



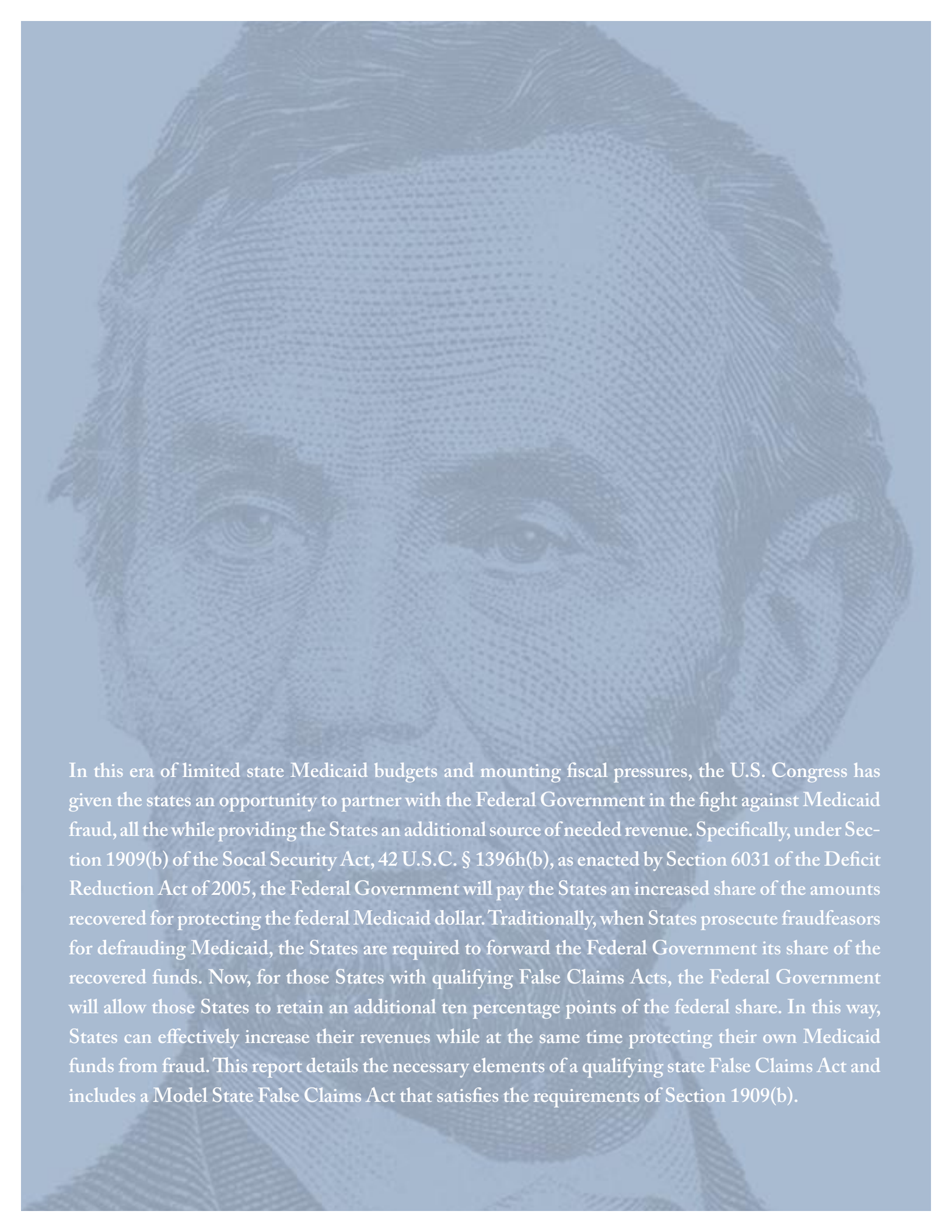
# MODEL STATE FALSE CLAIMS ACT

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QUALIFYING FOR ADDITIONAL MEDICAID FUNDS  
UNDER SECTION 1909(b) OF THE SOCIAL SECURITY ACT

