. Indiana, whose *qui tam* statute was passed only in 2005, reported 68 cases filed since its statute was enacted.

D. Federal/State Cooperation

The majority of states (18 out of 24, or 75%) report that they experience "good cooperation" on false claims cases with their federal counterparts, the local U.S. Attorneys' offices.¹⁰¹ This is a significant change from 2005 when only 31 % (4 out of 13)¹⁰² states reported "good cooperation" with their relevant U.S. Attorney's office. Today, the states are more impressed with federal efforts to pursue false claims than they were in 2005, with 61.9 % of the states describing their federal counterparts as "active" or "very active" in pursuing federal false claims¹⁰³ (compared to 46.15% of

⁹⁷ See, e.g., Massachusetts (Appendix B).

⁹⁸ See, e.g., Massachusetts (Appendix B).

⁹⁹ See, e.g., Massachusetts, Florida, Texas (Appendix B).

¹⁰⁰ See, e.g., Illinois (Appendix B).

¹⁰¹ Appendix B.

¹⁰² *States, Statutes and Fraud*, *supra* note 55 at Appendix B.

¹⁰³ Appendix B.

the states in 2005).¹⁰⁴

E. Benefit/Cost Analysis

Before 2005, when Congress enacted legislation giving a financial incentive to states that enacted FCAs with *qui tam* provisions,¹⁰⁵ thirteen jurisdictions (i.e., twelve states and the District of Columbia)¹⁰⁶ had such statutes. After 2005, nine additional states enacted FCAs. Thus, twenty-seven states do not yet have *qui tam* FCAs.¹⁰⁷ Of these, nine states¹⁰⁸ indicated in our survey a legislative interest in passing an FCA. The rest indicated that they are not interested in passing an FCA. These states stated that they believe the costs of an FCA outweigh its benefits.¹⁰⁹

These states identified the benefits and costs of FCAs as follows. The benefits are: (1) an additional 10% in Medicaid fraud recoveries as provided by Congress, (2) more whistleblowers coming forward with information about fraud, (3) a greater number of cases, and (4) greater jury appeal in having a statute specifically aimed at false claims.¹¹⁰ The states identified the following as the costs of *qui tam* FCAs: (1) additional investigative and litigative staff needed to evaluate and

¹⁰⁴ *States, Statutes and Fraud*, *supra* note 55 at Appendix B.

¹⁰⁵ Deficit Reduction Act of 2005, Pub. L. 109-171, 120 Stat. 4 § 6032 (2006).

¹⁰⁶ Appendix A.

¹⁰⁷ Appendix C.

¹⁰⁸ Appendix C, Responses to Questions I(d)-(f).

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

monitor *qui tam* actions¹¹¹ and, (2) sharing a portion of recoveries with relators.¹¹² Some states also questioned the need to have their own *qui tam* FCA when they participate, and recover, in global cases brought under the federal FCA regardless whether or not they have their own *qui tam* statute. As the Vermont prosecutor explained:

“There are pros and cons to the FCA statutes . . . We don’t necessarily need an FCA because we participate in the multi-state recoveries, and there is a cost/benefit analysis one must do in order to determine whether it fiscally makes sense to have a state false claims statute with a *qui tam* provision.”¹¹³

PART IV: ANALYSIS OF DATA

¹¹¹ The state of Washington conducted an extensive benefit/cost analysis by surveying other states. A “feasibility team” of eight individuals, including members of the Washington Attorney General’s office and the Washington Medical Fraud Control Unit, surveyed states with existing *qui tam* FCAs. The feasibility team received responses from ten states. See Appendix C. Based upon this survey, Washington concluded that enacting a *qui tam* FCA would cost Washington more money than an FCA would bring in primarily because of the need to add additional investigators and attorneys. Specifically based upon the feasibility team’s assumptions, and the data, the team determined that Washington would collect \$.41 for each \$1.00 spent under a *qui tam* FCA. Office of Payment Review and Audit, Washington Health and Recovery Services Administration, Washington State False Claims Act Feasibility Study.

¹¹² *Id.*

¹¹³ Appendix C.

A. From a Relator's Perspective: Why FCAs Work

As a practitioner who has been actively involved for more than twenty years in the litigation of complex *qui tam* cases on behalf of relators, I have seen many changes in the practice. The modern federal *qui tam* statute, which was revitalized by Congress in 1986, has led to the recovery of billions of dollars in addition to immeasurable deterrence of future fraud. For this reason, it is credibly viewed as a significant fraud fighting tool. The recoveries under the federal FCA have come in large part because of active participation by *qui tam* relators and their counsel in the investigation of FCA claims. In return, relators have been awarded approximately \$2 billion (as their portion of the direct recoveries).¹¹⁴

In addition to "direct" recoveries, there are "consequential" recoveries from false claims act cases. For example, if a relator files a case exploring a novel fraud theory and the theory proves successful, future cases may be based upon the theory. In this way the government "franchises" a relator's original theory and is able to recover from defendants in an entire industry. This has been seen when the federal government creates a coordinated multi-jurisdictional task force to pursue fraud in an entire industry. The original relator generally does not receive recoveries from these spin-off cases. In this sense, total amounts of recoveries to *qui tam* relators do not always reflect full contribution by relators.

The road for relators and their counsel has not always been easy.¹¹⁵ In part this is due to the

¹¹⁴ See <http://www.taf.org/STATS-FY-2007.pdf> (last visited August 8, 2008).

¹¹⁵ Marc S. Raspanti and David M. Laigaie, *Current Practice and Procedure Under the Whistleblower Provision of the Federal False Claims Act*, 71 TEMP. L. REV. 1, 23 (1998).

tension in FCA cases between the United States Department of Justice (DOJ) and relators. The FCA was designed to include this tension.¹¹⁶ Congress, in passing the 1986 Amendments that revitalized the FCA, was concerned about the low level of fraud recoveries by DOJ's Civil Division,¹¹⁷ and sought to enact a mechanism that would ensure that fraud cases were not only investigated but vigorously and diligently prosecuted. Revitalizing the partnership between private individuals with government prosecutors was Congress's effort to do this.

Initially after the 1986 Amendments to the FCA, the Department of Justice did not fully embrace involvement by *qui tam* relators and their counsel. Frankly, upon reflection, no one would expect them to do so. Sharing prosecutorial discretion with private individuals and private counsel creates the potential for disagreements over priorities, legal theories, allocation of resources, and relationship with the judiciary. However, for the most part, the statute has been an overwhelming success for the federal government. Insiders, who are properly motivated and protected, bring a level of insight and sophistication not available through conventional prosecutions. For this reason, DOJ and relators have developed a working relationship, facilitated by "Best Practice" guidelines issued by the Department of Justice.¹¹⁸

The states are relatively new to the world of *qui tam* litigation. Until recently, only a handful of states had false claims acts with *qui tam* provisions. Even those did not always have experience or resources to effectively use their statutes. When Congress offered states financial incentives in

¹¹⁶ *Id.*

¹¹⁷ S. REP. NO. 99-345, at 8 (1986) (discussing the inability of the government to deter fraud).

¹¹⁸ Although these internal guidelines have not been published by the government, they have been obtained through the Freedom of Information Act and published by Taxpayers Against Fraud. *See* 11 TAXPAYERS AGAINST FRAUD, FALSE CLAIMS ACT AND QUI TAM QUARTERLY REVIEW (Oct. 1997).

2005 to pass their own FCAs,¹¹⁹ many state legislators began to pay more attention to the federal FCA. States like California, Texas and Massachusetts, which had learned how to utilize their new laws effectively, became powerful advocates for passage of FCAs by other states.

Some states, especially those which have coordinated their efforts with federal law enforcement to pass their statutes, embrace their powerful new law with the fervor of the newly converted. New York and New Jersey, for example, have supported their new FCAs by funding special prosecutors in their Attorney General offices, hiring and training effective investigators and staffing their Medicaid Inspector General offices with nationally known prosecutors familiar with the false claims act enforcement.¹²⁰ States with FCAs are coordinating their efforts with each other, meeting regularly to help ensure that they reap the full benefits of their new laws.

Other states have not enacted their own FCAs despite the Congressional incentive, and some states with *qui tam* FCAs have not enjoyed the success of others. Unfunded mandates, lack of "buy in" by a state's Attorney General, pressures from interest groups seeking to destroy or curtail a statute, contribute to the initial negative perception of a new and innovative fraud-fighting initiative within some states. The states without FCA statutes of their own will find it increasingly difficult to tag onto "me too" global settlements when the bulk of the work has been done by highly organized fraud-fighting states with strong *qui tam* statutes. Eventually, a "have and have not" sentiment is likely to develop between those states that have an FCA with a strong *qui tam* provision and those

¹¹⁹ Under the Deficit Reduction Act of 2005, Congress incentivized States to pass "qualifying" false claims act legislation. Specifically, if a State passed legislation that was "as effective as" the federal False Claims Act, the State would get to keep a larger percentage of any future federal-state Medicaid fraud settlement. Failure to have a qualified law served to penalize taxpayers of those states that did not have them. *See* "Deficit Reduction Act of 2005: False Claims Education Requirements and the Rise of State False Claims Acts," Morse, Michael, Health Law Handbook, (Gosfield, A., ed.) (2008)

¹²⁰ For example, New York State appointed respected, longtime Associate U.S. Attorney James G. Sheehan as its first Medicaid Inspector General.

that do not.

One of the least familiar aspects of *qui tam* FCAs those states that have recently passed FCAs or are contemplating doing so is the public-private partnership the FCA creates between state prosecutors and *qui tam* relators. From my experience, those states that have learned to use effectively their FCA statutes do not resent sharing a piece of the settlement with *qui tam* relators. These states view the information of the relator and the resources, talent and experience of the *qui tam* bar as assets in litigating the complex and often challenging cases brought against well-heeled and well-funded defendants. These states, which like all states lack the funding of the federal government, seem particularly receptive to forging working relationships with whistleblowers and their counsel.

B. From a Defense Counsel's Perspective: Is More *Qui Tam* Litigation the Answer?

When Senator Charles E. Grassley inserted financial incentives in the Deficit Reduction Act of 2005 (DRA) in hopes of encouraging states to enact their own *qui tam* statutes, he predicted that “[t]he passage of the DRA [will] usher in a new era for the FCA.”¹²¹ In one sense, Senator Grassley was correct: the DRA did indeed launch a new era for *qui tam* litigation. It did so in the form of bonuses for whistleblowers and their attorneys. After years of watching most states recover their share of damages in Medicaid fraud actions without paying any portion of the recovery to relators,

¹²¹ Letter from Sen. Charles E. Grassley, to Daniel R. Levinson, Department of Health and Human Services Inspector General, and Alberto R. Gonzales, United States Attorney General (Mar. 17, 2006), *available at* <http://finance.senate.gov/press/Gpress/2005/prg032106.pdf>.

and complaining that non-*qui tam* states were free riding on their information,¹²² relators and their counsel now stand to increase the bounty they receive in multi-state Medicaid *qui tam* actions. For states willing to enter the *qui tam* arena, the DRA essentially creates a mechanism requiring states to pay a share of their recoveries in fraud cases to relators and their counsel. Congress subsidizes this transfer by allocating dollars headed for state Medicaid programs to states that enact FCAs which require payments to relators.

Thus, whether intended or not, the DRA incentive takes federal funding and gives it to relators and their counsel. Clearly, the hope is that these additional rewards will lead more insiders to blow the whistle on Medicaid fraud schemes that otherwise would not be detected under the existing federal FCA. I suggest that it is highly questionable whether more frauds will be detected because of more *qui tam* statutes, or whether the DRA will simply serve to transfer money to relators in cases that would have been filed anyway.

1. It Is Questionable Whether State Medicaid Programs Will Gain Anything From the DRA’s Supposed Financial Incentive

Before the DRA, relators could claim their “bounty” for bringing a claim—15 to 30 percent of the recovery only out of *federal* funds recovered. Medicaid fraud cases, this meant that relators collected their share only from the *federal* portion of Medicaid funds. (States and the federal government jointly pay for states’ Medicaid programs.) Thus, in Medicaid cases, the dollars states

¹²² In *United States ex rel. Bogart v. King Pharmaceuticals*, 410 F.Supp.2d 404, 408 (E.D.Pa. 2006), a whistleblower argued that the Court should order non-*qui tam* states to additional sums to fund his *qui tam* reward under a “common fund” theory. The District Court rejected the argument, finding that the common fund theory only applied in a class action context and that “Relator’s extension of the common fund doctrine to the current context would essentially impose whistleblower reward statutes on 38 sovereign state governments that have decided not to enact them.” *Id.* at 410.

recovered as a result of FCA suits, investigations and settlements as their state share, were off limits to relators.¹²³ Thus, for example, if a defendant settled a Medicaid fraud case for \$100 million dollars, and that recovery was divided between the federal treasury (\$50 million) and the state's treasury (\$50 million),¹²⁴ and the state had no *qui tam* statute, the relator would be entitled to an amount between \$7.5 to \$15 million of that recovery (15 to 30% of \$50 million).¹²⁵ Under the DRA, in a state with a *qui tam* FCA, the relator would be entitled to \$15 to \$30 million (15-30% of \$100 million).

The post-DRA world is one that state legislatures should be leery of entering. The DRA appears to contain a financial incentive for states that enact state *qui tam* statutes—implying that by enacting such a statute, a state will come out financially ahead as a reward for having a parallel enforcement mechanism. But the reality may be quite different. As the above example shows, a state that would have received \$50 million in a Medicaid recovery case, now will receive less than that (\$50 million minus the \$7.5 to \$15 million that will now go to the relator). In this way DRA compliant *qui tam* provisions transfer a portion of recoveries, that would otherwise go directly into state coffers, to relators and their counsel.

¹²³Prior to passage of the DRA, only 16 states and the District of Columbia had enacted some sort of *qui tam* statute: California, Illinois, Tennessee, Florida, Texas, Louisiana, Nevada, Delaware, Massachusetts, Hawaii, Virginia, New Mexico, Montana, New Hampshire, Indiana, and Michigan.

¹²⁴ Consistent with the applicable federal Medicaid assistance percentage (FMAP).

¹²⁵ Medicaid is a jointly funded program between the federal and state governments. The federal government's share of a state's expenditures for Medicaid is called the federal medical assistance percentage (FMAP). The FMAP for each of the 50 states and the District of Columbia is determined annually based on a statutory formula comparing the average per capita income of each state with the average per capita income for the United States for the three most recent calendar years. The FMAP formula thus results in a higher FMAP for states with lower per capita income relative to the national average (and vice versa for states with higher per capita incomes). The FMAP is recalculated each year, and must fall between 50% and 83%.¹ Overall, the federal government finances about 57% of all Medicaid costs annually. See Christine Scott, CRS Report for Congress, Federal Medical Assistance Percentage (FMAP) for Medicaid (Mar. 1, 2005).

Proponents of state passage of *qui tam* FCAs cite to the success of the federal *qui tam* statute and predict similar results for states that enact *qui tam* FCA statutes. But states will not be writing on a blank slate when it comes to Medicaid fraud allegations.

a. What Do the Numbers Say?

The DRA provides that states enacting a *qui tam* FCA statute that closely mirrors the federal FCA will receive an additional ten percent of federal Medicaid fraud recoveries.¹²⁶ As a result, the Medicaid Statute now provides that the federal Medicaid assistance percentage (FMAP) of any amounts recovered in an action brought under a qualifying state *qui tam* statute will be “decreased by 10 percentage points.” In practical terms, this means that for a state where the federal government reimburses 50 percent of the state’s Medicaid expenses, having a state *qui tam* statute will result in the federal government decreasing the FMAP from 50 to 40 percent for a Medicaid fraud settlement, thereby increasing the state’s portion of the recovery to 60 percent of the settlement or judgment (as opposed to the 50 percent it would have received). At a superficial level, it may sound appealing to enact a state *qui tam* statute and increase Medicaid revenues in existing cases. But when one digs deeper, the incentive may not be so appealing. Without passing their own FCA, states still recover in FCA Medicaid fraud cases, regardless of whether they have enacted state FCAs.¹²⁷ Relators too,

¹²⁶ *Id.* at § 6031(a).

¹²⁷ Over the past 15 years of aggressive health care fraud enforcement, working protocols have developed through which state and federal prosecutors share evidence as necessary, and at an appropriate time, in investigating each federal Medicaid *qui tam* case filed. In cases involving a single state’s Medicaid program, federal prosecutors work with the state’s Medicaid Fraud Control Unit (MFCU)—lawyers and investigators working in a state prosecutor’s office, funded by a federal appropriation. In national cases, MFCUs across the country have developed a mechanism for coordinating the interactions of multiple states with the federal investigation. Working through the National Association of MFCUs (NAMFCU), teams of MFCU lawyers serve as liaisons to state Medicaid program officials, MFCUs, and state prosecutors to facilitate a coordinated investigation and either negotiate a “global” resolution or coordinate litigation if settlement is not possible. Because the MCFUs are largely federally funded, there is little cost to states for participating

regardless of whether a state has an FCA, recover a bounty as a reward for coming forward with the suit. But they can only claim their bounty from the federal recovery if there is no state FCA; anytime there is a state *qui tam* statute though, the whistleblower will take a share of both the federal and state recoveries.

This means that for the state to recover \$60 million from a *qui tam* FCA, as it would under the DRA incentive, instead of the \$50 million it would have received without the DRA incentive, the state must pay a portion of the recovery to the relator. Relator shares range from 15 to at least 30 percent, according to FCAs, and relator shares average 20 percent.¹²⁸ Thus, after the average whistleblower bounty is paid, a state's net recovery drops from \$60 million to \$48 million. In this way, by passing and employing its own FCA, a state has netted a loss of \$2 million. And the relator who previously would have received \$10 million as his share of the recovery (20% of the \$50 million federal recovery) receives \$20 million as his share (20% of the \$100 million state and federal recovery).

In this sense by paying a whistleblower under its state *qui tam* FCA, states with a FMAP of less than 60% stand to lose. Sixty percent FMAP is the "break-even" point for states.¹²⁹ In Fiscal Years 2007 and 2008, 26 states received FMAP of 60 percent or higher.¹³⁰ In FY 2009, 27 states

in these investigations and recoveries.

¹²⁸ Under the federal FCA, the relator in a successful *qui tam* suit is entitled to 25-30 percent if the government declines to intervene and 15-25 percent if the government intervenes. On average, relators' shares average roughly 20 percent.

¹²⁹ This "break even" point does not account for other costs that a state faces when it enacts a state FCA.

¹³⁰ See Federal Financial Participation in State Assistance Expenditures, FY 2007, FMAP, 70 Fed. Reg. 71857 (Nov. 30, 2005). See Federal Financial Participation in State Assistance Expenditures, FY 2008, FMAP, 71 Fed. Reg. 69210 (Nov. 30, 2006).

have a FMAP over 60 percent.¹³¹

As noted *supra*, many of the states in this study bear out this point. Vermont, for example, comments on the “cost-benefit analysis” of enacting an FCA: “When we participate in the national cases, the relator’s share does not come out of our share. We don’t receive the 10 percent bump, but we do not pay as much in the relator’s share.”¹³² Washington agrees: “We did some modeling and we would lose money if we complied with the DRA because we would then have to pay the relators’ fees which we currently do not do. Paying the relators fees would cause us to lose money.”¹³³ Kentucky,¹³⁴ Oregon,¹³⁵ and Maine,¹³⁶ all cite to this issue in rejecting an FCA.

b. What Does The OIG Say?

Before a state can claim the 10 percent bonus discussed above, the DRA requires that the Inspector General of the Department of Health and Human Services (OIG) approve the state’s statute as “DRA-compliant.” Among other requirements, the OIG must find that the state FCA is “at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in [the federal FCA].”¹³⁷ Until such a finding is made by the OIG, a state that has enacted

¹³¹ See Federal Financial Participation in State Assistance Expenditures, FY 2009, FMAP, 72 Fed. Reg. 67305 (Nov. 28, 2007).

¹³² See Appendix C.

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.* For example, over the last five years, Oregon’s Medicaid Control Fraud Unit has produced a return of more than \$12 million to the State’s Medicaid program—without having to pay a share of that recovery to relators, who have instead recovered millions out of the federal share. See DOJ MEDICAID FRAUD UNIT FINALIZES SETTLEMENT WITH BRISTOL-MEYERS SQUIBB (July 16, 2008), <http://www.doj.state.or.us/releases/2008/rel071608.shtml>. See Appendix C.

¹³⁶ See Appendix C.

¹³⁷ See Deficit Reduction Act § 6031(b)(2). The state FCA must also “establish[] liability to the State for false or fraudulent claims described in [the federal FCA] with respect to any expenditure described in [the Medicaid

a state FCA can not receive the promised 10 percent of FMAP for having enacted the statute.¹³⁸ It will, however, have to share its state Medicaid recovery from its new FCA with relators.

To date, the OIG has reviewed thirteen state FCAs to determine whether those state statutes are DRA-compliant. The OIG has found eight states to be compliant (Hawaii, Illinois, Massachusetts, Nevada, New York, Tennessee, Texas and Virginia),¹³⁹ and rejected five states (California, Florida, Indiana, Louisiana and Michigan).¹⁴⁰ These five states face a lose-lose proposition: a statutory obligation to pay out relator shares without receiving the financial incentive promised by Congress.¹⁴¹ Moreover, because DRA compliance turns on whether the state's statute is "at least as effective" as the federal statute, a state risks losing its DRA-compliance anytime the federal statute is amended.¹⁴²

c. Other Costs for States Enacting a *Qui Tam* FCA

In addition to paying relators a portion of the recovery and the time lag before any financial incentive bonus under the DRA is approved by the OIG, states that choose to enact a state FCA face additional costs. As Kansas noted in our study, the "amount of resources that will have to be

statute]"; "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 [by the federal FCA. *Id.* at § 6031(b)(1), (3), (4).

¹³⁸ On August 21, 2006, OIG published a notice in the Federal Register that sets forth OIG's guidelines for reviewing State false claims acts. *See* Publication of OIG's Guidelines for Evaluating State False Claims Acts, 71 Fed. Reg. 48552 (Aug. 21, 2006).

¹³⁹ *See* HHS Office of Inspector General, State False Claims Act Reviews, <http://www.oig.hhs.gov/fraud/falseclaimsact.html>.

¹⁴⁰ *Id.*

¹⁴¹ *See* Federal Financial Participation in State Assistance Expenditures, FY 2009, FMAP, 72 Fed. Reg. 67305 (Nov. 28, 2007).

¹⁴² In 2007, both the Senate and House considered legislation to amend the federal FCA. *See* H.R. 4854 (False Claims Act Correction Act of 2007); S. 2041 (The False Claims Act Correction Act of 2007). *See also*

dedicated to investigating and overseeing every *qui tam* case will probably result in more expenses than the 10% gained” by having a state FCA.¹⁴³ Maryland, South Dakota, Utah, Washington and West Virginia also expressed concerns about the cost of hiring staff, conducting additional investigations, and monitoring relators and their counsel.¹⁴⁴ This is a realistic concern: states that have enacted *qui tam* statutes estimate that they have hired anywhere from 8 to 50 additional staff.

State *qui tam* statutes produce litigation costs unique to FCA cases. Because of multiple state FCAs and the global cases they may promote, there are likely to be multiple actions filed in multiple states. Filings under multiple state statutes may well impede the progress and coordination of investigations of alleged multi-state schemes.

2. States Without State *Qui tam* Statutes Have Recovered And Will Continue To Recover Millions of Dollars in Medicaid Fraud Claims.

States that have passed DRA-inspired state *qui tam* statutes have recovered in Medicaid fraud cases without such statutes. They can be expected to continue doing so. Connecticut, for example, reports recoveries of over \$30 million in the past few years by participating in global settlements under the federal FCA, or under existing state statutes. Kansas had recoveries of more than \$4 million in each of 2004, 2005, and 2007. Kentucky recovered 5 million in 2007 and expects to recover 11 million in 2008. Maryland has recovered more than \$27 million in the last five years. Ohio has recovered over \$60 million in 2007 and 2008 together. And in addition, the data in our

Comment of Virginia, Appendix B (noting that if the federal FCA is amended the state would need to consider similar amendments to insure continued DRA compliance).

¹⁴³ See Appendix C.

¹⁴⁴ See Appendix C (comments of Maryland, South Dakota, Utah, Washington, and West Virginia)

study reflects that many states without state *qui tam* statutes can also recover attorney's fees and damages under their existing statutes.¹⁴⁵

PART V: SUMMARY AND CONCLUSION

This Article reports data collected by the authors on the federal and state false claims acts and the policy questions these statutes pose. These acts are an important phenomenon for study not only because they are viewed as the “premiere” tool for fighting white collar crime, but also because they represent a new and unique approach to law enforcement, an approach that lends itself to expansion beyond the white collar arena. FCAs recruit private citizens through a fairly radical notion of standing (no personal damage necessary) and through financial incentives (millions of dollars). They encourage citizens to “blow the whistle” on fraud they see and to partner with the United States Department of Justice to litigate this fraud. FCAs encourage public prosecutors to work with private attorneys on cases chosen by private citizens. This requires DOJ to relinquish some of its autonomy and prosecutorial discretion to private citizens and their attorneys. When tensions develop between DOJ and these private litigants, the courts often have to step in. This requires at least some examination of executive branch decision-making, creating separation of powers tension between the judiciary and the executive branches.

