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An Empirical Study of Emerging State False Claims Acts

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Since Congress revitalized the federal False Claims Act (FCA) in 1986, the qui tam *action—which allows recovery by a private party who alleges and proves fraud against the government—has become an increasingly important and successful regulatory tool. Not surprisingly, the success of the federal FCA has motivated a growing minority of state legislators to pass similar statutes. Academic study of these provisions, however, has been limited.*

This Article presents the first comprehensive survey of the structure and implications of state FCAs and qui tam *provisions. The results are based on interviews with state officials charged with their enforcement. Interviewees were questioned regarding investigative resources allocated to false claims cases, the practical application of each individual state* qui tam *provision, the effectiveness of each provision, the impact of federal cases upon state cases, and coordination efforts between federal and state offices.*

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I. INTRODUCTION

As Zachary Bentley sat in his Key West, Florida, office reviewing the financial books of his pharmacy, he could hardly have imagined he would discover a pricing discrepancy that would lead to lawsuits yielding over half a billion dollars in recoveries.[1] Bentley's modest company, Ven-A-Care, Inc., provided in-home intravenous drug treatments to AIDS patients in his Key West community.[2] Bentley never intended to be a whistleblowing crusader, but could not ignore the pricing discrepancy he discovered in 1990.[3] At that time, high drug costs were exhausting many of his clients' insurance benefits.[4] Bentley saw firsthand the anguish the high costs created for his clients who could no longer afford the medicine they needed.[5] Again and again, Bentley and his two partners opted to continue treating AIDS patients whose insurance benefits were depleted.[6] As he sat in his office reviewing the pricing discrepancies, Bentley realized that many of his clients had been cheated by the false "spreads" pharmaceutical companies were using to market their products to drug suppliers.[7] The pharmaceutical companies were reporting higher than actual prices for their drugs, thereby guaranteeing themselves windfall profits through inflated Medicare reimbursements.[8]

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1 David Batstone, *Shaking Up the Drug Industry*, 32 SOJOURNERS MAG., Jan./Feb. 2003, at 19; *Medicare Drug Reimbursements: A Broken System for Patients and Taxpayers: Joint Hearing Before the Subcomm. on Health and the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 107th Cong. 47 (2001) [hereinafter *Bentley Statement*] (prepared statement of Mr. Zachary Bentley), *available at* http://energycommerce.house.gov/107/hearings/09212001Hearings371/Bentley616print.htm (last visited Oct. 26, 2005).

2. Batstone, *supra* note 1, at 19

3. *Id.*

4. *See id.*

5. *Id.*

6. *Id.*

7. *Id. See generally* Seventh Amended Petition, Texas v. Warrick Pharm. Corp., No. GV002327, 1000 WL 45998, at *3-4, *6-7 (Tex. Dist., Apr. 20, 2004) [hereinafter *Warrick Petition*] (describing fraudulent methods used by pharmaceutical companies).

8. *See* Batstone, *supra* note 1, at 19; *Warrick Petition*, *supra* note 7, at *3-4, *6-7.

Bentley was stunned when a Medicare reimbursement check passed across his desk for the infusion cancer drug, Leucovorin.[9] The Medicare reimbursement was 1000% more than his company paid for the drug.[10] According to Bentley, "[t]he ten-fold profit on this drug, being paid for by Medicare (80%) and the beneficiary (20%), was so excessive that the beneficiary's co-payment actually exceeded the cost of the drug to Ven-A-Care."[11]

Angered, Bentley and his partners refused to participate in the scheme when first approached.[12] A year later, when another drug company pitched a similar arrangement to them, they decided to blow the whistle on the fraudulent practice.[13] But before doing so, they wanted to be sure they were right.[14] They dug deeper, and discovered that the pricing scheme was a widespread and systemic problem.[15] According to Bentley, "[i]t became apparent to us that many drug manufacturers reported truthful prices, while others falsely inflated their price reports so that their targeted customers—oncologists, urologists, home care companies, [dialysis] providers, [durable medical equipment] companies, and others—would be induced by the resulting windfall profits to order their drugs."[16]

Bentley and his partners reported the scheme to federal officials and eventually presented their findings to a U.S. congressional subcommittee.[17] In Ven-A-Care's name, they also brought suit as a "*qui tam* relator"[18] under the federal civil False Claims Act (federal FCA).[19] Ultimately, the United States Department of Justice (DOJ) joined Ven-A-Care's FCA lawsuit.[20] Together, they obtained a judgment netting the federal treasury close to $500 million and shared in $44.8 million for their role in bringing and assisting in the lawsuit.[21]

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9. *Bentley Statement*, *supra* note 1, at 46-47.
10. *Id.*
11. *Id.*
12. Batstone, *supra* note 1, at 19.
13. *Bentley Statement*, *supra* note 1, at 46.
14. *Id.*
15. *Id.*
16. *Id.* at 48.
17. *See id.* at 47-48; *see also Medicaid Prescription Drug Reimbursement: Why the Government Pays Too Much: Hearing Before the Subcomm. on Oversight and Investigations of the H. Comm. on Energy and Commerce*, 108th Cong. 75-94 (2004) (testimony of Mr. T. Mark Jones and Dr. John Lockwood).
18. *See infra* notes 33-38 and accompanying text.
19. 31 U.S.C. §§ 3729-3733 (2000); *Bentley Statement*, *supra* note 1, at 48.
20. *Bentley Statement*, *supra* note 1, at 48.
21. *The Top 100 False Claims Act Settlements*, CORP. CRIME REP., Dec. 30, 2003, at 11-12, *available at* http://www.corporatecrimereporter.com/fraudrep.pdf (last visited Oct. 26,

The Ven-A-Care story is one of tremendous success for the federal government, but one of failure for all but a handful of state governments. Because drug companies also utilized their pricing discrepancy scheme to defraud the states through their Medicaid programs, the states, like the federal government, were potential plaintiffs. Most states, however, had no meaningful statutory power with which to proceed against the putative defendants. Those states which did not possess a potent statute similar to the federal FCA could not commence lawsuits against the pharmaceutical companies themselves.[22] Only a handful of states with *qui tam* provisions similar to the one found in the federal FCA were poised to reap large rewards.[23]

2005) The suit brought against Fresenius Medical Care of North America ranks as the fifth-largest settlement ever under the federal FCA. *Id.*

22. *See* Press Release, Office of Attorney General of Texas, Attorney General Reaps $27 Million Medicaid Fraud Settlement with Major Drug Maker (May 3, 2004) [hereinafter Texas Press Release], *available at* http://www.oag.state.tx.us/oagnews/release.php?id=453 (last visited Dec. 28, 2005).

23. Texas was one of the fortunate few to be able to sue the pharmaceutical companies for the losses it suffered because of their pricing scheme. *See* Robert Bryce, *Texas Goes After Big Pharma*, TEX. OBSERVER, Mar. 4, 2005, at 6. Using Texas' Medicaid Fraud Prevention Act, TEX. HUM. RES. CODE ANN. § 36.001-36.117 (2001), which mimics the federal FCA's *qui tam* provision, 31 U.S.C. § 3730 (2000), the Texas Attorney General adopted Ven-A-Care's claims and partnered with the whistleblowers and their legal counsel in a lawsuit against three drug companies: Schering-Plough Corporation's Warrick Pharmaceuticals, Boehringer Ingelheim's Roxane drug division, and Dey Laboratories. *See Warrick Petition*, *supra* note 7, at *1; *Bentley Statement*, *supra* note 1, at 47. Like the federal suit, the Texas lawsuit targeted the pharmaceutical companies' alleged practice of overstating the price of prescription brand-name and generic-brand albuterols. *See Warrick Petition*, *supra* note 7, at *3. The lawsuit trudged through three years of laborious litigation and seemingly endless deposition testimony, eventually extending into the term of Attorney General Cornyn's successor, Gregg Abbott, before concluding with a settlement. *See* Texas Press Release, *supra* note 22; Bryce, *supra*, at 3-4; *infra* App. B. "It was a hard-fought settlement," said Susan Miller, an attorney in Abbot's office. "We had at least a hearing a month regarding discovery and well over one hundred depositions." Telephone Interview with Susan Miller, Office of Attorney Gen. of Tex., in Austin, Tex. (Mar. 15, 2005). But the struggle proved worth the effort. On May 3, 2004, Texas Attorney General Gregg Abbott announced that his office "scored a major victory" in the Ven-A-Care litigation under his state's Medicaid Fraud Prevention Act. Texas Press Release, *supra* note 22.

Through its suit, Texas recovered $45.5 million. *Id.* Currently, Texas is among only thirteen states and the District of Columbia that have a statute modeled after the federal FCA. *See infra* Apps. A-B; *see also* Taxpayers Against Fraud, State False Claims Acts, *at* http://www.taf.org/statefca.htm (last visited Dec. 28, 2005). Other states with *qui tam* statutes and the District of Columbia have filed similar suits. *See, e.g.*, United States v. Merck-Medco Managed Care, L.L.C., 336 F. Supp. 2d 430, 433-35 (E.D. Pa. 2004) (describing a healthcare fraud case brought by three relators in partnership with the United States and several states under the federal FCA and by the States of Florida, Illinois, Tennessee, Nevada, Virginia, and the District of Columbia under their own false claims statutes). The *Merck-Medco Managed Care* case settled for $22.7 million in an agreement between the defendant

There is no question that the federal FCA, with its *qui tam* provisions, is a powerful regulatory tool. Only recently have states begun passing statutes that to some degree or another are modeled after it.[24] As they do so, questions arise: Is the FCA model effective, or overreaching? What impact will passage of multiple state false claims statutes have on an already complex regulatory world? What can we learn about detecting and deterring fraud from these experiences?

This Article reviews the experience of those states that have passed civil false claims acts. As part of this review, we have conducted what is to date the only comprehensive survey of states that have false claims acts with *qui tam* provisions.[25] Part II of this Article provides an overview of the federal FCA that serves as a prototype for the various state statutes. Part III discusses the results of the survey. Part IV concludes with observations about the states' current experiences in a rapidly changing environment.

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and the various plaintiffs. *See* Press Release, Pennsylvania Office of Attorney General, AG Pappert Announces $22.7 Million Settlement with Medco Health Solutions Resolving Allegations It Violated Consumer Protection Laws, Apr. 26, 2004, *available at* http://www.attorneygeneral.gov/press/release.cfm?p=275B8BE9-CF8B-D3DC-6493FF599F20B11D (last visited Dec. 28, 2005). For a sample of other successful state *qui tam* cases, see Taxpayers Against Fraud, State False Claims Acts, http://www.taf.org/statefca.htm (last visited Oct. 26, 2005) For example, California Attorney General Bill Lockyer and his staff are currently pursing a related case with Ven-A-Care against Abbott Laboratories, Inc. and Wyeth Pharmaceuticals, Inc. *See* Press Release, Office of the Attorney General of the State of California, Attorney General Lockyer Accuses Two Major Drug Companies of Inflating Prices, Cheating California Taxpayers, Jan. 7, 2003 [hereinafter California Press Release], *available at* http://caag.state.ca.us/newsalerts/2003/03-004.htm (last visited Oct. 26, 2005). Originally filed on July 28, 1998, the California lawsuit remained under seal for almost five years before Lockyer announced his accusations against the drug companies in early 2003. *Id.*

The Texas Attorney General readily admits that neither the lawsuit nor the large settlement would have been possible if the state had not amended its statute to include a *qui tam* or whistleblower provision. Texas Press Release, *supra* note 22; *see* Bryce, *supra* note 23, at *3-4. Shortly after announcing the settlement with Schering-Plough, Attorney General Abbott announced that Texas would be pursuing a similar suit against Abbott Laboratories and Baxter International. Juliann Walsh, *Texas Suit Alleges Abbott, Baxter Inflated Prices for Medicaid Patients*, CHI. SUN-TIMES, May 27, 2004, at 62. That suit is currently being litigated. *Id.*; Bryce, *supra*, at *1. Illinois announced an almost identical price inflation suit against Abbott Laboratories and forty-seven other defendants (the largest single drug-pricing suit to date) under its state statute in early February 2005. Michael D. Sorkin, *Drug-Pricing Practices Cost Consumers Millions, Illinois Says in Lawsuit*, ST. LOUIS POST-DISPATCH, Feb. 9, 2005, at A01.

24. *See infra* App. A.

25. The survey is limited to states with false claims statutes containing *qui tam* provisions in effect before January, 2005. *See* discussion *infra* Part III.A.