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In this era of limited state Medicaid budgets and mounting fiscal pressures, the U.S. Congress has given the states an opportunity to partner with the Federal Government in the fight against Medicaid fraud, all the while providing the States an additional source of needed revenue. Specifically, under Section 1909(b) of the Social Security Act, 42 U.S.C. § 1396h(b), as enacted by Section 6031 of the Deficit Reduction Act of 2005, the Federal Government will pay the States an increased share of the amounts recovered for protecting the federal Medicaid dollar. Traditionally, when States prosecute fraudfeasors for defrauding Medicaid, the States are required to forward the Federal Government its share of the recovered funds. Now, for those States with qualifying False Claims Acts, the Federal Government will allow those States to retain an additional ten percentage points of the federal share. In this way, States can effectively increase their revenues while at the same time protecting their own Medicaid funds from fraud. This report details the necessary elements of a qualifying state False Claims Act and includes a Model State False Claims Act that satisfies the requirements of Section 1909(b).

## BACKGROUND

The False Claims Act, also known as the “Lincoln Law” for its original proponent, has become a powerful weapon in protecting the public treasury. In the 1980s, as the United States was engaged in increased defense spending, there was increasing concern that some defense contractors were engaged in fraud against the American taxpayer. After much publicized stories about \$900 airplane ashtrays, \$7,600 coffeemakers and \$400 hammers charged to the Defense Department by wayward contractors, the U.S. Congress responded in 1986 by reinvigorating the federal False Claims Act, with the intention of “reach[ing] all types of fraud, without qualification, that might result in financial loss to the Government.”<sup>1</sup> Today, nearly twenty years after these important amendments, the False Claims Act has become the Government’s primary tool in fighting fraud against the Federal Treasury, returning over \$17 billion in the last twenty years.<sup>2</sup> Likewise, over a dozen states have built this same level of protection for their public dollars by enacting their own versions of the False Claims Act.<sup>3</sup>

However, while the False Claims Act has been quite successful, a significant loophole still exists when it comes to protecting the Medicaid program. Specifically, the federal False Claims Act only applies to fraud against the Federal Government, not the States, and therefore does not cover the States’ share of Medicaid spending. In February 2006, Congress sought to close this loophole by enacting section 6031 of the Deficit Reduction Act of 2005, S. 1932, which added section 1909(b) to the Social Security Act to encourage the remaining States to pass their own versions of the federal False Claims Act. And, with potentially millions of additional Medicaid dollars at stake and an early effective date of January 1, 2007, Congress is encouraging state legislators to act quickly. Taxpayers Against Fraud Education Fund, a nonprofit, public interest organization dedicated to combatting fraud against the American tax

dollar, has pulled together the following information to assist these States in enacting qualifying legislation. TAFEF believes that State taxpayer dollars used to fund the Medicaid program deserve the same level of protection against fraud that Federal taxpayer dollars now have under the False Claims Act. A number of States already benefit from this same level of protection. The new 10-percentage-point bonus will reward the remaining States for giving their State Medicaid funds the same level of anti-fraud protection. TAFEF is committed to assisting those States in enacting False Claims Acts that qualify for the 10-percentage-point bonus and while deterring and punishing fraud against Medicaid and other state programs.

### SECTION 1909(b) OF THE SOCIAL SECURITY ACT

Section 1909(b) offers the States a strong incentive to enact a state False Claims Act. Specifically, a State that has in effect a qualifying False Claims Act is entitled to an increase of ten percentage points in the share of any amounts recovered under an action brought under the Act. For example, if a State’s federal Medicaid matching rate is 57 percent, it would typically receive only 43 percent of the amount recovered from the fraudfeasor. However, if the State has enacted a qualifying False Claims Act, its share of any recovery would increase by 10 percentage points, to 53 percent of any amount received under its False Claims Act. (In this example, the state’s share of the recovery effectively increases by 23 percent!) In order to qualify for this increase, section 1909(b) requires that a State must demonstrate to the Inspector General of the U.S. Department of Health and Human Services (OIG) that its False Claims Act complies with the following requirements:

- (1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).
- (2) The law contains provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.
- (3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.
- (4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.