This Article has examined whether the unique model of the FCA is working. Because of 2005 legislation passed by Congress to encourage states to pass their own FCAs, an experiment in fifty jurisdictions is underway. By surveying the states that have enacted FCAs and those that have

¹⁴⁵ *Id.*

chosen not to enact FCAs despite Congressional encouragement, we have been able to assess the results to date.

In this Article, we have suggested the following three observations. First, some states are experiencing success with their newly-passed FCAs. According to our survey, these tend to be the states that allocated adequate resources to implementing their FCAs. Second, the states that have opted not to pass an FCA even though this decision costs them state Medicaid funds tend to be the states that were already enjoying some success in fraud recoveries (either by piggy-backing federal FCA cases, or through existing state statutes). These states have determined that the resources necessary to support their own FCA are not worth the additional benefits they could expect to receive by enacting an FCA. Third, our study indicates that more states are planning to enact FCAs in the near future. As that occurs, it may become more difficult for those states that do not have their own FCAs to “piggy-back” on global cases brought by other states and federal officials. This in turn will increase the costs for states not enacting their own FCAs, altering their assessment of such statutes, and making it more likely that they too will enact FCAs.

APPENDIX A

FALSE CLAIMS STATES WITH *QUI TAM* PROVISIONS

Jurisdiction	Statute Name	Code Section	General or Specific	Qui Tam Provision	Date Passed	Key Differences from Federal False Claims Act Statute (31 U. S.C. § 3729 et seq.)
California	California False Claims Act	Cal. Gov't Code § 12650 et seq.	General	§ 12652	1987	<ul style="list-style-type: none"> •Requires present or former state employees to exhaust internal procedures before becoming relator. § 12656(d)(4). •Requires notice to political subdivision [PS] being defrauded and allows PS to also intervene. § 12656(c)(7)-(8). Grants a fixed 33% to intervening AG and/or PS. § 12656(g)(1)-(2). •Allows AG to intervene in action after initially declining, but recovery remains the same as it would if gov. had not intervened. § 12656 (f)(2)(B). •If AG or PS intervenes, qui tam award = 15-33%. § 12656 (g)(2). •If AG or PS doesn't intervene, qui tam award = 25-50%. § 12656 (g)(3). •No minimum % for state or former employees acting as relators. § 12656 (g)(4).

Delaware	Delaware False Claims and Reporting Act	Del. Code Ann. Tit. 6, § 1201 et seq.	General	§ 1204-1205	2000	<ul style="list-style-type: none"> •Allows action brought by “any affected person, entity, or organization.” § 1203(b). •Private party may only bring the action after the AG has determined that there is “substantial evidence that a violation... has occurred.” § 1203(b)(4)b. •If the gov. proceeds, it shall have “exclusive responsibility” [rather than “primary”]. Private party only has right to continue as a nominal party and to participate as witness. § 1204(a). •No § 3730(c)(5) provision.
District of Columbia	District of Columbia False Claims Act	DC ST §2-308.14	General	§ 2-308.15	May 8, 1998	<ul style="list-style-type: none"> •Complaint under seal for minimum of 180 days. § 2-308.15(b)(2). •No person shall bring an action based on info learned during course of internal investigation in prep. for voluntary disclosure. § 2-308.15(c)(3). •Requires DC employees to exhaust internal procedures. § 2-308.15(c)(4). •Bans actions brought by employees of Council of D.C., Corp. Counsel, Inspec. General, Auditor, CFO, or Metro Police if info discovered during term of employment. § 2-

						<p>308.15(c)(5).</p> <ul style="list-style-type: none"> •Where gov. proceeds, qui tam relator receives at least 10% but not more than 20%. Where gov. doesn't proceed, qui tam receives at least 25% but not more than 40%.
Florida	Florida False Claims Act	Fla. Stat. § 68.081 et seq.	General	Fla. Stat. § 68.083(2)	1994	<ul style="list-style-type: none"> •Department of Financial Services may elect to intervene within 60 days. § 68.083(3). •Department of Financial Services allowed to take over some actions on behalf of the state. § 68.083(4). •If the gov. does not proceed and the defendant prevails, the court "shall award" defendant reasonable attorney's fees and costs against person bringing action. § 68.086(3). [automatic –no showing of harassment necessary]. •Actions are barred if brought (a) by state's attorneys (b) by state employee or former state employee based on info obtained in course of employment (c) by person who obtained info from state or former employee NOT acting in scope of employment (d) against county or municipality. § 68.087

Georgia	State Medicaid False Claim Act	49-4-4168	Specific to Medicaid	Ga. Code Ch. 4 of title 49.	2007	Closely modeled after federal False Claims Act
Hawaii	Hawaii False Claims Act	Haw. Rev. Stat. §661-22 et seq.	General	§ 661-25	2001	<ul style="list-style-type: none"> •Requires present or former state employees to exhaust internal procedures. § 661-27(e)(2) •False claims include beneficiary of inadvertent submission of false claim who discovers & does not report. § 661-21(a)(8).
Illinois	Illinois Whistleblower Reward and Protection Act	740 Ill. Comp. Stat. Ann. § 175/1 et. Seq.	General	§ 175/4	1992	Closely modeled after federal False Claims Act
Indiana	Indiana False Claims and Whistleblower Protection Act	Ind. Code §5-11-5.5	General	§ 5-11-5.5-4	2005	<ul style="list-style-type: none"> •Closely modeled after federal False Claims Act. •Primary jurisdiction is given to the AG. •Concurrent jurisdiction is given to IG in case they want to intervene if the AG refuses.
Louisiana	Louisiana False Claims Act	La. Rev. Stat. Ann. 46:438 et seq.	Specific to Medicaid	46:439.1-439.4	1997	<ul style="list-style-type: none"> •More than one qui tam relator allowed, provided each one is an “original source.” § 46:439.1(B). •No qui tam action shall be instituted later than one year after complaint is received by AG. § 46:439.1(C). •Public employees banned from qui tam actions if had duty to investigate or report. § 46:439.1(F)(1) •Public employees or former employees who had access to records of

						<p>the state relative to activities of health care providers may not bring an action.</p> <p>§ 46:439.1(F)(2)</p> <ul style="list-style-type: none"> •Employer may fire qui tam plaintiff if court finds action frivolous, vexatious, or harassing. <p>§ 46:439.1(G).</p> <ul style="list-style-type: none"> •SOL for qui tam claims is one year from date knew or should have known. §46:439.2(2)(b). Complaint under seal for 90 days. <p>§46:439.2(A)(4)(a)</p> <ul style="list-style-type: none"> •Qui tam relator must object to settlement in order to get hearing. § 46:439.2(B)(5). •If AG proceeds, then relator receives 15%-25%. § 46:439.4(A) •If AG doesn't proceed, relator may receive no more than 30%; but no less than 25%. <p>§ 46:439.4 (B).</p> <ul style="list-style-type: none"> •Person who <u>participated</u> in violation may have award reduced. Person who <u>planned</u> violation barred from recovery. § 46:439.4(D). •Court determines award to multiple qui tam plaintiff. § 46:439.4(E). •State must be "made whole" before disbursements to qui tam plaintiff. § 46:439.4(G). •No recovery for frivolous, vexatious, or
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						harassing qui tam actions. § 46:440.3(D).
Massachusetts	Massachusetts False Claims Act	Mass Ann. Laws CH. 12, § 5(A)-(O).	General	§ 5C-5G	2000	<ul style="list-style-type: none"> •Complaint under seal for 120 days. § 5C(3). •No action allowed to be brought by state auditor, investigator, attorney, financial officer, contracting officer or anyone who learned of info from such persons. § 5G(4). •False claims include beneficiary of inadvertent submission of false claim who discovers & does not report. § 5B(9).
Michigan	MI Public Act 337 amending “The Medicaid False Claim Act”	MCL 400.601 et seq.	Specific to Medicaid	§ 10A(1)	2008	Closely modeled after the federal False Claims Act
Montana	Montana False Claims Act	2005 Mont. Code, CH. 465, HB 146	General	MCA § 17-8-406	2005	Closely modeled after the federal False Claims Act
Nevada	Nevada Submissions of False Claims to State or Local Government	Nev. Rev. Stat. § 357.010 et seq.	General	Nev. Rev. Stat. § 357.080	1999	<ul style="list-style-type: none"> •Complaint under seal for 60 days until AG elects whether to intervene. § 357.080(4). •Requires present or former state employees to exhaust internal procedures. § 357.090. •Qui tam plaintiff must request settlement hearing. § 357.120(3). •If AG intervenes at outset, the qui tam recovery is 15-33%. § 357.210(1). •If AG doesn’t intervene,

						<p>qui tam recovery is 25-50%. § 357.210(2).</p> <ul style="list-style-type: none"> •Public employees guaranteed no minimum reward. § 357.220. •False claim includes: (a) knowingly buys public property from someone unauthorized to sell public property & (b) beneficiary of inadvertent submission of false claim who discovers and does not report. § 357.040(f) & (h). •SOL is lesser of 3 years after AG discovered fraud or 6 years after fraud occurred. § 357.170(1).
New Hampshire	New Hampshire False Claims Act	New Hamp. RSA § 167:61	Specific to Medicaid	167:61-c	2005	Subject- Specific to Medicaid only.
New Jersey	New Jersey False Claims Act	N.J.S.A. § 2A:32C-1	General	N.J.S.A. § 2A:32C-2	2008	Closely modeled after the federal False Claims Act
New Mexico	New Mexico Medicaid False Claims Act	N.M. Stat. Ann. §27-14-1 et. al.	General	§ 27-14-7	2004	<ul style="list-style-type: none"> •Actions are brought by the New Mexico Human Resources Department. § 27-14-4(A). Before filing an FCA action, the Human Resources Department must notify the attorney general in writing and "shall not proceed with the action except with the written approval of the attorney general. § 27-14-7(F). •If the attorney general does not respond within twenty working days,

						consent is presumed. § 27-14-7(F). All dismissals and settlements must be approved by AG in writing. § 27-14-7(F).
New York	New York False Claims Act	New York Stat. § 39-13-187 et al.	General	§39-13-187	2007	Generally modeled on federal False Claims Act
Oklahoma	Oklahoma Medicaid False Claims Act	Section 5053, title 63	General, (despite its name)	Section 3(B) of § 5053	2007	Modeled after the federal False Claims Act
Rhode Island	The State False Claim Act	Chapter 9-1.1-1	General	Chapter.9-1.1	2008	Modeled after the federal False Claims Act
Tennessee	(1) False Claims Act; (2) Tennessee Medicaid False Claims Act	(1) 4-18-101 et seq.; (2) 71-5-181 et seq.	General	(1) 4-18-104; (2) 71-5-183	(1) 2001; (2) 1993	No jurisdiction over actions brought against a member of the general assembly, a member of the state judiciary, a member of the executive branch of the state, or a member of the governing body if action is based on information known to state when action was brought. § 4-18-104(d)(1).
Texas	Medicaid Fraud Prevention Act	Tex. Hum {??} Res. Code §36.001-36.117	Specific to Medicaid	§ 36.101	1995	<ul style="list-style-type: none"> •If AG declines to take over action, action is dismissed. Relator barred from continuing as a party. § 36.104. •AG may contract with private attorney to represent the state. §36.105. •If state proceeds, relator entitled to 10-25%. If court finds action based primarily on

						disclosures other than those by relator, the court may award not more than 7%. •Authorizes the state to act as qui tam relator in fed case. § 36.055.
Virginia	Virginia Fraud Against Taxpayers Act	Va. Code Ann. § 8.01-216.1	General	§ 8.01-216.5	2003 with amendments in 2007	<ul style="list-style-type: none"> •Commonwealth has 120 days to decide whether to proceed. § 8.01-216.5(B). •Persons that court finds planned and initiated violations as well as those who are convicted of criminal conduct are dismissed from action and receive no proceeds. § 8.01-216.7(C). •Requires present or former state employees to exhaust internal procedures. § 8.01-216.8. State inmates barred from action. § 8.01-216.8.
Wisconsin	Wisconsin False Claims for Medical Assistance Act	§ 20.931	Specific to Medicaid	§ 20.931(5)	2008	Closely modeled after federal False Claims Act

APPENDIX B	
SURVEY DATA OF STATE FALSE CLAIMS STATUTES WITH <i>QUI TAM</i> PROVISIONS*	
SECTION I	GENERAL QUESTIONS
Question I(a)	Do you have a false claims statute or a subject-specific statute?
California	Yes, generally closely modeled on the federal FCA.
Delaware	General.
D.C	General.
Florida	General.
Georgia	Specific to Medicaid.
Hawaii	General Statute.
Illinois	General false claim statute.
Indiana	General.
Louisiana	Subject specific- Medicaid assistance program integrity law. We have discussed with bigger <i>qui tam</i> lawyers in the state to push it towards a general <i>qui tam</i> statute- I'm in favor of a general statute.
Massachusetts	The Massachusetts FCA is a statute of general application.
Michigan	Specific to Medicaid.
Montana	General
Nebraska	Subject Specific-Medicaid.
Nevada	General.
New Hampshire	Subject specific. Statute only relates to false claims that are submitted to the Department of Health and Human Services, and covers primarily Medicaid provider claims.
New Jersey	General.
New Mexico	Both- a general and then one specific to Medicaid.
New York	General.
Oklahoma	Oklahoma Medicaid False claims act.
Rhode Island	General.
Tennessee	We have both. The Tennessee Medicaid False Claims Act was enacted in 1993 and is limited to claims submitted under the Medicaid system. In 2001 Tennessee enacted a general FCA that covers everything except Medicaid and also covers false claims submitted to local governments and political subdivisions.
Texas	Subject specific- Medicaid.
Virginia	General.
Wisconsin	Subject to medical assistance
Question I(b)	Does your statute have a <i>qui tam</i> provision? If so, how does it work?
California	Yes. The primary difference lies in the percentage awards. 15-33% if government intervenes. 25-50% if government does not.

Delaware	Yes. It's modeled after the federal FCA.
D.C.	Yes it does.
Florida	Yes, our statute closely follows the Federal FCA.
Georgia	Yes; it closely follows after the Federal FCA. If state intervenes process to recover, the relator is entitled to a specific share. If state doesn't, counsel gets more.
Hawaii	Yes. That is exactly what it is. The two are interchangeable.
Illinois	Yes.
Indiana	Yes, it's based on the federal <i>qui tam</i> . If a relator comes forward and says they've found fraud, we do a disclosure statement saying what the fraud is and the evidence of it. If we think it's a good case, we serve it in federal court and then serve it on all the states. The states and the federal court are given time to intervene. Indiana gives primary jurisdiction to the AG. Concurrent jurisdiction is given to the IG in case they want to intervene if the AG doesn't want to.
Louisiana	Yes.
Massachusetts	The <i>qui tam</i> provisions of the Massachusetts FCA are closely modeled on the federal act.
Michigan	Yes. Works similar to federal FCA.
Montana	Yes. It is modeled after the federal FCA.
Nebraska	No.
Nevada	Yes, modeled after the Federal FCA.
New Hampshire	Yes, modeled after the FCA.
New Jersey	Yes. We tried to model it after the federal statute for the FDRA.
New Mexico	Yes. (Medicaid.) It's modeled fairly close to the federal provision.
New York	Yes it does-It mirrors the Federal FCA.
Oklahoma	Yes, the whole thing is the whistle blower statute.
Rhode Island	Yes. It is modeled after the FCA.
Tennessee	Yes, both do. The Medicaid FCA is modeled closely after the federal statute, except that Tennessee increased the per-claim fines to \$5000 -\$25,000. The general FCA closely mirrors the California FCA.
Texas	Yes, the <i>qui tam</i> provision mirrors the federal act in that the case has to be filed under seal and served on the government. The statute allows for 180 days to review the case while it is under seal. At the conclusion, the government can ask for an extension on the seal, if necessary, to continue its investigation, or make a determination whether to pursue the case. In the event the state elects to decline intervention, a recent amendment to the Texas statute permits the relator to go forward with the suit on his own, albeit still on behalf of the state.
Virginia	Yes, modeled after the Federal FCA.
Wisconsin	Yes

Question I(c)	When was your statute passed?
California	Passed in 1987, effective in 1988.
Delaware	June 30, 2000.
D.C.	May 8, 1998.
Florida	July 1, 1994.
Georgia	May 2007.
Hawaii	2001.
Illinois	1992.
Indiana	July 2005.
Louisiana	1997.
Massachusetts	July 1, 2000.
Michigan	2008
Montana	2005
Nebraska	1996.
Nevada	1999.
New Hampshire	Applies to false claims submitted after January 1, 2005. Before 2005, we had an FCA statute, but there was not a <i>qui tam</i> provision.
New Jersey	Passed January 16, 2008; effective March 13, 2008.
New Mexico	2004.
New York	2007.
Oklahoma	Nov. 1, 2007.
Rhode Island	2 nd version passed this passed February 15 th , 2008
Tennessee	Medicaid FCA was passed in 1993, the general FCA became effective in 2001.
Texas	The initial statute was enacted in 1995. The statute was amended in 1997 to add the <i>qui tam</i> provision.
Wisconsin	October 27, 2007
Virginia	It became effective on January 1, 2003.
Question I(d)	Has it been amended?
California	It was amended to comply with the FDRA requiring up to \$10,000 in civil monetary penalties with a minimum of \$5,000.
Delaware	Yes.
D.C.	No.
Florida	Yes, as recent as July 2007. The previous Florida False Claims Act did not expressly extend liability to fraudulent claims. The revised Florida FCA extends liability to the state for knowingly presenting, or causing to be presented, false or fraudulent claims for payment or approval. The Florida FCA's statute of limitations has been amended to conform with statute of limitations contained in the Federal FCA. See Fla. Stat. § 68.098, 31 U.S.C. § 3731(b). The amended Florida Act increased the penalties under the Act to conform with the Federal FCA. The time a new filing is initially under seal was amended to conform with the Federal Act.

Georgia	No.
Hawaii	No.
Illinois	Yes, in 2004. The CID provision was amended and renamed a subpoena.
Indiana	Yes.
Louisiana	Yes, in 2007. The amendments did the following things: 1. added a knowingly provision (438.3) 2. increased the civil monetary penalty to no less than \$5,000 for each false claim (438.6) 3. added a provision which provides that when a qui tam plaintiff proceeds with an action, the court may allow the secretary or the Attorney General to intervene at a later date for good cause shown (439.2) 4. increased the recovery awarded a successful qui tam plaintiff to no less than 15% but no more than 25% of the total recovery.
Massachusetts	Yes.
Michigan	Yes, in 2008.
Montana	Not so far. There was an attempt in 2007, but it didn't pass.
Nebraska	Yes.
Nevada	Yes, the FCA amendments were made in 2007 by our legislature to conform to the Federal FCA and were made so that we could qualify for the Deficit Reduction Act enhancement.
New Hampshire	No.
New Jersey	No, it is brand new.
New Mexico	No.
New York	Not applicable.
Oklahoma	No.
Rhode Island	No.
Tennessee	The Medicaid FCA was amended. In 2004, the amendment provided that the Commissioner of the Department of Finance and Administration shall appear before and in writing to the TennCare oversight committee regarding fraud and abuse in the TennCare program. In 2005, the amendment provided that the Commissioners of Finance and Administration, Commerce and Insurance, and Health have the authority to promulgate any necessary rules and regulations needed so that their departments can effectuate their respective duties under the Act.
Texas	Yes.
Wisconsin	No.
Virginia	Yes. In July of 2007, several non-substantive amendments went into effect. One amendment permits the Commonwealth to recover costs and attorney's fees from a defendant.
Question I(e)	Why was it amended?
California	Medicaid- to comply with FDRA.

Delaware	IT was amended in 2007 to comply with the FDRA. It also added several liability provisions for failure to report fraud and provided for a limited amount of recoveries to be used in False Claims litigation.
D.C.	Not applicable.
Florida	Amended to comply with DRA.
Georgia	Not applicable.
Hawaii	Not applicable.
Illinois	To change the name of the CID to subpoena.
Indiana	There was no definition of the word “knowing.” It was added along with the definition of “knowingly.”
Louisiana	To come into compliance with DRA.
Massachusetts	The text original included establishment of a fund from <i>qui tam</i> claims to be administered by the AG’s office and the legislature repealed that provision. The result is that the entirety of recoveries under the act are returned to the General Fund, and the Attorney General does not retain funds for future FCA work.
Michigan	To comply with DRA.
Montana	Not applicable.
Nebraska	To create the Medicaid fraud control unit.
Nevada	To comply with the Deficit Reduction Act (DRA).
New Hampshire	Not applicable.
New Jersey	Not applicable.
New Mexico	Hasn’t been amended.
New York	Not applicable.
Oklahoma	Not applicable.
Rhode Island	Not applicable.
Tennessee	The fines were increased and we added a definition of the word “claim” that is slightly different from the federal definition. It initially had a criminal provision that was deleted.
Texas	The most recent amendments were made to comply with the Deficit Reduction Act.
Virginia	To facilitate litigation of cases and to ensure Virginia qualified for the 10% increase in recovery under the Deficit Reduction Act, which provides the Commonwealth with a 60-40% split.
Wisconsin	Not applicable.
Question I(f)	Are further amendments needed to your statute?
California	None currently anticipated, but prior amendments enacted have been submitted to the office of the IG for certification of compliance with the FDRA.
Delaware	Not at this time.
D.C.	Never amended.
Florida	None at this time.

Georgia	Information unavailable.
Hawaii	No.
Illinois	No.
Indiana	Not that I'm aware of. We're waiting for a finding that we're in compliance with the federal FCA.
Louisiana	No, other than making it a general statute.
Massachusetts	The MFCU is considering whether to recommend amendment of the Civil Investigative Demand provisions of our statute to permit the sharing of materials procured by CID with officials from other states responsible for investigations in the same area of inquiry.
Michigan	No.
Montana	Yes, if we want to be in compliance with the federal statute.
Nebraska	Yes, minor provisions.
Nevada	No.
New Hampshire	Unknown. State is currently waiting for OIG to complete its review of NH statute and rule whether statute qualifies as DRA compliant.
New Jersey	It is hard to say. We're working our way through some filings right now but it's too early to tell whether we'll need any amendments.
New Mexico	No, not regarding the Medicaid section.
New York	Hard to tell, relatively new.
Oklahoma	Well, it is brand new. All cases happened years ago now that we are included. Haven't had a case yet. Right now in legislation. Some amendments are pending but don't know if they will pass.
Rhode Island	Maybe if Federal FCA is amended.
Tennessee	No.
Texas	Our office is making that determination now in anticipation of the 2009 legislative session. We're always working to improve the statute and part of that includes anticipating the changes that will be needed in the future or changes that will be made to the federal statute.
Virginia	There will be further amendments as time passes, to be determined by case decisions and our experience in litigating cases under the Act. Also, if the federal FCA is amended, we would consider similar amendments to insure continued DRA compliance..
Wisconsin	Not at this point.
Question I(g)	Does your statute qualify for additional Medicaid dollars under the Federal Deficit Reduction Act?
California	Yes.
Delaware	Yes.
D.C.	Yes.
Florida	Our statute is currently being evaluated by the Department of Justice. We have amended our statute per the letter received from OIG of the U.S. Department of Health and Human services (HHS).

Georgia	Submitted it, haven't heard.
Hawaii	Yes.
Illinois	Yes.
Indiana	The only thing that didn't qualify us was the lack of definitions.
Louisiana	Right now we are being evaluated by the Inspector General, but we expect that we will become DRA compliant. The Inspector sent out a letter of things that needed to be changed in our statute and we complied.
Massachusetts	Yes.
Michigan	After 2008 amendments it should.
Montana	Not yet.
Nebraska	No.
Nevada	Yes.
New Hampshire	We received the OIG letter. Per OIG, the NH statute requires further amendments to qualify for additional Deficit Reduction Act funds.
New Jersey	Yes, we believe it does. We're currently waiting for official approval.
New Mexico	Yes.
New York	Yes.
Oklahoma	Yes, it is almost verbatim and passed to get that money.
Rhode Island	Awaiting decision from Department of Justice
Tennessee	Yes.
Texas	Yes.
Virginia	Yes.
Wisconsin	Still pending approval.
SECTION II	INVESTIGATION RESOURCES
Question II(a)	Do multiple agencies in your state enforce your statute (i.e., AG's office, Medicaid Fraud Unit, Anti-Trust Division, Special <i>Qui tam</i> Units)? If so, is one agency in charge? Which one? If there is coordination among enforcing agencies, is that a problem?
California	The AG has the authority over both Medicaid and general FCA claims on behalf of the state. The University of California has prosecutorial authority as well. There is coordination between Medicaid and non-Medicaid, as well as to some degree with UC. Political subdivisions are authorized to bring FCA cases. Coordination between the state and political subdivisions varies.
Delaware	All groups in the AG's office have the ability to enforce and AG's office is in charge. All the agencies are in the same office, so there is coordination. Not a problem.
D.C.	Yes; Medicaid is in charge but DC AG's Office, Office of Inspector District Control Unit cooperate. We confer on matters of mutual interest.