II. THE FEDERAL CIVIL FALSE CLAIMS ACT

Diseased mules, defective muskets,[26] and an iconic President's frustration[27] led to passage of the federal FCA in 1863.[28] The statute gave the federal government a way to combat fraud suffered by the Union Army when it received deliveries of defective supplies.[29] Today the federal FCA is used against fraud perpetrated by all sorts of government contractors including health care providers,[30] defense contractors,[31] and oil and gas companies.[32]

Since its passage in 1863, the federal FCA has included a *qui tam* provision.[33] *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."[34] Private parties who allege and prove fraud against the federal

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26. 132 CONG REC. 22339 (1986) (statement of Rep. Berman). According to the 1863 investigation, one thousand mules delivered to the Union army were "unfit for the service, and almost worthless, for being too old or too young, blind, weak-eyed, damaged, worn out, or diseased." *False Claims Act Amendments: Hearings Before the Subcomm. on Admin. Law & Gov't Relations of the H. Comm. on the Judiciary*, 99th Cong. 295 (1986); *see* Note, *The History and Development of Qui Tam*, 1972 WASH. U. L.Q. 81, 91-101 [hereinafter *History of Qui Tam*] (describing the history of *qui tam* in American jurisprudence); J Randy Beck, *The False Claims Act and the English Eradication of* Qui Tam *Legislation*, 78 N.C. L. REV. 539, 555-56 (2000) (describing passage of 1863 federal FCA)

27. *See* Beck, *supra* note 26, at 555.

28. Act of March 2, 1863, ch. 67, 12 Stat. 696.

29. S. REP. NO. 99-345, at 8 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5273.

30. "Approximately one of every three dollars recovered through false claims cases relate to healthcare fraud." The False Claims Act Res. Ctr., Examples of Qui Tam Cases, http://www.falseclaimsact.com/healthcare.html (last visited Oct. 26, 2005); *see* ANDY SCHNEIDER, TAXPAYERS AGAINST FRAUD EDUCATION FUND, THE ROLE OF THE FALSE CLAIMS ACT IN REDUCING MEDICARE AND MEDICAID FRAUD BY DRUG MANUFACTURES: AN UPDATE 5 (2004), *at* http://www.taf.org/publications/TAFSingle.pdf (last visited Oct. 26, 2005) (noting that in the fall of 2004, according to the Assistant United States Attorney General in charge of the Civil Division, there were "under seal in the neighborhood of 100 whistleblower cases involving allegations against over 200 drug manufacturers with respect to 500 different products").

31. S. REP. NO. 99-345, at 2-3, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5267-68.

32. In fiscal year 2000, the second largest category of fraud recoveries ($230 million) came from "companies alleged to have underpaid royalties on [production of oil and other minerals from public lands], 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, U.S. Dep't of Justice, Justice Recovers Record $1.5 Billion in Fraud Payments, Highest Ever for One Year Period (Nov. 2, 2000), *available at* http://www.USDOJ.Gov/opa/pr/2000/November/641civ.htm (last visited Nov. 4, 2005).

33. Act of March 2, 1863, ch. 67, 12 Stat. 696, 698.

34. Vt. Agency of Nat'l Res. v. United States *ex rel.* Stevens, 529 U.S. 765, 768 n.1 (2000); *see History of Qui Tam*, *supra* note 26, at 83 & n.9 (citing 3 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND 160 (1768)).

government bring *qui tam* lawsuits.[35] If successful, these *qui tam* plaintiffs (known as "relators")[36] collect a percentage of the recovery.[37] The relator need not be personally injured or affected by the defendant's conduct, but is deemed to have standing on the theory that the federal government, as the real injured party, may assign its right to sue to a private plaintiff.[38]

Prior to 1986, the federal FCA was amended several times[39] in ways that weakened all *qui tam* actions,[40] so that they were rarely and ineffectively used.[41] In 1986, Congress substantially amended the FCA, invigorating *qui tam* actions.[42] The 1986 amendments increased

35. 31 U.S.C. § 3730 (2000). There are seven types of conduct covered by the FCA, all involving the submission of false claims to the federal government, including: 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 or transmit money or property to the Government." *Id.* § 3729(a); *see, e.g.*, Pickens v. Kanawha River Towing, 916 F. Supp. 702, 705 (S.D. Ohio 1996) (discussing "reverse false claims").

36. JOHN T. BOESE, CIVIL FALSE CLAIMS AND QUI TAM ACTIONS §§ 1-5 (2005). Boese's treatise is an excellent resource on the FCA.

37. 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 at amounts of $5500 to $11,000. *Id.* § 3729(a) The statute specifies penalties of $5000 to $10,000, but Congress 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, 110 Stat. 1321-358 (1996).

38. In *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 773 (2000), the United States 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. The FCA can reasonably be regarded as effecting a partial assignment of the Government's damages claim."

39. Act of March 2, 1863, ch. 67, 12 Stat. 696 (1863), *amended by* Rev. Stats. 3490-94, 5438 (1875), *amended by* Act of Dec. 23, 1943, ch. 377, 57 Stat. 608 (1944), *codified at* 31 U.S.C. §§ 232-235 (1976), *recodified at* 31 U.S.C. §§ 3729-3731, Pub. L. No. 97-258, 96 Stat. 978 (1982), *amended by* False Claims Amendments Act of 1986, Pub. L. No. 99-562, 100 Stat. 3153 (1986), *amended by* Pub. L. No. 103-272, 108 Stat. 1362 (1994) (codified at 31 U.S.C. §§ 3729-3731).

40. 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 had informed the federal government about the fraud. Act of December 23, 1943, ch. 377, 57 Stat. 608, 609 (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); United States v. Priola, 272 F.2d 589, 593-94 (5th Cir. 1959)

41. *See* BOESE, *supra* note 36, § 1.03.

42. *See id.* § 1.04[H].

the amount of recovery a relator could obtain,[43] established a generous mandatory minimum recovery for relators,[44] included the award of attorneys' fees for relator's counsel, added whistleblower protections, and relaxed the "jurisdictional bar" provision that had prevented many relators from filing suit.[45]

This jurisdictional bar provision was included in the 1943 amendments to the FCA in an effort to ensure that relators provided government officials with new information and did not simply file an FCA action based upon information already available to government regulators.[46] In Congress's view, a relator is not helping the

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43. The 1986 amendments increased damages from double to treble and increased penalties from $2000 per false claim to between $5000 and $10,000 per false claim. 31 U.S.C. § 3729 (2000). The FCA provides no guidance on how to assess the amount of penalties within this range. Most courts hold that, barring constitutional problems under the Eighth Amendment's excessive fine clause, assessment of at least $5000 (now $5500) is not discretionary but rather mandatory. *See* United States v. Cabrera-Diaz, 106 F. Supp. 2d 234, 242 (D.P.R. 2000); United States *ex rel.* Garibaldi v. Orleans Parish Sch. Bd., 46 F. Supp. 2d 546, 565 (E.D. La. 1999); *cf.* Hudson v. United States, 522 U.S. 93, 110-11 (1997) (Stevens, J., concurring) (discussing double jeopardy limits on civil sanctions). *But see* United States v. Krizek, 909 F. Supp. 32, 33-34 (D.D.C. 1995) (providing two different calculations of the number of claims in the same case for purposes of establishing liability and penalties), *rev'd and remanded*, 111 F.3d 934, 938 (D.C. Cir. 1997) (finding insufficient evidence to support the two different standards, but implicitly approving of the use of the two standards); United States v. Greenberg, 237 F. Supp. 439, 445 (S.D.N.Y. 1965)

The 1863 FCA gave the relator 50% of any successful judgment. 12 Stat. 698, § 6 (1863) (current version codified at 31 U.S.C. § 3729 (2000)). The 1943 Amendment reduced this to 10% maximum if the government intervened and 25% if the government did not, with no guaranteed minimum in any case. Act of December 23, 1943, ch. 377, 57 Stat. 608 (1944). The 1986 Amendments increased the relator's share, guaranteed a minimum recovery in most cases and provided for attorneys' fees and costs. Pub. L. No. 99-562, 100 Stat. 3153 (1986). A relator is now guaranteed 15-25% of the judgment when the government intervenes, and 25-30% if the government does not intervene. 31 U.S.C. § 3730(d)(1)-(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, the DOJ has promulgated factors to consider. *DOJ Relator's Share Guidelines*, FALSE CLAIMS ACT AND QUI TAM Q. REV., Oct. 1997, at 17, *available at* http://www.taf.org./publications/PDF/Oct97qr.pdf (last visited Oct. 26, 2005). The amount may be reduced to 10% if the FCA case is based on information additional to that provided by the relator. 31 U.S.C. § 3730(d)(1). Any relator who is convicted of criminal conduct arising from his or her role in the FCA violation receives nothing. *Id.* § 3730(d)(3). Reasonable attorneys' fees and costs are also to be awarded under the 1986 Amendments. *Id.* § 3730(d)(1)-(2). *See generally* Marc S. Raspanti & David M. Laigaie, *Current Practice and Procedure Under the Whistleblower Provisions of the Federal False Claims Act*, 71 TEMP. L. REV. 23, 24-28 (1998) (outlining the development of the federal FCA).

44. 31 U.S.C. § 3730(d)(1)-(2).

45. *See infra* notes 48-49 and accompanying text.

46. BOESE, *supra* note 36, § 1.02.

government much (at least not enough to share in the judgment of the lawsuit) if government officials already know about the fraud the relator is disclosing.[47] Thus, after 1943 and until 1986, when Congress again amended the jurisdictional bar provision, the federal FCA jurisdictionally barred *qui tam* actions if the information included in the relator's lawsuit was known to the U.S. government when the action was brought.[48] Because the government often had some knowledge of the fraud, even if it did not have enough information to stop it, few if any relators could clear the "government knowledge" jurisdictional bar. The 1986 amendments to the FCA allowed relators to go forward in their lawsuit, even if government officials are aware of the fraud at issue, *if* the relator was an "original source" of the information about the fraud.[49]

The 1986 amendments made a remarkable difference in the use of the federal FCA. Before 1986, the DOJ received approximately six *qui tam* cases per year.[50] Since the 1986 amendments went into effect, 4704 *qui tam* cases have been filed through September 30, 2004 (415 in 2004), and $8.4 billion has been recovered ($554 million in 2004).[51]

The procedure for pursuing federal *qui tam* FCA actions is unique in American jurisprudence. The complaint filed by the *qui tam* relator is sealed and not served on the defendant or made public in any way.[52] The entire action is, in effect, stayed while the federal government (acting through the DOJ and the appropriate United States Attorney) is notified of the lawsuit by service of a copy of the complaint and "written disclosure of substantially all material evidence

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47 *Id.*

48. *See* United States *ex rel.* Wisconsin v. Dean, 729 F.2d 1100, 1104-05 (7th Cir. 1984) (discussing the practical impact of this change). In *Dean*, the State of Wisconsin brought suit as relator against a physician for filing allegedly false Medicaid claims with the State of Wisconsin. *Id.* at 1102. The United States Court of Appeals for the Seventh Circuit dismissed the lawsuit, finding that Wisconsin was jurisdictionally barred because the United States was "in possession" of the information in the lawsuit at the time the case was filed. *Id.* This was true. The United States knew of Dr. Dean's Medicaid fraud, but only because Wisconsin, which had previously convicted Dr. Dean of Medicaid fraud for the same claims alleged to be false in its *qui tam* action, had provided information about Dr. Dean's conviction to the Department of Health and Human Resources as required by Medicaid laws. *Id.* at 1103-04. Recognizing the unfairness of its decision, the Seventh Circuit concluded its opinion in *Dean* by suggesting that Congress was the more appropriate body from whom relators should seek relief from an unfair jurisdictional bar provision. *Id.* at 1106.

49. 31 U.S.C. § 3730(e)(4) (2000).

50 Steve France, *The Private War on Pentagon Fraud*, 76 A.B.A. J., Mar. 1990, at 46, 48

51. CIVIL DIV., U.S. DEP'T OF JUSTICE, FRAUD STATISTICS—OVERVIEW OCT. 1, 1986-SEPT. 30, 2004 (2005) [hereinafter FRAUD STATISTICS].