<sup>1</sup> S. Rep. 99-345, 99th Cong., 2d Sess., at 19, *reprinted in* 1986 U.S.C.C.A.N. 5266, 5284. *See also* <http://www.taf.org/legislativehistory.htm> for the complete legislative history to the 1986 FCA Amendments.

<sup>2</sup> *See* <http://www.taf.org> for additional information.

<sup>3</sup> Currently, several states have already enacted a False Claims Act, including California, Delaware, Florida, Hawaii, Illinois, Indiana, Louisiana, Massachusetts, Michigan, New Hampshire, New Mexico, Nevada, Tennessee, Texas, Virginia, and the District of Columbia. The full text of these state acts are available at <http://www.taf.org/state-fca.htm>.

## RECOMMENDED STATUTORY PROVISIONS

This report is intended to assist States in drafting False Claims Acts legislation that complies with section 1909(b) of the Social Security Act of 2006. Specifically, this report highlights the statutory provisions that the OIG may look to when assessing whether the proposed legislation is “as effective” as the federal False Claims Act. To meet this necessary hurdle, TAF Education Fund, in distilling existing state FCAs, believes that the state legislation should include the following sixteen provisions:

- a provisions providing *qui tam* whistleblowers (formally known as “relators”) standing to bring FCA actions on behalf of the state government, under the seven types of conduct currently prohibited in 31 U.S.C. 3729(a), including the following:
  - Presenting, or causing to presented, a false claim;
  - Making, or causing to be made, a false statement or record in support of a false claim;
  - Conspiring to violate the FCA;
  - Making, using, or causing to be made or used a “false record or statement to conceal, avoid or decrease an obligation to pay to transmit money or property to the Government.” *See* Model State False Claims Act (MSFCA), Sections 2(a)(1)-(a)(7).
- a provision statutorily setting treble damages (with double damages in instances of sufficient cooperation) and civil penalties at amounts of \$5,000 to \$10,000 per false claim. *See* MSFCA § 2(a).
- a provision permitting successful relators to collect at least the same percentage of the recovery as allowable under 31 U.S.C. 3730(d), namely that the relator is guaranteed 15 to 25 percent of judgment when the State government intervenes, and 25 to 30 percent if the State government does not intervene. *See* MSFCA § 3(d)(1).
- a provision awarding reasonable attorneys fees and costs to a successful relator. *See* MSFCA § 3(d)(1)-(2).
- a provision defining the Act’s *mens rea* requirement of “knowing” or “knowingly” to include: “(1) actual knowledge of the information, (2) deliberate ignorance of the truth or falsity of the information, or (3) reckless disregard of the truth or falsity of the information,” and further specifying that “no proof of specific intent to defraud is required.” *See* MSFCA § 1(b).
- a provision setting the statute of limitations for all violations under the FCA, including actions under the Act’s retaliation provision, to be ten years after the date on which the violation occurred. The federal FCA provision, 31 U.S.C. § 3730(b)(1), has a confusing formula that

calls for a 10-year, 6-year, and 3-year limitation, based on various situations. TAF Education Fund recommends that the States simply the statute of limitations provision by adopting a single statutory term of ten years, which would comply with Social Security Act section 1909(b)'s requirement that the state FCA be "as effective in rewarding and facilitating *qui tam* actions" as the federal False Claims Act. *See* MSFCA § 4(a).