Florida	The Attorney General's Office has authority to enforce the Florida False Claims Act. Multiple sections within the Attorney General's Office enforce the Florida False Claims Act. In addition to the Office of the Attorney General the Department of Financial Services has authority to enforce the Florida False Claims Act in limited circumstances. The Department of Financial Services and the OAG are separate state agencies.
Georgia	Just the AG.
Hawaii	AG's office only, but other offices capable of handling these claims.
Illinois	Medicaid fraud is investigated by the state police, and we are in the prosecution arm.
Indiana	The AG enforces the statute. However, concurrent jurisdiction is given to the Inspector General in case they want to intervene if the AG doesn't want to.
Louisiana	All agencies have the ability to enforce the statute, but the AGs office and the Department of Health & Hospitals (DHH) are the main two. There is coordination among our agencies. Coordination can be a problem, but our statute requires a memo of understanding so we know how it is handled. AGs office has a daily communication with DHH and both agencies engage in cross-training with their employees, which is very good and effective.
Massachusetts	No. The attorney general is exclusively responsible for enforcement of and intervention in cases brought under the FCA. There are multiple divisions within the AG's office that would take responsibility for FCA cases brought in different subject matter categories. The FCA also provides that the AG may initiate an action under the statute.
Montana	Yes, the AG's office is in charge. There have been some problems with coordination in the past, but it has improved.
Nebraska	Only the AG's office enforces the FCA.
Nevada	Only the AG's office enforces our FCA.
New Hampshire	The AG's office enforces the statute. Medicaid Fraud Unit is in the AG's office.
New Jersey	Yes. The AG's office is the screening mechanism and the case distributor. There haven't been any problems with coordination so far. It's just a question of getting a track record.
New Mexico	No. Only the Department of Health and Human Services can enforce. They have to get a sign-on from the AG's office, but they do the prosecution themselves. There is coordination between human services and the AG's office and it's not a problem.
New York	
Oklahoma	AG's office only.
Rhode Island	AG's office only.
Tennessee	The AG's office has direct responsibility for litigation involving claims submitted to the state, but works closely with the TBI-MFCU and affected

	agencies. Under the general FCA statute, claims submitted to political subdivisions are actionable and the political subdivisions can enforce those actions.
Texas	The Texas Attorney General's office is the agency charged by statute with the enforcement of the Texas Medicaid Fraud Prevention Act.
Virginia	The Attorney General's Office only. The MFCU is within the Attorney General's Office.
Wisconsin	MFCU in the AG's office
Question II(b)	Has your legislature allocated funds for investigative resources to pursue violations of your state's False Claims Act? If so, what? When were those funds first allocated (i.e., when the statute was passed, or after?) If after, what led to the allocation?
California	Yes. The non-Medicaid section is completely funded by the False Claims Act Fund created by the state legislature. A percentage of the False Claims Act Fund is appropriated by the legislature on a line item basis to operate the false claims section. Medicaid- MFCU receives 75% from federal funding and 25% from the state's general fund with occasional supplemental funding the False Claims Act Fund as authorized by the legislature. Both branches needed more staff dedicated specifically to each function doing FCA cases which led to the allocation.
Delaware	We have investigators in MFCU who also work on FCA cases.
D.C.	Yes, they have funding.
Florida	My knowledge of this subject is limited to the MFCU. I am not aware of the legislature allocating specific funds to MFCU for the investigation and prosecution of violations of the Florida False Claims Act. Resources used to pursue violations of the False Claims Act are taken from MFCU's budget. The State does however allocate funds to MFCU's overall budget. MFCU is not the only unit within the Florida Attorney General's Office that enforces the FCA. The Attorney General's Office and Department of Financial Services are the only Florida state agencies with authority to enforce the Florida FCA.
Georgia	No additional funding for additional resources, just what they have in Medicaid fraud.
Hawaii	Not to his knowledge.
Illinois	There is a provision that when we get recovery one-sixth will be allocated to the AG's whistleblower fund and one-sixth to the state police whistleblower fund. The rest goes to the general fund.
Indiana	No.
Louisiana	Yes, its called the Joint Fraud and Abuse Detection Fund. Anything in addition to recovery for monies lost by the Medicaid program, for example, if we get multiple or treble damages, goes into the joint fund which both the AG and DHH have access to for investigation and enforcement purposes. It has been this way for quite some time.

Massachusetts	The Attorney General makes recommendations to the legislature for funding in general and specific areas of concern as part of the annual budget process. The legislature has earmarked supplemental funding for the MFCU on at least one occasion since the passage of the Massachusetts FCA.
Montana	Yes. Under MFCU, 75% of the funds come from the federal government. The funds were allocated in 1995, just before MFCU unit was formed in 1996.
Nebraska	Yes, the MFCU operating budget was first allocated in 2004 which was when MFCU was created.
Nevada	No, the handling of FCA matters is handled by the AG's office without specific resource allocation from our legislature for FCA matters.
New Hampshire	No. Additional funds have not been allocated for FCA actions. We have not added funded positions in response to the statute's passage in 2005. Our investigative resources are part of the AG office budget, and we receive 75% federal funding as a Medicaid Fraud Unit.
New Jersey	Not specifically, but the legislature has established a False Claims Prosecution Fund which provides that the AG will receive 10% of the recoveries.
New Mexico	No.
New York	Not specifically, but Med Control Office has received significant funds. Part will be for FCA.
Oklahoma	No; we have a med Fraud Control Unit, 75 percent funded, they say this is your job, do it.
Rhode Island	No.
Tennessee	There is not a line item in the budget for FCA enforcement, but that is part of the job of the AG's office. Both the Bureau of TennCare and the MFCU have committed significant resources to Medicaid FCA enforcements.
Texas	In 2007, the Texas legislature appropriate funds for additional resources to assist the Office of the Attorney General in investigating and litigating civil Medicaid fraud claims. The significant increase in the number of claims filed and the history of successful civil Medicaid fraud recoveries led to the appropriation.
Virginia	In 2005. The Commonwealth provided matching funds for additional MFCU staff: 3 lawyers, 1 investigator, 1 paralegal/staff assistant, and a part-time supervisor to create a MFCU <i>Qui Tam</i> Squad to handle Medicaid fraud claims brought under VFATA. The funding was requested to more effectively enforce Medicaid fraud claims brought under VFATA.
Wisconsin	Not specifically for this purpose.
Question II(c)	What state resources are now available to investigate your state's false claim statute? Amount? Type? Budget line-item? Percentage of recoveries? Any federal funds? If so, what?
California	Non-Medicaid- varies from year to year, but it's usually between \$8 to \$11 million. Medicaid – Out of approximately \$32 million allocated to the Bureau of Medical Fraud and Elder Abuse during the 2008-2008 fiscal year,

	approximately \$4 million was used to pursue violations of the FCA.
Delaware	Information unavailable.
D.C.	Unsure of all the different resources
Florida	I am not aware of a specific dollar figure being set aside to investigate violations of the Florida False Claims Act. However, the Attorney General's Office has created the Complex Civil Enforcement Bureau within the Medicaid Fraud Control Unit to investigate and litigate cases involving false claims to the Florida Medicaid program. The Complex Civil Enforcement Bureau contains investigators, attorneys and various support staff. State and Federal funds are used to fund the Medicaid Fraud Control Unit. I do not have any information concerning the resources available to units other than MFCU.
Georgia	4.4 million; state funds 1.1 million.
Hawaii	None specifically are dedicated to the act.
Illinois	75% of the resources come from the federal government and 25% comes from the state to litigate.
Indiana	The money we bring in helps fund our office. I don't know that any are specifically earmarked for <i>qui tams</i> .
Louisiana	Don't know the exact amount, it depends on the amount of recoveries we receive. Under Louisiana law, the legislature can sweep the fund for other Medicaid purposes, except that we recently doubled the size of our unit and we've been putting all the money (550,000- a 25% match for federal monies) that has to go to enforcement of our statute. We are funded with 75% Federal Funds and 25% state funds.
Massachusetts	With respect to the Medicaid program, the AGO evaluates and pursues potential false claims recoveries through the Medicaid Fraud Control Unit, which is jointly funded by the federal and state governments. The AGO does not retain a percentage of recoveries in these cases.
Montana	MFCU gets 80% of its total budget (\$566,000) from the federal government and 20% from the state. A small portion of the total budget is used to investigate MFCU False Claims.
Nebraska	850,000(total MFCU budget) We do have a budget-line item within the AG's office budget. We do not have a percentage of recoveries. We do get federal funds, 75% of MFCU budget.
Nevada	Just the various offices within the AG's office, anything within the AG's budget, or the AG's personnel are available to pursue FCA cases.
New Hampshire	The resources of the Medicaid Fraud Unit and the AG's office, also works cooperatively with the National Association of Medicaid Fraud Control Units on multi-state cases.
New Jersey	We have the resources of the MFCU and we also rely on our single state agencies, vendors, fiscal intermediaries, and the contractors that we use. Also, we get 10% of the recoveries for the False Claims Prosecution Fund. 75% of our funding (in MFCU) is from the federal government.

New Mexico	Resources are available through the Medicaid program to audit Medicaid providers. There are attorneys in the office to do that. There is a joint agreement with other offices to cooperate and investigate. No specific line item amount. There are funds allocated to the Medicaid division to do audits and similar things. Some false claims cases come from there.
New York	We have over 300 people in Medicaid Fraud Control Unit, 400 in Medicaid Inspector Office.
Oklahoma	We have investigators but not necessarily for <i>qui tam</i> cases only.
Rhode Island	Only existing funds in budget.
Tennessee	There is not a line item in the budget for FCA enforcement, but that is part of the job of the AG's office. Both the Bureau of TennCare and the MFCU have committed significant resources to Medicaid FCA enforcements.
Texas	The Texas Attorney General's Office has both a Medicaid Fraud Control Unit (MFCU), which receives federal funding and prosecutes criminal actions, and a Civil Medicaid Fraud Division, which operates exclusively with state funds.
Virginia	It depends on the agency the case is assigned to. If it's a large agency we have access to that agency's resources. For example, the Virginia Department of Transportation has an inspector general with their own investigators and if we have a case that involves them, then we can use their investigators, but they are not dedicated to <i>qui tam</i> cases. We do not have many non-Medicaid fraud recoveries and those cases are assigned to attorneys based upon the nature of the case. Relator's share is set by VFATA. Federal and state funds have been dedicated to the staffing of the MFCU Civil Investigative Squad. The overwhelming majority of our FATA cases are Medicaid fraud related. For those cases, we share recoveries with the federal government 60-40. Our 60% share is returned to the Virginia Department of Medical Assistant Services, the state agency which administers the Medicaid program.
Wisconsin	Funding comes from the AG's office. 75% federal funding and 25% state. This is the general source of the funding.
Question II(d)	Do you have dedicated investigators assigned to investigate filed <i>qui tam</i> cases? If so, how many?
California	Currently: Non-Medicaid- 18 attorneys, 13 auditors, paralegals, analysts, and administrative personnel. Currently: Medicaid- 34 staff devoted exclusively to dealing with FCA cases. We also have the ability to call upon the MFCU's 105 allocated peace officer positions to assist when necessary.
Delaware	Overlap with MFCU.
D.C.	Within this office we have 21 professional people, lawyers etc.
Florida	The Attorney General's Office thru its MFCU Complex Civil Enforcement Bureau ("CCEB") has 16 employees comprised of attorneys, investigators and other staff tasked with investigating and litigating <i>qui tam</i> cases alleging false claims to the

	Florida Medicaid program. CCEB is staffed with three investigators and two analysts. In addition to CCEB several MFCU regional offices dedicate resources to investigate qui tam filings. I am aware that resources are dedicated to investigate non-Medicaid qui tams however I do not know the specifics.
Georgia	No.
Hawaii	No. They are general pull. They do all kinds of stuff.
Illinois	We use the state police and the Medicaid fraud control unit. This is approximately 36-40 investigators.
Indiana	We work with investigators on occasion. They work in the fraud, and abuse and neglect section. None specified for <i>qui tam</i> cases.
Louisiana	Not designated for that purpose only. We are trying to start up a special unit, but that requires more money and people. They are all lumped in with the Medicaid Fraud Unit. The same people that investigate with the MFCU also handle civil matters as well. Someday I hope to have a special unit dedicated to investigation alone.
Massachusetts	No investigators are assigned exclusively to FCA cases.
Montana	Not in MFCU. Unsure about the general side.
Nebraska	No.
Nevada	No.
New Hampshire	No.
New Jersey	No, we have an investigative pool and cases are assigned based on availability.
New Mexico	No, we use Medicaid auditors to refer cases.
New York	Not specifically allocated. They are just investigators, we have civil units.
Oklahoma	Yes, we have them for fraud, whether <i>qui tam</i> or anything
Rhode Island	No.
Tennessee	When we need investigators, the Tennessee Bureau of Investigations makes them available on a regular basis. The AG's office does not have investigators dedicated solely to these cases.
Texas	We have both lawyers and investigators assigned to investigate Qui Tam actions.
Virginia	1 dedicated Medicaid Fraud Control Unit & 1 Civil Investigation Squad investigator. Civil Investigation Squad was formed in 2005. Also, the larger picture is that Virginia employs others who are "dedicated" to Medicaid fraud recovery, but that aren't particularly titled as such.
Wisconsin	General investigators assigned as needed.
Question II(e)	Do you have Civil Investigative Demands (CIDs)? If so, how are they administered? Do you use them? Do you want CIDs?
California	Not as such. They're called investigative subpoenas, and the AG has very broad authority to issue them. We use them.
Delaware	Yes. Not sure how they're administered; used by the consumer protection division.

D.C.	No.
Florida	Florida's MFCU has subpoena power pursuant to the state Medicaid fraud statutes.
Georgia	AG subpoena, subpoena fills the same function as CID's .
Hawaii	No.
Illinois	Yes but they are now called subpoenas. They are used but not a lot.
Indiana	We have the ability under the statute to do subpoenas.
Louisiana	Yes we would like to have CIDs.
Massachusetts	Yes, the statute provides for CID authority to be administered case by case within the AG's discretion.
Montana	No.
Nebraska	No, we do have subpoena power though
Nevada	No.
New Hampshire	No. Even without CID authority, necessary records can generally be obtained because Medicaid provider enrollment agreements require production of records upon demand by the State.
New Jersey	Yes, we draft and serve them. We also have the authority to bring contempt actions into superior court if they're not complied with. We haven't used them yet.
New Mexico	Yes.
New York	Don't have any CID but do have subpoena power.
Oklahoma	Yes, subpoena power; we do search warrants, no CID's.
Rhode Island	Yes.
Tennessee	Yes. We frequently use them in conjunction with FCA cases.
Texas	Yes, The Texas Medicaid Fraud Prevention Act provides CID authority. They are used as one of the investigative tools provided by the statute.
Virginia	Yes, the VFATA provides for authority for CID's and we have used that authority, but only on a limited basis to date.
Wisconsin	Subpoena power.
Question II(f)	Do you believe you have adequate funds allocated to investigate and prosecute state false claims actions?
California	No comment.
Delaware	No.
D.C.	Could always use more.
Florida	No comment.
Georgia	At the present time yes, but fore see that he will need more resources.
Hawaii	There are no funds directly allocated for the act.
Illinois	Yes.
Indiana	Yes.
Louisiana	Yes we do for now, but we need more funds. We function now, but could function better with more money. We are planning to expand, and of course, with that we'll need more money.

Massachusetts	The Medicaid Fraud Control Unit has had success in pursuing FCA recoveries, but could certainly make use of additional resources in this subject matter area.
Montana	Probably at this point, but if we're doing our job correctly we're going to need to grow.
Nebraska	Yes.
Nevada	Yes.
New Hampshire	Yes.
New Jersey	Right now I would say we should probably allocate more funds and some more positions. The caseload is getting heavy and each one requires more and more time. I think we should be utilizing this statute aggressively.
New Mexico	No.
New York	Yes.
Oklahoma	We don't just investigate FC; they also do fraud and we can always use more staff and more money.
Rhode Island	Unclear at this point.
Tennessee	Yes.
Texas	Yes.
Virginia	Currently, in the Medicaid Fraud Unit we have 114 open matters, but only 3 attorneys and one investigator dedicated to <i>qui tam</i> cases. Each case is reviewed and our resources are allocated to those cases for which we determine we have the best chance for recovery. We have enhanced our abilities by beginning joint investigations with other states and the federal government.
Wisconsin	Difficult to tell. Yes at this point.
Question II(g)	Are the settlement dollars collected under your State False Claims Act invested back into FCA enforcement or do the funds go into the general State Treasury fund?
California	Non-Medicaid: Most goes back into FCA enforcement and some go to the general fund. Medicaid: The base amount is basically restitution for the Medicaid program. First the relator is paid, then if there's enough money left over 100% lost by Medicaid goes back to Medicaid, and then a portion of the settlement goes into state FCA fund, and then any remaining funds go into the state treasury general fund.
Delaware	It depends. Penalties go to the federal fund. Restitution goes to Medicaid single state agency.
D.C.	General Treasury fund.
Florida	As for funds recovered by the MFCU, the Agency for Healthcare Administration is made whole first. Penalties and damage multipliers obtained pursuant to the FCA are paid to the Florida General Revenue Fund.
Georgia	Go to a specific destination-indigent care trust fund.
Hawaii	They go to the general treasure fund but can go into a special fund.

Illinois	One sixth goes to the AG's whistleblower fund, one sixth to the state police fund and the rest goes to the general fund.
Indiana	It's done on a case by case basis, depending on the money that's recovered. Some of it will depend on restitution and Medicaid. If it's over the restitution amount, the money can go to investigative costs.
Louisiana	Anything over and above direct Medicaid restitution goes into the Joint Fraud and Abuse Detection Fund.
Massachusetts	They go to the General State Treasury Fund.
Montana	It depends upon the source of the fraud. If the fraud is Medicaid, it goes back to the department of public health and human services (the Medicaid department.) The department that was defrauded is reimbursed first.
Nebraska	State treasury fund.
Nevada	Neither, if it is a Medicaid settlement it goes back to restitution to the program. I am not familiar with what happens in other areas.
New Hampshire	Returned to the general fund.
New Jersey	10% of false claims against the state government go into the False Claims Prosecutions fund. If it's Medicaid, 25% goes back into the Medicaid Fraud Control fund. The money deposited in there is utilized only for investigating and prosecuting Medicaid fraud.
New Mexico	The funds go back into the general state treasury, but they have to be used for the Medicaid program. They are appropriated by the state legislature for the Medicaid program.
New York	General State Treasury Fund.
Oklahoma	Have not had a case come up so unsure.
Rhode Island	There is a special FCA fund.
Tennessee	Settlement dollars under the Medicaid FCA go to the general fund. Under the general FCA, part of the recovery goes to the AG's office to fund future prosecutions.
Texas	Attorneys fees and costs incurred and recovered by the state are retained by the Texas Attorney General's Office up to a cap. The remaining state recovery is remitted to the Texas Health and Human Services Commission for appropriate allocation and distribution.
Virginia	Medicaid- the state share will go back to the Department of Medical Assistance Services and is re-invested into the Medicaid program. Other recoveries go back to the agencies that were affected. If program income is generated as a result of a case, those funds would be used to fund fraud investigation.
Wisconsin	No recoveries yet. May come back to program or the general fund.
Question II(h)	Do you have any opinions on where funds should go?
California	It's governed by the FCA (and any other applicable statutes) and we don't see any reason why it should be revised.
Delaware	They should go back into enforcement.
D.C.	No, no opinion.

Florida	No.
Georgia	They should go back to the Medicaid program.
Hawaii	Just depends on the case, many times the unit gets the money, sometimes it doesn't get the money.
Illinois	No.
Indiana	No.
Louisiana	They are being appropriately dealt with now. Medicaid program should be reimbursed for their losses and then the rest should go for enforcement purposes.
Massachusetts	Funding of specific agencies of state government, including the Attorney General's Office, is within the purview of the state legislature. As noted above, the Medicaid Fraud Control Unit would welcome additional resources in its pursuit of Medicaid false claims.
Montana	I think it would be good if it went to a combination of both Medicaid and general.
Nebraska	That is within the purview of the legislature.
Nevada	No.
New Hampshire	No.
New Jersey	I think they're going to the right place. One of the things we wanted to do was to have a revolving fund so that we would have at least a semi-steady source of funds. Sometimes it's difficult to get additional state dollars allocated.
New Mexico	The current system is appropriate. It's a good way to help fund the Medicaid program (by providing benefits to Medicaid recipients). Should stay going the way they are going.
Oklahoma	To fight Medicaid fraud you must fund the investigation; not talking millions of dollars, it depends on how much money there is, if there is money left over fine but allow us funds to work with.
Rhode Island	No.
Tennessee	No.
Texas	No.
Virginia	Not particularly. The statute is clear on where they are to go.
Wisconsin	No.
SECTION III	APPLICATION
Question III(a)	What types of cases are filed under your statute (health care, contract, environmental, other)?
California	Non-Medicaid: broad range involving state contractors, defective products, false escheat reports filed with a state controller, false statements related to mining royalties due to the state, environmental cleanup, the state beverage container program, etc.
	Medicaid: Medicaid/medical; manipulation of prices relied upon to determine the amount of Medicaid reimbursement, off-label marketing case, cost report case, billing/exaggerating of medical services, falsification of records, misrepresentations of the safety of the drugs, etc.

Delaware	Mostly Medicaid/pharmaceutical with some contract. Not sure about environmental.
D.C.	Medicaid-DC false Claims act covers all kinds; many departments within DC gov. deal with it and have the potential to use the DC FCA.
Florida	Many different types of qui tam cases are filed under the Florida False Claims Act. The largest percentage of qui tams comprise cases alleging fraud against the Medicaid program.
Georgia	Healthcare Medicaid Fraud.
Hawaii	Healthcare only so far.
Illinois	Medicaid because of limitations.
Indiana	Only health care cases involving Medicaid in our section. Another division in the AG's office handles the other areas.
Louisiana	Medicaid.
Massachusetts	The Medicaid Fraud Control Unit evaluates, monitors and pursues a significant volume of cases that contain Medicaid allegations of Medicaid Fraud. With respect to other subject matter areas, you will need to speak to others within the Attorney General's Office.
Montana	Mostly health care.
Nebraska	Medicaid false claims.
Nevada	Primarily healthcare- probably 95% of filed case are Medicaid cases. Other types of cases- no idea.
New Hampshire	Health care fraud upon the Medicaid Program, often involving pharmaceutical claims.
New Jersey	Right now it's been health care and contracts. Health care keeps us pretty busy.
New Mexico	Medicaid; not sure which are filed under the general provision.
New York	Don't know about the other ones, Medicaid and mostly pharmaceutical.
Oklahoma	Health care related.
Rhode Island	Any false claim
Tennessee	Under Medicaid, the cases are all healthcare. Under the general statute, they are widely varied.
Texas	Medicaid.
Virginia	Medicaid cases account for approximately 90%. The non-Medicaid cases are a variety of different topics, such as alleged fraud by contractors with state agencies.
Wisconsin	Healthcare related by statutory definition.
Question III(b)	How would you rate the quality of cases filed under your statute?
California	It varies widely. There are specialist <i>qui tam</i> firms who do good to excellent work and then there are inexperienced firms who can't figure out whether the funds are state or federal funds and have trouble sorting through Medicaid v. Medicare services.
Delaware	Recently improving. They were initially just filed as add-ons to federal cases

	and only filed in DE because we have a statute.
D.C.	Generally Good.
Florida	MFCU gets many new cases each year. Its hard to broadly classify the cases as a whole. Some filings are very good. Most of the good cases have a knowledgeable relator and a competent relator's counsel with resources. I do not know about the quality of the non-Medicaid filings.
Georgia	Haven't seen enough to rate.
Hawaii	They run the gambit from very good to very poor.
Illinois	Half are good cases.
Indiana	Fairly good; not a lot of frivolous claims.
Louisiana	They are great because all of the federal <i>qui tam</i> cases that we participate in are on a global basis and in those we rely on our provisions in our state statute. Most cases are drug manufacturer related. They are excellent cases and helped by the aid of the NAMFCU.
Massachusetts	The cases vary in terms of the quality and organization of the filings, but most appear on their face to be competently drafted. A thorough evaluation of any specific matter requires significant legal and investigative sources, and a number have led to significant recoveries.
Montana	There haven't been any cases filed under our FCA other than those that have been brought by the national relators. The national cases have been good cases.
Nebraska	Good.
Nevada	That is hard to judge. If someone has a claim that falls within the region of the False Claims Act we either intervene or don't. We don't particularly judge them one way or another. We have not seen any frivolous filings.
New Hampshire	Good.
New Jersey	Hard to say. One thing that's been happening is that as the states pass their FCA, many of the relators are going back to court and filing an amended complaint so they can file under a specific state's FCA rather than under the federal.
New Mexico	The majority of cases are tag-a-longs to larger <i>qui tam</i> actions- national/federal suit so pretty good.
New York	Mostly pretty good (50 filed so far) Most are by sophisticated lawyers in this area.
Oklahoma	Nothing has been filed here.
Rhode Island	None filed yet.
Tennessee	Varies widely.
Texas	The cases are evaluated individually and they are not subject to an overall quality rating.
Virginia	As to the non-Medicaid fraud cases: mediocre to poor. Medicaid fraud cases: they run the gambit. We have relators' counsel that work with many healthcare matters and they are very sophisticated and it is reflected in the information that they give to us. We also have cases that aren't as detailed. Sophisticated

	relators provide us with enough information to at least start an investigation. Medicaid fraud cases generally are of a better quality than other cases. Also, we have a lot of cases that come in that are not sound legally or factually. We screen them and decide either 1. to intervene 2. not to intervene or 3. move to dismiss. If the statute is being misused, we move to dismiss.
Wisconsin	They appear to be of good quality.
Question III(c)	How would you rate the quality of the lawyers bringing these cases?
California	Varies widely. Specialist firms are not always but usually good to excellent.
Delaware	Some are very experienced. Recently there have been knowledgeable and experienced relators' counsel who have handled many of the cases.
D.C.	On average very good.
Florida	Quality of lawyers varies. Generally those that specialize in this area of law are very experienced quality attorneys.
Georgia	They seem to be capable, knowledgeable lawyers.
Hawaii	Good to bad.
Illinois	Pretty good, but some are not great.
Indiana	Fairly good.
Louisiana	Terrific, some of the best in the country. They are trailblazers in this area.
Massachusetts	Generally very good.
Montana	We haven't had any contact with them.
Nebraska	We do not have a <i>qui tam</i> provision, so all our cases are brought by the MFCU attorneys.
Nevada	Same problem judging lawyers as you would judging the cases. For the most part they are helpful, well-versed in the facts of their case, and the FCA law and litigation.
New Hampshire	No comment.
New Jersey	Pretty good. There tends to be a small bar and they all seem to know what they're doing.
New Mexico	Since we deal with big lawsuits, they're usually done by big law firms. Pretty high quality.
New York	Very good.
Oklahoma	Nothing here.
Rhode Island	Can't answer, too new.
Tennessee	There are an experienced set of lawyers that are very good and knowledgeable, and other lawyers would benefit from partnering with more experienced lawyers.
Texas	Very knowledgeable and capable.
Virginia	Varies. Lawyers bringing Medicaid fraud cases are generally better.

