

Should there be a law? *Qui tam* statutes

ALASKA BAR RAG

By Bill Falsey

Alaska, like a dwindling number of other states, does not have a *qui tam* statute. Should it?

Qui tam statutes allow citizens to act as "private attorneys general" and bring civil suits in the name of the government. (*Qui tam* is short for "*qui tam pro domino rege quam pro se ipso in hac parte sequitur*," an

eye-crossing parade of Latin meaning "who as well for the king as for himself sues in this matter.")

In the United States, the federal False Claims Act is the mostly widely known *qui tam* provision. Since liberalizing amendments in 1986, over 9,200 *qui tam* lawsuits have been filed under the False Claims Act, resulting in nearly \$39 billion in settlements and judgments for the United States, with just over \$4 billion of that amount going to the private *qui tam* filers, called "relators."

Like most *qui tam* provisions, the False Claims Act does not give private citizens an unfettered ability to bring claims on the government's behalf. A private litigant must provide a copy of his or her complaint to government before it can be served or made public, and while the *qui tam* complaint remains sealed, the government will undertake its own investigations.

Ultimately, the government may intervene and effectively take over the *qui tam* suit; decline to participate (allowing the private citizen to proceed in the government's absence); or move to dismiss the complaint. The size of the private litigant's recovery depends on the government's choice: of funds ultimately recovered through settlement or judgment, relators receive a maximum of 10-15% if the government intervenes, or 25-30% if the government does not.

Since 1987 (when the first wave was enacted), 29 states and the District of Columbia have adopted a *qui tam* statute similar to the federal law. (Several states' laws apply only to

medical-assistance claims, however.)

Those who favor the trend argue that *qui tam* statutes lead to greater detection and stronger deterrence of fraud, both of which strengthen state treasuries. In the first 13 years after Illinois adopted its Whistleblower Reward and Protection Act, the state originated exactly zero false-claim cases. *Qui tam* litigants, by contrast, initiated 136. The Illinois Attorney General intervened in 130 of those 136 suits, ultimately leading to a recovery of over \$21 million.

Opponents question the trend. They see the laws as encouraging frivolous lawsuits, and as possibly reducing the government's recovery. The United States intervenes in less than 25% of *qui tam* actions it sees, and opponents suspect that private litigants, in the successful suits, may merely be using the law to siphon money from judgments that the government, with more time, would have obtained on its own.

Others chart a middle course. They argue that *qui tam* provisions are valuable, but should be limited to subject areas that are difficult for a government's bureaucracy and department of law to police. Medical-billing claims are a leading candidate: of the \$16 million recovered in *qui tam* suits filed in Tennessee between 1991 and 2005, every dollar was related to Medicaid fraud.

For its part, Congress has come down strongly in favor of state *qui tam* laws to Medicaid fraud. So much so, that's enacted a financial incentive: states that adopt a local version of

the federal statute are entitled to 10% of the federal government's share of any recovery in a successful Medicaid-fraud action brought under the state law. And since Medicaid costs are often split 50%/50% between federal and state governments, those amounts can be significant.

What's the right answer? Should Alaska have a *qui tam* statute? Broad, or limited to Medicaid-fraud claims? Know of another statute that Alaska should consider?

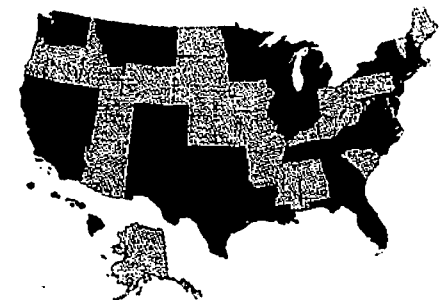
Sources:

http://www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Statistics.pdf

<https://www.doioig.gov/docs/false-claimsact.pdf>

Christina Orsini Broderick, *Qui Tam Provisions and the Public Interest: An Empirical Analysis*, 107 Colum. L. Rev. 949 (2007)

<http://falseclaimsactattorney.com/false-claims-act/state-fca-laws/>
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States with *Qui Tam* Statutes

States with no *Qui Tam* Statutes

Sources: http://www.justice.gov/civil/docs_forms/C-FRAUDS_FCA_Statistics.pdf

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