- a provision establishing the burden of proof as a "preponderance of the evidence" standard. *See* MSFCA § 4(c).
- a provision providing a cause of action for relators who suffer retribution from employers for whistleblower activities related to the FCA. *See* MSFCA § 3(g).
- a provision that allows relators to go forward with a *qui tam* action, even if government officials are aware of the fraud at issue, unless the elements of the actionable false claims alleged in the *qui tam* complaint had been publicly disclosed specifically in the news media or in a publicly disseminated governmental report at the time the complaint was filed and the relator did not have independent knowledge of the fraud. *See* MSFCA § 3(e)(3).
- a provision providing that the first to file a *qui tam* claim is the only relator who qualifies to pursue such a claim. *See* MSFCA § 3(b)(5).
- a provisions providing that the *qui tam* complaint is filed under seal and not served on the defendant or made public in any way, and that the entire action is stayed while the State (acting through its Attorney General) is notified of the lawsuit by service of a copy of the complaint and "written disclosure of substantially all material evidence and information the person possesses." *See* MSFCA § 3(b)(2)-(3).
- a provision providing that the State's Attorney General assumes "primary responsibility" for the lawsuit, but also that the relator continues also as plaintiff. *See* MSFCA § 3(c)(1).
- a provision preserving certain rights of the relator when the State 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. *See* MSFCA § 3(c)(2).
- a provision providing that if the Government elects not to intervene, the *qui tam* relator may proceed with the action. *See* MSFCA § 3(c)(3).
- a provision providing that during litigation, a 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," 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." *See* MSFCA § 3(c)(2)(C).
- a provision providing that upon a showing of "good cause," the court may permit the government to intervene "at a later date," even if the government originally declined to intervene. *See* MSFCA § 3(c)(3).

TAF Education Fund also recommends that the States adopt provisions that address issues of venue and discovery, including provisions empowering the state to utilize subpoena powers similar to the civil investigative demands authorized under section 3733 of the federal False Claims Act. *See* 31 U.S.C. § 3733. Because these issues of civil procedure vary from state to state, TAF Education Fund has chosen to not include such provisions in the Model State False Claims Act. Additional resources are available at [www.taf.org](http://www.taf.org).

The following model legislation contains each of the sixteen elements that TAFEF believes will qualify a state False Claims Act for the 10-percentage-point bonus under section 1909(b). This legislation is based primarily upon the federal False Claims Act and existing state False Claims Acts. The complete text of each of these statutes may be found at [www.taf.org](http://www.taf.org).

## ADDITIONAL RESOURCES

- The text of the federal False Claims Act, 31 U.S.C. 3729 et seq., is available at <http://www.taf.org>.
- The legislative history behind the federal False Claims Act is available at <http://www.taf.org/legislativehistory.htm>.

## MODEL STATE FALSE CLAIMS ACT

### SECTIONS

- 1 Definitions.
- 2 Acts subjecting person to treble damages, costs and civil penalties; exceptions.
- 3 Attorney general investigations and prosecutions; powers of prosecuting authority; civil actions by individuals as *qui tam* plaintiff and as private citizens; jurisdiction of courts.
- 4 Limitation of actions; activities antedating this Act; burden of proof.
- 5 Remedies under other laws; severability of provisions; liberality of legislative construction; adoption of legislative history
- 6 Applicable rules of civil procedure.

### § 1 DEFINITIONS

For purposes of this Act:

(a) **Claim.** “Claim” includes any request or demand for money, property, or services made to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient, whether under contract or not, if any portion of the money, property, or services requested or demanded issued from, or was provided by, the State (hereinafter “state funds”), or if the State will reimburse such contractor, grantee, or other recipient for any portion of the money or property which is requested or demanded.

(b) **Knowing and Knowingly.** “Knowing” and “knowingly” mean that a person, with respect to information, does any of the following:

- (1) Has actual knowledge of the information.
- (2) Acts in deliberate ignorance of the truth or falsity of the information.
- (3) Acts in reckless disregard of the truth or falsity of the information.

Proof of specific intent to defraud is not required.

(c) **Person.** “Person” includes any natural person, corporation, firm, association, organization, partnership, business, or trust.

(d) **Employer.** “Employer” includes any natural person, corporation, firm, association, organization, partnership, business, trust, or State-affiliated entity involved in a nongovernmental function, including state universities and state hospitals.