Wisconsin	Appear to be competent.
Question III(d)	Do the <i>qui tam</i> plaintiffs' lawyers assist the state in prosecuting these cases?
California	Yes, in varying degrees.
Delaware	Sometimes.
D.C.	Yes, they share resources. Everyone tries to be cooperative. Share the work load, cases can last years, the hope is that the relators counsel can add in and give assistance.
Florida	Some relators' counsel assist with the prosecution of these cases. The level of cooperation depends on the case. A knowledgeable relator's counsel with a helpful relator can be an important asset for the State.
Georgia	Yes.
Hawaii	Yes.
Illinois	Yes.
Indiana	Yes. They're fairly involved, somewhat case by case.
Louisiana	It varies, some are better than others. Some <i>qui tam</i> lawyers do not even know how to file a <i>qui tam</i> action properly, but some are splendid and work with us every step of the way.
Massachusetts	In general, yes, and some are very helpful. They are available to assist in whatever way they can.
Montana	Not applicable.
Nebraska	No, because we do not have a <i>qui tam</i> statute.
Nevada	A lot of the time intervention doesn't occur until after a settlement. We work with them, but there are different levels of cooperation. A lot of the time the government takes over the investigation. It is a case-by-case basis. In cases where we have intervened before settlement, yes, we are litigation partners with the plaintiffs' lawyers.
New Hampshire	Yes, but to varying degrees.
New Jersey	We have not used anyone yet for assistance since we're relatively new.
New Mexico	In most of the big cases, we give the right to go forward without the NM office. We're usually out of it because it's either a small amount of money or we can't determine whether there is a valid claim for our state.
New York	Haven't gotten that far yet, all are still under seal.
Oklahoma	Most people just send us boxes of stuff telling us what is going on, no real dealings.
Rhode Island	Too new, have not had experience yet.
Tennessee	Varies. In some cases, relators' counsel are terrific and do significant, helpful work. Other relators' counsel will send cases and walk away.
Texas	Yes.

Virginia	Yes.
Wisconsin	Yes.
Question III(e)	Were these cases being pursued before your state's False Claims Act was passed? If so, by what agency?
California	Some fraud cases were being pursued by the AG's office.
Delaware	No idea.
D.C.	Not sure.
Florida	Not sure.
Georgia	No idea.
Hawaii	No.
Illinois	Yes, under vendor fraud statutes that provides for the same penalties.
Indiana	There were some global cases in connection with National MFCU.
Louisiana	No.
Massachusetts	The Massachusetts MFCU has always pursued Medicaid false claims, and prior to passage of the Massachusetts FCA had some involvement with the U.S. government in federal FCA cases. The passage of the Massachusetts FCA has led to the filing of a large volume of health care fraud cases, particularly in the area of prescription drugs, and has given the MFCU the opportunity to become involved in many more national cases.
Montana	Unsure.
Nebraska	No.
Nevada	Yes, typically we were just partnered with the DOJ and it was under a federal FCA act filing. We worked together in an effort to achieve a global settlement.
New Hampshire	Generally yes, through multi-state cases worked cooperatively with other states under the guidance of the National Association of Medicaid Fraud Control Units.
New Jersey	Yes, some were pursued by federal agencies.
New Mexico	Some were being pursued by private law firms mostly under the federal FCA. Some Medicaid FCAs were filed through our department and prosecuted by USAs on our behalf.
New York	Yes, by Medicaid Fraud control unit and Inspector General.
Oklahoma	Not sure.
Rhode Island	The U.S. Attorney's Office.
Tennessee	Not sure.
Texas	The passage of the Texas Medicaid Fraud Protection Act in 1995 initiated the prosecution of civil fraud claims for monetary recovery on behalf of the Texas Medicaid program.
Virginia	Not in the same manner. The MFCU did pursue and obtain recoveries for fraud in the Medicaid program and the OAG has pursued remedies for other types of fraud (e.g. consumer fraud) .
Wisconsin	Yes. They were done by the MFCU of the AG's office.
Question III(f)	How well does your office interface and coordinate with the federal

	government?
California	<p>Non-Medicaid: Some of the USAOs are much more cooperative and helpful than others. The USAO for the Northern District of San Francisco is especially helpful.</p> <p>Medicaid: We try as much as possible to coordinate efforts with the federal government. In the last three years, there has been a growing level of cooperation between states and the federal government. We strive to develop relationships with other government attorneys in similar situations pursuing the same types of cases.</p>
Delaware	Sometimes very well.
D.C.	Very well, ongoing basis.
Florida	We have a good working relationship with the DOJ and with the US Attorneys offices in various cases.
Georgia	Well effectively he hopes. They pay 75% of their budget.
Hawaii	It just depends; case by case basis.
Illinois	Well. The offices meet regularly, share resources and investigators, and trade referrals.
Indiana	Pretty well.
Louisiana	Wonderful-it's a great relationship. Particularly in this area state and federal attorneys working these cases are in constant communication. Sometimes we do not get as much of the settlement as we think we ought to receive. That is not intended to be a criticism, settlements are just a complex deal.
Massachusetts	The Massachusetts MFCU, working in coordination with the National Association of Medicaid Fraud Control Units, regularly cooperates on Medicaid fraud cases with the Department of Justice and U.S. Attorney's Offices around the country, and has participated in numerous federal-state investigations and settlements.
Montana	We interface very well with the USA's office.
Nebraska	Very well.
Nevada	We work with them on any <i>qui tam</i> that is filed in the federal system that has to do with Nevada.
New Hampshire	Very well.
New Jersey	Fairly well. Overall the federal offices and states are working better today than even a decade ago.
New Mexico	Very well. One of the difficulties with the <i>Qui tam</i> regime ad Federal government is their statute is exclusive. Territoriality is the issue. The Fed Gove withholds information. One of the benefits of having a State FCA is that you get the knowledge to address program issues.
Oklahoma	Haven't really dealt with Fed government on any of these cases.
Rhode Island	Very well.
Tennessee	Tennessee has extensive experience in working and coordinating with AUSAs across the country.

Texas	Very well.
Virginia	Our MFCU has a great relationship with our federal counterparts, but we do not need to interface with them for the other cases. It depends on the district.
Wisconsin	Very well.
Question III(g)	Can you give me a description of the working relationship, if any, with relators' counsel in intervened cases? What involvement do relators' counsel have in discovery, trial prep, trial, etc? Is it a team approach, with a division of labor? Exclusion? Something in between?
California	There's a whole range of assistance. It depends on the relator, the experience of the counsel, etc. Sometimes problems arise with keeping cases under seal with the government wanting to extend the seal, and the relator wanting the seal lifted and the action litigated sooner. Some relators' counsel participate at all levels, but it's really dependent on the situation and firm.
Delaware	We've only intervened in a couple. Good working relationship with relator in those cases. They're helpful in coordinating responses to discovery requests and the like, but we haven't tried one where we've intervened.
D.C.	We try and share resources and knowledge.
Florida	We sometimes approach the litigation as a team and coordinate our efforts. The relator's counsel may have resources that are otherwise not available to the state. The Office of Attorney General is always concerned with what is in the best interest of the State and the Attorney General's Office controls the litigation and makes the final determination as to the litigation strategy. Relators counsel can be an important source of legal knowledge and experience.
Georgia	Not enough experience to say.
Hawaii	Locally, very good.
Illinois	Good relationship.
Indiana	We haven't had a lot of direct contact with them because we deal a lot with national <i>qui tam</i> cases. Good contact so far. There is limited division of labor. There is no exclusion as far as sharing information about the case under seal.
Louisiana	It varies. The good ones will give you everything you need. If they don't cooperate with you it affects the amount of recovery they receive. They can get as much as 25% of the settlement if they do their part or as little as 15%. We operate under a team approach with relators' counsel.
Massachusetts	Overall, our relationship with relators' counsel has been very positive, and a number of relators have provided significant help in cases in addition to their initial filings. On occasion the government must limit its sharing of information with relators' counsel (e.g. when there is a criminal investigation of the conduct alleged in a relators' complaint). We have seen very few cases actually go to trial, but a number of attorneys for relators have indicated their willingness to participate in work such as research, drafting of pleadings and

	trial preparation.
Montana	No relationship.
Nebraska	Not applicable because we do not have a <i>qui tam</i> statute.
Nevada	A lot of time intervention doesn't occur until after a settlement. We work with them, but there are different levels of cooperation. A lot of time the government takes over the investigation, but again, its on a case-by-case basis. Cases where we have intervened before settlement, yes we are litigation partners. As for the involvement that relators' counsel have in discovery, trial prep, etc- it depends on when we intervene in the suit.
New Hampshire	Insufficient direct experience to comment.
New Jersey	No involvement yet.
New Mexico	Some of the big cases we just turn over and we're not involved. We've done some investigation for the relators in couple of cases. We try to cooperate when asked. The relators' counsel do 99% of the trial preparation. If our office does anything, it's usually investigation. When the suit is brought, we usually investigate first to see if it's valid and then turn it over to them and allow them to prosecute it.
New York	Mr. Raspanti and a half dozen other people have been very good. Not all are perfect but overall it has been a good experience.
Oklahoma	None so far.
Rhode Island	None so far.
Tennessee	Varies widely.
Texas	Under the Texas Medicaid Fraud Prevention Act, if the state elects to intervene in the case filed by the Relator, the state has the primary responsibility for prosecuting the case. The state and the Relator proceed as co-plaintiffs. Historically, there has been an excellent working relationship with relator's counsel throughout the litigation.
Virginia	It varies.
Wisconsin	Unknown.
Question III(h)	Are <i>qui tam</i> relators' counsel helpful? If so, how? If not, what problems do they present?
California	It varies. Problems are most likely to occur with cases being kept under seal.
Delaware	They're helpful when we're all working together. Problems can arise because the relators' counsel has an obligation to their client and don't work for the government.
D.C.	They are definitely helpful.

Florida	Relators' counsel can be very helpful and an asset to the state on a case. Relators' counsel may be asked to assist with the State's investigation in a number of ways and sometimes relators' counsel assist with litigation issues. Problems with relators' counsel arise when they overvalue their cases and/or are unfamiliar with the Florida False Claims Act.
Georgia	Again, not enough experience to say , but they probably are very helpful.
Hawaii	Locally, yes very. We don't have that much interaction though.
Illinois	Some are helpful and some are not.
Indiana	Yes, on average. They usually help whenever one of the AGs needs additional information or something. It's a case by case situation. No conflicts as of yet.
Louisiana	It varies. Other than not know how to file a <i>qui tam</i> action, the only problems they present are a lack of experience or they get too greedy in the settlement recovery.
Massachusetts	Please see response IIIg. immediately above.
Montana	Not applicable.
Nebraska	Not applicable because we do not have a <i>qui tam</i> statute.
Nevada	Yes. They do not present any problems that come to mind.
New Hampshire	Insufficient experience to comment.
New Jersey	Not applicable.
New Mexico	Yes. They seem to be interested in getting our assistance. They don't present any problems.
New York	Yes.
Oklahoma	No involvement
Rhode Island	Can't say, haven't dealt with them yet.
Tennessee	Varies.
Texas	Yes, the majority of them are very experienced and very helpful.
Virginia	It varies. As far as problems, occasionally, relators' counsel add a claim under VFATA without considering whether our state has losses based upon the alleged fraud scheme.
Wisconsin	Yes.
Question III(i)	Does your state <i>qui tam</i> statute apply retroactively to fraud that occurred prior to the passage of the statute?
California	Yes.
Delaware	No.
D.C.	Never been litigated so he can't answer the question.
Florida	I do not think it was applied retroactively.
Georgia	It doesn't say it is retroactive, but the issue has not been litigated.
Hawaii	Yes.
Illinois	Not sure, because this issue has never come up.
Indiana	No. Indiana's statute is silent as to whether it is retroactive, but Indiana, along with other states has read it to mean it does not apply retroactively.

Louisiana	Yes, it's a ten year prescriptive period. When the statute was enacted, it applied to fraud 10 years prior.
Massachusetts	Yes.
Montana	We believe so. The statute of limitations is 3 years after discovery but no more than 10 years after the wrongful act. MCA §17-8-404.
Nebraska	Not applicable because we do not have a <i>qui tam</i> statute.
Nevada	There is a provision there that allows it to apply retroactively. We are settling a few retroactive cases, and thus, they are not going to litigation.
New Hampshire	No, statute applies only to claims filed as of January 1, 2005.
New Jersey	No.
New Mexico	I don't think so.
New York	Yes, we think so, see what the court says later.
Oklahoma	There is no judicial determination; reading on the face, it has no retroactive application.
Rhode Island	No.
Tennessee	No.
Texas	The Texas Medicaid Fraud Prevention Act applies to fraud that occurred after its enactment in 1995.
Virginia	No.
Wisconsin	
Question III(j)	Can you explain the process your office follows once it receives a false claims complaint?
California	We assign staff to investigate and determine the merits. (There is a statutory requirement that the AG do such an investigation.) Beyond that it depends on the case.
Delaware	It depends on whether it's a complaint specific to Delaware or whether it's a complaint that has been filed at a federal level as well. If only Delaware, it would be full investigated. If nationally, the first step is to determine what's gone on prior to the filing in Delaware. Our statute provides that the AG investigate any allegations, but that the decision to intervene doesn't necessarily belong to the AG. The AG investigates and then makes a determination of whether there's substantial evidence of a violation and then provides that information to the entity, organization, or person affected.
D.C.	My office is part of national process, national organization of all the Medicaid control units throughout the country. General approach, whenever the major <i>Qui tam</i> cases are filed, we inspect to determine if the complain has merit. If so, a lawsuit is filed.
Florida	First an intake review and initial assessment is done on all new cases. An attorney and investigator are then assigned to review the case in greater detail. Cases are reviewed to determine if there is a Medicaid nexus to the described conduct and we check the Medicaid utilization to determine the possible

	Medicaid dollars at issue. Depending on the assessment of the case a relator interview may be conducted. The investigative group meets periodically to discuss the investigation and assess the case.
Hawaii	Complaint is reviewed, determination is made whether to break seal and investigate. If it doesn't pan out, there is always a settlement. None have gone to trial
Illinois	He will contact the state police, and they assign an investigator. Then we interview the relator. Based on that information, we decide whether to seek records through subpoena.
Indiana	We get the case, review it, do intake on it, take steps to make sure the seal is protected, start investigating it and work with the national MFCU if they're on it along with any federal agencies to get any necessary data.
Louisiana	Most of the cases arise in federal court. Claims that arise in federal court, we will get a call from federal attorneys; we'll work together with those prosecutors and help with the investigation. Usually, we have a lot to bring to the table in terms of the investigation. Everything is done under seal and we can ask for an extension of the seal. If the Feds elect to proceed, we work with them in federal court. If they decide not to proceed, we must make a decision whether to bring it in state court.
Massachusetts	We do an initial evaluation, often in partnership with other qui tam states, to analyze the claims and to evaluate whether the case has the prospect for substantial recovery. In multi-state cases, we support and often participate in cooperative efforts among the states to complete in-depth investigations of matters in order to determine whether to intervene in, settle or decline the case.
Montana	We make sure that it is a false claims complaint and then give it to an attorney who assesses whether the case meets statute guidelines, including whether plaintiff is a state resident.
Nebraska	No.
Nevada	The statute requires that we look at the claim, and we must make an intervention decision within 60 days. Sometimes we seek an extension of the seal to complete the investigation.
New Hampshire	The statute sets forth the procedural process. Cases are filed under seal. No further comment on investigative process.
New Jersey	The complaint is served on the AG. We have a section in our civil division that's responsible for the initial screening and then it's passed onto the appropriate agency whether Medicaid or general. We coordinate to assign cases to specific attorneys from there.
New Mexico	We take a look at the complaint, assign it to an attorney, contact Medicaid division and ask them to investigate the money spent by the Medicaid program. Then we decide whether we're going to take on the case or allow the private attorney to go forward.

New York	Filed initially with AG in NY; complaint is provided by AG within 2 weeks, investigative group meets monthly to determine who is going to do what; statute must consult with Medicaid AG and AG to intervene or settle.
Oklahoma	Yes, it is first spelling out in statute, OK has had an ordinary <i>qui tam</i> statute since statehood.
Tennessee	We do a case summary that is fairly detailed both on the allegations and who the players are. We also coordinate with the National Association of Medicaid Fraud Control Units (NAMFCU) working group for <i>qui tam</i> and really work with other states as we move forward. We do a relators' interview. We may request information formally and informally from a defendant. Its really an exercise in coordinating with lots of other people. Many of our cases are national in scope.
Texas	The case is served on the AG and forwarded to the Civil Medicaid Fraud Division. The allegations are investigated and the claims are assessed by a team within the division that is dedicated to the evaluation of newly filed cases. That team utilizes the investigative tools provided by the Texas Medicaid Fraud Prevention Act, including civil investigative demands and examinations under oath.
Virginia	All cases go to the <i>qui tam</i> coordinator who reviews them, logs them in, and sends them to the <i>qui tam</i> Civil Investigative Squad. If the Chief of that Squad determines a case involves Medicaid fraud, the case will be retained for assignment to one of the Squad attorneys. If not, the case is returned to the <i>qui tam</i> coordinator who is responsible for having it assigned to an attorney who represents the agency most affected by the claim.
Wisconsin	It does not.
SECTION IV	EFFECTIVENESS
Question IV(a)	What is the total amount of funds recovered by your state as a result of your statute? (\$ breakdown by type of cases and amount per year; settled, tried, or alternative remedy cases which occurred as a result of the <i>qui tam</i> statute)
California	Non-Medicaid- Currently, excluding the money paid to relators, it is approximately \$353 million since 1999. Medicaid- Currently, excluding the money paid to relators, it is approximately \$254 million since 1999.
Delaware	Information unavailable.
D.C.	Don't have this kind of information.
Florida	Not exactly sure, but the following data from Medicaid fraud settlements shows an increasing amount of settlement recovery: 2002- \$2.5 million to FL- Bayer ; 2004- \$8.2 million to FL- Parke Davis; 2005- Serono- \$54.2 million to FL.
Georgia	Unsure.
Hawaii	Don't know.

Illinois	We have collected around 7 million a year.
Indiana	So far we have not collected any as a direct result of our state false claims statute.
Louisiana	In the last 4 years, we've recovered over \$41.3 million.
Massachusetts	The Massachusetts MFCU has recovered significant funds as a result of Medicaid FCA cases brought under the state and federal statutes (in the tens of millions of dollars).
Montana	Information unavailable.
Nebraska	Approximately 10 million since 2004. Varies widely by case, but approximately 3 million per year.
Nevada	We do not track the amount of funds recovered. However, most cases are settled.
New Hampshire	Statistics not available at time of telephone interview.
New Jersey	Nothing yet. (New statute.)
New Mexico	
New York	Can't point anything out, nine months old.
Oklahoma	Under OK Medicaid 56-10001SX it is a crime in OK to submit false claims to the state; try to make system whole again, they have been collecting Medicaid fraud for years. If you throw in global around 5 million annually.
Rhode Island	None.
Tennessee	Roughly \$20 million since 1993.
Texas	To date, approximately \$120 billion.
Virginia	MFCU has data on total Medicaid fraud recoveries, but we do not track civil recoveries by source (<i>qui tam</i> , ACE cases, etc.). VFATA was effective January 1, 2003. Non-Medicaid fraud cases have resulted in recoveries of approximately \$255,000.
Wisconsin	Zero so far.
Question IV(b)	How many cases are filed under your statute? (year by year since passage, if available)
California	We don't track that.
Delaware	Information unavailable.
D.C.	Don't know.
Florida	Definitely increased through the late 1990's. Over the last 4 or 5 years it has dramatically increased.
Georgia	In state court 3; 12-15 national cases.
Hawaii	Most ever has been once a year.
Illinois	About 15 per year, most are settled or intervened.
Indiana	There have been approximately 68 cases where Indiana is named as a party.
Louisiana	There are about 150 ongoing right now in the country that we are participating

	in (global cases).
Massachusetts	Approximately 200-250 Medicaid fraud cases have been filed under the Massachusetts FCA since its passage in 2000, with the majority filed between 2003 and the present.
Montana	None.
Nebraska	1 to 2 per year-most cases are settled prior to filing.
Nevada	Don't track it.
New Hampshire	Decline to comment.
New Jersey	I'm aware of 4 since the effective date.
New Mexico	
New York	50 cases filed.
Oklahoma	None since the passage.
Rhode Island	Since 2008 RI has been included in suits
Tennessee	124 cases are open now. Approximately 185 cases have been filed since 1993
Texas	Information unavailable.
Virginia	Medicaid: 114 active cases. Estimate that we've received between approximately 200 cases over the last 5 years.
Wisconsin	4 cases.
Question IV(c)	What were your recoveries for false claims prior to the passage of the statute (i.e., compared to after the statute)?
California	Information unavailable.
Delaware	Information unavailable.
D.C.	Don't know.
Florida	Uncertain.
Georgia	In 2008-19 million 2007-8 million 2006-4 million 2005-9.3 million 2003-4 million
Hawaii	Don't know.
Illinois	Not sure.
Indiana	Information unavailable.
Louisiana	Zero.
Massachusetts	There has been a significant increase in Medicaid false claims recoveries in the years since the passage of the MFCA.
Montana	Information unavailable.
Nebraska	Unknown.
Nevada	We do not maintain a record of that.
New Hampshire	Statistics not available at time of telephone interview.
New Jersey	About \$2.5 million last year and \$26 million the year before that.
New Mexico	

New York	Last year on fraud abuse in civil cases we recovered 150 million, expect this year to be up around 250 million.
Oklahoma	Unknown.
Rhode Island	Information unavailable.
Tennessee	Don't know.
Texas	Information unavailable.
Virginia	Don't have statistical breakdown comparing these sources of recovery.
Wisconsin	Zero.
Question IV(d)	Do you anticipate greater recoveries? If so, why? If not, why not?
California	The existence of the FCA and whistleblower incentive has been tremendously successful. No projection as to a rise in recoveries.
Delaware	No. For Medicaid cases, whether Delaware has a <i>qui tam</i> statute or not does not seem to affect how much money Delaware recovers, because most of the money comes from the global settlement of the cases. Delaware was one of the first states to have a statute, but if there's a national case, all states get money whether they have a statute or not. If it's not a Medicaid case, it would make a difference.
D.C.	Yes.
Florida	I expect an increase in the recovery of Medicaid funds pursuant to False Claims Act due to the creation of the Complex Civil Enforcement Bureau within MFCU.
Georgia	In the long run, yes.
Hawaii	No idea.
Illinois	Yes, as more cases are filed and attorneys become more aware of the statute.
Indiana	Yes, we have a very good statute. It will continue to gain success.
Louisiana	Yes.
Massachusetts	Yes. The coordination on national cases is improving, and the MFCU in our office and around the country are getting more attorneys, investigators and auditors involved in the evaluation and investigation of these matters.
Montana	Yes, since we get to keep more funds using the state FCA than we would with the federal FCA.
Nebraska	Yes, more and better referrals and investigations.
Nevada	Almost all <i>qui tam</i> cases that are filed turn into national or global cases. Its hard to quantify what its effect has been because we would intervene in the global case anyways.
New Hampshire	Yes.
New Jersey	Yes, because I think that as the act gets publicized and the relators' bar and plaintiffs' counsel learn about it they'll put it to greater use and we'll start to see more local cases. I think that the state will be handling more of those because unless it's a significant amount the federal government doesn't get involved.