52. 31 U.S.C. § 3730(b)(2).

and information the person possesses."[53] While the complaint remains under seal, the DOJ evaluates the case, tests its merits, assesses its resources, and determines whether it will intervene.[54] If it enters the case, the DOJ assumes "primary responsibility" for the lawsuit but the relator continues as plaintiff.[55] The relator retains certain rights if the government intervenes, including the right to object and be heard on a motion to limit the relator's role, or to dismiss or settle the case.[56] If the federal government elects not to intervene, the *qui tam* relator may proceed with the action as the sole plaintiff.[57]

If the government intervenes in the lawsuit, for the most part the relator is guaranteed at least 15% of any judgment or settlement.[58] The relator can receive or the court may award more, up to 25%.[59] If the government does not join the lawsuit, the relator is guaranteed 25% and could receive up to 30%.[60] Only in cases where evidence is based on publicly disclosed information, or the relator is partially at fault for

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53. *Id.* The written disclosure to the government by a relator "of substantially all material evidence and information" helps the government focus its evaluation of the relator's claims. BOESE, *supra* note 36, § 4.04; *see* United States *ex rel.* Made in the USA Found. v. Billington, 985 F. Supp. 604, 608 (D. Md. 1997); Raspanti & Laigaie, *supra* note 43, at 37.

54. BOESE, *supra* note 36, § 4.05.

55. 31 U.S.C. § 3730(c)(1). This dual-plaintiff system creates interesting dynamics. When the government intervenes, *qui tam* actions become three-party lawsuits. The coplaintiffs (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 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. Gen. Elec., 808 F. Supp. 580, 583-84 (S.D. Ohio 1992).

56. 31 U.S.C. § 3730(c)(2). 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.* § 3730(c)(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.* § 3730(c)(2)(D). Some relators have successfully objected to proposed settlements between the government and *qui tam* defendants. *See, e.g.*, Gravitt v. Gen. Elec. Co., 680 F. Supp. 1162, 1165 (S.D. Ohio 1988), *dismissed*, 848 F.2d 190, 190 (6th Cir. 1988) (unreported table opinion).

57. 31 U.S.C. § 3730(c)(3). If the relator proceeds as the sole plaintiff after the DOJ has declined to intervene, the DOJ may request to receive copies of all pleadings filed and deposition transcripts (at the government's expense). *Id.* Upon a showing of "good cause," the court may permit the government to intervene "at a later date." *Id.*

58. *Id.* § 3730(d)(1).

59. *Id.* § 3730(d)(2).

60. *Id.*

the violations, does the relator get a smaller percentage.[61] Because the federal FCA's damages and penalty provisions tend to generate exceptionally large judgments,[62] relators' taxable recoveries involve substantial sums.[63]

The federal *qui tam* FCA statute contains two features that render it extraordinarily successful as a regulatory and prosecutorial tool.[64] First, it brings forth inside information of fraud. "Complex economic wrongdoing cannot be detected or deterred effectively without the help of those who are intimately familiar with it."[65] "Inside information can alert regulators and the public to ongoing or inchoate wrongdoing; in many cases, before harm has occurred."[66] "Insiders can also guide public regulators as they investigate questionable activity and can help overcome concealment and cover-ups."[67] Government officials confirm the importance of insiders: "'Whistleblowers are essential to our operation . . . . Without them, we wouldn't have cases.'"[68]

The federal FCA brings forth inside information through its damages and penalties provisions and its jurisdictional bar provision.[69]

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61. *Id.* § 3730(d)(1), (3) Note that the *qui tam* FCA provisions discourage class actions; the more plaintiffs there are, the less each will get of the percentage of a judgment statutorily allocated to relators.

62. For example, recent judgments in FCA *qui tam* cases include an $875 million settlement from TAP Pharmaceuticals; a $745 million settlement with HCA Healthcare Corporation to resolve some of the alleged FCA violations pending against HCA, a $385 million settlement with National Medical Care, Inc, a $325 million settlement with SmithKline Beecham Clinical Laboratories, a $325 million settlement with National Medical Enterprises, and a $110 million settlement with National Health Laboratories *See* BOESE, *supra* note 36, § 1.05[A].

63. For example, recent relators' awards include $44.8 million, $28.9 million, and $18.1 million. Taxpayers Against Fraud, *Top* Qui Tam *Recoveries of the Year 2000*, FALSE CLAIMS ACT AND QUI TAM Q. REV., Jan. 2001, at 20, http://www.taf.org/publications/PDF/Jan2001.final.pdf (last visited Oct. 26, 2005).

64. Pamela H. Bucy, *Private Justice*, 76 S. CAL. L. REV. 1, 53-54 (2002).

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

66. *Id.*

67. *Id.*

68. Justin Gillis, *Whistleblowing: What Price Among Scientists?*, WASH. POST, Dec. 28, 1995, at A21 (quoting Lawrence J. Rhoades, a division director at the United States Department of Health and Human Services); *see also Health Care Initiatives Under the False Claims Act that Impact Hospitals: Hearing Before the Subcomm. on Immigration & Claims of the H. Comm. on the Judiciary*, 105th Cong. 15 (1998) [hereinafter *Subcomm. on Immigration & Claims Hearings*] (statement of 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).

69. Bucy, *supra* note 64, at 60-62, 68-69. The solicitation of inside information was one of the statute's goals As noted in the Senate Report accompanying the 1986 Amendments, "[t]he proposed legislation seeks not only to provide the Government's law

The damages and penalty provisions, coupled with the mandatory percentage allocated for the relator, provide a substantial incentive (that is, potentially, a lot of money) to attract knowledgeable insiders to take the risks attendant with serving as whistleblowers. The jurisdictional bar provision, which disqualifies anyone from serving as a relator who brings information the government already has,[70] ensures that a relator's information is timely and of use to the government.

Second, the fact that the DOJ and a relator continue together as plaintiffs, or at a minimum, that the DOJ "monitors" the private plaintiff, provides a measure of perceived quality control on federal FCA actions. It also provides a way for knowledgeable relators (and of equal importance, their counsel) to supplement regulators' strained resources.[71] The federal FCA has proven highly effective in recruiting legal talent who possess both the skill and resources to handle complex, time-consuming, and expensive cases. Because of the large recoveries available to private plaintiffs under the federal FCA through statutorily mandated percentages of large, fixed penalties, private plaintiffs' counsel can receive significant fees. Their fees are often a combination of court-awarded attorneys' fees and a percentage of the recovery they negotiated pre-trial with their clients.[72] These large fees

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enforcers with more effective tools, but to encourage any individual knowing of Government fraud to bring that information forward." S. REP. No. 99-345, at 2 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5266-67.

70. When information about the fraud is publicly available, the relator may proceed in the case as a plaintiff only if the relator is an "original source" of the information. 31 U.S.C. § 3730(e)(4)(A) (2000).

71. The FCA contains another mechanism to help with quality control, but this mechanism, unlike the dual-plaintiff system, is not unique to the FCA. The FCA provides that parties filing frivolous *qui tam* actions may be held responsible for defendants' attorneys' fees and expenses. *Id.* § 3730(d)(4).

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

Id.; *see also* United States *ex rel.* Haycock v. Hughes Aircraft Co., Nos. 94-55620, 94-55826, 1996 WL 612680, at *1 (9th Cir. 1996) (recognizing courts' discretion in awarding attorneys' fees when relator's claim is frivolous); United States *ex rel.* Herbert v. Nat'l Acad. of Sci., No. 90-2568, 1992 WL 247587, at *7 (D.D.C. 1992) ("Because Plaintiff has abused not only the provisions of the *qui tam* statute, but the processes of this Court, this Court will . . require the Plaintiff to pay the Defendant's reasonable attorney's fees and the expenses of this litigation.").

72. For example, in *United States ex rel. Taxpayers Against Fraud v. General Electric Co.*, relators' counsel and relator agreed that counsel would receive 25% of the relators' share. 41 F.3d 1032, 1036 (6th Cir. 1994). This percentage was in addition to attorneys' fees and

are a significant incentive for top legal talent to undertake often challenging *qui tam* plaintiffs' work.

Recent examples demonstrate the formidable legal and investigative resources the federal FCA brings to prosecutorial efforts. In one *qui tam* FCA case, six law firms devoted the equivalent of twenty full-time lawyers to the case incurring $1 million in fees and expenses per month while the case was being intensively litigated.[73] In another recent federal *qui tam* FCA case:

> [T]here were 125 defense attorneys and fifteen relators' attorneys, plus DOJ attorneys[;] the federal courthouse was not large enough to accommodate the group for docket calls. The defendant, Shell Oil Company, produced 7000 banker boxes of records. One of the relator attorneys took responsibility for handling all documents in the case. Doing so took 5000 square feet of warehouse space (with the record boxes stacked seven feet high). This relator's attorney organized the records so that the plaintiffs could respond within thirty days to any defense request for identification of any record pertaining to a particular claim by producing a CD containing the requested records. This case settled . . . with a recovery to the U.S. Treasury of $400 million and a relator's share of $64 million.[74]

In short, because of its ability to attract knowledgeable insiders, recruit skilled legal talent and maintain a measure of quality control on private litigants, the federal FCA has proven to be a strong and lucrative tool for the federal government. Since 1986 when the federal FCA was resurrected with significant amendments, *qui tam* recoveries under the Act have increased from none in fiscal year 1987 to $1.4 billion in fiscal year 2003.[75] The federal FCA has often been described by law enforcement officials as the DOJ's "primary civil enforcement tool to combat fraud"[76] and "an essential tool to protect the integrity of the Medicare program."[77] Key to the FCA's success are its revitalized

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costs awarded by the court pursuant to 31 U.S.C. § 3730(d)(1). *Id.* The total amount awarded to relator's counsel in this case was more than $4 million. *Id.*

73. Pamela H. Bucy, *Game Theory and the Civil False Claims Act: Iterated Games and Close-knit Groups*, 35 LOY. U. CHI. L.J. 1021, 1030 n.61 (2004).

74. *Id.* (citations omitted).

75. FRAUD STATISTICS, *supra* note 51.

76. *Subcomm. on Immigration and Claims Hearings*, *supra* note 68, at 14 (statement of Donald K. Stern, U.S. Attorney, District Mass., and Chair, Attorney General's Advisory Comm., Department of Justice) ("[T]he False Claims Act . . . has been the Department's primary civil enforcement tool to combat fraud").

77. *Id.* (statement of Lewis Morris, Assistant Inspector General, Department of Health & Human Services).

qui tam provisions.[78] Not surprisingly, the success of the federal FCA has motivated a growing minority of state legislators to pass similar statutes.

III. STUDY RESULTS

To conduct a study of states' experience with false claims statutes, the authors of this Article interviewed the individuals in each state responsible for enforcing that state's false claim act.[79] In every instance, this was at least one attorney in the state Attorney General's (AG) office.[80] All interviews were conducted between December 2003, and February 2005.[81] Only individuals in states with false claims statutes in effect prior to January 1, 2005, were surveyed.[82] A total of twenty individuals were interviewed, some multiple times, for a total of thirty-three interviews.[83] Interviewees were questioned regarding investigative resources allocated to false claims cases, the practical application of each individual state *qui tam* provision, the effectiveness of each provision, the impact of federal cases upon state cases, and coordination efforts between federal and state offices.[84]

A. General Observations

Nineteen states have some type of false claim statute that provides civil or criminal liability for those who present false claims to the state (or conspire to do so).[85] Only thirteen of the nineteen statutes contain *qui tam* provisions.[86] This study focuses on only those states that have false claims statutes with *qui tam* provisions. As noted, *qui tam* provisions allow any person who is aware of false claims

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78. Bucy, *supra* note 64, at 61-62; Bucy, *supra* note 65, at 906-09.

79. *See infra* App. B.

80. *Id.* Actions in New Mexico are officially brought by the Human Services Department, but the Attorney General has supervisory control. *See* N.M. STAT. ANN. § 27-14-3, -7 (Supp 2004).

81. *Infra* App. B.

82. In January 2005, New Hampshire's false claims statute with a *qui tam* provision became effective. *See* N.H. REV. STAT. § 167:61-61e (LexisNexis 2004). New Hampshire's statute is not included in this study because it was not effective before January 1, 2005.

83. Information on file with the authors

84. *Infra* App B.