## § 2 ACTS SUBJECTING PERSON TO TREBLE DAMAGES, COSTS AND CIVIL PENALTIES; EXCEPTIONS

(a) **Liability.** Any person who commits any of the following acts shall be liable to the State for three times the amount of damages which the State sustains because of the act of that person. A person who commits any of the following acts shall also be liable to the State for the costs of a civil action brought to recover any of those penalties or damages, and shall be liable to the State for a civil penalty of not less than \$ 5,000 and not more than \$10,000 for each violation:

- (1) Knowingly presents or causes to be presented to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient of State funds, a false or fraudulent claim for payment or approval.
- (2) Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved.
- (3) Conspires to defraud the State by getting a false claim allowed or paid, or conspires to defraud the State by knowingly 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 State.
- (4) Has possession, custody, or control of public property or money used or to be used by the State and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt.
- (5) Is authorized to make or deliver a document certifying receipt of property used or to be used by the State and knowingly makes or delivers a receipt that falsely represents the property used or to be used.

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from any person who lawfully may not sell or pledge the property.

(7) Knowingly makes, uses, or causes 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 State.

(8) Is a beneficiary of an inadvertent submission of a false claim to any employee, officer, or agent of the State, or to any contractor, grantee, or other recipient of state funds, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the State within a reasonable time after discovery of the false claim.

(b) **Damages Limitation.** Notwithstanding subdivision (a), the court may assess not less than two times the amount of damages which the State sustains because of the act of the person described in that subdivision, and no civil penalty, if the court finds all of the following:

- (1) The person committing the violation furnished officials of the State who are responsible for investigating false claims violations with all information known to that person about the violation within 30 days after the date on which the person first obtained the information.
- (2) The person fully cooperated with any investigation by the State.
- (3) At the time the person furnished the State with information about the violation, no criminal prosecution, civil action, or administrative action had commenced with respect to the violation, and the person did not have actual knowledge of the existence of an investigation into the violation.

(c) **Exclusion.** This section does not apply to claims, records, or statements made under the State Revenue and Taxation Code.

### § 3 ATTORNEY GENERAL INVESTIGATIONS AND PROSECUTIONS; POWERS OF PROSECUTING AUTHORITY; CIVIL ACTIONS BY INDIVIDUALS AS *QUI TAM* PLAINTIFF AND AS PRIVATE CITIZENS; JURISDICTION OF COURTS

(a) **Responsibilities of the Attorney General.** The Attorney General diligently shall investigate a violation under section 2. If the Attorney General finds that a person has violated or is violating section 2, the Attorney General may bring a civil action under this section against that person.

(b) **Actions by private persons.**

(1) A person may bring a civil action for a violation of this Act for the person and for the State in the name of the State. The person bringing the action shall be referred to as the *qui tam* plaintiff. Once filed, the action may be dismissed only with the written consent of the court, taking into account the best interest of the parties involved and the public purposes behind this act.

(2) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the State Attorney General. The complaint shall also be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The State may elect to intervene and proceed with the action within 60 days after it receives both the complaint and the material evidence and the information.

(3) The State may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2). Any such motions may be supported by affidavits or other submissions in camera. The defendant shall not be required to respond to any complaint filed under this section until after the complaint is unsealed and served upon the defendant pursuant to State Rules of Civil Procedure.

(4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the State shall—

(A) proceed with the action, in which case the action shall be conducted by the State; or

(B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action.

(5) When a person brings a valid action under this subsection, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

(c) **Rights of the parties to *qui tam* actions.**

(1) If the State proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action. Such person shall have the right to continue as a party to the action, subject to the limitations set forth in paragraph (2).

(2)(A) The State may seek to dismiss the action for good cause notwithstanding the objections of the *qui tam* plaintiff if the *qui tam* plaintiff has been notified by the State of the filing of the motion and the court has provided the *qui tam* plaintiff with an opportunity to oppose the motion and present evidence at a hearing.

(B) The State may settle the action with the defendant notwithstanding the objections of the *qui tam* plaintiff if the court determines, after a hearing providing the *qui tam* plaintiff an opportunity to present evidence, that the proposed settlement is fair, adequate, and reasonable under all of the circumstances.