New Mexico	Not sure. There's more of a deterrent effect.
New York	Yes.
Oklahoma	Yes.
Tennessee	Yes.
Texas	Yes. Our office has expanded dramatically and thus many more cases will be litigated going forward.
Virginia	Yes – greater resources, growing expertise and past history.
Wisconsin	Yes, in the future.
Question IV(e)	Do you believe your state's false claims statute has had a deterrent effect on those who would defraud your state? Why? Any data? Any anecdotes?
California	Yes. We're aware of large firms that now regularly educate clients about the FCA.
Delaware	Not sure.
D.C.	Some debate about it. It's an open question, difficult to know.
Florida	Yes, we believe its having a deterrent effect.
Georgia	Not yet.
Hawaii	Hard to say, would be pure speculation.
Illinois	Yes, healthcare providers and drug companies are becoming more aware of the act.
Indiana	That's the goal. It's still very new.
Louisiana	It has had some minor effect. If someone wants to steal they are going to steal regardless of the law.
Massachusetts	Unknown.
Montana	Probably not, since usually if they are defrauding the state they don't think they're going to get caught. It doesn't seem to be slowing down.
Nebraska	Yes, recoveries and convictions are well publicized. We have a relatively small provider community. Word of settlements and convictions tend to spread rapidly.
Nevada	We have no way of measuring that, I don't know.
New Hampshire	Yes.
New Jersey	Not yet. We're hopeful that it will.
Oklahoma	No too new to determine.
Rhode Island	Not sure.
New Mexico	Yes, because it's specific to Medicaid. Before we had the act, we had an audit bureau that would go through providers' claims, etc. and do over-billing situations. Since passage of the act, we've seen a big reduction in mistakes in billing. Because of the FCA, there was an incentive for them to be more careful.
New York	Hopefully.

Tennessee	Not as much as we'd like.
Texas	We certainly hope so.
Virginia	Medicaid: We haven't really had enough history to assess that. With global recoveries, usually part of the agreement requires the corporation to enter into a corporate compliance agreement and train its employees on fraud. Can't say that any deterrence has been based solely on the Virginia FATA, but as the number of states with <i>qui tam</i> statutes increase the more deterrence there will be.
Wisconsin	Don't know.
Question IV(f)	In your opinion, is your false claims statute effective? If so, how? If not, why not? What would improve its effectiveness?
California	Yes, it is effective.
Delaware	Yes, there are cases which wouldn't ordinarily recover but they do because of the FCA.
D.C.	Well the use of DC FCA only arises in these Big <i>Qui tam</i> cases against drug manufacturers. The fed FCA rule supreme and controls so there is little impact of the DC FCA.
Florida	Yes.
Georgia	Yes.
Hawaii	Yes, it helps.
Illinois	It is to an extent. We had the vendor statute before so the affect has not been that drastic. The FCA gets a lot of publicity which makes it more effective than the vendor statute.
Indiana	We're hopeful that it will be effective. It's too early to tell because it's so new.
Louisiana	Yes. Also, right after Hurricane Katrina, the legislature adopted a false claims statute dealing with contractors that were dealing with recovery efforts- it specifically deals with disaster contracts, but I'm not sure how well it works.
Massachusetts	Yes, based upon the record of successful investigations and settlement. Additional resources would increase our effectiveness in pursuing Medicaid fraud claims.
Montana	Yes.
Nebraska	Yes, good enforcement mechanisms are provided; longer criminal and civil fraud statutes of limitations would be helpful.
Nevada	Sure it is effective.
New Hampshire	Yes, the NH statute is as effective as the Federal FCA.
New Jersey	Too soon to tell. We're optimistic it will be.
New Mexico	Yes, in benefiting the Medicaid program because of deterrent effects. If we had more resources we could do more in-depth investigation.
New York	Yes.
Oklahoma	Not sure yet, I believe it will be.
Rhode Island	Too new to tell.

Tennessee	Yes. Nothing really is needed to improve it- it's a good statute.
Texas	Yes.
Virginia	Yes it is effective, largely tracking the federal law.
Wisconsin	Don't know.
Question IV(g)	What legislative or other changes would you like to see in your statute? Why?
California	Nothing anticipated.
Delaware	Whatever has been proposed by Dan Miller.
D.C.	None.
Florida	Not at this point.
Georgia	Not sure.
Hawaii	Works great the way it is.
Illinois	It is good the way it is.
Indiana	I can't really think of any. It's already DRA compliant and the form is very good.
Louisiana	No, the statute is excellent.
Massachusetts	The MFCU is considering whether to recommend amendment of the Civil Investigative Demand provisions of our statute to permit the sharing of materials procured by CID with officials from other states responsible for investigations in the same area of inquiry.
Montana	I would like to see it in compliance with the federal statute.
Nebraska	Lengthen statute of limitations for criminal and civil fraud cases because due to the length of time to detect and investigate cases can exceed the applicable statute of limitations.
Nevada	After the amendments were made to comply with the DRA, everything is fine.
New Hampshire	Unknown at this time. The State is waiting for OIG's ruling on whether the NH statute is DRA compliant and therefore does not need to be amended.
New Jersey	No changes for right now. I think we need to let it establish itself. In my experience, a new statute typically takes about a decade to settle in.
New Mexico	Can't think of any.
New York	Too early to tell.
Oklahoma	Too new to know.
Rhode Island	Too early to tell.
Tennessee	None at this time.
Texas	Our office is presently reviewing this matter in anticipation of the next legislative session.
Virginia	Can't think of any changes right now. We want to keep it close to the federal statute. Several advantages to keeping it close to the federal statute- 1. Precedents- Usable precedents we can be guided by in interpreting our statute 2. We don't want to lose certification from the DRA compliance.

Wisconsin	None.
SECTION V	IMPACT OF FEDERAL FALSE CLAIMS ACT IN AND ON YOUR STATE
Question V(a)	In your state, how active is prosecution by federal agencies and the United States Attorney's office under the federal FCA?
California	Very active.
Delaware	They're active.
D.C.	They are involved.
Florida	The various US Attorneys Offices and the Department of Justice are very active in prosecuting violations of the Federal False Claims Act.
Georgia	Not sure. They are not around us that often. I think the Northern and Southern districts are active.
Hawaii	Difficult to say, don't know anything to compare them too.
Illinois	We have three districts and they are all active.
Indiana	Active- they aggressively seek out and prosecute fraud.
Louisiana	Very good, very active relationship.
Massachusetts	Very active. The U.S. Attorney's Office for the District of Massachusetts is one of the most active in the country in pursuing federal FCA case leaders, especially in the health care arena.
Montana	Not aware of any federal FCA actions that have been brought.
Nebraska	Unknown.
Nevada	It is infrequent.
New Hampshire	Very active.
New Jersey	They're fairly active. I think our local USA's office is really trying to establish themselves. They're looking for and want cases and have devoted additional resources to them.
New Mexico	Fairly active.
New York	Buffalo AG's Office is very active, Manhattan is less active, Brooklyn is somewhat active.
Oklahoma	You would have to ask them.
Rhode Island	Fairly active.
Tennessee	Very active. We have a number of cases with them.
Texas	Quite active.
Virginia	With regard to the Western District (VA has 2 districts- Eastern & Western) the U.S. Attorney's Office- has actively investigated <i>qui tam</i> cases. Some activity in <i>qui tam</i> cases in the Eastern District- mainly in the Alexandria Division.
Wisconsin	Not certain. Not privy to that information.
Question V(b)	Do you have a constructive and productive relationship with your local United States Attorney's office?

California	Generally yes. Some more than others.
Delaware	Yes.
D.C.	Yes.
Florida	Yes.
Georgia	Yes.
Hawaii	Hot and cold. It just depends.
Illinois	Yes.
Indiana	Yes, we work well with them.
Louisiana	Very much so. We have 3 divisions in Louisiana and a great relationship with all 3.
Massachusetts	Yes.
Montana	Yes, it's getting a lot better.
Nebraska	Yes, both.
Nevada	I deal more with the main DOJ office in Washington D.C. than with the local office.
New Hampshire	Yes.
New Jersey	Yes. It ebbs and flows but overall it's good.
New Mexico	Absolutely.
New York	Yes, we love the Buffalo guys, Brooklyn we like, other two aren't as active.
Oklahoma	We have a relationship.
Rhode Island	Yes.
Tennessee	Yes, we are in a really good position. We work with all the attorneys in all 3 districts in Tennessee.
Texas	Yes.
Virginia	Yes, always been a very cooperative relationship.
Wisconsin	Yes.
Question V(c)	Which federal offices are the most active prosecutors of the federal FCA in your state (a particular U.S. Attorney's office, Main Justice, etc.)?
California	No way to measure it.
Delaware	Only one office.
D.C.	Main Justice and US Attorney's Office.
Florida	Based upon my experience the US Attorneys Office in South Florida and the Department of Justice are very active in False Claims litigation in Florida.
Georgia	Northern and Southern Districts are the more active.
Hawaii	Main Justice, local US Attorney's Office.
Illinois	The Northern District of Illinois is the primary agency that prosecutes and they are pretty active.
Indiana	Both US Attorney's offices are active.
Louisiana	All 3 US Attorney offices are equally active.

Massachusetts	The US Attorney's office for the District of Massachusetts is very active in FCA cases. The Department of Justice in Washington is involved in larger cases, and the Office of Inspector General of the U.S. Department of Health and Human Services is active in negotiation Corporate Integrity Agreements in cases that reach resolution.
Montana	The Billings office is the most active.
Nebraska	US Attorney.
Nevada	None that I know of.
New Hampshire	The local US Attorney's Office.
New Jersey	We only have one district.
New Mexico	We only have one US Attorney's Office. There is some involvement from Main Justice.
New York	Yes, Philadelphia AG's office.
Oklahoma	No sure, there is only 3 office and of those three districts the one's they have worked with on any fraud is the Northern District in Tulsa.
Rhode Island	Not sure.
Tennessee	For in state cases, we do more joint cases with the Eastern District of Tennessee.
Texas	The U.S. Attorney's offices are quite active.
Virginia	The US Attorney's office is very active.
Wisconsin	Don't know.
Question V(d)	Is there coordination on federal FCA cases between your office and federal law enforcement officials? If so, to what extent? How does such coordination come about? Could it be improved? How?
California	Non-Medicaid: Sporadic and not as effective as it ought to be. It could be improved by more regular coordination. Medicaid: Yes, there is cooperation with federal agencies, which has been increasing over the last few years. NMFCU often assists with such coordination.
Delaware	Yes. There's been a change of focus in the USA's office away from health care, but it's still a good working relationship. We used to have frequent meetings, but now there's not a health care fraud task force coordination. We would like to see the focus back on health care.
D.C.	Yes, FBI health and human office of inspector General.
Florida	Yes, there is coordination between our office and various federal law enforcement officials on multi-state cases. The level of coordination depends on the case. Often we are able to work closely with the DOJ and the Assistant US Attorney assigned to the case.
Georgia	Some, but not really.
Hawaii	Most of the time yes.

Illinois	There is pretty good coordination between our office and the U.S. Attorney's office.
Indiana	Yes, we work jointly on cases and coordinate on a regular basis. If one of the agencies is made aware of a potential fraud case, we share information and work together. It's a good system.
Louisiana	Yes, in particular with the Office of the Inspector General and the Federal Department of Health & Human Services. I do not think it could get any better.
Massachusetts	There is significant and growing cooperation between the states and the federal government on Medicaid false claims cases. Massachusetts has been involved in a number of cooperative investigations and settlements under the auspices of NAMFCU.
Montana	We always try, but there hasn't been much coordination in the last few years. We need someone who will push for more healthcare cases. I think that the cases could be worked really well with that kind of collaborative effort.
Nebraska	Yes, through cooperation and information sharing. Generally through the health care task force.
Nevada	We work closely with the main DOJ office and the US Attorney's offices. So there is some coordination with whomever is investigating the suit whether that be the Feds, FBI, etc. Also, the National Association of Medicaid Fraud Control Units has a system where they assign negotiating teams to work global cases and we work closely with them.
New Hampshire	Yes.
New Jersey	Yes, we meet quarterly. It could always be improved. Sometimes there are mixups. In addition to meeting, we email or talk daily on at least one case.
New Mexico	Yes, we cooperate with the FBI. No improvements are necessary.
New York	Don't know, we do very well.
Oklahoma	No cases together.
Rhode Island	Yes, we have frequent meetings.
Tennessee	Yes. Anytime we have a case with the federal government we hold a number of meetings. The FBI, postal inspector, OIG, assistant US attorneys all meet together and start coordination from the very beginning.
Texas	Texas participates in a number of multi-state cases and works alongside federal officials in those cases.
Virginia	Yes, when we have a <i>qui tam</i> investigation, the correspondence and coordination usually goes through the US Attorney's offices.
Wisconsin	Yes.
Question	The following is extra data provided by the States
Virginia	We were involved in one case of interest to all of the states - <i>Bogart v. King</i> - this is a <i>qui tam</i> case that got to the 3 rd Circuit Court of Appeals- the issue was whether a relator can recover attorney's fees from states who benefit from a <i>qui tam</i> recoveries regardless of the entitlement for such recovery under state law. The 3 rd Circuit ruled that the relator could not recover attorney's fees against

	the states under a common fund theory and were limited to recoveries permitted by state law.
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APPENDIX C	
SURVEY DATA OF STATES WITHOUT FALSE CLAIMS ACTS	
Unless otherwise specified in the answer, the data corresponds to the MFCU units.	
SECTION I	GENERAL QUESTIONS
Question I(a)	It is our understanding that your state does not yet have a state false claims statute. Is that correct?
Alabama	Yes.
Alaska	Yes.
Arizona	Yes.
Arkansas	Yes.
Colorado	Yes, that is correct that we have no whistleblower FCA statute. There are 2 statutes that permit recovery of overpayments.
Connecticut	Yes.
Idaho	Yes.
Iowa	Yes.
Kansas	Yes.
Kentucky	Yes.
Maine	Title 22, Section 15 is somewhat specifically limited to false claims submitted to the Department of Health & Human Services. We have no <i>qui tam</i> statutes.
Maryland	Yes.
Minnesota	Yes.
Mississippi	Yes.
Missouri	We do have a false claims statute, but no <i>qui tam</i> provision.
North Carolina	FCA (Medicaid only) statute on state level but no <i>qui tam</i> provision.
North Dakota	[Declined to participate in study.]
Ohio	Yes.
Oregon	We do have a statute which makes it a criminal offense to submit false claims to a healthcare program. We do not have a civil statute with <i>qui tam</i> provisions.
Pennsylvania	[Declined to participate in study.]
South Carolina	South Carolina does not have a false claims act with a whistle blower/ <i>qui tam</i> provision. I assume you plan to define "false claims act" to be one which must substantially track the federal statute, include a Whistle blower provision, etc. If that assumption is correct, then yes.
South Dakota	Yes.
Utah	Yes. Utah has a fairly robust False Claims Act relating to civil and criminal penalties for filing false claims for Medicaid, but we do not have a <i>qui tam</i> provision.
Vermont	Yes.
Washington	Yes.
West Virginia	West Virginia has criminal and civil false claims statutes but we do not have a

	<i>qui tam</i> provision.
Wyoming	Yes.
Question I(b)	Does your state participate in national or multi-state Medicaid fraud settlements? If so, what civil claims are released in the settlement? Criminal claims?
Alabama	Criminal claims; we are funded by the DHHS, which was created by Congress in the Mid 1970's. We participate in global cases. Civil claims varies from settlement to settlement, depends on the terms. Most of the global cases have genesis in federal <i>qui tam</i> action.
Alaska	Yes, in both.
Arizona	Yes. We generally deal with off-label marketing and pharmaceutical claims. 90% of the work in our division is focused on criminal acts.
Arkansas	Yes, Civil, but has never worked on one. Mostly Fraud counts or substandard care.
Colorado	Yes, in both civil and criminal claims.
Connecticut	Yes. Typically, those settlements will release claims associated with Medicaid fraud. Most don't release criminal claims. To the extent that there is a criminal issue, that would be addressed by the Division of Criminal Justice.
Idaho	Yes.
Iowa	Yes, for the national settlements the MFCU settlement team establishes settlement language and we follow that. We sign off on both civil and criminal settlements; it just depends on the nature of the particular national settlement. Settlement signing is done with the knowledge and approval of the office of the attorney general.
Kansas	Yes. Only those claims relevant to the conduct we're alleging would be released. We use the language in the settlement agreement and the release claims only relate to the covered conduct.
Kentucky	Yes, in both. Criminal action is usually preserved in the settlement.
Maine	Yes. What claims are released in a settlement depends upon the nature of the underlying conduct. Both civil and criminal claims may be released.
Maryland	Yes. Usually covered conduct is released. Typically it has to do with either the drug company not reporting the best price or giving discounts to lower the actual price of the drug. Sometimes there is a criminal component and sometimes not.
Minnesota	Yes. Civil-general civil Medicaid claims—256-b-121-false claims for Medicaid.
Mississippi	Yes, both in civil and criminal global settlements. Most settlements are pre-filing.
Missouri	Yes, civil claims are released against the Medicaid program. We occasionally have criminal declinations.
North Carolina	Yes. We release state civil FCA claims. Depending on the facts and settlement, we may or may not agree to not refer the covered conduct for criminal

	prosecution.
North Dakota	[Declined to participate in study.]
Ohio	It depends on the covered conduct of the settlement. Typically we have standard release language that we put into the claims. We don't usually release managed care, or antitrust claims with national settlements. Criminal claims are also dependent; settlement specific.
Oregon	Yes, the extent of releases granted will depend on the specifics of each individual case.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes, in both civil and criminal.
South Dakota	Yes. General release for any claims relating to the covered conduct SDCL Chapter 22-45. Same for criminal claims.
Utah	Yes, most of them; we use the language in the settlement agreement which generally specifies the covered conduct contemplated by the release.
Vermont	Yes, we participate in both the civil and criminal settlements.
Washington	Yes, they go through the MFCU. I think we just do civil.
West Virginia	Yes, it depends on the case.
Wyoming	Yes, generally in the civil. Sometimes the criminal part is waived as part of the settlement. If it's waived then we can go ahead and do our own criminal prosecution if need be.
Question I(c)	In settling program fraud cases, do you have a rule of thumb for recovery amounts, (i.e., the federal government's approach of 2 times single damages, discounted for litigation risk)?
Alabama	2 times single damages; we try and mirror the federal statute. Feds take their share first, which is usually 20-25 percent.
Alaska	No, I've done a recovery as low as \$140.
Arizona	No.
Arkansas	If they go to trial we try and get them to pay a fine in the amount of money that was taken, they 3x restitution amount. If they settle early on the amount may be less.
Colorado	No, for the global we take we can get, but we review them to make sure they're proper. For Colorado settlements, the MFCU does not have the power to enter into negotiations for civil recoveries, meaning that a civil recovery is referred back to the Single State Agency to discuss civil recovery amounts if the entity against whom a false claim case is filled does not return the funds the MFCU demands.
Connecticut	Each matter is addressed on its own individual merits.
Idaho	Don't think so, We just got a MFCU.
Iowa	We accept whatever is negotiated by the NAMFCU team. Without a state FCA, we have nothing to pursue in terms of additional settlements.
Kansas	A lot of how we deal with it is by the settlement agreements that are submitted by the national association decided by the people handling the multi-state claim.

Kentucky	Two things are considered---whether the conduct is egregious enough for double damages to be sought and what damages model should be used to calculate damages. We use a damage model to calculate a real loss. We usually go for the whole amount of damages but can go for difference in price.
Maine	No.
Maryland	No.
Minnesota	Try and get triple recovery.
Mississippi	We usually just take what the global settlement releases to us- based on the amount of Medicaid fraud dollars spent in MS.
Missouri	It's done on a case by case basis, but the federal rule is a good barometer of where we are on the issues.
North Carolina	We mirror the federal approach.
North Dakota	[Declined to participate in study.]
Ohio	A double damage is our rule of thumb.
Oregon	No, depends upon the case and evidence. There are a number of different facts considered to determine what is adequate for each individual case.
Pennsylvania	[Declined to participate in study.]
South Carolina	No, on state specific matter we are much more flexible. We may settle case on other false claims where multipliers may not be appropriate.
South Dakota	We have a statute that allows for collection of treble damages, but it usually depends on each individual case. If the proof is strong in a particular case, we're not as willing to take less. If the proof is weaker, we'll take less. I'm not aware of any hard guidelines.
Utah	Double damages.
Vermont	No, at the minimum we have to make the Medicaid program whole, so that's our bottom line.
Washington	It's decided at a Federal Level. We take the global settlement amount decided at the federal level. In 2006 our MFCU was part of 5 NAMFCU global settlement amounts.
West Virginia	No rule of thumb. We always go for more than single damages.
Wyoming	Tend to follow what is being done nationally. If the global team says this will be the better way to go, we participate that way.
Question I(d)	Has a <i>qui tam</i> provision been introduced this session in your state legislature or is one being circulated around the legislature? If so, does the AG support the bill? The Department of Health or Medicaid Agency?
Alabama	Yes, but there seems to be very little interest in adopting one.
Alaska	Not that I am aware of.
Arizona	No, not that I'm aware of.

Arkansas	Yes, but was withdrawn; In 09 it is likely to pass.
Colorado	Not during this term. Members of state government, including the Governor, have been discussing health care reform which I assumed would include the possibility of <i>qui tam</i> legislation.
Connecticut	I believe so. The AG supports it; pretty sure that the state Medicaid agency does too.
Idaho	No.
Iowa	Not at this time. Iowa is one of the 6 states where the MFCU is not part of the AG's office. The issue has been raised with both the AG and the SSA, but I'm unsure on the AG's stance.
Kansas	No <i>qui tam</i> legislation, but there was an attempt to get a civil false claims act passed. We've had a difficult time trying to get it passed. This year we decided to try just the FCA first and then, based on its success, try to introduce a <i>qui tam</i> provision. The AG absolutely supports this bill, and I believe the Medicaid department does also.
Kentucky	Yes. The Attorney General supports it and the Medicaid Agency has supported proposed legislation.
Maine	A bill was introduced last year but did not make it out of committee. The Office expressed concern over certain provisions and requested to be involved with or consulted regarding the drafting of any FCA
Maryland	Yes, a Medicaid specific FCA that meets the FDRA. The legislature is currently in session and both the AG and MFCU support it.
Minnesota	Yes.
Mississippi	I think so- but don't know the status. Don't know if the AG supports it.
Missouri	Not this session. Both support it.
North Carolina	Yes, both support it.
North Dakota	[Declined to participate in study.]
Ohio	Yes, we currently have House Bill 355 and Senate Bill 39. Yes, the agencies and the ODJS support.
Oregon	Not in the last session ('07). The legislature is not presently in session.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes, it has been introduced this session.
South Dakota	No. It's never been introduced that I'm aware of.
Utah	No. However, recently we have been contacted by counsel for the legislative branch inquiring into whether we should amend our statute to include a <i>qui tam</i> provision.
Vermont	No. Someone in fall wrote to Governor asking the government to adopt a FCA statute so that the state could recover more Medicaid dollars. There has definitely been some interest, both in the unit and among the citizens.
Washington	No.
West Virginia	No.

Wyoming	No, this session it's a budget session.
Question I(e)	Has <i>qui tam</i> legislation been introduced in prior legislative sessions? Do you know why it was defeated?
Alabama	No
Alaska	Not that I'm aware of.
Arizona	No.
Arkansas	Yes.
Colorado	Yes. Last session it died in committee, but I don't know why.
Connecticut	<i>Qui tam</i> legislation has been introduced previously. It has not ultimately been enacted.
Idaho	Not to her knowledge.
Iowa	Not that I am aware of.
Kansas	Yes. It was defeated primarily because of huge lobbying efforts on behalf of medical and hospital associations. The lobbying was a response to feeling threatened by the ability of employees to raise concerns.
Kentucky	Yes, for three straight years. One can only speculate about causes of defeat.
Maryland	Yes. It was defeated because of lobbying by the hospital.
Maine	Last session and it died in committee.
Minnesota	Yes, big lobby by pharmaceutical companies and republicans as a whole.
Mississippi	Not aware that is has been.
Missouri	There was one two sessions ago. It passed in the Senate and failed in the House.
North Carolina	It was introduced last summer and passed committee but never came up for a final vote. The legislature became involved in budget issues and didn't get to it.
North Dakota	[Declined to participate in study.]
Ohio	Yes.
Oregon	In 2007 there was no legislation introduced with <i>qui tam</i> provisions.
Pennsylvania	[Declined to participate in study.]
South Carolina	Information unavailable.
South Dakota	No.
Utah	No.
Vermont	No.
Washington	No.
West Virginia	No.
Wyoming	Last session it was considered and probably will be considered next year.