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

86 States that include *qui tam* provisions in false claims statutes include: California, Delaware, Florida, Hawaii, Illinois, Louisiana, Massachusetts, Nevada, New Mexico, Tennessee, Texas, Virginia, and the District of Columbia. *See infra* App. A.

submitted to a state to bring a civil lawsuit alleging such conduct.[87] This *qui tam* plaintiff, known as a "relator," need not be personally harmed.[88] Standing is granted to the relator on an "assignment" theory—that the victim of the false claim, the government, may assign its right to bring suit.[89] California was the first state to pass a false claims act with a *qui tam* provision, passing its statute in 1987.[90] Many of the state false claims statutes, however, are of very recent vintage: six of the thirteen were passed or amended to include *qui tam* authority in the last five years.[91] Massachusetts' *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."[92]

Ten of the thirteen statutes apply to any type of false claim against the state; three of the statutes are specifically limited to healthcare or Medicaid fraud.[93] All of the thirteen statutes provide that relators will share in any recovery obtained.[94] At least two jurisdictions provide that relators can obtain as much as 50%, depending on the circumstances of the case.[95] All of the statutes provide the opportunity for some political subdivision of the jurisdiction to intervene and to continue the case as coplaintiff with the relator.[96]

Every statute grants a political subdivision of the jurisdiction the authority to monitor the relator's case even if that political subdivision opts not to intervene as coplaintiff.[97] All but one jurisdiction, Texas, provide that the relator may continue if the political subdivision responsible for false claims cases chooses not to intervene.[98] All of the statutes provide a 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

87. *See supra* notes 33-38 and accompanying text.
88. *See supra* notes 33-38 and accompanying text.
89. *See supra* notes 33-38 and accompanying text.
90. *See infra* Apps. A-B.
91. *See infra* Apps. A-B.
92. MASS. GEN. LAWS ANN. ch. 12, § 5C(2) (West 2002).
93. *Infra* App. A. Tennessee has both a general and a healthcare-specific statute. *See infra* App. B.
94. *See infra* App. A.
95. Those states are Nevada and California. *See id.*
96. *See id.*
97. *See id.*
98. *See id.*

intervene.[99] All of the statutes have a jurisdictional bar provision, forbidding the relator from going forward if the information is public.[100] All of the statutes provide 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.[101]

The thirteen jurisdictions with *qui tam* provisions are geographically dispersed, stretching from Hawaii to the District of Columbia.[102] Interestingly, five of the thirteen statutes are in Southern states—more than any other region in the country.[103] Most of the statutes have seen only cosmetic amendments, if any, since the *qui tam* provision was passed.[104]

B. Investigation Resources

The thirteen states with *qui tam* false claims statutes 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 the Anti-Trust or Consumer Fraud divisions.[105] Depending on the type of case, other state and local enforcement authorities often play a role in investigating the *qui tam* cases, such as investigators with state Departments of Transportation, Insurance, Education, or Medicaid.[106] Virginia is the only state that has a Special *Qui Tam* Unit dedicated solely to the coordination, investigation, and prosecution of *qui tam* actions.[107]

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99. *See id.*
100. *See id.*
101. *See id.*
102. *See id.*
103. Southern states hosting *qui tam* provisions include: Florida, Louisiana, Tennessee, Texas, and Virginia. Two northern states have passed these provisions: Delaware and Massachusetts. Two, Nevada and New Mexico, are in the Southwest. Illinois and California round out the group. *See infra* App. A.
104. Five of the thirteen have undergone such minor amendments. *See infra* App. B. Illinois, for example, renamed its Civil Investigative Demand (CID) provision as a "Civil Investigative Subpoena." *See id.*; 740 ILL. COMP. STAT. ANN. 175/6 (West Supp. 2005) Tennessee is the only state that has made a significant substantive amendment since passing its *qui tam* provision; it deleted criminal penalties from its statute. *See infra* App. B
105. *See infra* App. B.
106. *See infra* App. B
107. *See infra* App. B. Virginia's *Qui Tam* Coordinator is veteran prosecutor Guy W Horsley who works part-time in the Virginia Attorney General's office with the assistance of one full-time paralegal. *Id.* All *qui tam* cases in Virginia are first referred to Horsley, who then assigns investigators and manages the development of the case. *Id.* Although the

Currently, only two of the thirteen jurisdictions allocate specific funds for investigative resources to pursue *qui tam* actions.[108] Four AG offices reported that a substantial portion of their budget for *qui tam* investigations is federally funded.[109] 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.[110]

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.[111] Although Massachusetts' false claims statute does not mandate 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.[112] All other *qui tam* recoveries in Massachusetts, however, must be placed in the state's general fund.[113] In Virginia, no specific investigative funds are allocated to *qui tam* cases, but the Medicaid Fraud Unit, which handles the bulk of the state's *qui tam* cases, is the only state agency authorized to "borrow" investigators from other state agencies.[114]

California is the only state with seasoned investigators specifically dedicated to pursuing *qui tam* cases.[115] California's AG office has three investigative auditors and two analysts assigned to civil false claims cases.[116] In addition, there is a bureau-wide group of investigators that may be called upon on an as-needed basis.[117] Several states, such as Florida and Hawaii, have investigators with experience working on *qui tam* cases, but they are not assigned exclusively to *qui tam* cases.[118]

Most of the states utilize a variety of state investigative agencies to investigate *qui tam* cases brought by relators. Illinois, for example,

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Virginia Attorney General approved a specific protocol for coordination of *qui tam* cases, the protocol has not yet been released for publication. *Id.*

108. *See infra* App. B.
109. *See id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. *Id.*
114. *Id.*
115. *Id.*
116. *Id.*
117. *Id.*
118. *Id.*

uses the State Police and the Medicaid Fraud Control Unit, together comprising approximately forty investigators.[119] Tennessee relies heavily on the Tennessee Bureau of Investigation, made up of approximately twenty-five investigators.[120] The Virginia AG's office supplements its own investigative resources with investigators "borrowed" from other state agencies and volunteer law students.[121] 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.[122] Several states made clear that they rely heavily on the investigative resources and information gathered by relators and their counsel to supplement their resources.[123]

Five out of thirteen states' false claims statutes contain Civil Investigative Demands (CID) or a similar type of subpoena power available for investigating *qui tam* cases.[124] CID provisions generally grant the express authority to the attorney general in a particular jurisdiction to demand evidence in the form of documentary material, answers to interrogatories, and 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."[125] All of the offices with CID authority agree that CIDs are extremely powerful prosecutorial tools.[126] As one assistant AG exclaimed, CIDs "are a terrific tool."[127] In the AG offices of the eight states without CID powers, all but two indicated that such powers would be helpful.[128]

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119. *Id.*
120. *Id.*
121. *Id.*
122. *See infra* App. B.
123. *See id.*
124. *See infra* Apps. A-B.
125. 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).
126. *See infra* App. B.
127. *Id.*
128. *See id.* The District of Columbia does "not see a need" for CIDs, Nevada "do[es] not want them," Louisiana has subpoenas which "are sufficient," and the Delaware AG's office "wouldn't mind having them, but [does] not believe CIDs would enhance [the] ability to prosecute false claims cases." *Id.* If document requests are denied, then the Delaware AG office simply "goes after them with a search warrant." *Id.* When asked whether his state's statute authorized CIDs, at least one respondent exclaimed, "What the hell is a CID?" *Id.*

C. Application

Regardless of whether a state's *qui tam* statute applies to all false claims or only those concerning healthcare,[129] presently the majority of *qui tam* cases filed under the thirteen statutes are healthcare related.[130] One assistant AG explained that this was because most of the state *qui tam* cases are "global" Medicaid cases that were first developed in federal courts as Medicare and Medicaid fraud cases.[131] "Global" cases are those that identify a nationwide fraud, usually investigated by multiple federal and state offices, and resolve the criminal, civil, and administrative liability defendants face in multiple jurisdictions all at one time.[132]

Those responsible for enforcing state false claims statutes describe the quality of *qui tam* cases filed under their statutes as "good" (Delaware, D.C., Massachusetts), "fairly high quality" (Texas), and "half good, half bad" (Hawaii, Illinois, Tennessee).[133] All respondents agreed that, generally, the preparation by the relator and his or her counsel determines whether a case is good or weak.[134] The states rely on experienced relator counsel to provide needed discovery, to screen cases, and to provide litigation assistance.[135]

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129. The false claims statutes in three of the thirteen states pertain only to false healthcare claims. *See infra* Apps. A-B The remaining ten state statutes apply generally to any type of false claim against the state. *See infra* Apps. A-B.

130. *See infra* App. B.

131. *Id.* For an example of one such successful "global" case, see *United States v. Merck-Medco Managed Care, LLC.*, 336 F. Supp. 2d 430, 433-35 (E.D Pa. 2004) (describing a global case involving six states and the District of Columbia, the federal government, and three *qui tam* relators), and *supra* note 23 and accompanying text.

132. *See infra* App. B.

133. *See id.*

134. *See id.* One respondent provided an example of a weak case brought by an ill-prepared relator where the relator alleged that the state was defrauded by the defendant's failure to accurately report income or pay enough state taxes. *Id.* However, the state statute, like the federal FCA, excluded violations of the tax code from coverage under its false claims statute. *Id.*

135. *See infra* App. B. One respondent enthusiastically exclaimed that relators' counsel are "extremely helpful," providing much of the discovery and often "present[ing] well screened cases and provid[ing] substantial assistance in litigation." *Id.* According to Christopher Ames of California's Attorney General's office, "[t]here are *qui tam* plaintiffs' firms that are specialists, and they are good to excellent, and there are lawyers who have never seen or heard of false claims cases [who] are full of problems." *Id.* Prosecutors in Delaware, Hawaii, Massachusetts, Nevada, Texas, Virginia, and the District of Columbia rate the quality of relators' lawyers they work with as either "good" or "pretty good." *See id.* Prosecutors in Florida, Illinois, Louisiana, and Tennessee have had a more mixed experience. *See id.*

Once a relator brings a case to the attention of state officials, the thirteen states follow a variety of procedures.[136] Usually, the *qui tam* relator is required to serve a copy of the complaint as well as documentary material upon the government entity responsible for prosecuting false claims act violations.[137] The complaint then remains under seal for between 60 days[138] in some jurisdictions and as many as 120 days[139] in others.[140] Most jurisdictions allow the prosecuting authority to petition the court for extensions of the statutory period.[141] Before the statutory period expires the prosecutorial authority is required to either assume or to deny control of the action.[142] Government prosecutors maintain varying control over actions in which they intervene, with some maintaining "primary control"[143] and others assuming "exclusive control"[144] of the litigation.[145]

D. Effectiveness

Prior to passage of their false claims statutes, only five of the states surveyed brought suit against defendants who were submitting false claims to the state.[146] For the most part, few such cases were pursued even under relatively simple fraud theories.[147] Representatives in states surveyed described their state false claims statute as an effective tool against fraud.[148] Although the state statutes are too new to measure accurately their deterrent impact, most state AG's believe

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136. *See infra* App. B.

137. *See, e.g.*, MASS. GEN. LAWS ANN., ch. 12, § 5C(3) (West 2002) (stating that "a copy of the complaint and written disclosure of substantially all material evidence and information the relator possesses shall be served on the attorney general").

138. Sixty days is the statutory period that a complaint must remain under seal under the federal FCA. 31 U.S.C. § 3730(b)(2) (2000). Most jurisdictions mimic the federal statute in this regard. *See infra* App. A.

139. *See, e.g.*, MASS. GEN. LAWS ANN., ch. 12, § 5C(3).

140. *See infra* App. A.

141. *See, e.g.*, MASS. GEN. LAWS ANN., ch. 12, § 5C(3); *infra* App. A.

142. *See, e.g.*, MASS. GEN. LAWS ANN., ch. 12, § 5C(4); *infra* App. A.

143. Under the federal FCA, the government maintains "primary responsibility for prosecuting the action." 31 U.S.C. § 3730(c)(1). Most jurisdictions mimic the federal statute in this regard. *See infra* App. A.

144. Delaware's statute expressly states that when the State intervenes in a false claims action, the attorney general "shall have the exclusive responsibility" for the action. DEL. CODE ANN. tit. 6, § 1204(a) (Supp. 2004); *infra* App. A.

145. *See infra* App. A.

146. *See infra* App. B.

147. Massachusetts is the one primary exception. *See infra* App. B.

148. *See infra* App. B. Although none of the authorities responsible for enforcing the individual statutes yet have developed reliable or consistent methods for tracking recoveries in *qui tam* cases, many of the respondents to the survey stated that *qui tam* cases have some deterrent effect. *See infra* App. B.

that their false claims statutes have the potential to deter fraud against state governments.[149]

IV. OBSERVATIONS AND CONCLUSIONS

The survey we have conducted of states with *qui tam* false claims statutes has demonstrated six things. First, compared to recoveries obtained by the federal government under the federal FCA, the recoveries obtained by the states under state false claims statutes have, to date, been modest.[150] Whereas the total recoveries under the federal FCA in *qui tam* cases was $1.08 billion in 2002 and $1.5 billion in 2003,[151] recoveries obtained in the states are relatively small: for example, approximately $4 million in Hawaii between 2000 and the fall of 2004; approximately $1.2 million total in D.C.; and an approximate average of $1 million per year in Tennessee.[152] Texas had more than $45 million in recoveries in 2004, but almost all of this came from one case: the Ven-A-Care case brought initially by Zachary Bentley and the DOJ.[153]

Second, virtually all the states report inadequate resources to develop cases under their own statutes. Only one state has full-time personnel dedicated solely to *qui tam* cases;[154] only two states have specific funds allocated for investigative resources to pursue *qui tam* actions.[155] Less than half of the states have CID investigative authority.[156]

Third, most of the significant recoveries in the states have resulted from states' ability to join federal law enforcement efforts and global settlements.[157] This raises the question whether the state statutes bring anything new to law enforcement, or whether the states are simply using their statutes to maximize "piling on" or piggy-backing opportunities.

