ILR Briefly

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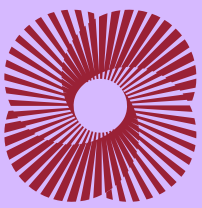
Fixing the FCA Health Care Problem



U.S. Chamber of Commerce
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The False Claims Act (FCA) has had a disproportionate impact on the health care industry, as the claims submission process causes it to bear the brunt of FCA enforcement actions. Legislative reforms could address the inequitable and penal application of the FCA against this industry.

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Introduction

The False Claims Act (FCA) is the federal government's primary weapon to combat fraud against it. The FCA arms law enforcement officials with a penal remedy of treble damages and civil penalties against those who knowingly or fraudulently present false claims to the government.

Civil penalties are mandatory in nature and can currently range from $11,803 to $23,607 for each claim submitted to the government.[1] The FCA also empowers private citizens (known as *qui tam* relators) to bring lawsuits on behalf of the government (known as *qui tam* actions) and to obtain a substantial bounty if they prevail. The U.S. Supreme Court, on multiple occasions, has characterized FCA damages and civil penalties as essentially penal in nature.[2]

The FCA has been disproportionately enforced against the health care industry. In January 2022, the U.S. Department of Justice (DOJ) reported that it recovered more than $5.6 billion in FCA recoveries in 2021, with over $5 billion relating to matters involving the health care industry.[3] Those operating in the health care industry typically present many low dollar claims for payment—such as $120 for an office visit, $40 for a lab test, or just a few dollars for a prescription. Given the prospect of a minimum per-claim penalty of $11,803, this makes health care entities an especially attractive target for an FCA lawsuit.

Such disproportionate penal recoveries can inflict substantial damage on an industry where services are largely provided by non-profit entities that offer substantial charity care.[4] Set forth below is a discussion of the disproportionate impact the FCA has had on the health care industry and an analysis of the claims submission process that makes the health care industry bear the brunt of FCA enforcement actions. Finally, potential legislative reforms are discussed that could address the inequitable and penal application of the FCA against the health care industry and other industries that may be similarly situated.

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A Brief History of the FCA and Its Application to the Health Care Industry

Congress enacted the FCA in 1863 with the specific goal of combating defense industry contract fraud that was being perpetrated against the Union Army during the Civil War.[5] In its original form, the Act imposed both criminal and civil penalties and prohibited the "present[ation of] ... any claim upon or against the Government ... knowing such claim to be false, fictitious, or fraudulent."[6]

In 1986, Congress amended the Act.[7] The amendments significantly expanded the scope of the FCA, including (1) clarifying that a party does not have to have "specific intent" to violate the Act; (2) specifying that "reckless disregard" and "deliberate ignorance" can constitute "knowledge" for purposes of the FCA; (3) reducing the plaintiff's burden of proof to a simple "preponderance of the evidence"; and (4) raising penalties.[8]

FCA activity against the health care industry increased significantly in the 1990s. Beginning in 1992, the government instituted Operation LabScam, which yielded an unheard-of $111 million settlement against National Health Laboratories.[9] The settlement resulted in nationwide publicity, leading to a number of blockbuster settlements against large laboratories of around $800 million between 1992 and 1997.[10]

The initial settlement and resulting media attention inspired relators to file FCA lawsuits in the health care field. Moreover, the government began to overreach by investigating community hospitals based upon "seemingly trivial cases," routinely sending demand letters that were "unduly harsh in tone and substance."[11] This resulted in Congress considering legislation in 1998 to address DOJ's ham-fisted practice of threatening FCA lawsuits without bothering to conduct any investigation. The legislation, known as the Health Care Claims Guidance Act, was narrowly tailored and designed to make it more difficult for DOJ to assert that minor, technical regulatory breaches constituted

FCA violations.[12] For example, Congress proposed amending the FCA to require DOJ to prove a violation by "clear and convincing evidence" rather than a "preponderance of the evidence" and bar DOJ from obtaining a judgment when the amount of alleged damages was immaterial relative to a health care provider's annual claims.[13] To head off passage of this legislation, DOJ issued the "Holder Guidelines" to Department attorneys regarding their use of the FCA.[14] DOJ's promulgation of the Holder Guidelines was sufficient to avert Congress's enactment of remedial FCA legislation.[15] Once DOJ achieved this objective, it began to ignore its own guidelines and reverted back to its prior practices.[16]

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The FCA amendments have resulted in substantial recoveries for the federal government and relators alike. Since 1986, the government has recovered more than $70 billion.[17] Relators are entitled to 15 to 25 percent of the proceeds in FCA actions when the government has intervened in their lawsuits, and 25 to 30 percent of the proceeds in FCA actions when the government has not intervened.[18] The lure of large recoveries has drawn out potential relators like "moths to a flame."[19]

Disproportionate Application of the FCA to the Health Care Industry

While the FCA applies to any claims submitted to the federal government, no industry has been more impacted by it since the passage of the FCA amendments than the health care industry. Health care makes up an important—and generally increasing[20]—share of our economy. It is thus not surprising that recoveries in the health care space constitute a significant percentage of FCA recoveries each year. What is striking and unsettling, however, is the degree to which the percentage of FCA fines and penalties levied against health care entities outweighs and outpaces health care spending.