(C) Upon a showing by the State that unrestricted participation during the course of the litigation by the person initiating the action would interfere with or unduly delay the State's prosecution of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as—

(i) limiting the number of witnesses the person may call;

(ii) limiting the length of the testimony of such witnesses;

(iii) limiting the person's cross-examination of witnesses; or

(iv) otherwise limiting the participation by the person in the litigation.

(D) Upon 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, the court may limit the participation by the person in the litigation.

(3) If the State elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action. If the State so requests, it shall be served with copies of all pleadings filed in the action and shall be supplied with copies of all deposition transcripts (at the State's expense). When a person proceeds with the action, the court, without limiting the status and rights of the person initiating the action, may nevertheless permit

the State to intervene at a later date upon a showing of good cause.

(4) Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil action will interfere with the ongoing criminal or civil investigation or proceedings.

(5) Notwithstanding subsection (b), the State may elect to pursue its claim through any alternate remedy available to the State, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the action shall have the same rights in such proceeding as such person would have had if the action had continued under this section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to an action under this section. For purposes of the preceding sentence, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

**(d) Award to *qui tam* plaintiff.**

(1) If the State proceeds with an action brought by a person under subsection (b), such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the action or settlement of the claim, which includes damages, civil penalties, payments for costs of compliance and any other economic benefit realized by the government as a result of the action, depending upon the extent to which the person and/or his counsel substantially contributed to the prosecution of the action. Where the action is one which the court finds to be based primarily on disclosures of specific information (other than information provided by the person bringing the action) relating to allegations or transactions specifically in a criminal, civil, or administrative hearing, or in a legislative or administrative report, hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing the action in advancing the

case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. Any such person shall also receive an amount for reasonable expenses which the appropriate state court judge finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the State does not proceed with an action under this section, the person bringing the action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. The amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the action or settlement and shall be paid out of such proceeds, which includes damages, civil penalties, payments for costs of compliance and any other economic benefit realized by the government as a result of the action. Such person shall also receive an amount for reasonable expenses which the appropriate state court judge finds to have been necessarily incurred, plus reasonable attorneys' fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the State proceeds with the action, if the court finds that the action was brought by a person who planned and initiated the violation of section (1) upon which the action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the action is convicted of criminal conduct arising from his or her role in the violation of section 1, that person shall be dismissed from the civil action and shall not receive any share of the proceeds of the action. Such dismissal shall not prejudice the right of the State to continue the action.

(4) If the State 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.

**(e) Certain actions barred.**

(1) No court shall have jurisdiction over an action brought under subsection (b) against a member of the State legislative branch, a member of the judiciary, or a senior executive branch official if the action is based on evidence or information known to the State when the action was brought.

(2) In no event may a person bring an action under subsection (b) which is based upon allegations or transactions which are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party.

(3) Upon motion of the state Attorney General, the court may, in consideration of all the equities, dismiss a relator if the elements of the actionable false claims alleged in the *qui tam* complaint have been publicly disclosed specifically in the news media or in a publicly disseminated governmental report, at the time the complaint is filed.

(f) **State not liable for certain expenses.** The State is not liable for expenses which a person incurs in bringing an action under this section.

(g) **Private action for retaliation action.** Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee on behalf of the employee or others in furtherance of an action under this section, including investigation for, initiation of, testimony for, or assistance in an action filed or to be filed under this section, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorneys' fees. An employee may bring an action in the appropriate court of the State for the relief provided in this subsection.

#### § 4 LIMITATION OF ACTIONS; ACTIVITIES ANTEDATING THIS ARTICLE; BURDEN OF PROOF

(a) **Statute of limitations.** A civil action under Section 3 may not be brought more than 10 years after the date on which the violation was committed.

(b) **Retroactivity.** A civil action under Section 3 may be brought for activity prior to the effective date of this Act if the limitations period set in subdivision (a) has not lapsed.