Question I(f)	Do you believe your state needs a false claims statute? If so, why? If not, why?
Alabama	I don't know, there two lines of thinking-some think it is beneficial, others say the existing civil statutes would be just as effective.
Alaska	Yes, it would help reduce the loss to Medicaid.
Arizona	A FCA is an excellent idea. The biggest issue for us in adopting an FCA would be getting adequate staff to enforce it. We're currently monitoring what other states are doing. If it continues to be popular, we'll discuss it.
Arkansas	Yes, as long as it is done correctly.
Colorado	Honestly neutral on the question because we are unsure how it will affect operations in Colorado.
Connecticut	A false claims act should be beneficial.
Idaho	Not sure yet.
Iowa	Yes, it would use give use the ability to pursue cases on Iowa providers in the same manner as the national cases.
Kansas	Yes. We would have the ability to go to common law and ask for punitive damages, but we think it would beneficial to have the statute as another tool that's available. It seems easier to get the point across if you have something that's more pointed that will be specific to what you're looking at. FCA would take out some of the guesswork of a jury because it's so specific.
Kentucky	Yes and no. There are some positives and some negatives to this legislation. Since Kentucky doesn't recognize relators' status, we don't have to give them the fee like the states with a FCA.
Maine	No. The State has one.
Maryland	Yes. If we discover fraud and don't think we can make a criminal case, there is no way to sue in the AG's office. It just goes back to the Medicaid division for them to try to do an administrative remedy.
Minnesota	Yes, it would be nice to get the additional 10% and it would promote disclosure of people who have information.
Mississippi	No comment.
Missouri	It's a good idea to have one. A lot of fraud cases, especially health care, will only be discovered by an individual with inside information coming forward.
North Carolina	Yes, it would encourage whistleblowers to report fraud.
North Dakota	[Declined to participate in study.]
Ohio	Yes. What we have found in participating in national settlements is because we fight white collar fraud the only way to find out about it is through insider knowledge and without the federal FCA, much of this conduct would never have come to light. There are many issues regarding whether state funds can be recovered under the federal FCA. We want to be involved in the investigation early so we can investigate ourselves.

Oregon	We do have a criminal statute covering false claims submitted to health care programs. Regarding a civil statute, there is a difference between asking the question regarding a potential civil FCA statute, and one with <i>qui tam</i> provisions. The Oregon Department of Justice has concerns about the cost/benefit of enacting <i>qui tam</i> provisions in a FCA for our state.
Pennsylvania	[Declined to participate in study.]
South Carolina	Can't comment on this.
South Dakota	In my opinion, it seems nice to have in theory, but the practical problem is that when you get a state FCA, the number of claims that start to come in gets high and the office doesn't have enough resources to deal with them. If we got one in South Dakota, in order to be effective, we would need more staff and the legislature might be unwilling to fund additional resources. I believe the federal FCA is sufficient for our state.
Utah	Yes, it is a good idea. But we likewise would be concerned if the legislature does not allocate sufficient resources to handle the claims.
Vermont	There are pros and cons to the FCA statutes. We have a criminal statute which prohibits false claims and a civil monetary penalty that we can recover up to treble damages. We don't necessarily need an FCA because we participate in the multi-state recoveries, and there is a cost/benefit analysis one must do in order to determine whether it fiscally makes sense to have a state false claims statute with a <i>qui tam</i> provision.
Washington	No. Our modeling indicates that our recovery dollars would diminish.
West Virginia	It doesn't make fiscal sense for West Virginia to have a <i>qui tam</i> provision.
Wyoming	No.
Question I(g)	Are you aware that your state does not qualify for additional Medicaid dollars under the Federal Deficit Reduction Act without a statute? Is that of any importance to you?
Alabama	Yes, not enough of an incentive to adopt.
Alaska	Yes, we are aware that we do not qualify.
Arizona	Yes, we want as much money as possible for enforcement.
Arkansas	Yes, that is why there is more urgency to get it passed in the next session.
Colorado	Yes, we are aware that we do not qualify.
Connecticut	Yes. If there were such an act, we could get the additional funding. That's one of the reasons it's desirable.
Idaho	Yes, to some of us it is important
Iowa	Yes, it is important to the MFCU because we would like to see those additional recoveries.
Kansas	Yes. Yes and no to it being of any importance. From the standpoint of being able to give 10% to Medicaid, it's important, but the impact on the state and the amount of resources that will have to be dedicated to investigating and

	overseeing every <i>qui tam</i> case will probably result in more than expenses than the 10% gained by Medicaid. Also, I'm not sure it's worth the headache involved to get. Also, that extra 10% may fluctuate and we don't have a lot of industry that relates to Medicaid specifically.
Kentucky	Yes. KY continues to monitor the benefits and detriments of state <i>qui tam</i> laws.
Maine	Yes, aware that we do not qualify for additional dollars.
Maryland	Yes. If we did an analysis, we think the cost of implementing a state FCA wouldn't be that much more beneficial because the recoveries wouldn't be that much.
Minnesota	Yes.
Mississippi	Yes, it is important and it's a relevant factor when the decision is made about a <i>qui tam</i> legislation.
Missouri	Yes.
North Carolina	Yes and yes.
North Dakota	[Declined to participate in study.]
Ohio	Yes.
Oregon	Yes.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes, we are familiar with the DRA and that we do not qualify.
South Dakota	Yes, but there are still practical implication problems. It is likely in our state that the benefits wouldn't be greater than the cost of implementation.
Utah	Yes. While the MFCU may consider it important, our legislative branch leans in favor of business/providers and it may not be so important to them.
Vermont	Yes, we are aware that we do not qualify under the DRA. We have to do a cost-benefit analysis. When we participate in the national cases the relator's share does not come out of our share. We don't receive the 10% bump, but we do not pay as much in the relator's share.
Washington	We did some modeling and we would lose money if we complied with the DRA because we would have to pay the relators fees which we currently do not do. Paying the relators fees would cause us to lose money as well as hiring the additional staff to work the cases.
West Virginia	We're aware of it, but it doesn't make fiscal sense for West Virginia to have a <i>qui tam</i> provision.
Wyoming	Yes, we are aware.
SECTION II	INVESTIGATION RESOURCES
Question II(a)	Do multiple agencies in your state enforce other program fraud remedies (i.e., AG's Office, MFCU, Anti-Trust Division)? If so, is one agency in charge? Which one? Is there coordination among enforcing agencies?

Alabama	Right now just the Medicaid fraud division.
Alaska	There is a consumer protection division. There is coordination with that unit and the AG.
Arizona	Multiple agencies enforce and there is coordination.
Arkansas	MFCU and DHS. DHS can recoup money and it comes to DHS, they can then stop paying someone if they think fraud is happening.
Colorado	The Consumer Fraud Division and the MFCU are part of the AG's office. Yes, there is coordination between these agencies.
Connecticut	Yes. Each agency has its own purview, but there is coordination among agencies.
Idaho	MFCU is the only unit within the AG's Office.
Iowa	Within the AG's office there is a consumer protection Unit and the Department of Inspection & Appeals (which houses the MFCU) also has a Unit that pursues fraud by Medicaid recipients.
Kansas	It's just the AG's office with other divisions underneath them- MFCU, anti-trust, etc. The AG is in charge and there is coordination among agencies.
Kentucky	Yes, there is great coordination among the agencies.
Maine	MFCU is within the office of the AG. Our FCA applies to any program, not just Medicaid, so there might be another agency within the AG's office that would bring the action.
Maryland	Yes. There is coordination among agencies.
Minnesota	Yes; AG, Anti-trust program, Consumer Division.
Mississippi	Consumer Protection Division and there is coordination.
Missouri	It's the mission of MFCU to investigate and prosecute that fraud. We work with the OIG and FBI whenever we investigate. We're part of the AG's office and they're in charge. There is coordination among the agencies.
North Carolina	It is not clear what the question is asking or means by "other program fraud." The MFCU investigates Medicaid provider fraud and works cooperatively with the OIG, FBI, and other federal agencies.
North Dakota	[Declined to participate in study.]
Ohio	We're very active with all of the other agencies in our state. We meet monthly and work closely with the OIG and FBI agents in charge of investigating health care fraud. No one agency is in charge; we have quarterly task force meetings to work together and joint planning.
Oregon	Anti-trust, consumer fraud, there are also people who represent Medicaid agency in administrative proceedings. The level of coordination, and lead role, depends on specifics of the individual case.
Pennsylvania	[Declined to participate in study.]
South Carolina	Anti-trust, consumer fraud, and a MFCU. The AG is the ultimate agency in charge. We have a separate consumer affairs commission that can bring consumer fraud actions outside of the ambit of the AG. Within the AG's

	office there is coordination and unsure about the consumer affairs division.
South Dakota	No. The state MFCU is part of the AG's office. I'm not aware of any other unit enforcing any recoveries.
Utah	Other divisions within the AG's office do; anti-trust, consumer protection. No clear leader and minor coordination.
Vermont	Within the AG's office there is also a consumer fraud unit, an anti-trust unit, and our MFCU unit. The MFCU has both civil and criminal jurisdiction. The Medicaid agency itself can do administrative recoupments. The level of coordination and which Unit takes the lead in a case, depends on the specific allegations and where the case originated.
Washington	Within the AG's office there is a consumer protection division. There is also an insurance commissioner's office that is a separate agency not under the AG. Yes, there is coordination.
West Virginia	Yes. No one agency is in charge; we do a very good job of handling coordination.
Wyoming	Anti-trust, consumer protection division, and MFCU. The AG's office is in charge of all program fraud and we tend to work together between the groups.
Question II(b)	Do you have a statute that is utilized to prosecute other types of fraud, i.e., consumer fraud statutes, criminal statutes, etc? Are there any deficiencies in these statutes?
Alabama	No, not really.
Alaska	We use the regular criminal fraud statute and we have a Medicaid fraud statute- 47.05.210. As for deficiencies- we've only had them since 2003 and haven't run into problems so far.
Arizona	Yes, our primary area is in fraudulent schemes/artifices and theft. There are also consumer protection and advocacy sections. Not aware of any deficiencies.
Arkansas	Yes-for criminal if would fall under theft statute.
Colorado	There are consumer and criminal statutes for consumer fraud. For the most part, if one is going to prosecute for Medicaid fraud, they have to rely on general criminal statutes such as theft, computer crimes, etc. There is no healthcare fraud statute over and above the normal criminal statutes. There are no deficiencies, but it has been argued that a healthcare fraud statute would be a good idea because it is more on point with the fraud being prosecuted.
Connecticut	Yes, all of the above, although statutes can always be improved.
Idaho	Yes, to her knowledge no deficiencies.
Iowa	Yes, the consumer fraud office within the AG prosecutes that type of fraud. In the Inspection and Appeals Unit they investigate fraud by Medicaid recipients. The Medicaid Fraud statutes in Iowa are practically non-existent (no strong civil statutes) and are not very effective and probably lacking.
Kansas	We have a consumer protection act, but I'm not familiar with it. General

	criminal statute that covers some of the elderly- protects against misrepresentations, duress in order to exploit finances, etc. Also Medicaid false claims act used for fraud against the state Medicaid program. I can't speak to criminal or consumer protection, but I don't think there are any deficiencies in Medicaid. Overall it's good.
Kentucky	Yes, no deficiencies known.
Maine	Applies to any program run by the Department of Health & Human Services only. It's very comprehensive.
Maryland	Yes. The statutes don't help MFCU.
Minnesota	Yes, always looking at Medicaid Statute; no deficiencies.
Mississippi	We have a general false pretense statute for false representations and we have several of these.
Missouri	We use our statute which has both civil and criminal provisions. MO Code Revised Statutes Missouri 191.900 et seq. You can always argue that you don't have the perfect statute, but overall they're fine.
North Carolina	North Carolina can use either a Medicaid specific fraud statute or a general fraud state. We requested increased penalties for a Medicaid fraud scheme, but the bill has not been enacted.
North Dakota	[Declined to participate in study.]
Ohio	Yes, we have a consumer sales act.
Oregon	We have multiple criminal statues for the filing of false claims. There are also common law remedies and civil statutes appropriate for a variety of circumstances. The Oregon MFCU has also acted to bring select cases under the federal FCA.
Pennsylvania	[Declined to participate in study.]
South Carolina	There are a lot of criminal statutes that are available that address fraudulent conduct. There are no deficiencies that I am aware of. The MFCU does not have a problem recovering.
South Dakota	Yes.
Utah	Main one is titled Utah's False Claims Act, very similar to Federal minus the <i>qui tam</i> part. It has civil and criminal penalties. Utah does not have a number of generic fraud statutes which covers almost any scheme or artifice to obtain something of value by fraud. Our statutes are probably adequate.
Vermont	There is a consumer fraud statute, common law fraud statutes, and a civil monetary penalty that allows us to recoup up to three times the amount of wrongfully obtained assistance or \$500 per false claim or per false document submitted in support of a false claim. The only problem is that our civil monetary statute requires actual knowledge, which is rather limiting. We'd prefer it to contain a reckless disregard element.
Washington	We have a consumer fraud statute, a provider fraud statute RCW 74.09.210- "Fraudulent Practices and Penalties"- which basically defines what fraud is and has a treble damages provision. There are no deficiencies in our statutes.
West Virginia	We have multiple criminal statutes to address the fraud. There are no

	deficiencies in these statutes.
Wyoming	There are consumer fraud statutes. The way our criminal fraud statutes are set up makes them all encompassing so that we may have a consumer act and don't necessarily have to identify it.
Question II(c)	Has your legislature allocated funds for investigative resources to pursue program fraud? If so, what? When were those funds allocated (i.e., when the Statute was passed, or after? If after, what led to the allocation?)
Alabama	Yes, in that we funded 75% by the federal government 25% by state. The 25% money is set aside for program fraud.
Alaska	Yes, but only as part of the yearly appropriation.
Arizona	75% federal funds and 25% state funds allocated at the start of MFCU- before 1985.
Arkansas	Honestly don't know.
Colorado	Funds the MFCU and the consumer protection division of the AG. The MFCU was first founded in 1978 but was established in the Governor's office, a year later given to the Colorado Bureau of Investigations, and finally, in 1981 came to the AG's office. While it has been funded every year since its creation, it has gone under different group's budgets.
Connecticut	That's a hard question to answer. There are investigators in our office and in the Medicaid Fraud Control Unit. No resources are tied to any particular statutes.
Idaho	Under a grant the Federal Government pays part and the state pays part.
Iowa	Yes, there is a State appropriation every year for the investigation division of the Dept. of Inspections & Appeals. The MFCU has been funded by the requisite 25% state appropriation since it was founded in 1986. For the recipient fraud unit within the DIA, it is the same.
Kansas	The consumer protection division is funded largely by the AG's budget on a yearly basis. The Medicaid program is partially state and partially federal. There is a provision that allows us to seek/recovery any expenses incurred in doing our job. We also have five certified law enforcement officers that only do Medicaid work, registered nurse used for medical record review and three other investigative types. All came about when the statute was passed.
Kentucky	Our MFCU program is well-supported. Since we have no qui tam legislation, funding for it is not an issue.
Maine	The MFCU must be somewhat separately funded- we were created in 1979 and that's when the funds were first allocated.
Maryland	Yes, this is money that is in the AG's office. Allocated in 1979 for MFCU.
Minnesota	No.
Mississippi	Yes, the fund portion of our budget and by doing that salaries for our investigators. 78% federally funded, maybe 75%.

Missouri	The allocation is on a yearly basis, with the state providing 25% and the federal government providing 75%.
North Carolina	Yes. The State match is 25%. The funds were initially allocated in 1979 when the Unit was first certified. Funding has been renewed on a yearly basis.
North Dakota	[Declined to participate in study.]
Ohio	Yes. Funds were allocated to all three agencies for our state. The state matches us with 25%. The funds were allocated when MFCU was established in 1979.
Oregon	The state legislature allocates money in the biennial budget for state share of MFCU operations. There are no specific allocations for cases.
Pennsylvania	[Declined to participate in study.]
South Carolina	They fund a MFCU.
South Dakota	Yes, the funds were allocated when MFCU was started – mid 1980s.
Utah	Yes but only for MFCU.
Vermont	Yes, they just approved a third attorney position for our unit who will be responsible for prosecuting Medicaid program fraud. In the past two years, we have been successful in securing three new positions for the Unit. An additional auditor, investigator, and attorney. The MFCU was first funded in 1978 and was fully operational in 1979.
Washington	Yes the fund part of the MFCU- for example, in 2006 they gave us 3 additional FTEs.
West Virginia	25% of MFCU bills are paid by the state.
Wyoming	WY Dept of Health has to build it in to their budget request which pretty much get approved. Our MFCU budget is mostly federal and has some matching state funding.
Question II(d)	What state resources are now available to investigate fraud perpetrated against your state? \$ Amount, Type, Budget Line-Item, Percentage of Recoveries? Any federal funds? If so, what?
Alabama	We have 900,000 to run our office.
Alaska	Funded 75% by Feds & 25% by the State.
Arizona	Information unavailable.
Arkansas	DHS- has attorney review; MCF has 8 investigators, 6 attorneys; auditor, and 23 paralegals and support staff.
Colorado	The MFCU has our own investigators. Other departments that investigate fraud also have them. Sometimes State investigators have brought state fraud cases to the Das. On all levels (state, county, and city) law enforcement officials usually have the authority to investigate fraud against the state.
Connecticut	Information unavailable.
Idaho	Yes; 2 investigators and 2 auditors.
Iowa	State appropriation funds 25%, federal grant funds 75% of our budget. This legislative session we are anticipating additional state funding being approved.

	Because of the penalty funds that accrue from the national settlements, I have resources to hire expert witnesses and participate with federal agencies and help fund the Medicaid part of their investigations.
Kansas	The budget for the past year was about 1.2 million for the Medicaid unit.
Kentucky	Kentucky's MFCU has 15 sworn law enforcement agents working under the director's supervision. Additionally, the Unit currently has 2 auditors, two nurses, and a Medicaid specialist. The program is funded 75/25. We used recovered funds as allowed by law.
Maine	In the MFCU we prosecute provider fraud- 4 detectives, an auditor, and 1 other assistant AG. We receive referrals and help from Federal groups: OIGHHS, etc. There is also another assistant AG that works with beneficiary fraud in another unit.
Maryland	\$2,500,000 per year, 75% by a federal grant.
Minnesota	MFCU; commerce division of state has an investigative unit; white collar fraud unit.
Mississippi	Built into the AG's budget. We have other divisions in the AG's office and I'm sure they'd be glad to loan us their investigators, for example, the Public Integrity Division would loan us their investigators. In the MFCU, we have 13 law enforcement officials that are in charge.
Missouri	Information unavailable.
North Carolina	Funded by a 75% federal grant and 25% state match.
North Dakota	[Declined to participate in study.]
Ohio	Approximately \$1,250,000 state budget for this year. The other 75% is federally funded.
Oregon	Money and personnel of the MFCU.
Pennsylvania	[Declined to participate in study.]
South Carolina	State has a MFCU which has a relationship with the Single State Agency and the personal to do all of the MFCU work.
South Dakota	Information unavailable.
Vermont	MFCU has 7 people: 2 attorneys and the 3 rd attorney position just got approved, 2 full-time law enforcement investigators, 2 full-time auditors, and 1 program auditor. The state portion of our budget is \$196,000. We are funded 25% state and 75% federal.
Washington	MFCU is part of the state general fund. 50% federal and 50% state matching funds.
West Virginia	For MFCU, about \$1 million. The insurance commission and consumer protection division each have very large budgets to combat fraud.
Wyoming	The Wyoming MFCU receives both federal and state funding in the budget process. 75% federal and 25% state.
Question II(e)	Do you have dedicated investigators assigned to investigate program fraud cases? If so, how many?

Alabama	Yes, part of our requirement to get federal funding is to have a group of people to investigate audit, and do analysis. We have 3 investigators and 1 auditor.
Alaska	Yes, our resources can only be used for Medicaid Fraud. We use all law enforcement officers in the State. If I need a helicopter from the State, we ask them and they give it to us. Our investigators are not sworn. We have to get a sworn officer to execute a search warrant.
Arizona	In our division we have 5 law enforcement and 1 investigative nurse.
Arkansas	8.
Colorado	Yes, 8 criminal investigators who are police officers. Also, we have nurse investigator (not a commissioned officer), and an auditor.
Connecticut	On the criminal side, yes.
Idaho	2 of each.
Iowa	Yes, unit size is 9 including director- 3 investigators and 1 auditor for provider fraud, 3 investigators for the abuse area, and 1 attorney.
Kansas	Yes, see above.
Kentucky	15 law enforcement agents, 2 auditors, 2 nurses, 1 Medicaid specialist, 5 prosecutors including director.
Maine	4 are dedicated to provider fraud.
Maryland	In Medicaid fraud, 10 investigative.
Minnesota	5.
Mississippi	MFCU has 13 law enforcement officials- they are all certified (A few are in the process of being certified- almost are). Plus, 2 program analysts that have as part of their job something that is investigatory in nature.
Missouri	Yes, 11 investigators total in my division.
North Carolina	Yes, 22 in MFCU.
North Dakota	[Declined to participate in study.]
Ohio	We have 24 special agents in our unit; 18 investigate fraud and 6 investigate patient abuse/neglect allegations. There is also a special agent in charge.
Oregon	MFCU has a total of 4 investigators, 3 attorneys, 2 auditors, 1 analyst, and 1.5 support staff to investigate and pursue all types of cases within the MFCU's federally authorized jurisdiction, not just program fraud.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes, the MFCU has 7.
South Dakota	Yes, we have 2 investigators. They also do work other than program fraud, but it's all Medicaid related.
Utah	5 sworn law enforcement officers who investigate all matters within MFCU's jurisdiction.
Vermont	In the MFCU all seven staff members are dedicated to investigate and prosecute provider fraud and patient abuse cases occurring within the Vermont Medicaid program.

Washington	In addition to the MFCU staff, the office of payment review and audit has 35 employees dedicated to fraud detection and overpayment determinations. There is also a payment review program that has 8 employees dedicated to fraud detection.
West Virginia	Yes, 7 in MFCU.
Wyoming	MFCU- 1, we are the smallest MFCU in the country with 1 attorney, 1 investigator, 1 auditor, and 1 office manager.
Question II(f)	Do you have CIDs (i.e., Civil Investigative Demands) or other administrative subpoenas? If so, how are they administered? Do you use them? Do you want CIDs?
Alabama	Alabama has subpoena authority, CIDs, and search warrants.
Alaska	No, an enrollment agreement requires that anytime someone from MFCU asks for records we can get it from anywhere at anytime. Alaska regulation requires them to give us the information. If they do not give us the records, it is a misdemeanor offense and we prosecute it.
Arizona	We're almost exclusively criminal so we use criminal subpoenas.
Arkansas	Yes, very broad subpoena power.
Colorado	The MFCU does not have them. Neutral as to wanting CIDs.
Connecticut	Yes. Administration is difficult to answer in a nutshell since there are different tools for different purposes. We use them for some matters.
Idaho	They have immediate Access Letters which is like a CID; no subpoenas.
Iowa	By law we are authorized to issue administrative subpoenas. We either mail them or deliver them in person based on whether we think the provider will try to hide records or not. We are in the habit of using subpoenas for anytime we collect records.
Kansas	Yes. We can use them as related to Medicaid fraud cases. We use them often, though we try to send a letter first asking for records, figuring that it creates a more hospitable attitude.
Kentucky	Yes, we have administrative subpoena power, and issue letters that approximate CIDs, and search warrants as well.
Maine	No, if our state was to enact a <i>qui tam</i> statute- we'd like that power.
Maryland	No CIDs, but we have a relationship with the OIG and they have CIDs that MFCU can use.
Minnesota	At times they use the Federal authority, administrative subpoena power.
Mississippi	No, maybe the division of Medicaid program does- they exercise administrative subpoenas. MFCU does not have any administrative subpoenas.
Missouri	Yes, we prepare and serve them ourselves via authority granted by the statute.
North Carolina	Yes. They are issued by the AG's office. We use them in Medicaid fraud civil

	investigations.
North Dakota	[Declined to participate in study.]
Ohio	No, that's part of the pending legislation. We do want them.
Oregon	Our administrative rules for the Medicaid program require that the Medicaid providers cooperate with investigations with the MFCU.
Pennsylvania	[Declined to participate in study.]
South Carolina	There are none with the Medicaid specific fraud statutes, but we can use other provisions.
South Dakota	Yes, we have grand jury and other types and we use them.
Utah	CID's.
Vermont	Our Medicaid regulations require that providers cooperate with investigations and request for records. The Consumer Fraud Unit can administer CIDs and the OIG has administrative subpoenas. We can go through these agencies and use their subpoena powers, which we do.
Washington	Our secretary has administrative subpoena authority. Our regulations require the provider to cooperate with the investigations.
West Virginia	We have administrative subpoenas. They are issued by the authority of the Secretary of Health and Human Resources. We use them often.
Wyoming	Wyoming has administrative subpoena authority.
Question II(g)	Do you believe you have adequate funds and personnel allocated to investigate and prosecute state fraud actions?
Alabama	Yes.
Alaska	I could use more investigators.
Arizona	No, we need more staff.
Arkansas	Yes, but we could use another investigator.
Colorado	Yes, but we could always use more. Compared to other units of the same size it seems as if our budget may be a little on the lower side of other comparable state MFCU budgets. Also, it's hard to know the size of the fraud perpetrated against your state. In order to know the size of the fraud, it needs to be detected and it's hard to know the amount of crime being done without being able to investigate more vigorously.
Connecticut	Do not feel it is appropriate to comment.
Idaho	At this point yes, but it is hard to tell because the department is so new. In a year from now they could have twice as many cases and not enough staff.
Iowa	No because we are getting the approval for additional staff this legislative session and will get the additional funds and personnel.
Kansas	Nobody likes to think they have all the money/staff they could possibly use. Right now there are more cases than agents available to handle the workload. We could definitely use more agents and attorneys. We have enough funding

	for what we're doing, but in order for us to expand the way we need to; we need more space so we need additional funds.
Kentucky	Yes, not necessarily <i>qui tam</i> but program fraud yes. Over the last 3 years, we have increased staff by 10 people, one attorney nine investigators.
Maine	Currently yes, but because healthcare is a growing area at some point we will probably need to grow. We certainly manage what we have now.
Maryland	If we got an FC, we would need more staff- a civil unit, prosecutors, and auditors.
Minnesota	Could use more investigators.
Mississippi	We could always use more of course, but we are doing the job we are given to do.
Missouri	For state Medicaid actions, yes.
North Carolina	We had adequate funds and positions in the past, but due to substantial growth in the Medicaid program, we need and have submitted an expansion budget request for additional positions.
North Dakota	[Declined to participate in study.]
Ohio	We are requesting additional employees. Our caseloads have doubled in the last four years.
Oregon	No comment.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes.
South Dakota	Yes. The more you spend, the more you recover. Knowing that there are limited resources, I think we're ok.
Utah	Yes, but would like to see more, but right now it is adequate. We need more referrals from our SURS and other Medicaid agencies.
Vermont	No comment.
Washington	Yes, although we would like more.
West Virginia	Yes.
Wyoming	Yes, would like an additional investigator and that would require additional funds, but we do not suffer for a lack of funds or anything. Another investigator would help the case load move more quickly.
Question II(h)	Are the settlement dollars collected under your fraud statutes invested back into your Medicaid Fraud enforcement or do the funds go to the program or the general treasury fund?
Alabama	Alabama retains the money to run the unit; which is around 900,000 a year; the rest goes into the general treasury fund.
Alaska	They go back to the Medicaid program. The statute currently does not allow the funds to go back to the MFCU.
Arizona	They go back to the Medicaid Program.
Arkansas	Yes, it would help reduce the loss to Medicaid.