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149. *See supra* App. B. For example, California's pursuit of *qui tam* claims has spawned an entire compliance industry dedicated to helping companies that contract with the State. *Id.* In an effort to deter future fraud through negative publicity, the California AG posts the outcome of false claims cases on its website. *Id.*; *see* Office of the Attorney General—California Department of Justice, http://caag state.ca.us/ (last visited Oct. 26, 2005).

150. *See infra* App. B.

151. FRAUD STATISTICS, *supra* note 51

152. *See infra* Apps. A-B.

153. *See supra* note 23 and accompanying text.

154. *See supra* notes 115-117 and accompanying text.

155. *See supra* note 108 and accompanying text.

156. *See supra* notes 124-128 and accompanying text.

157. *See supra* notes 150-153 and accompanying text.

Fourth, despite their modest success and inadequate resources, law enforcement officials in the states with *qui tam* false claims statutes generally view their statutes as valuable in detecting and deterring fraud.[158] They may be right. The long term potential of such statutes is still under evaluation, but the prognosis for those states willing to invest in the process is optimistic. The federal statute did not enjoy immediate success; arguably it took half a dozen years after its revitalizing 1986 amendments before it was utilized effectively.[159]

Fifth, the presence of state false claims statutes present challenges in resolving what is already a complex prosecutorial environment. When there are multiple prosecuting entities, it is more difficult for a defendant to reach a global resolution of a nationwide regulatory problem. This complication poses problems for all players: government contractors who, for business purposes, need to anticipate and resolve all liability they may face, and federal and state regulators who seek to coordinate their investigations.

Sixth, state authorities enforcing their new false claims statutes have a steep learning curve. This is not surprising. The *qui tam* FCA regulatory model is unique in the way it partners private parties with public regulators as plaintiffs.[160] Like all new regulatory paradigms, it takes time to understand how these statutes work and to deploy resources effectively. Our survey revealed specific aspects of state false claims practice that need attention. For example, the states as a whole need to do a better job of tracking their false claims recoveries and related statistics. More precision in the tracking of state recoveries will lead to better allocation of scarce investigative resources. Conducting this study revealed multiple lapses in state record-keeping of false claims recoveries. Also, the states need to enhance communication and coordination amongst themselves and their federal counterparts. Lastly, states need to become more effective in working with *qui tam* relators and their counsel.[161]

Given their modest recoveries, inadequate resources, and at times appurtenant nature thus far, one may question the value of state *qui tam* false claims statutes. We suggest four reasons why state false claims statutes are valuable and will become even more valuable over

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158. *See supra* notes 148-149 and accompanying text.

159. *See* FRAUD STATISTICS, *supra* note 51.

160. *See* Bucy, *supra* note 64, at 43-54, 58-80.

161. Experience with the federal FCA has shown that cooperation with meritorious *qui tam* relators maximizes efficient use of the resources relators and their counsel potentially provide to regulators. *See* Bucy, *supra* note 65, at 959-72.

time. First, these statutes cover activity not reached by the federal FCA statute. Most notably, the state statutes apply to false claims submitted to state governments in programs funded with exclusively state or mixed state and federal funds. When there are no federal dollars at issue, the federal FCA has no applicability no matter how egregious the fraud.[162] In this way, the state statutes are able to vindicate the rights of state citizens and state taxpayers which can not be reached with existing civil statutes. Second, the state statutes provide an unprecedented opportunity for states with depleted treasuries to build up their investigative and prosecutorial resources and return needed funds to beleaguered state programs.

Third, almost every state false claims statute differs in some ways from the federal FCA statute.[163] In this respect, the states provide mini-laboratories to study statutory variations. What works? What doesn't? What could be improved? For example, Texas includes a provision often discussed as a possible amendment to the federal FCA:[164] whether a relator's complaint should be dismissed if the government decides not to join the lawsuit as a plaintiff.[165] There were heated debates when this amendment was rejected in the federal statute.[166] Congress believed a healthy tension between the DOJ and relators was, in the end, good for the taxpayers. *Qui tam* relators could push fraud theories that the DOJ felt uncomfortable or unable to pursue. Observing Texas's experience with this provision can shed light on whether such a requirement can in fact operate as a control on poorly conceived relators' actions.

Texas's statute also includes another provision not in the federal FCA. Texas allows its prosecutors, as well as the private plaintiff, to recover attorneys' fees upon prevailing in the case.[167] Observing experiences in Texas allows policymakers to study whether this provision encourages plaintiffs to litigate unnecessarily or whether an award of attorneys' fees supplements state resources and thereby enhances the quality of false claims actions brought and prosecuted by states. The opportunity to observe these variations in false claims regulatory models could help refine existing or create new, more effective regulatory mechanisms.

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162. 31 U.S.C. § 3729(c) (2000).

163. *See infra* App. A.

164. *See* Bucy, *supra* note 64, at 72 n.384.

165. TEX. HUM. RES. CODE ANN. § 36.104 (Vernon 2001).

166. *See, e.g.*, 89 CONG. REC. 7573-76 (1943) (discussing the de facto control granted to the Attorney General by proposed statutory language).

167. TEX. HUM. RES. CODE ANN. § 36.007.

Fourth, the presence of robust state false claims statutes provides what every capitalist endeavor needs: increased competition. Relators who, for whatever reason, receive an unfavorable response from federal law enforcement officials have another venue in which to prosecute their claims. The states should encourage such competition. If state dollars are also at issue, relators can take their case to the state, or more likely a series or consortium of states, which may be similarly impacted by the fraud scheme. *Qui tam* relators will quickly determine which states are serious about expanding their fraud fighting capabilities under their newly-passed statutes and which ones are not. Healthy competition between the states and the federal government will inure to the benefit of taxpayers. If current trends continue, more states will pass their own versions of the federal FCA.

Such competition will encourage responsiveness by government officials to meritorious relators and increase recoveries to taxpayers. Before doing so these states should study those states which have been most successful and determine which provisions should be included in their statutes.

APPENDIX A

False Claims Statutes with *Qui Tam* Provisions*

By Jurisdiction with Comparisons to the Federal False Claims Act

Jurisdiction	Statute Name	Code Section	General or Specific	Qui Tam Provision	Date Passed	Key Differences from Federal False Claims Statute (31 U.S.C. § 3729 et seq.)
California	California False Claims Act	Cal. Gov't Code § 12650 et seq.	General	§ 12656	1987	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 Attorney General (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't 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	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 government

						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 et. al.	General	§ 2-308.15(b)	2000	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 preparation for voluntary disclosure. § 2-308.15(c)(3).
						Requires D.C. employees to exhaust internal procedures. § 2-308.15(c)(4).
						Bans actions brought by employees of Council of D.C., Corporate Counsel, Inspector General, Auditor, CFO, or Metro Police if info discovered during term of employment. § 2-308.15(c)(5).
						Where government proceeds, *qui tam* relator receives at least 10%, but not > 20%.
						Where government doesn't proceed, *qui tam* receives at least 25%, but not > 40%.
Florida	Florida False Claims Act	Fla. Stat. § 68.081 et seq.	General		1994	May elect to intervene within ninety days. § 68.083(3).
						Department of Banking & Finance allowed to take over some actions instead of Department of Legal Affairs. § 68.083(4).
						If the government does not proceed and the defendant prevails, the court "shall award"

						defendant reasonable attorneys' 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.
Hawaii	Hawaii False Claims Act	Haw. Rev. Stat. § 661-22 et seq.	General		2000	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 and 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	Practically identical.
Louisiana	Louisiana False Claims Act	La. Rev. Stat. Ann. § 46:439.1 et seq.	Specific to Medical Assistance	§ 46:439.1	1997	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 state records regarding health care providers banned.

						§ 46:439.1(F)(2).
						Employer may fire *qui tam* plaintiff if court finds action frivolous, vexatious, or harassing. § 46:439.1(G).
						Statute of limitations for *qui tam* claims is one year from date known or should have known. § 46:439.2(2)(b).
						Complaint under seal for 90 days. § 46:439.2(A)(4)(a).
						Qui tam relator must object to settlement in order to get hearing. § 46:439.2(B)(5).
						If AG proceeds, then relator receives 10%-20%. § 46:439.4(A).
						If AG doesn't proceed, relator may receive no more than 30%; but no minimum. § 46:439.4 (B).
						Person who *participated* in violation may have award reduced. Person who *planned* violation barred from recovery. § 46:439.2(D) (emphasis added).
						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 job protection for frivolous, vexatious, or harassing *qui tam* plaintiff. § 46:440.3(D).
Massachusetts	Massachusetts False Claims Act	Mass. Ann. Laws CH. 12, § 5(A)-(O).	General	§ 5C-5G	2000	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 and does not report. § 5B(9).
Nevada	Nevada Submission of False Claims to State or Local Government	Nev. Rev. Stat. § 357.010 et seq.	General	§ 357.080	1999	Complaint under seal until AG elects whether to intervene [up to 120 days per § 357.110]. § 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, *qui tam* recovery is 25-50%. § 357.210(2).
						Public employees guaranteed no minimum reward. § 357.220.
						False claim includes: (a) knowingly buys public property from someone unauthorized to sell public property, and (b) beneficiary of inadvertent submission of false claim who discovers and does not report. § 357.040(f) & (h).
						Statute of limitations is lesser of three years after AG discovered fraud or five years after fraud occurred. § 357.170.
New Mexico	New Mexico Medicaid False Claims Act	N.M. Stat. Ann. § 27-14-1 et al.	Specific to Medicaid	§ 27-14-7	2004	Actions are brought by the New Mexico Human Resources Department. § 27-14-4(A). Before filing a false claims 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).
Tennessee	Tennessee Medicaid False Claims Act	Tenn. Code Ann. § 71-5-181 et seq.	Specific to Medicaid	§ 71-5-183	1993	No bar against actions brought against members of the Congress, the judiciary, or the senior executive branch.
Texas	Medicaid Fraud Prevention Act	Tex. Hum {77} Res. Code § 36.001 -36.117	Specific to Medicaid	§ 36.101	1995	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 federal case. § 36.055.
Virginia	Virginia Fraud Against Taxpayers Act	Va. Code Ann. § 8.01-216.3	General	§ 8.01-216.5	2002	Commonwealth has 120 days to decide whether to proceed. § 8.01-216-5(D).
						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.

APPENDIX B	
Empirical Survey of State False Claims Statutes with *Qui tam* Provisions*	
Responses from state attorney general offices collected in telephone interviews with the authors December 2003 - February 2005	
SECTION I	GENERAL QUESTIONS
Question I(a)	Do you have a false claims statute or a subject-specific statute?
California	Yes. It applies to all state funds and is broad in how it characterizes state funds.
D.C.	Yes.
Delaware	General.
Florida	Florida has a general false claims statute.
Hawaii	Yes. It is modeled almost verbatim to the federal False Claims Act (FCA).
Illinois	We have a general false claims statute.
Louisiana	Our statute is Medicaid specific.
Massachusetts	Yes, we have a false claims statute. It is not subject specific.
Nevada	General.
New Mexico	Subject-specific for Medicaid, but there is a general false claims statute being presented to the legislature.
Tennessee	We have both. Medicaid is TCA 71-5-181.
Texas	Texas' Statute (the Medicaid Fraud Prevention Act) only covers Medicaid.
Virginia	We have a false claims statute: Virginia Fraud Against Taxpayers Act.
Question I(b)	Does your statute have a *qui tam* provision? If so, how does it work?
California	Yes. It is modeled after the federal statute.
D.C.	Yes.
Delaware	Yes. The statute is the same as the federal FCA, except there are no CIDs and no express exemption for tax claims. It's found in title VI, §§1203-1204 "It mirrors, in a lot of respects, the federal *qui tam* provision, though it's not as long or involved." The time during which the action is under seal is shorter than with the federal Statute; in Delaware the time is sixty days. After sixty days, the Attorney General's (AG) office can decide to intervene, decline, or ask for an extension, just like with the federal government. The AG's office investigates the case, bringing in the agency that might be involved (any state agency that is the beneficiary of a contract or is potentially defrauded by the contract in question). "The agency is asked about the complaint, the allegations, and whether the complaint is actually a problem or not—whether they're getting ripped off." From there, the AG's office will either decline to intervene, intervene, or apply to extend the seal.
Florida	Yes.
Hawaii	Yes.
Illinois	Yes.
Louisiana	Yes. It is just like the *qui tam* provision in the federal FCA.