In 2021, federal health care program spending is estimated to have accounted for 24.1 percent of total federal outlays,[21] but FCA cases involving claims to Health and Human Services (HHS) (including Medicaid and Medicare claims) accounted for 89.7 percent of total FCA recoveries and 88.6 percent of FCA recoveries in cases brought by *qui tam* relators.[22]

It is not possible to explain away this pattern by alleging that these numbers simply reflect an extremely high incidence of fraud in the health care industry.

First, the percentage of health care recoveries is currently, and has largely been, disproportionate to the percentage of FCA claims brought in the health care space. While health care allegations underlay 60.5 percent of all FCA actions brought in 2021, they generated 89.7 percent of total recoveries—a difference of nearly 50 percent.[24]

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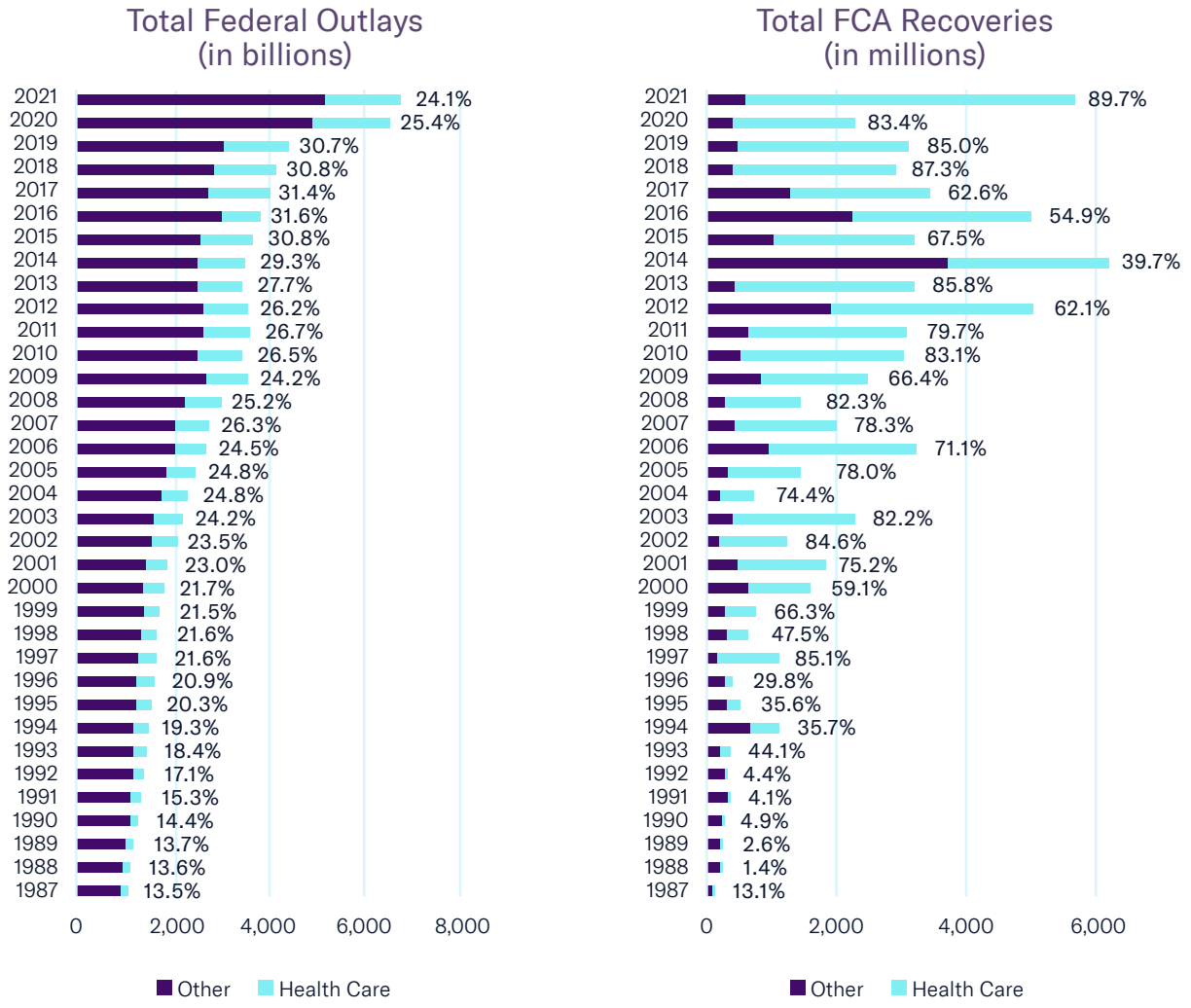
Second, and perhaps more notably, *qui tam* relators proportionately bring a much larger number of health care cases than the federal government. *Qui tam* relators have strong financial incentives to bring FCA actions. As noted above, if the government intervenes and recovers proceeds from the action, the *qui tam* relator is entitled to 15 to 25 percent of the total recovery.[26] If the government declines to intervene and the relator recovers proceeds from the action, the *qui tam* relator is entitled to 25 to 30 percent of the total recovery.[27] Courts have long recognized that relators, as a class, are fundamentally different in