Colorado	All funds recovered civilly and criminally go back to the general state fund.
Connecticut	Funds that are direct restitution for program losses get credited to the program. Anything beyond program losses would go into the state's general fund.
Idaho	General Fund.
Iowa	Settlements have program recovery and penalty funds. Program recovery and any interest are returned to the Medicaid program. Penalty funds accrue to the MFCU- this might change.
Kansas	We have a mixture. We try to incorporate as much as possible into the unit for funding it and then there's a certain amount that has to go back to the Medicaid unit.
Kentucky	Funds go back into Medicaid program in order to make the program whole; left over money goes 5% into a MFCU administrative account; the balance is deposited into the Medicaid agency's budget.
Maine	Most goes back to the Medicaid program, sometimes we get reimbursed for investigative costs.
Maryland	They go the Medicaid program.
Minnesota	Funds go to DHS into the general fund, investigative costs are retained by the MFCU to pursue other fraud actions.
Mississippi	We receive 2 types of funds: restitution goes back to division of Medicaid and other funds come to the AG's office as penalties (Generally go to AG's office and not the MFCU), but they are available to the MFCU later as part of the State match of our funds. The AG also pays our expenses.
Missouri	All go back to the program.
North Carolina	Medicaid funds go back to the Medicaid program. Penalties go to the civil penalties forfeiture fund which goes to the benefit of public schools.
North Dakota	[Declined to participate in study.]
Ohio	Both. The funds go back to our single state agency and then part of the penalties is also invested in investigating Medicaid fraud.
Oregon	Damages and penalties are allocated as authorized by state law; generally, they go back to the Medicaid program.
Pennsylvania	[Declined to participate in study.]
South Carolina	Right now the money typically goes back to the Single State Agency. There are also fees and costs that can be used for Program Integrity functions in the Medicaid area.
South Dakota	The funds go back to into the Medicaid program, not MFCU.
Utah	The double damages, restitution portion goes to the program to make program whole, anything on top of that is considered a penalty and that stays with AG's office and in AG litigation fund. 2 million is the max, goes into state general treasury fun in AG litigation fund
Vermont	Goes back to the Agency of Human services. The penalty money we collect goes back for fraud enforcement, but is split 50/50 between the MFCU and the Medicaid agency.

Washington	Back to the Medicaid fund.
West Virginia	Both. The program is always made whole and we're always shooting for investigative costs to be used for our department.
Wyoming	Global settlements- fraud dollars goes to federal part & the state dollars come back and are given to the office of Medicaid. The MFCU doesn't take any money or interest.
Question II(i)	Do you have any opinions on where the funds should go?
Alabama	The way it is done now is sufficient.
Alaska	It is fine for the money to go back to the Medicaid program. Enforcement should not be based on how much money we can get because it puts us in an inappropriate ethical position where the focus becomes on how much money we can get.
Arizona	Victim rights law indicates that we should apply those funds to victims first and then do investigative funds.
Arkansas	No comment.
Colorado	No.
Connecticut	Do not feel it is appropriate to comment.
Idaho	It would be nice to get some of the money back to the unit in order to afford new equipment.
Iowa	Recoveries should be returned to the Medicaid program. Penalty amounts should accrue to the MFCU.
Kansas	I like the current system. We should first make the Medicaid program whole, but I don't think Medicaid should get excess funds because of the high amount of fraud there. We should reinvest any extra money back into MFCU whether it's immediate or whether it's held for later.
Kentucky	It is done appropriately now.
Maine	No.
Maryland	They should go to the Medicaid program.
Minnesota	Wants the funds to go back to the unit.
Mississippi	Not really an opinion- with the global settlements- we decide whether they are restitution or penalty dollars and thus allocate them from there.
Missouri	I think we need to reimburse the Medicaid program.
North Carolina	The Medicaid recovery funds should go to the Medicaid program. Penalties should go to the civil asset forfeiture fund.
North Dakota	[Declined to participate in study.]
Ohio	The current system is appropriate.
Oregon	No.
Pennsylvania	[Declined to participate in study.]
South Carolina	No.
South Dakota	The way it's split now is fair. When we collect Medicaid dollars, they should go back into the program. When we can collect other costs, that's great.

Utah	They way it is drafted is fine.
Vermont	The money should go back to the Medicaid program and the way we currently split our penalties is appropriate.
Washington	It should go back to the Medicaid fund.
West Virginia	No.
Wyoming	The funds should go back to the Medicaid program because that's where they came from, but would like to see the interest come to the MFCU.
Question II(j)	Are you in touch with other states through perhaps the MFCU or other state agencies that have false claims acts?
Alabama	Yes, but not on a continuous basis. We work with other MFCU's.
Alaska	Yes, we are a part of the NAMFCU and participate in their conferences and directors symposia every year.
Arizona	Yes.
Arkansas	Not many dealings with them.
Colorado	Yes.
Connecticut	Yes.
Idaho	We do keep in touch with other MFCU's, not sure which ones have a FCA.
Iowa	Yes. MFCU Directors communicate through the national association- NAMFCU.
Kansas	Yes.
Kentucky	Yes, extremely strong association between MFCU's.
Maine	Yes.
Maryland	Yes.
Minnesota	Yes, work with US Attorney's Office; collects and settlement negotiations or pursuing those cases. Also see people at MFCU meeting and trainings.
Mississippi	Yes.
Missouri	Yes, I'm a past president of MFCU.
North Carolina	Yes.
North Dakota	[Declined to participate in study.]
Ohio	Yes, we're very active nationally.
Oregon	Yes.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes.
South Dakota	Yes.
Utah	Yes, informally at MFCU meetings every now and then.
Vermont	Yes.
Washington	We aren't, but we've surveyed several of them.

West Virginia	Yes.
Wyoming	Yes, participate in the NAMFCU and correspond with those states that are members.
Question II(k)	What impressions, if any, have you drawn from your conversations with other states that have <i>qui tam</i>/false claims act statutes?
Alabama	Not enough experience.
Alaska	This is a broad question. Reinforces my view that Alaska would be best served with a FCA statute. Alaska is a small state and it is much harder to hide things there, and would certainly benefit from a civil and criminal FCA.
Arizona	It's an excellent idea; some states are just healthier than others in number of staff. Overall positive comments.
Arkansas	Haven't had much contact with them, but has never heard anything bad.
Colorado	It's a mixed impression. The state gains more money, but also spends more. Also, we've heard that the enactment of a <i>qui tam</i> brings large amounts of cases of which some are not meritorious and some are. If a <i>qui tam</i> is enacted, a good percentage of the cases are healthcare related.
Connecticut	Do not feel it is appropriate to comment.
Idaho	Main impression is there are definite pros and cons to having a FCA.
Iowa	General impression is that they are happy to have these statutes and that they are effective in identifying and pursuing fraud cases.
Kansas	Varied. I don't think there's anyone who has regretted having a FCA.
Kentucky	Mixed emotions; More in favor of getting one, but there are some drawbacks to having one.
Maine	Mixed feelings- some who have recently enacted legislation (these are the minority) believe that it has brought to their attention more fraud. The others that have recently enacted legislation just believe that what it ends up doing is increasing the relators' share and increasing the busy work and investigation. It takes a lot of resources.
Maryland	Most of the people I've talked to have said their recoveries have gone way up.
Minnesota	Well they have a leg up on MN; wishes we had process; aid in discovery of fraud claims and enhance recovery ability.
Mississippi	Any other remedy that you have available to you is helpful. As far as getting a direct content from them about their statutes, I haven't gotten a direct answer. It's at least one more remedy that is available that I assume helps the state recover dollars that were fraudulently obtained.
Missouri	It's a very valuable tool to have.
North Carolina	It seems to be useful.
North Dakota	[Declined to participate in study.]
Ohio	We're definitely trying to coordinate our investigative efforts and resources. It's brought all the states together in terms of looking at trends and trying to combat fraud in the system.

Oregon	For smaller states it's difficult without additional staff resources to pursue cases and many cases are pendent to ones already on file with federal courts.
Pennsylvania	[Declined to participate in study.]
South Carolina	Some work, some do not.
South Dakota	They're concerned about the resources. It's not a bad thing, but you have to have the resources to implement it properly, which is a problem.
Utah	Be careful what you wish for; sometimes the growth is so overwhelming that they ended up being under staffed and funded.
Vermont	They are very busy.
Washington	We did our own survey in WA and the problem we found is that States that have FCA statutes don't have baseline data showing impact as their statues are relatively new.
West Virginia	It seems that if you're a larger state with resources, it's a viable option. For smaller states with limited resources, it's not as cost effective.
Wyoming	Most of the states surrounding Wyoming do not have statutes, and if they do, they are new and have just started. It's not a common statute.
SECTION III	APPLICATION
Question III(a)	What types of cases are filed under your statutes or other civil remedies (health care, contract, environmental, other)?
Alabama	All health care; patient abuse and exploitation.
Alaska	Medicaid assistance Fraud. Mental element required for prosecution under our Medicaid statute is all the way down to reckless. Based on this, we've charged everything from speech & language pathologists to personal care attendants.
Arizona	Health care.
Arkansas	Criminal Cases can file against certain individuals for abuse or neglect; civil against nursing homes for abuse or neglect.
Colorado	All the MFCU prosecutes is provider fraud.
Connecticut	All of the above. Anti-trust, consumer protection too.
Idaho	Only cases that their unit takes involve Medicaid Fraud.
Iowa	Consumer fraud cases, Medicaid provider fraud issues (we take most provider cases to the US Attorney, where civil statutes may be applied), and with the unit that handles individual recipient use of Medicaid- food stamp fraud and misuse of the Medicaid card because someone sold the card or loaned it to a relative.
Kansas	Health care, consumer protection, not sure about others.
Kentucky	Only Medicaid provider fraud and abuse of vulnerable adults.
Maine	Only been a few filings in recent years- 1 was a pharmaceutical drug switching case and it was filed under the Maine state statute before it went global.
Maryland	Health care.
Minnesota	Medicaid Fraud.

Mississippi	Consumer cases are filed under slightly different legal theories and not familiar with what they file- but are a general statement of fraud. MFCU- strictly provider fraud operation, but we have no jurisdiction to go after the recipients.
Missouri	Health care in our division.
North Carolina	Medicaid Fraud.
North Dakota	[Declined to participate in study.]
Ohio	Health care, all Medicaid fraud in our division.
Oregon	The MFCU pursues a variety of cases under the MFCU's lawful jurisdiction. Medicaid provider billing fraud, theft of patient funds, criminal mistreatment, etc.
Pennsylvania	[Declined to participate in study.]
South Carolina	We do civil and criminal Medicaid cases. MFCU prosecutes provider fraud and patient abuse. Provider Fraud: Billing for nonexistent or unnecessary medical services, billing for more expensive products or services than were provided, paying kickbacks to patients or other providers for patient referrals. Inflating a nursing home's annual cost report. Padding mileage accumulated on ambulance trips, and billing for professional services rendered by personnel lacking appropriate credentials Patient Abuse: includes physical abuse or neglect, as well as financial crimes such as breach of trust or theft of a patient's money.
South Dakota	Health care.
Utah	Medicaid Fraud.
Vermont	Medicaid provider billing fraud, theft of patient funds, and patient abuse cases occurring in Medicaid funded facilities.
Washington	The MFCU just does Medicaid provider fraud and resident abuse cases; DFI (Division of Fraud Investigation) investigates client fraud. The AG's office website also has a consumer protection link consumer fraud e.g. telemarketer fraud, etc.
West Virginia	Health care fraud.
Wyoming	Medicaid health care fraud or patient abuse cases are filed.
Question III(b)	How would you rate the quality of those cases?
Alabama	Our cases pretty much run the gambit. We get cases from a number of sources as well as generating our own cases.
Alaska	Very good.
Arizona	Outstanding.
Arkansas	All over the spectrum.
Colorado	No comment.
Connecticut	Every case brought is meritorious.

Idaho	Average.
Iowa	Good- we have a high acceptance rate by prosecutors. For provider fraud cases in the last 3 years, we've turned in 21 cases to prosecutors and 18 were accepted.
Kansas	We don't file any bad cases. We have to be very careful about what cases we pursue and we try to do a really good job of working cases effectively, efficiently, and thoroughly.
Kentucky	Some are strong cases; others are less clear and difficult to prosecute.
Maine	Extremely good, because we are not a <i>qui tam</i> state we do not see people that try to bring frivolous suits.
Maryland	None have been brought. The federal cases are good.
Minnesota	Pretty good cases, plenty of criminal activity
Mississippi	Hard to quantify. Some referrals/complaints are good and some aren't. Some are criminal, but some aren't because no crimes have actually been committed.
Missouri	If we file, they're good.
North Carolina	We are currently a non- <i>qui tam</i> state. We only pursue cases that we can determine are quality cases.
North Dakota	[Declined to participate in study.]
Ohio	Very good. We have an excellent investigative staff and we're constantly trying to adapt.
Oregon	The cases that we file are very good; most of our formally pursued cases result in a conviction or judgment.
Pennsylvania	[Declined to participate in study.]
South Carolina	We initiate the civil and criminal actions in South Carolina. It really doesn't apply since we don't have a <i>qui tam</i> provision.
South Dakota	Unavailable.
Utah	Some are harder to prove than others, but usually pretty strong cases.
Vermont	Good.
Washington	SEURs (Surveillance Utilization Review) staff with our payment review program does the intake. Maybe 50% of allegations pan out. That was another concern we had, that if we had a FCA people would make up frivolous claims to get money.
West Virginia	Good.
Wyoming	We've won all of them, but we don't file a lot of cases. If we file, we are pretty sure that we will prevail. In four years, we have an average of 4 good prosecutions a year.
Question III(c)	Could you explain the process your office follows once it receives a program fraud allegation?

Alabama	Allocations are assigned to an auditor. Then the file is taken under review. If allegation is determined to be founded, the case is taken to a jury.
Alaska	Complaint is entered into the state computer system that tracks its progress. Three investigators track down the allegation through the computer and conduct individual interviews. They report back to the prosecutor who decides what to charge. Then indict if necessary and try the case if necessary.
Arizona	When there are allegations, we assign a special agent who interviews through subpoenas and then determines the likelihood of prosecution and presents it to a prosecutor.
Arkansas	As soon as the allegation goes in it goes to head investigator, who will assign it to a particular investigator and about same time an attorney gets involved and get subpoenas. Then goes to legal review to look first for criminal claims; attorneys review case and move forward from there.
Colorado	It's investigated, screened by a chief investigator, assigned for investigation, and periodically reviewed by staff.
Connecticut	We review it with other agencies, investigate, assess the merits, and if we feel we need to move forward, we do.
Idaho	They will have typically an investigator to screen and see if it's worth doing; if yes, a team is assigned to it, they will investigate it, once finished they will give it to attorney to either decline to file or file something.
Iowa	Review the allegation and do preliminary research to see if it appears to be valid. If so, we consult with a senior investigator and an attorney to see if it's criminal in nature and if it is, we pursue a formal investigation to deliver to a prosecutor. If it's civil in nature, Iowa doesn't have good civil statutes and will turn it over to the Single State Agency (Department of Human Services) and they pursue an administrative remedy. Exception: we pursue a case and take it to a federal prosecutor- they decide if they can pursue a civil action.
Kansas	All referrals come into one of the agents, electronically or by phone or whatever else the case may be. They're then assigned to an intake person who is very familiar with the claims process. They do intake, develop analysis of that case based upon review of the data and whether the data supports fraud. If the data doesn't support fraud, the case is closed. Interviews are done and a summary is written and submitted to director or other attorney to file charges.
Kentucky	Investigator looks into case and reports what s/he finds. Then the Attorney's decide whether to pursue it or not. Director makes final decision.
Maine	Allegation is received by administrative personal, put into an incident report that is reviewed the director of the unit, who makes an assessment of whether we need additional information. Once we have all the info, the director makes a decision to open a case or not. Then the detective does an investigation, the attorney reviews it and determines whether criminal or civil charges should be brought.
Maryland	We log the referral /complaint into our complaint data base. We do a preliminary

	investigation to see if we want to open a case. This would include looking at the Medicaid paid claims data, interviewing relevant people like the complainant and the program people. We could then open a criminal case, refer the matter to the Medicaid program integrity people at our state health agency or close the matter.
Minnesota	Case is referred to them, reviewed by manager; reviewed by chief investigator; both discuss who will be assigned the initial investigation and decide if it is something that needs to be on a fast or slow track. Once decide it should be opened as documented case, it is assigned to an attorney and investigator. Then they figure out how much info and need; interview get search warrant and collected documents; investigator gives a spread sheet to determine the amount of fraud and then it is given to attorney will draft criminal complaint.
Mississippi	A group of people meets with the investigators and staff from the MFCU. They bring the files and tell us what they think the case is about. MFCU goes back and assigns an investigator or group to investigate things, our staff is very experienced. Then they bring it to the head of the MFCU and they decide whether or not to accept the case.
Missouri	We look at it, assign it a number, categorize it as a complaint (depending on the allegation), assign one or more investigators, and then go out and determine the credibility and substantiality of it. If we believe it's credible and substantial, it becomes a case and one or more attorneys are assigned to the case and they continue the investigation until it's ready to be filed as a civil or a criminal case.
North Carolina	It's assigned to an investigator and a unit attorney who investigates and takes appropriate action.
North Dakota	[Declined to participate in study.]
Ohio	We receive an allegation which we intake via form from our intake officer, then it goes through the intake committee with attorneys and special agents, and then if we open it, it's assigned to an investigative team. If it's closed, we keep a record of the intake and our decision.
Oregon	All allegations are reviewed within 30 days. The MFCU director makes a decision as to whether or not to open a formal investigation, and opened cases are assigned to an attorney and 1 member of the investigative staff to establish an investigative plan. Progress of the investigation is tracked, and at the end of the investigation, there is a determination made about whether or not to file a criminal or civil case.
Pennsylvania	[Declined to participate in study.]
South Carolina	We investigate it and make a determination as to how to proceed.
South Dakota	Information unavailable.
Utah	Complaint comes in. It is assigned to an investigator. They investigate. If merit is found they will file charges.
Vermont	The allegation comes in as a referral or a complaint. The director looks at it and decides whether we have jurisdiction and should open an investigation. If we do not have jurisdiction, we will refer it to another agency that does. If it's

	mainly Medicaid program provider fraud, we will assign an investigator, an auditor, and an attorney who investigate the case as a team. After the investigation is completed, we will decide what, if any, type of action to take- i.e. pursue civil or criminal charges or not pursue charges at all.
Washington	Do a workup, order charts from the provider, analyze the billing, try to get proof to back up the allegations, and depending on what we uncover, the case they may or may not be recommend for an audit.
West Virginia	No matter what the source of the complaint, we do a preliminary inquiry. If reasonable suspicion exists we will open a case and pursue the matter until closure or until it is referred for prosecution.
Wyoming	Complaint comes in, either from office of Medicaid or a private citizen. We open up a referral form and that information is given to both investigator and an auditor. The auditor pulls records to see if it's a Medicaid provider and recipient. The Investigator verifies the compliant and starts gathering evidence. The auditor always obtain records either from the provider or intermediary payer (contract company that state uses to pay Medicaid claims) - and the claims are verified. Then it's wrapped up and we have a case or don't have a case. In WY, usually I have to take the case to a state or federal prosecutor, and if they can't take the case then I handle it. Otherwise I prepare the cases and help guide them through the healthcare arena.
SECTION IV	EFFECTIVENESS OF YOUR LAW
Question IV(a)	What is the total amount of funds recovered by your state as a result of program fraud enforcement? (Breakdown by type of case, amount per year)
Alabama	Last year 3.9 million.
Alaska	We get most of our money from global settlements. Recoveries can range from \$1.5 million to \$140 dollars.
Arizona	Information unavailable.
Arkansas	Information unavailable.
Colorado	Recoveries: 4/1/07-3/31/08: \$2,764,128.09. Of that amount, \$2,722,109.09 is from global cases; an additional \$10,531.43 in pre-filing civil settlements, and the remainder from criminal restitution.
Connecticut	Over the past few years, it's been somewhere over \$30 million for Medicaid plus some additional recoveries; state only programs administered in the same way as Medicaid.
Idaho	Information unavailable.
Iowa	About 3.4 million in national recoveries for between now and December (2008 calendar year). State fiscal year runs 7/1-6/30, figures reported are by state fiscal year: SFY 2005 \$804,908.64; SFY 2006 \$436,075.28; SFY 2007 \$1,433,790.11; SFY 2008 \$625,762.46 (collected to date, anticipate at least another

	\$650,000.00 from national settlements by end of state fiscal year). The vast majority of recovered funds derive from national cases where DOJ and NAMFCU team have pursued a provider on behalf of all the states.
Kansas	Medicaid- \$20,713,000 since inception in 1996 1996- \$0 certified in 1995 and still starting up 1997- \$360,000 1998- \$75,000 1999- \$8,500 2000- \$117,800 2001- \$223,800 2002- \$626,900 2003- \$304,000 2004- \$4,300,000 2005- \$4,500,000 2006- \$532,000 2007- \$4,700,000 2008- \$2,200,000 (so far)
Kentucky	5 million last year, this year 11 million
Maine	2005: around \$650,000; 2006: almost \$2 million; January-March 2008:\$2,340,000.
Maryland	\$27,000,000 in the last five years- both state criminal and national cases.
Minnesota	No idea, around 8-9 million
Mississippi	When we settle there is a federal and state portion- $\frac{3}{4}$ were federal dollars to begin with. Total dollars 2005- little over \$4million; 2006- \$3.5 million; 2007- over \$ 7 million. Two weeks ago we are looking for \$8 million that will come back to the state in 2008, \$1.7 million has already come back to the state and when it is matched by the Feds it'll get close to \$7 million. These are high years and the numbers go up and down.
Missouri	Information unavailable.
North Carolina	For the 2007 Fiscal Year we recovered in excess of \$20 million. We will recover in excess of that amount during the current fiscal year.
North Dakota	[Declined to participate in study.]
Ohio	2008- \$33.4 million to date 2007- \$26.6 million 2006- \$17 million 2005- \$17 million 2004- \$37 million
Oregon	2007: approximately \$6.1 million in judgments from criminal and civil cases.
Pennsylvania	[Declined to participate in study.]
South Carolina	Not sure of the top of my head. Check the OIG website.
South Dakota	Information unavailable.

Utah	2007-3,020,681 2006-334,408 2005-3,459,099
Vermont	2008 (October 1 to date)- approximately \$3.8 million 2007- approximately \$2.9 million 2006- approximately \$500,000
Washington	MFCU/NAMFCU part of 4 recoveries in 2006 for \$2,793, 247.00 in annual report. Annual state Medicaid program overpayment recoveries in the millions.
West Virginia	Over the last 5 years in our division, we've had over 20 million in recoveries.
Wyoming	Information unavailable.
Question IV(b)	When a national fraud case settles and your state is part of it, what statutes do you utilize to recover for your state?
Alaska	Don't use a state statute for global cases.
Arizona	Generally worked out through the DOJ or other statutes; generally federal law.
Colorado	Don't know for sure. If you have a criminal filing you have to be actively involved in it.
Connecticut	Each one is different and not all of them identify a specific state statute.
Iowa	Don't have a specific state statute- recovery is based on settlement decided at national level.
Kentucky	Kent revised Statute Chapter 205.8451-8475
Maine	Title 22, section 15.
Maryland	We use common law causes of action like fraud, misrepresentation, unjust enrichment and the like.
Minnesota	Don't use a statute for Global cases
Mississippi	We've got some basic Medicaid fraud statutes that allow us to investigate and prosecute. Anytime we think they've made false representations and Medicaid dollars have been spent.
Missouri	Our fraud statute.
North Carolina	We use the state Medicaid FCA.
North Dakota	[Declined to participate in study.]
Ohio	Typically it's negotiated by the global team. It varies from settlement to settlement depending on what it covers.
Oregon	State statutory and common law.
Pennsylvania	[Declined to participate in study.]
South Carolina	When a national case settles it is typically under the basis of the federal FCA. Also, we have a Medicaid false-claim statute.
South Dakota	We don't typically cite any in there. We usually just release any claims, but if we had to, we would use the general Medicaid fraud statutes.
Utah	Utah FCA Statute.