Massachusetts	Yes. It works like the federal FCA, except that the period under seal is 120 days. After that, we must request an extension for an additional ninety days. There is no provision for further extension beyond 210 days. The statute allows for rule making by the AG, but the AG has not done any rule making. "We are gathering more experience with the statute."
Nevada	Yes. It is just like the *qui tam* provision in the federal FCA.
New Mexico	Yes. It is very unique because it requires that the Human Services Department (HSD) be served with any complaint. Then, it requires that HSD respond in writing to the defendant within sixty days with any determinations about the case. This can be a problem when a case is under seal or a defendant doesn't even know about a case.
Tennessee	Yes. It is modeled after the FCA.
Texas	Yes, it does. When a *qui tam* action is filed, the party is required to give notice to the AG. The AG has sixty days past the date when it receives both the notice of the lawsuit and information detailing the nature of the complaint. If the AG does not intervene, then the lawsuit is dismissed.
Virginia	Yes. It's modeled after the federal provision. The AG has 120 days to intervene. AG acts on behalf of the state and is limited to civil actions filed by private persons.
Question I(c)	When was your state statute passed?
California	1987 and effective in 1988.
D.C.	Unable to provide a response.
Delaware	June, 2000.
Florida	1994
Hawaii	Summer 2000.
Illinois	1992
Louisiana	1997
Massachusetts	It was passed in 2000 and enacted in July 2000.
Nevada	1999
New Mexico	Effective May 19, 2004.
Tennessee	1993
Texas	1995
Virginia	July, 2002.
Question I(d)	Has it been amended?
California	There have been minor amendments.
D.C.	Unable to provide a response.
Delaware	No.
Florida	There have been no substantive amendments.
Hawaii	Not significantly.
Illinois	Yes, in 2004. The CID provision was amended and renamed a subpoena.
Louisiana	I don't think so, but new provisions have been added.
Massachusetts	Unable to provide a response.
Nevada	No.
New Mexico	No.
Tennessee	Yes. The amendment deleted one section that had criminal penalties.
Texas	Yes. It was amended in 1997.
Virginia	No, but it may need to be amended.

SECTION II	INVESTIGATION RESOURCES
Question II(a)	Do multiple agencies in your state enforce your statute (i.e., Attorney General's office, Medicaid Fraud Unit, Anti-Trust Division, Special *Qui tam* Units)? If so, is one agency in charge? Which one? If there is coordination among enforcing agencies, is that a problem?
California	At the state level, the AG is the only agency. However, local entities have enforcement authority with respect to their funds There are hundreds of local entities and coordination occurs through the AG.
D.C.	Yes. We have an office of corporation counsel that enforces the *qui tam* statute and, on occasion, we do coordinate with them.
Delaware	Yes Two. Medicaid Fraud Control Unit and the Civil Division of the Attorney General's office The AG's office is in charge. Since all agencies are in the AG's office, coordination presents no problems. The investigating agency is the AG's office The statute reads that the claim is brought by a private party and the action is brought in the name of the government and is served on the AG. "[The AG's office is] required to notify the affected agency that there is an investigation and give them a sketch of the allegation. [They'll ask them], 'Look at this, do you have damages, do you have losses, or is this not a problem?' But the other agency is not going to go to court. If [the AG's office does] intervene, then their office [the AG's office] is the one that speaks for the agencies."
Florida	The statute is enforced primarily by the AG's office Some cases which involve matters under investigation by the Financial Services Department (formerly the Banking and Finance Department and the Insurance Department) are handled by that department. However, their involvement in cases as "minimal". The AG's office is at the forefront The AG's office operates through the Department of Legal Affairs. When the statute speaks of that department it should be read as synonymous with the AG's office. The AG's office has two divisions which handle *qui tam* suits: the Medicare Fraud Unit and the Economic Crimes Division.
Hawaii	The statute is not limited, but in practice other divisions have not pursued these types of cases. We use special investigators within the Medicaid Fraud Unit. There is some communication between us and the federal branch.
Illinois	Medicaid fraud is [investigated by] the state police, and we are in the prosecution arm.
Louisiana	Yes The Medicaid Fraud Unit and the Department of Health and Hospitals. There is coordination.
Massachusetts	The Attorney General's office is the agency with authority. It then delegates to the Chief of Business and Labor Protection Unit. Below that, there are numerous divisions, including the Bureau of Medicaid Fraud Investigations There is no special *qui tam* unit. The *qui tam* relator is referred to the particular unit to which his/her claim relates.
Nevada	The AG is the specific agency that enforces this statute.
New Mexico	Human Services Department would likely say no, because they pursue the cases and enforce the statute, but the AG's office is involved.

Tennessee	We are the lawyers for the state and state agency. All lawsuits are handled by this office. Tennessee Bureau of Investigation handles the investigation unit.
Texas	Ms. Miller's office is pretty much the only unit of the AG's office enforces the statute. [Her office] handles all of the enforcement activities, though other agencies assist with their investigations.
Virginia	No. We would like to coordinate with the Medicaid Fraud Unit. Currently, there is a Special *Qui tam* Unit with one attorney (part time) and a paralegal. Attorney General has approved the protocol but has not yet published it. Still developing internal reporting system.
Question II(b)	Has your legislature allocated funds for investigative resources to pursue violations of your state's false claims statute? 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	No response provided.
D.C.	Yes We receive funding from the D C City Council, and 75% comes from the federal government.
Delaware	No special funding for investigations They have their own state investigators in the AG's office. For example: in Delaware's Medicaid Fraud Control Unit, they have investigators who investigate allegations of fraud, so they would be the ones who would be spearheading the investigations should they get a state action involving Medicaid. Investigations of state *qui tam* claims would be investigated similarly to other allegations of fraud. There are other agencies—the Department of Education, etc —that receive contracts and supplies just like any government entity that all have contracts with outside vendors.
Florida	The state legislature has not specifically allocated funds for investigative resources to pursue violations of Florida's false claims statute. However, the Medicare Fraud unit gets a "substantial percentage" of funds from federal government. Recovery for non-Medicare goes back to the Economic Crimes Unit. I am unsure where Medicare money goes However, the statute mandates that recovery go to the General Revenue Fund. If the Financial Services Department were to recover money, the statute mandates it be deposited in that department's administrative trust fund.
Hawaii	No.
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 a general fund.
Louisiana	In the state false claims act statute, we created a joint fraud and abuse protection fund. Anything that is not Medicaid restitution goes into the fund. There is a provision that allows for these funds to be used for Medicaid budget shortfalls. Use of this fund is governed by the legislature.

Massachusetts	No. Complaints are handled like any other tip or whistleblower whether the false claims statute applies or not. All funding comes from the general fund of the Massachusetts State Treasury However, there is a provision in the statute for the AG to recover investigatory and attorneys' fees. These funds can be deposited into a false claims prosecution fund. All other recoveries go back to the general treasury.
Nevada	No.
New Mexico	No.
Tennessee	The Tennessee Bureau of Investigations Medicaid Fraud Unit is 75% federal and 25% state.
Texas	No.
Virginia	No. However, Medicaid Fraud Unit has been authorized additional investigators to borrow from other agencies for medical *qui tams*. All other state agencies (for instance, Virginia Department of Transportation) are limited to using investigators from their own particular agencies. In addition, there are volunteer intern programs under development - involving law students in second and third years of law school.
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? $ federal funds? If so, what?
California	In 1999, there was a new section of the AG's office created and given an independent budget allocation by the legislature. The realization of the size and complexity of the cases led to the allocation of the funds. Medical fraud preceded the 1999 split by a year and medical unit began to receive budget augmentation. Approximately 11 million for the false claims section as a line item budget. The false claims fund receives 33% of the false claims recoveries, and it is that money that goes into the fund. We can tap into the false claims fund, but we have to keep the bookkeeping separate.
D.C.	Unable to respond.
Delaware	Only the normal budget. No portion of the recovery is dedicated specifically to prosecutions of the false claims statute. A Medicaid Fraud Unit's case starts with their investigators doing standard investigation work within the limits of their job. Investigation of false claims comes out of the normal resources of the Fraud Control Unit. If outside resources were required, I do not know where they would come from. Additional resources would have to come through the AG's office and the AG's finance director. Medicaid fraud claims are investigated out of the normal budget. There is no budget line-item that I am aware of. The statute speaks to what the *qui tam* plaintiff would get and what amount goes on to reimburse the defrauded agency, but the statute doesn't talk about the AG's office getting any percentage or amount of money that I can see. The statute really just addresses the *qui tam* plaintiff. The Medicaid Fraud Unit does receive federal funding as a Medicaid Fraud Control Unit, but that money is not specifically earmarked for the false claims statute. Instead, federal funding helps run the unit generally, "whether it's patient abuse cases or fraud cases or anything else that comes through the door."

Florida	The state legislature has not specifically allocated funds for investigative resources to pursue violations of Florida's false claims statute. However, the Medicare Fraud unit gets a "substantial percentage" of funds from federal government.
Hawaii	There is no fund or money earmarked for these types of cases.
Illinois	75% of the resources come from the federal government and 25% comes from the state to litigate.
Louisiana	No federal funds go into the fraud and abuse fund.
Massachusetts	The "lion's share" of false claims act investigation is conducted by the Medicaid Fraud Unit which is 75% supported by federal funds.
Nevada	The state provides existing investigators.
New Mexico	The agency's general budget is all there is.
Tennessee	There is no line item for this. The reality is that as recoveries go by, this office retains one-third of penalties and interest and no federal funds are involved.
Texas	Unable to respond.
Virginia	Each agency is allotted its own budget through the AG's office for all types of cases. We hope to have our first recovery in approximately one week (late March 2004), which will help us in establishing the manner in which recoveries are distributed.
Question II(d)	Do you have dedicated investigators assigned to investigate filed *qui tam* cases? If so, how many?
California	There are three investigative auditors and two analysts that work the civil false claims cases and there is a bureau wide group of investigators that can be called upon.
D.C.	Yes we do, and the number varies.
Delaware	No.
Florida	There are no investigators exclusively assigned to investigate *qui tam* cases. Two or three predominately do.
Hawaii	The cases are assigned randomly, and there are a couple of investigators that are experienced with pharmacy cases.
Illinois	We use the state police and the Medicaid fraud control unit. This is approximately 36-40 investigators.
Louisiana	Not specific investigators.
Massachusetts	No. We use the same investigators who are assigned to criminal and non-false-claims civil cases.
Nevada	No.
New Mexico	No. We just have our normal investigators.
Tennessee	Tennessee Bureau of Investigation is used. This is approximately twenty-five people.
Texas	No. Other than cooperation from Texas agencies, this office does not have investigators. Investigation is done by cooperation with the agencies—like the Texas HHS commission—and through what relators' attorneys gather.
Virginia	No. However, Medicaid Fraud Unit has been authorized additional investigators to borrow from other agencies for medical *qui tams*. All other state agencies (for instance, Virginia Department of Transportation) are limited to using investigators from their own particular agencies. In addition, there are volunteer intern programs under development, involving law students in second and third years of law school, that all agencies may utilize.
Question II(e)	Do you have CIDs? If so, how are they administered? Do you use them? Do you want CIDs?