(c) **Burden of proof.** In any action brought under Section 3,

the State or the *qui tam* plaintiff shall be required to prove all essential elements of the cause of action, including damages, by a preponderance of the evidence.

(d) **Estoppel.** Notwithstanding any other provision of law, a guilty verdict rendered in a criminal proceeding charging false statements or fraud, whether upon a verdict after trial or upon a plea of guilty or nolo contendere, shall estop the defendant from denying the essential elements of the offense in any action which involves the same transaction as in the criminal proceeding and which is brought under subdivision (a), (b), or (c) of Section 3.

#### § 5 REMEDIES UNDER OTHER LAWS; SEVERABILITY OF PROVISIONS; LIBERALITY OF LEGISLATIVE CONSTRUCTION; ADOPTION OF LEGISLATIVE HISTORY

(a) **Remedies under other laws.** The provisions of this Act are not exclusive, and the remedies provided for in this Act shall be in addition to any other remedies provided for in any other law or available under common law.

(b) **Severability of provisions.** If any provision of this Act or the application thereof to any person or circumstance is held to be unconstitutional, the remainder of the Act and the application of the provision to other persons or circumstances shall not be affected thereby.

(c) **Liberality of legislative construction and adoption of legislative history.** This Act shall be liberally construed and applied to promote the public interest. This Act also adopts the congressional intent behind the federal False Claims Act, 31 U.S.C. §§ 3729–3733, including the legislative history underlying the 1986 Amendments to the federal False Claims Act.

#### § 6 APPLICABLE RULES OF CIVIL PROCEDURE

[Reminder: TAF Education Fund recommends that the States adopt provisions that address issues of venue and discovery, including provisions empowering the State to utilize subpoena powers similar to the civil investigative demands authorized under subsection 3733 of the federal False Claims Act. See 31 U.S.C. § 3733. Because these issues of civil procedure vary from state to state, TAF Education Fund has chosen not to include such provisions in the Model State False Claims Act.]

## APPENDIX

### DEFICIT REDUCTION ACT OF 2005

#### CHAPTER 3—ELIMINATING FRAUD, WASTE, AND ABUSE IN MEDICAID

##### SEC. 6032. ENCOURAGING THE ENACTMENT OF STATE FALSE CLAIMS ACTS

**(a) IN GENERAL.**—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by inserting after section 1908A the following:

##### “STATE FALSE CLAIMS ACT REQUIREMENTS FOR INCREASED STATE SHARE OF RECOVERIES

**“SEC. 1909. (a) IN GENERAL.**—Notwithstanding section 1905(b), if a State has in effect a law relating to false or fraudulent claims that meets the requirements of subsection (b), the Federal medical assistance percentage with respect to any amounts recovered under a State action brought under such law, shall be decreased by 10 percentage points.

**“(b) REQUIREMENTS.**—For purposes of subsection (a), the requirements of this subsection are that the Inspector General of the Department of Health and Human Services, in consultation with the Attorney General, determines that the State has in effect a law that meets the following requirements:

“(1) The law establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to any expenditure described in section 1903(a).

“(2) The law contains provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in sections 3730 through 3732 of title 31, United States Code.

“(3) The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General.

“(4) The law contains a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of title 31, United States Code.

**“(c) DEEMED COMPLIANCE.**—A State that, as of January 1, 2007, has a law in effect that meets the requirements of subsection (b) shall be deemed to be in compliance with such requirements for so long as the law continues to meet such requirements.

**“(d) NO PRECLUSION OF BROADER LAWS.**—Nothing in this section shall be construed as prohibiting a State that has in effect a law that establishes liability to the State for false or fraudulent claims described in section 3729 of title 31, United States Code, with respect to programs in addition to the State program under this title, or with respect to expenditures in addition to expenditures described in section 1903(a), from being considered to be in compliance with the requirements of subsection (a) so long as the law meets such requirements.”

**(b) EFFECTIVE DATE.**—Except as provided in section 6035(e), the amendments made by this section take effect on January 1, 2007.

**TAXPAYERS AGAINST FRAUD EDUCATION FUND**

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