Vermont	It depends on the case, but usually the common law statutes and/or state statutes.
Washington	With the global cases they are all tried under federal law and we just become a part of that case.
West Virginia	Usually when it's a global settlement the Federal FCA is used.
Wyoming	Don't think we use any statutes. Typically the global settlement encompasses our ability to participate in federal actions. We don't need a specific state statute to recover. A drawback from state false claim actions is that some yahoo in another state that is a whistleblower and every state that has a false claim he'll want a part of their statute and then Wyoming is forced into participating for someone in another state that has little or no connection to our state. Then we end up spending an exceptional amount of time and money to recover a little bit of money. This is a downside for a small state.
Question IV(c)	Do you believe that you are recovering enough funds with the current statute you have?
Alabama	Yes.
Alaska	No.
Arizona	Yes.
Arkansas	Yes, but I wonder what is out there that we do not know about
Colorado	That is hard to answer because the MFCU doesn't really prosecute the Colorado civil false claims.
Connecticut	Do not feel it is appropriate to comment.
Idaho	Don't know; maybe should know.
Iowa	If we had more staff, we'd have more cases and more recovery. Iowa criminal statutes are adequate, civil statutes are lacking.
Kansas	Usually there's a settlement that's been negotiated that utilizes the Federal FCA because it is usually filed under the federal FCA and we just piggyback on that.
Kentucky	Yes, but more fraud is being undetected. We won't have "enough" until we have it all.
Maine	Yes.
Maryland	No.
Minnesota	Yes.
Mississippi	No doubt that there is fraud going on that has not been detected and you can never recover enough because some fraud goes undetected. We are doing what we can do, but we hate it when people can't get services that they need because people steal from our State.
Missouri	We're only lacking the <i>qui tam</i> provision.
North Carolina	Yes, but if the <i>qui tam</i> act we proposed is enacted and certified, the state share will increase by 10% under the DRA, and we hope that more whistleblowers will file cases.

North Dakota	[Declined to participate in study.]
Ohio	We would like to see the FCA passed because we've enjoyed recoveries from the national FCA.
Oregon	Depends on which statute you are referring to, and the definition of "enough."
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes.
South Dakota	Yes. It would be nice to get some bigger cases, but we're acting efficiently under the current statute.
Utah	Yes, given our man power.
Vermont	Yes, though we could do more with more personnel.
Washington	Yes.
West Virginia	We could do a better job with our current set-up.
Wyoming	If we have a criminal case and we've identified a dollar amount, we recover it.
Question IV(d)	Do you believe you would be able to recover additional funds with a false claims or <i>qui tam</i> statute? Please explain.
Alabama	Uncertain; we would have to try it out to find out.
Alaska	Yes.
Arizona	Yes.
Arkansas	Yes, again, as long as it is done correctly.
Colorado	Uncertain, we do not know enough information on how the experience will go in Colorado.
Connecticut	A false claims or <i>qui tam</i> statute would be very beneficial.
Idaho	Probably. Again, the program is very new; only recovered in national cases
Iowa	Yes. We would either be able to add state recoveries to national settlements, or develop in-state <i>qui tam</i> cases.
Kansas	Yes.
Kentucky	Yes, however, other issues to consider rather than just money.
Maine	Not particularly.
Maryland	Yes.
Minnesota	Yes.
Mississippi	No comment.
Missouri	The potential is certainly there.
North Carolina	Yes. If the <i>qui tam</i> act we proposed is enacted and certified, the state share will increase by 10% under the DRA, and we hope that whistleblowers will file cases.
North Dakota	[Declined to participate in study.]
Ohio	Yes, we would like to have one to make sure we're recovering enough funds

	for our state, and so we can be involved from the beginning in the cases. The national statute has proven very useful for our state.
Oregon	No comment.
Pennsylvania	[Declined to participate in study.]
South Carolina	Information unavailable.
South Dakota	Probably yes, but there's still the argument about funding additional people vs. how much extra money you will really recover.
Utah	Not sure, since we don't pay the 10% for relator's counsel.
Vermont	Possibly. It's a cost benefit analysis- the cost of the relator's share vs. 10% increase under the DRA.
Washington	No.
West Virginia	Yes, but we would have to spend a lot of money and it would usurp all the extra funds.
Wyoming	Yes, under federal FCA, you get treble damages and in a state that has a FCA you can get treble damages and I'm not sure where that money would go back to. You can always recover more money though.
Question IV(e)	Do you have the ability to recover attorneys' fees or damages with another statute that you currently have? If so, explain.
Alabama	Yes.
Alaska	Not on the criminal side. I think we could get investigative costs, but then we'd have to keep track of all of them and we do not want to do that. In the criminal division it doesn't serve much purpose because we must pursue these cases anyway. I do not base my decisions on how much money we get back.
Arizona	Not on the criminal side.
Arkansas	Yes.
Colorado	"Damages" are always available in a civil case for money, because even recovered money is "damages" by definition. There are two statutes in Colorado that allow the state Medicaid agency, through its attorneys, to bring an action to recover overpayments. Neither was available to the MFCU. C.R.S. 25.5-4-301, 304-206. There are civil penalties in these statutes.
Connecticut	Yes. We have some affirmative statutes that allow us to obtain attorneys' fees, etc. as a remedy.
Idaho	Yes.
Iowa	No.
Kansas	Yes, under the criminal statute, it specifically says that we're entitled to receive "reasonable attorneys' fees" and investigation costs.
Kentucky	No; we usually make it part of the settlement.
Maine	Yes, for cases filed under our statute: able to get attorney fees, cost of suit and

	investigation, civil damages up to 3 fold the damages but not less than \$2000 for each false claim whichever of those amounts is greater, and interest. Global cases- they are settled and we take what we can get.
Maryland	We have the ability if we get a criminal conviction to recover multiple damages and penalties, but only with a criminal conviction. That's another benefit that would be gained with a state FCA.
Minnesota	Yes, under Civil Medicaid Statute.
Mississippi	I think we have the ability to recover costs of investigation and things like that, and with the ability to recover penalties that could cover attorney fees and investigation costs.
Missouri	Yes, we're entitled to recover up to treble damages, penalties from \$5,000 to \$10,000 and investigative and attorneys' costs.
North Carolina	I am not sure that I understand this question; however, the state FCA permits the recovery of attorney's fees and damages.
North Dakota	[Declined to participate in study.]
Ohio	Yes, we are able to recover investigative costs with our current Medicaid fraud statute- 2913-40 ORC.
Oregon	In appropriate cases under those statutes.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes, Medicaid false claim statute passed in 1994 allows us to seek criminal penalties, including jail terms and civil fines as well.
South Dakota	It's not in the statute but by agreement when we settle, the losing party agrees to paying costs, i.e., attorneys' fees, copying, etc.
Utah	No.
Vermont	Under the consumer fraud statutes one can recover attorney fees. The civil monetary statute allows us to recover penalties.
Washington	No, and that's something we are talking about the impact of this in the context of the FCA because we know that the federal government can recover administrative fees.
West Virginia	Under our state False Claims statute we can get reasonable attorneys' fees.
Wyoming	Restitution is restitution. If it's a civil case, damages have to be established and attorney fees are usually not in the statutes, but sometimes we can make a good argument for fees as part of a fine so it could offset the cost of investigation.
Question IV(f)	How many program fraud cases does your state pursue? (year by year since passage if available)
Alabama	On average per year about 80 per year.
Alaska	We have about 200 cases that go through every year. In terms of what becomes a prosecution, sometimes we have 5-6 a year. This January we had 11 convictions.

Arizona	Information unavailable.																																																												
Arkansas	Last year around 200 that includes both criminal and civil.																																																												
Colorado	<p>COLORADO MFCU CASES OPENED (Note: Year runs from 4/1 to 3/31) Reported Fraud cases within</p> <table border="1"> <thead> <tr> <th>Year</th> <th>Cases opened</th> <th>reported case load</th> <th>Fraud cases</th> </tr> </thead> <tbody> <tr> <td>2007-2008 (prelim)</td> <td>46</td> <td>61</td> <td>54</td> </tr> <tr> <td>2006-2007</td> <td>43</td> <td>60</td> <td>*</td> </tr> <tr> <td>2005-2006</td> <td>32</td> <td>46</td> <td>*</td> </tr> <tr> <td>2004-2005</td> <td>25</td> <td>33</td> <td>*</td> </tr> <tr> <td>2003-2004</td> <td>24</td> <td>37</td> <td>*</td> </tr> <tr> <td>2002-2003</td> <td>46</td> <td>62</td> <td>53</td> </tr> <tr> <td>2001-2002</td> <td>46</td> <td>57</td> <td>52</td> </tr> <tr> <td>2000-2001</td> <td>43</td> <td>79</td> <td>73</td> </tr> <tr> <td>1999-2000</td> <td>39</td> <td>67</td> <td>64</td> </tr> <tr> <td>1998-1999</td> <td>40</td> <td>80</td> <td>76</td> </tr> <tr> <td>1997-1998</td> <td>45</td> <td>71</td> <td>65</td> </tr> <tr> <td>1996-1997</td> <td>36</td> <td>55</td> <td>51</td> </tr> <tr> <td>1995-1996</td> <td>40</td> <td>52</td> <td>45</td> </tr> <tr> <td>1994-1995</td> <td>43</td> <td>56</td> <td>48</td> </tr> </tbody> </table> <p>* Annual reports do not indicate how many fraud cases are within case load, but normally such cases comprise 80-90% of the total case load.</p>	Year	Cases opened	reported case load	Fraud cases	2007-2008 (prelim)	46	61	54	2006-2007	43	60	*	2005-2006	32	46	*	2004-2005	25	33	*	2003-2004	24	37	*	2002-2003	46	62	53	2001-2002	46	57	52	2000-2001	43	79	73	1999-2000	39	67	64	1998-1999	40	80	76	1997-1998	45	71	65	1996-1997	36	55	51	1995-1996	40	52	45	1994-1995	43	56	48
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Connecticut	Not available.																																																												
Idaho	None so far.																																																												
Iowa	Right now: 51 open cases. Over the course of a year, probably 80-85. The number of cases increased in the past year, but had been stable for the previous 2 years (averaging about 65 cases a year then).																																																												
Kansas	<p>1997- 1 1998- 1 1999- 8 2000- 4 2001- 5 2002- 2 2003- 3 2004- 19 2005- 14 2006- 5 2007- 5 2008- 9</p>																																																												
Kentucky	By last Oct-had opened 55 cases, closed 88 cases and had 200 pending.																																																												
Maine	Not been many cases actually filed under our statute. We use our criminal laws to prosecute the criminal part of a false claim.																																																												

Maryland	We have about 65-70 fraud cases open at any one time which includes 20-25 global cases. We obtain between 10 and 15 fraud criminal convictions per year. We also review about 500 abuse and neglect cases each year and obtain 10 or so convictions each year.
Minnesota	60-70 open on average. Settle or complete about 20-25 criminal cases; 20-25 civil cases.
Mississippi	Our investigators stay very busy, as far as number- unsure.
Missouri	At any given time, we have at least 100 cases that we're pursuing just within our unit.
North Carolina	During the 207 Fiscal Year, the NC MFCU averaged approximately 180 open investigations.
North Dakota	[Declined to participate in study.]
Ohio	2008- 26 indictments through March 2007- 92 convictions, 19 of those were patient abuse 2006- 99 convictions, 16 were patient abuse
Oregon	2007- 61 cases under existing state/federal civil and criminal statutes.
Pennsylvania	[Declined to participate in study.]
South Carolina	Not sure of the top of my head. Check the OIG website.
South Dakota	Information unavailable.
Utah	Information unavailable.
Vermont	Last year- 35 fraud investigations and 69 patient abuse investigations.
Washington	Medicaid- 2006 MFCU pursued 23 cases that were litigated in 2006.
West Virginia	At the end of last quarter we had 35 in our division.
Wyoming	MFCU averages 4 a year.
Question IV(g)	Do you believe your state's current fraud statutes have had a deterrent effect on those who would defraud your state? Why? Any data? Any anecdotes?
Alabama	Yes, the majority of Medicaid providers is honest and has legitimate billing.
Alaska	Yes. They know now that it is a criminal offense not to give us the records and that we will prosecute them for failing to do so. We use the new statute with the lower mental element more often. Now, we are in a position where we can prosecute everything under the new statute. When it was enacted in 2003 it wasn't retroactive.
Arizona	Absolutely. Arizona has the fraudulent schemes/artifices statute, which is a class 2 felony, and a presumption of 5 years- it is a very deterrent penalty.
Arkansas	Yes.
Colorado	Yes.

Connecticut	Yes, fraud statutes by definition have a deterrent effect.
Idaho	Unsure at this point.
Iowa	No because we don't have any civil fraud statutes that impact Medicaid.
Kansas	Yes in combination with our unit being aggressive in handling those cases. I've heard of companies that have screwed up and recognized that they need to fix their problems so they won't get charged with fraud.
Kentucky	No. More and more providers and pharmaceutical companies are committing fraud. Some providers seem to seek other ways to defraud if one path is foreclosed.
Maine	Prosecution under fraud statues does deter and we prosecute.
Maryland	Yes.
Minnesota	No.
Mississippi	Yes, if I were in that business and were aware that all of these settlements and penalties. It just makes sense that they are being discouraged- this is based on conversations with defense attorneys.
Missouri	We'd like to think so.
North Carolina	Yes, we've seen instances in which billing patterns have changed after prosecution.
North Dakota	[Declined to participate in study.]
Ohio	That's a good question. I think we could always be doing more.
Oregon	Yes.
Pennsylvania	[Declined to participate in study.]
South Carolina	I think our enforcement activities have had a deterrent effect.
South Dakota	Yes. I believe that the providers know they're being watched and so they know it's in their best interest to be honest.
Utah	Yes, it is pretty stiff if they look at it at all.
Vermont	I hope so.
Washington	Yes, we have the big cases that get prosecuted and provider community gets put on notice and other provider's behavior changes.
West Virginia	Yes, but we don't have maximum deterrence right now.
Wyoming	As much as any statute has the ability to deter. There is really no way to measure that.
SECTION V	IMPACT OF FEDERAL FALSE CLAIMS ACT IN AND ON YOUR STATE
Question V(a)	In your state, how active is prosecution by federal agencies (i.e., the United States Attorney's Office or the Department of Justice under the Federal False Claims Act?
Alabama	Information unavailable.
Alaska	Not very.
Arizona	Pretty good.
Arkansas	We don't deal with them very often

Colorado	It is active, but unsure as to how it compares to other states.
Connecticut	Active.
Idaho	I think they do a pretty good job with the resources they have available.
Iowa	Both US Attorney offices (Northern & Southern District) use the federal FCA for civil prosecutions of fraud. They apply this statute whenever they deem it applicable. Both offices are active in the prosecution of fraud of all types.
Kansas	Very active criminal division in the USA's office. Also active from a civil standpoint.
Kentucky	Kentucky has 2 federal districts (East and West). They work with both, but work very closely with the Western division. We all share resources.
Maine	Fairly active- we frequently do joint matters. We are not one of the states that are a satellite for the global cases.
Maryland	There aren't a lot of Medicaid cases.
Minnesota	Very Active.
Mississippi	Not sure if they're actually going under the federal FCA, they are active for prosecutions of fraud.
Missouri	They're active.
North Carolina	Very active.
North Dakota	[Declined to participate in study.]
Ohio	We work very closely with both of our AUSAs. It depends on personality, but they're active.
Oregon	There are only a handful of cases pursued under the federal FCA in Oregon. There are multiple cases the Oregon MFCU participates in with USDOJ or other USA Offices, pursued around the nation.
Pennsylvania	[Declined to participate in study.]
South Carolina	It's hard to figure; technically we wouldn't be aware of those until they become public. They are reasonably active.
South Dakota	Fairly active. Medicaid fraud is somewhat low, but when it occurs, we're very happy with federal authorities and their pursuit of that fraud.
Utah	We have had some success working with the U.S. Attorney's Office. We have had two large cases including one significant conviction of a pharmacist this year.
Vermont	Very active. They have a dedicated attorney, an investigator, 2 OIG agents, and an FBI agent who are assigned to healthcare fraud investigations.
Washington	Very active and productive. Most of the cases that were whistleblower cases involved national corporations and would be tried at a national level as opposed to the state level. Based on that model, we determined that only 55% of Medicaid cases would be tried on the state level and if we did have a FCA statute and these cases were filed at a state and national level- the relators' fees could yield a potential loss.
West Virginia	Active.
Wyoming	If we take a case to that we felt was worthy of prosecution they will prosecute. If it's a low amount of loss, they encourage me to take it to the state court.

	Definitely nothing negative about them.
Question V(b)	Do you have a constructive and productive relationship with your local United States Attorney's Office?
Alabama	Yes.
Alaska	Yes.
Arizona	Yes.
Arkansas	Yes.
Colorado	Yes.
Connecticut	Yes.
Idaho	Yes, very much so. They assist sometimes the US Attorney's office
Iowa	Yes.
Kansas	Very good working relationship. Other MFCU's are jealous.
Kentucky	Yes, very good relationship, had a cross-designation of one attorney, but the feds hired her away.
Maine	Yes.
Maryland	Yes.
Minnesota	Yes, excellent.
Mississippi	Yes.
Missouri	Yes.
North Carolina	Yes.
North Dakota	[Declined to participate in study.]
Ohio	Yes.
Oregon	Yes.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes.
South Dakota	Very much so.
Utah	Yes, while there is some political tension between our offices, the MFCU director has a good relationship with the U.S. Attorney's Office and is collaborating on cases.
Vermont	Yes.
Washington	Yes, very much so. We have quarterly "Med-Fraud" meetings.
West Virginia	Yes, very much.
Wyoming	Yes.
Question V(c)	Which federal offices are the most active prosecutors of the federal False Claims Act in your state (a particular U.S. Attorney's office, Main Justice, etc.)?

Alabama	HHS of Inspector General in Birmingham.
Alaska	We just have 1 region.
Arizona	The USA's office.
Arkansas	Us Attorney's Office.
Colorado	We only have 1 district.
Connecticut	We only have one district in CT.
Idaho	Information unavailable.
Iowa	Probably the Northern district (we have a Northern and Southern district), but this is simply a factor of where our recent cases have originated geographically.
Kansas	Only one district. All three offices are equally active.
Kentucky	US Attorney's Office.
Maine	Lead office is in Portland, Maine and that's the one we deal with the most.
Maryland	USA's office in Baltimore is the most active.
Minnesota	Dept. of Human Health Services and the one are listed.
Mississippi	Both the Northern and Southern districts are active prosecutors of fraud.
Missouri	Both offices are active.
North Carolina	They're all active.
North Dakota	[Declined to participate in study.]
Ohio	It ebbs and flows with personnel, but they're equally active.
Oregon	We only have 1 district.
Pennsylvania	[Declined to participate in study.]
South Carolina	We only have 1 district.
South Dakota	USA's office.
Utah	U.S. Attorney's Office of the District of Utah.
Vermont	We only have 1 district.
Washington	The US attorney in the Western region is more active in our state.
West Virginia	Both the northern and the southern districts are active.
Wyoming	Only 1 US Attorney's Office.
Question V(d)	Is there coordination on federal False Claims Act cases between your office and federal law enforcement officials? If so, to what extent? How does such coordination come about? Could it be improved? How?
Alabama	It is good how it is now.
Alaska	On our general investigations we use the Feds and they use us.
Arizona	They don't go through our division- they work mainly through another department.

Arkansas	Information unavailable.
Colorado	Yes, we are frequently in communication with them on a formal and informal basis. I don't know how it could be improved.
Connecticut	Yes, to a very good extent. We coordinate in both formal and informal ways via regular meetings of task force and regular communication. It could always be improved.
Idaho	Pretty good relationship and it will improve with the work we do together.
Iowa	Yes, typically because there is more than a Medicaid component we do the Medicaid portion of the investigation. The FBI, OIG, or other federal agency will develop the Medicare/SSA/IRS etc portion and private insurance companies will develop information for their portion of the case.
Kansas	Yes, we've joined forces on a number of search warrants as a result of a lack of resources. We've done a good job of utilizing resources as much as possible. There's always room for improvement.
Kentucky	Great relationship with West and a solid one with Eastern Division.
Maine	Yes, when there is a joint matter there is coordination.
Maryland	Yes. The coordination is good.
Minnesota	Lots of coordination.
Mississippi	Yes, cooperation comes about because they contact us or we contact them. The Federal interest is not always Medicaid and the MFCU's interest is Medicaid.
Missouri	On cases that directly affect Medicaid, yes. We talk, have regular meetings, and if there's litigation involving a Medicaid program, they tend to do their best to get a partial lifting of the seal to allow us to participate and assist. The coordination is pretty good right now and within the constraints of the FCA, it's as good as it can be. To a large part, it's personality driven.
North Carolina	Yes. Most of our FCA cases are investigate and pursued jointly with federal agencies. We attend periodic health care fraud working groups attended by state and federal agencies. NC MFCU attorneys are cross designated as SAUSAs and work closely with civil AUSAs.
North Dakota	[Declined to participate in study.]
Ohio	Yes, definitely. We have quarterly meetings, sometimes weekly. One of my colleagues and I are special Assistant U.S. Attorneys, which also encourages coordination.
Oregon	Yes there is coordination.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes there is coordination.
South Dakota	Yes, to a great extent. It comes about through periodic meetings or calls about cases. I don't really think it could be improved; we run our cases be each other frequently.
Utah	Though we are improving our relationship with and involvement with the U.S. Attorney's Office, we hope for more effort and collaborating from our OIG agents.

Vermont	Yes, with both the FBI and the OIG. We have regular meetings every other month and if we are working on a case together we are in touch frequently.
Washington	Yes, there is a large <i>qui tam</i> case and they relied on the state to provide information.
West Virginia	Yes, there is good coordination and cooperation.
Wyoming	Yes, if we take a case to the US Attorney's office they request that we work with the FBI. So there is good cooperation that way.
Question V(e)	Can you describe the working relationship, if any, with relators' counsel in <i>qui tam</i> cases filed under the federal statute or the statutes of other states. What involvement does relators' counsel have in investigations? Is it a team approach, with division of labor? Exclusion? Something in between?
Alabama	Information unavailable.
Alaska	None.
Arizona	Information unavailable.
Arkansas	Information unavailable.
Colorado	Information unavailable.
Connecticut	Very good. Because we don't have a <i>qui tam</i> provision, we don't have experience with them.
Idaho	Too new to take on active role incases until they were on their feet
Iowa	None, Iowa doesn't have a <i>qui tam</i> statute.
Kansas	Information unavailable.
Kentucky	Fed's usually deal with them not us.
Maine	Not yet, I intend to (Note: the Maine MFCU director is new). The NAMFCU has on Maine's behalf.
Maryland	We don't have any relationship with the relators' Bar because we don't have a State FCA.
Minnesota	Most of the contact with the realtors is with federal authority; they have to go through US Attorney's office, we support them; we actually coordinate the data and obtain the data and because other states might be similarly situated; we do 80 percent of the grunt work. Relators counsel doesn't call them directly because they should be working with US attorney's office, although they occasionally call. We try not to have them call because she isn't as knowledge of the federal statute.
Mississippi	No comment.
Missouri	It can be great or not so great. The majority of them are good attorneys working as hard as they can for their client. We have a productive relationship. The extent of their involvement is determined on case by case basis. We rarely work with relators' counsel because the USA's office decides the working relationship with the relator.
North Carolina	Since NC is a non-qui state state, the civil AUSA is the primary contact with

	relator's counsel and would be in a better position to answer this question. We cooperate as part of the team, but our first hand experience with relator's counsel is too limited to be able to answer this question.
North Dakota	[Declined to participate in study.]
Ohio	It just depends on the attorney and their resources.
Oregon	It depends on whether you are talking about a case pursued nationally, or a local, Oregon-only case.
Pennsylvania	[Declined to participate in study.]
South Carolina	Yes, it depends on if the relators counsel is helpful.
South Dakota	Information unavailable.
Utah	Not a <i>qui tam</i> state, so no real relationship, but in some cases it has been a very good relationship.
Vermont	Yes, we've worked with them peripherally. I've met a few relators and sat in on interviews with them, but I haven't worked closely with one.
Washington	No comment.
West Virginia	We have not had any relationship with relators' counsel.
Wyoming	We don't have a state FCA so we don't have state counsel for realtors. Don't really have experience dealing with them.