California	The AG has investigative subpoena powers and we issue them.
D.C.	No. We do not see a need for them.
Delaware	Currently, no. I wouldn't mind having them, but I don't not believe CIDs would enhance our ability to prosecute false claims cases. The AG's office has subpoena power; it's like a grand jury summons. AG subpoenas are only used to get documents If document requests are denied, the AG goes after them with a search warrant.
Florida	Florida has CIDs. The Economic Crimes Division and the Medicare Fraud Unit each have administrative subpoenas available.
Hawaii	No. We would like CIDs. They do allow pre-indictment subpoenas.
Illinois	We have CIDs now called subpoenas. We use them, but not a whole lot.
Louisiana	No. We use Article 66 subpoenas which are similar to a CID. These are sufficient.
Massachusetts	Yes. "They are used a lot and are a terrific tool." Section 5(n) outlines authority for CID, allowing for essentials like document requests, interrogations and depositions. CIDs are used in the same way as grand jury investigation subpoenas.
Nevada	No. We do not want them because we will just use the power of the grand jury subpoena if we need to go further.
New Mexico	The Medicaid Unit does not have CID authority.
Tennessee	Yes. We are pushing for an expanded CID request for consumer protection information. Our CIDs have to be signed by the AG.
Texas	Yes. CIDs are administered through Texas' Civil Medicaid Fraud section and through the attorney that is in charge of the case. CIDs have been used and are wanted.
Virginia	No. Possibility in the future.
SECTION III	APPLICATION
Question III(a)	What types of cases are filed under your statute (healthcare, contract, other)?
California	No response provided.
D.C.	Civil and criminal healthcare cases are filed under the statute.
Delaware	Most are global *qui tam* cases. Recipient fraud is not investigated; the office is required by regulation to focus only on provider fraud.
Florida	Great rise in healthcare and "some more off the wall economic *qui tams*;" pharmaceutical; against specific health care providers alleging nonperformance or substandard performance.
Hawaii	No more than three have been filed under this statute and none of them have gone to trial. These were billing fraud cases.
Illinois	Medicaid because of limitations.
Louisiana	Most are drug pricing cases or failure of care by a facility.
Massachusetts	The lion's share are healthcare fraud. A few are non healthcare, but it is problematic to characterize without disclosing information currently under seal. There is a trend by the false claims act bar to look for a nationwide cause, file it with Main Justice, and then file it individually with the states So essentially we get the same claims that the feds are getting.
Nevada	Any claim against the government.
New Mexico	Medicaid by virtue of the statute. We also get named in all of the federal ones as the other states with a statute do.

Tennessee	Upcoding, pharmaceutical industry, rebate program, off-label use, and short filling.
Texas	Provider fraud cases, drug manufacturer fraud cases, and a few nursing home fraud cases. As far as I am aware, no recipient fraud cases are pursued under the statute.
Virginia	All types. Any civil case fits. So far, health care, VDOT and county contractor. Most healthcare cases are national in scope.
Question III(b)	How would you rate the quality of cases filed under your statute?
California	There are *qui tam* plaintiffs' firms that are specialists, and they are good to excellent, and there are lawyers who have never seen or heard of false claims cases and are full of problems. One of the threshold problems is that they haven't figured out whether the funds are state or federal.
D.C.	Good, but when we decide not to intervene, it is because there are no direct monetary damages incurred by the District of Columbia.
Delaware	Most of the cases filed are global and, as such, high quality.
Florida	Quality of cases "ranges" An example of a "not strong case"—Relator alleged Florida was defrauded in reverse false claim where defendant failed to accurately report income and didn't pay enough taxes. The federal statute specifically excludes violation of tax code under FCA. Florida doesn't specifically limit but presumptively tracks federal. AG declined to intervene. Still pending, not under seal. Fla. 2nd Circuit 03CA1092.
Hawaii	50% of the cases are good However, a problem arises when an initial *qui tam* case makes blanket allegations of wrongdoings and we find other stuff when we investigate. The conflict arises when we try to settle with the *qui tam* plaintiff, because the plaintiff usually wants more.
Illinois	50% are good cases.
Louisiana	The majority of cases are of a national level that usually originated in another state. Thus, they are not usually high quality for our state.
Massachusetts	Generally, the cases are well put together and the bar is good.
Nevada	They are pretty good.
New Mexico	Unable to respond.
Tennessee	50% that are filed are good cases and are being brought by lawyers that are doing it right.
Texas	Fairly high-quality, due to the threshold set by the statute; if the AG doesn't intervene, the case is dismissed. So, to bring a case, attorneys know they'll have to have evidence and a pretty high-quality case.
Virginia	Unable to respond.
Question III(c)	How would you rate the quality of the lawyers bringing these cases?
California	Unable to respond.
D.C.	Good.
Delaware	High.
Florida	Quality of lawyers ranges. Some know how to proceed. For others, it's their first *qui tam* and they are uncertain how it works. Relators can be a problem. Many seem to have mentality of sitting back and waiting for the money to roll in.

Hawaii	One firm has made a point to make this a big part of their private practice. They are smart attorneys.
Illinois	Pretty good, but there is a group that isn't great.
Louisiana	"Lawyers are lawyers; some are good some are bad."
Massachusetts	Good cases and good lawyers.
Nevada	They are pretty good.
New Mexico	Unable to respond.
Tennessee	50% are good.
Texas	Most of them are very good. Some of the provider-fraud case lawyers are average. But the national-scope fraud cases that are brought have good attorneys.
Virginia	They are good; however, there is one lawyer of whom we are suspicious.
Question III(d)	Were these cases pursued before your state's false claims statute was passed? If so, by what agency?
California	They were being pursued, but were not being pursued systematically by anybody.
D.C.	Unable to respond.
Delaware	Delaware cases were pursued solely by federal agencies under the federal FCA prior to the passage of Delaware's statute.
Florida	Prior to our statute, cases were pursued by same two arms of the AG's office. *Qui tam* makes them aware of more specific examples.
Hawaii	Yes. Medicaid Investigations Fraud Unit pursued these cases.
Illinois	Yes, under the vendor fraud statute that provides for the same penalties.
Louisiana	Unable to respond.
Massachusetts	Yes, by the Attorney General under more general fraud statutes. We still use those statutes a great deal. Recently, Massachusetts brought an FCA claim against thirteen pharmaceutical companies, alleging FCA, fraud, etc.
Nevada	Yes. Usually with the Department of Justice under the federal FCA.
New Mexico	Unable to respond.
Tennessee	To a small extent, but it has grown since the passage of the statute.
Texas	As far as I know, there was no mechanism for these cases to be pursued until the statute was passed.
Virginia	Yes, through Medicaid Fraud Unit and Antitrust and Consumer Unit. VDOT is a prolific source of *qui tam* actions. Consumers being overcharged, etc , could easily be brought as a *qui tam*. "Not foreign ground, just new remedy and procedure."
Question III(e)	How well does your office interface with the federal government?
California	We work with them all over the country, because when a Medicaid case is filed, it is filed in federal court and we are often named in the suit. We work well with them.
D.C.	We interface very well. We have a close relationship with the United States Attorney's office.
Delaware	Well. The respective offices meet regularly, share resources and investigators, and trade referrals.
Florida	Office has a good working relationship with the three federal districts in Florida.

Hawaii	We are looking for more cooperation. Before the statute, they did not interface at all.
Illinois	Well. The respective offices meet regularly, share resources and investigators, and trade referrals.
Louisiana	We have an excellent relationship with federal prosecutors.
Massachusetts	Quite well—not only in health care fraud division of U.S. Attorney in Massachusetts (excellent relationships) but also with Main Justice in Washington. "We see each other coming and going." Personal relationships, e.g. dinners, family outings, etc. Massachusetts also interfaces with other states through multistate things with Medicaid fraud units. "We are developing a multi-state organization called NAMFU: National Association of Medicaid Fraud Units."
Nevada	Not as well as we would like.
New Mexico	Unable to respond.
Tennessee	This depends on who is involved, but generally it is tough because they do not like to share information.
Texas	Pretty well; my office has taken the lead on (something of) a national case, and they've had good relationships with the federal lawyers.
Virginia	Hard to say how many cases, but the lawyers are dealing with Assistant U.S. Attorneys. Recently the federal prosecutors asked to sign our written consent order. They have experience.
Question III(f)	Are *qui tam* relators' counsel helpful? If so, how? If not, what problems do they present?
California	Yes. Some present well screened cases and provide substantial assistance in litigation later on, and in other cases they are on the sidelines and do nothing. Some create problems. The statute has a provision that allows the problem causing attorneys to be handled.
D.C.	Yes, they provide much of the discovery we need to decide if we should pursue a false claims case.
Delaware	Relators' counsel are indirectly helpful through knowledge of individual cases and have presented no particular problems. Relators counsel are "either too nosy and after you all the time ('Have you investigated this or that or the other thing?') or you can't get in touch with them—they just seem to be extremes." Anecdotes: One group not local to Delaware (not on the east coast) brought a *qui tam* action through the Eastern District of Pennsylvania. I had to leave a number of messages for them and never got any information from them. I had to constantly pester them. The group didn't serve the complaint properly, either. At the opposite extreme is someone breathing down your neck every couple of weeks asking about progress.
Florida	*Qui tam* relator counsel "can be extremely helpful." But it's case-specific.
Hawaii	Experienced ones are helpful.
Illinois	Some are helpful and some are not.
Louisiana	Some are. Some are not.
Massachusetts	Sure. There are good ones. We want to encourage the development of a *qui tam* bar to welcome the development of *qui tam* complaints. The purpose will be to make sure it's a good, well researched case.
Nevada	Some are helpful and some are not.
New Mexico	Unable to respond.

Tennessee	There are two things that have an effect: (1) do they know what they are doing, and (2) do they keep us informed as the case moves forward?
Texas	For the most part, relators' counsel have been extremely helpful. They help perform the investigations when the office hasn't had the sufficient resources to do it themselves. Relators' counsel provide AG with enough evidence to determine whether or not they have a valid case.
Virginia	We work in tandem until we part ways. "Current situation where we believe case has no merit, but brought in good faith." Relators simply misinterpreting code. Probably will move to dismiss.
Question III(g)	Does your state *qui tam* apply retroactively to fraud that occurred prior to the passage of the statute?
California	No. It was a long time ago and we have a ten-year statute of limitations.
D.C.	No.
Delaware	No They've talked about it before in their unit. Nothing in the statute that says it's retroactive. If there isn't anything that specifically says that the statute should be applied retroactively, then in Delaware you can't apply it retroactively: "It wasn't a crime until you made it a crime, ergo, the bad guys weren't on notice."
Florida	Nothing in the *qui tam* statute facially prevents it from applying retroactively to fraud occurring before passage. I don't think it's ever been challenged. However, the statute of limitations allow for a maximum of seven years—so, it is a moot point now.
Hawaii	If fraud was continuous from 1995, then yes, but before that or if it stopped, I do not know.
Illinois	I don't know, because it has been around since 1992 and we have not had this issue come up.
Louisiana	Yes.
Massachusetts	The AG takes the position that it does, but the issue has not been decided by any court. Not pending.
Nevada	It says it does, but this might not withstand a challenge.
New Mexico	Unable to respond
Tennessee	Unable to respond.
Texas	No.
Virginia	No. It doesn't say one way or the other, but presumption is that it is not retroactive One current case will probably be dismissed because the statute is not retroactive. *Qui tam* counsel will probably not oppose but will still wait to see.
Question III(h)	Can you explain the process your office follows once it receives a false claims complaint?
California	We investigate it to determine the merits of the case, and there is a statutory requirement that we do that.
D.C.	We initiate an investigation, and the matter is under court seal. Once we investigate, a decision is made as to whether we want to intervene. The main force is investigating to make an intelligent decision.

Delaware	(1) Complaints are received by Delaware's State Solicitor, who is the head of the Civil Division of the AG's office; (2) the complaint is recorded in a special *qui tam* litigation list; (3) the State Solicitor determines whether the case will be handled by the Civil Division or by the Fraud Division; (4) the Division Leader assigns the case to a Unit Leader, who then assigns the case to a particular attorney and investigator.
Florida	I read the complaint and send it to either Economic Crimes or Medicaid. I sometimes personally handle claims that could be sent to Medicaid. Decision of intervention is made. I have some input along with the boss, the Assistant AG for Economic and Medicare Crimes and that person's boss, the Deputy AG. An investigation is begun. They quickly talk to relator and counsel. May be parallel civil and criminal investigations.
Hawaii	We don't have a process because there have been one or two cases where they kept it under seal and provide the office with little information.
Illinois	I 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 CID/subpoenas.
Louisiana	There are two ways. Either we keep the case in-house and work with relators counsel or if the case is too big we bring in outside counsel but maintain involvement in the case.
Massachusetts	The typical procedure is for a complaint to come in and be sent to the agency specializing in the case's subject area.
Nevada	Determine whether to pursue and contact the appropriate division involved.
New Mexico	Unable to respond.
Tennessee	First, we document when we received the complaint and the statement of material evidence. This begins the 60 days of seal. Then, we meet the relator and establish contact with the U.S Attorney's office. Last, we begin to work on CIDs.
Texas	If it is a *qui tam*, then the office will determine when they have to notify the court if they decide to intervene. Next, they will contact relator's counsel and proceed with them depending on what level they're at in the case.
Virginia	Once claim comes in to the Director of the *Qui tam* Office, it goes to the senior chief in the unit, and he assigns it to one of his lawyers.
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 case and amount per year)
California	Unable to respond.
D.C.	FY 2002: $349,077; FY 2003: $13,048,538; FY 2004: $1.2 million.
Delaware	"This is impossible to answer." Delaware recently recovered $500,000 but that is atypical. I am unaware of any studies or legislative review of the statute's effectiveness.

Florida	There does not seem to be a process in place for keeping up with it. When asked about any specific cases or awards that come to mind, he paused a minute and said that all the cases that came to mind he thinks are actually federal cases where fraud occurred in Florida, leading to Florida sharing in recovery. Example is the March 2003 Bayer Pharmaceuticals case.
Hawaii	$3 million in restitution and damages and $1 million in liquidated damages. $1.2 million in Skill Nursing facility; $4 million in improprieties by a pharmacy; $500,000 to $1 million involving a Kaiser (a case where we are working with the federal government) for physician assistant practices.
Illinois	We have recovered around $6-7 million a year since 2000.
Louisiana	Unable to respond.
Massachusetts	None yet.
Nevada	We do not track this.
New Mexico	Unable to respond.
Tennessee	The best guess is $10-12 million.
Texas	It's very difficult [to pin down a figure]. Last year, we had a state *qui tam* case against a generic drug manufacturer for false price reporting was for $18 million. However, they'll also receive settlements for federal cases, and for state cases where her office is involved in the negotiations but not the litigation, such as the recent Bayer settlement, which paid $10 million.
Virginia	No recoveries yet. Currently negotiating a settlement.
Question IV(b)	How many cases are filed under your state statute? (year by year since passage, if available)
California	I don't know because we don't track that.
D.C.	Unable to respond.
Delaware	At present, there are no cases filed under the statute under the Medicaid Fraud Unit There might be some cases floating around, but the contracts manager would know that.
Florida	He stated about 20-30 cases in the last year under the statute.
Hawaii	Approximately one per year.
Illinois	There are approximately fifteen a year filed. 75% of the cases are intervened or settled (most are settled).
Louisiana	Few, because most of the lawyers are unfamiliar with the state *qui tam* provision.
Massachusetts	Not available.
Nevada	Unable to respond.
New Mexico	Unable to respond.
Tennessee	There are twenty-five open right now.
Texas	Almost all the cases that are filed are still under seal, so unable to say.
Virginia	Estimated total of thirty-five. We are keeping a computer database of actions.
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	Unable to respond.
D.C.	Unable to respond.
Delaware	Unable to respond.
Florida	Unable to respond.
Hawaii	Big settlements with pharmacies and drug wholesalers.
Illinois	Unable to respond.

Louisiana	Unable to respond.
Massachusetts	None.
Nevada	Unable to respond.
New Mexico	Unable to respond.
Tennessee	Unable to respond.
Texas	None.
Virginia	Unable to respond.
Question IV(d)	Do you anticipate greater recoveries? If so, why? If not, why not?
California	The number of attorneys who understand the existence of the false claims statute is growing and would suggest we can expect greater usage over time There is no reason to think that recoveries are going to diminish.
D.C.	Probably, because we are more interested in pursuing these cases.
Delaware	Definitely. "Once the plaintiff's bar figures it out and the word gets out that you can whistle blow and get recoveries, people will start doing it. There's a lag time before litigation starts kicking in." They'll get more recoveries due to the statute, because they'll be more involved as state plaintiffs in federal cases, and have more control (presumably) in settlement negotiations.
Florida	Unable to respond.
Hawaii	Yes. Because Hawaii has a false claims statute, we are more involved with the national cases.
Illinois	Yes, because there going to be more cases filed as private citizens and attorneys become more aware of the statute.
Louisiana	We anticipate further reliance on the statute.
Massachusetts	Too soon to tell.
Nevada	Yes, because more and more cases are filed each year.
New Mexico	Unable to respond.
Tennessee	Yes, because we have added another lawyer to help with the cases and take a more active role.
Texas	I anticipate greater recoveries, because a statute is now in place that allows them.
Virginia	Yes Whether it's a cash cow or not, it's better than nothing. It's a good thing for the government to go after people who defraud the public trust.
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	You can tell by the attorneys that show up that what has happened before has made an impact on them. The biggest impact is the posting of the outcome of these cases on the Health and Human industry web site. The compliance industry has been built up in the last five years, because the government has cracked down on fraud.
D.C.	Unable to respond.
Delaware	Unable to respond.
Florida	"Without question" the Florida false claims statute has had a deterrent effect on those who would defraud the state. "Wish more people knew about *qui tam* provisions."
Hawaii	Yes. Because we publish the recoveries and our AG does make a point to say we encourage people to come forward and collect. We have been generous to relators.

Illinois	Yes. Healthcare providers and drug companies are more aware of it.
Louisiana	No.
Massachusetts	Unable to respond.
Nevada	Who knows, but likely.
New Mexico	Unable to respond.
Tennessee	No, not enough.
Texas	It's probably too soon to tell. The unit has only been in existence since 1999, and the consequences of the statute are just now coming to fruition. There are no statistics that would show whether or not the statute has been effective.
Virginia	It has a deterrent effect on contractors who see it happening and larger companies, such as pharmaceutical manufacturers. National suits backed by both federal and state governments have a deterrent effect. "But it will not cure the ills of the world." There is always the possibility of disgruntled employees bringing frivolous suits based on personal vendettas.
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	This is a question of the AG's agenda.
D.C.	I think it is an effective tool, because there is trebling of money damages and a penalty provision that scares would-be violators.
Delaware	I believe the Delaware statute is effective; the statute is modeled after the federal FCA, so it's designed to work. Delaware has very few false claims cases at this point, so it is difficult to tell.
Florida	Unable to respond.
Hawaii	Yes. I am glad we modeled against the federal statute.
Illinois	It is effective to an extent, but because they had the civil vendor statute before, this statute hasn't had a drastic effect. It is effective because the FCA gets a lot of publicity (especially the drug company settlements).
Louisiana	Yes. The *qui tam* is not always effective, but it can be.
Massachusetts	"I believe it's going to be effective. It creates incentives for lawyers to pursue cases that otherwise wouldn't be pursued." The primary benefit is that it creates private attorneys general.
Nevada	Yes, because we get the money back for the program.
New Mexico	Unable to respond.
Tennessee	Unable to respond.
Texas	In general, it is effective, in the same way that every other penalty statute is effective. It's effective as a deterrent. As long as people know the statute is out there, it in general should affect their decisions as to how they deal with the Medicaid program. Texas has a pretty strong statute already.
Virginia	For the most part, yes. However, I have doubts about one suit, because it looks suspicious. Attention and reputation would improve its effectiveness.
Question IV(g)	What legislative or other changes would you like to see in your statute? Why?
California	Unable to respond.
D.C.	None.

Delaware	It wouldn't hurt to have CIDs. Having CIDs would not necessarily help the AG's ability to prosecute, as the AG has many ways of getting information, but CIDs would help other people who don't have the AG's authority.
Florida	He wished the statute had a longer statute of limitations.
Hawaii	Addition of CIDs.
Illinois	It is good the way it is.
Louisiana	Unable to respond.
Massachusetts	None.
Nevada	There is nothing I can think of.
New Mexico	The idea that HSD has to come up with a written determination of the merits before the defendant is even aware that there is a complaint filed against them should be changed.
Tennessee	CID power and restoration of the criminal aspect. The federal government has the authority to create a corporate integrity agreement with a company that allows you to settle under injunctions to do certain things. This is a way to make the company behave.
Texas	I might favor increasing per-violation penalties.
Virginia	None. It's well written, similar to the federal FCA. We'll have to see how it fits the needs of the state. We need clarification, however, on what role our office will have once it intervenes. Will we still be able to use U.S. Attorney resources? The state statute contemplates that the state will take the lead, but state would like to coattail on feds and others. With multistate actions (such as major pharmaceutical company multistate actions) what will our role be? Will it be a committee of coordinated state AG offices?
SECTION V	IMPACT OF FEDERAL FALSE CLAIMS CASES ON STATE CASES
Question V(a)	In your state, how active is prosecution by federal agencies under the federal FCA?
California	Prosecution is very active and a combination of the three U.S. attorney's offices and main justice is involved in many cases.
D.C.	Very active.
Delaware	Unable to respond.
Florida	The U.S. Attorneys in Tampa and Miami are the most energetic in prosecuting the federal FCA in Florida. Prosecution has been slowed by the war on terrorism; attorney and FBI resources have been refocused.
Hawaii	We are more active than they are.
Illinois	There are three districts, and they are all active.
Louisiana	Immense. Our federal prosecutors are active, and we have a lot of success together.
Massachusetts	Very, very, very active.
Nevada	Federal agencies are not particularly active in this area.
New Mexico	Unable to respond.
Tennessee	Unable to respond.

Texas	Part of that I do not know. Federal agencies don't just prosecute health-care related false claims. I do know that in our office's settlements they do take into account what the feds do for their contribution to the Medicaid program. Federal agencies do have investigators that are dedicated to looking into Medicaid fraud. In her experience, they've been pretty vigilant.
Virginia	Pretty active. I do not keep tabs on it.
Question V(b)	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	Unable to respond.
D.C.	The U.S. Attorney's office in D.C. and main justice.
Delaware	The U.S. Attorney for the Eastern District of Pennsylvania and "whatever district of Massachusetts files a bunch of these pharmaceutical cases in Delaware."
Florida	The U S Attorneys in Tampa and Miami are the most energetic in prosecuting the federal FCA in Florida Prosecution has been slowed by the war on terrorism; attorney and FBI resources have been refocused.
Hawaii	Main Justice.
Illinois	The Northern District of Illinois is the primary agency that prosecutes this, and they are pretty active.
Louisiana	Main Justice.
Massachusetts	Main Justice.
Nevada	They are not particularly active.
New Mexico	Unable to respond.
Tennessee	Unable to respond.
Texas	The San Antonio U.S. Attorney's office is pretty effective.
Virginia	The U.S. Attorney's office in Alexandria, Virginia is very active.
Question V(c)	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	Unable to respond.
D.C.	When my office pursues a case under the D C. statute, there isn't really any coordination. There is coordination when my office decides to bring a federal false claim action. There is no improvement needed.
Delaware	Medicaid Fraud Unit and federal officials stay in touch on status of cases by fax, phone, and mail and by exchanging copies of complaints and seal extensions. Coordination is adequate. Possible need for improvement.
Florida	In federal cases, if the fraud is primarily in Florida, then the state and the feds are on equal footing in the case. However, if Florida is one of several states in the action, then the feds act more as a coordinator of state investigations. Stevenson believes states are more apt to let the feds run the show, but "Florida is eager to step up to the plate and lead."
Hawaii	No response provided.
Illinois	There is good coordination between our office and the U.S. Attorney's office.
Louisiana	Yes. Extensive. We have a state task force that meets with them regularly. We pursue cases together under a joint task force.

Massachusetts	We work closely with the feds. We talk to DOJ Main Justice and work cases together. One of the Massachusetts A.G. lawyers is also a Special Assistant U.S. Attorney deputized to participate in federal grand jury investigations.
Nevada	There is not good coordination, because we usually do not hear from them until they want us to sign off on a settlement agreement. We want to work on this.
New Mexico	Unable to respond.
Tennessee	This varies from case to case, but the federal government could keep us more informed.
Texas	My office works with U.S. Attorneys' offices outside of Texas on national cases generally when the relator wants to serve all the states that he alleges have been defrauded. Sometimes my office will be contacted directly by federal officials when the defendant is a national provider (like Bayer), and it's known that all states have been affected. Extent of coordination depends on the case. My office can coordinate investigations with federal officials so there's no redundancy. They try to coordinate court filings, so that everyone gets an extension if one is needed. If it's a national case, coordination depends on how the case goes. Sometimes the U.S Attorney's office will get very involved at the front end of the case in negotiating with the defendants, and sometimes the states themselves do it. It depends on the case. The only way to improve coordination is to have more staff available.
Virginia	Yes, especially in Medicaid Fraud cases. In fact, I have a meeting on Tuesday to coordinate with the feds on a case. We have joined where the U.S. Attorney has requested. Both feds and state agencies have initiated coordination. No difficulties working with various public offices. One problem is trying to get judges to understand that there are/will be multiple states. Judges don't have experience working with states. It is incumbent on parties to educate judges. "It should be an interesting dance."