Figure 1: Federal Health Care Program Outlays as a Percentage of Total Federal Outlays Versus Health Care-Related Recoveries as a Percentage of Total FCA Recoveries (1987-2021)[23]

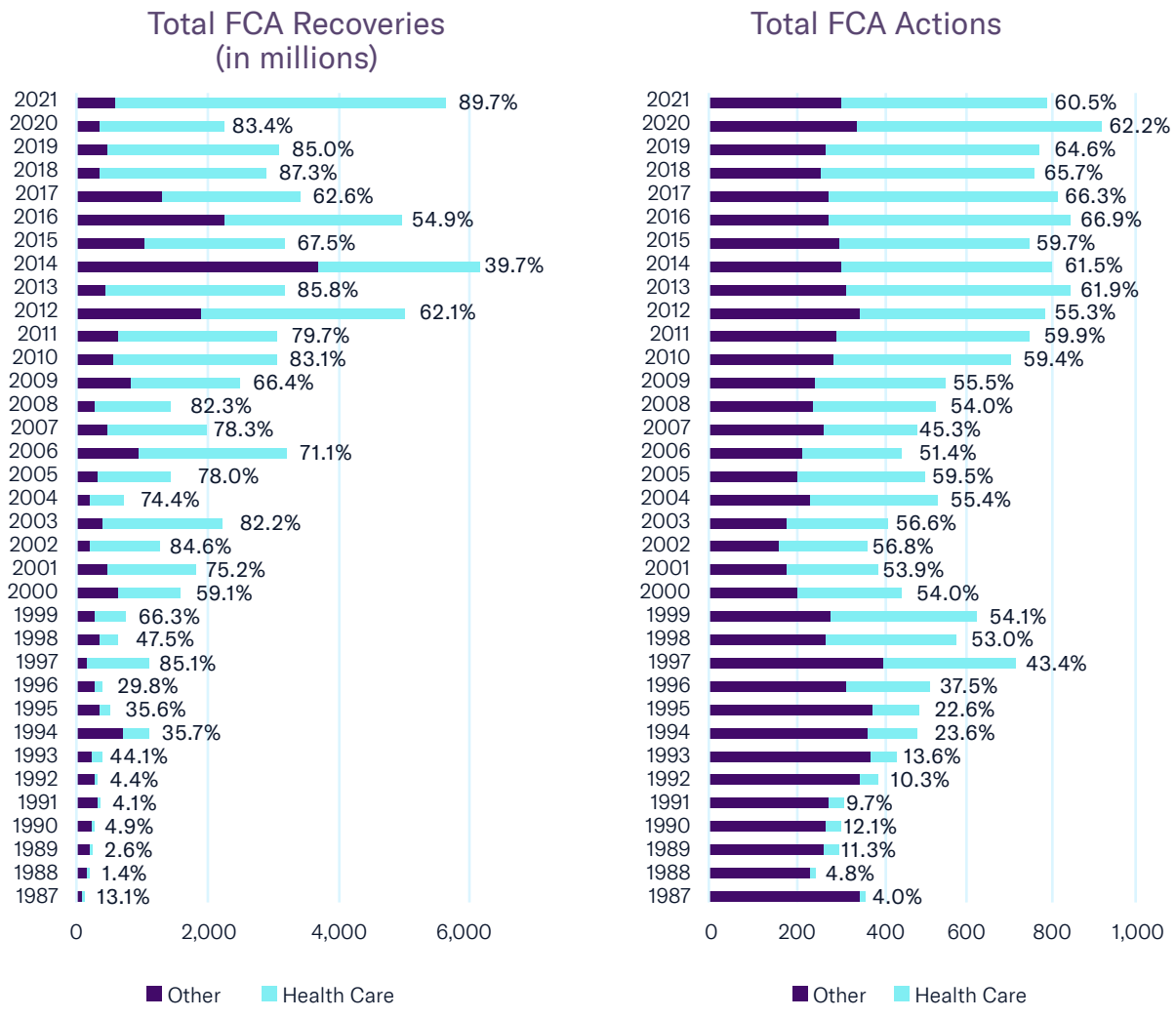


kind from the government in that they are primarily motivated by prospects of financial recovery and not the public good.[28]

The percentage of health care FCA actions initiated by the federal government has never exceeded 50 percent.[29] In fact, while health care cases have averaged 61.2 percent of all FCA actions brought by *qui tam* relators since 1987, they have averaged only 22.6 percent of FCA actions initiated by the federal government.[30]

Were rampant fraud wholly, or even mostly, responsible for the massive share of FCA fines and penalties levied against the health care industry, one would expect to see not only a higher proportion of overall FCA claims brought, but

Figure 2: Health Care-Related Recoveries as a Percentage of Total FCA Recoveries Versus Health Care FCA Actions as a Percentage of Total FCA Actions Brought (1987-2021)[25]



also significantly more government-initiated actions. To understand why the FCA has a disproportionate impact on the health care industry, it is therefore necessary to look to the structure of the statute itself.

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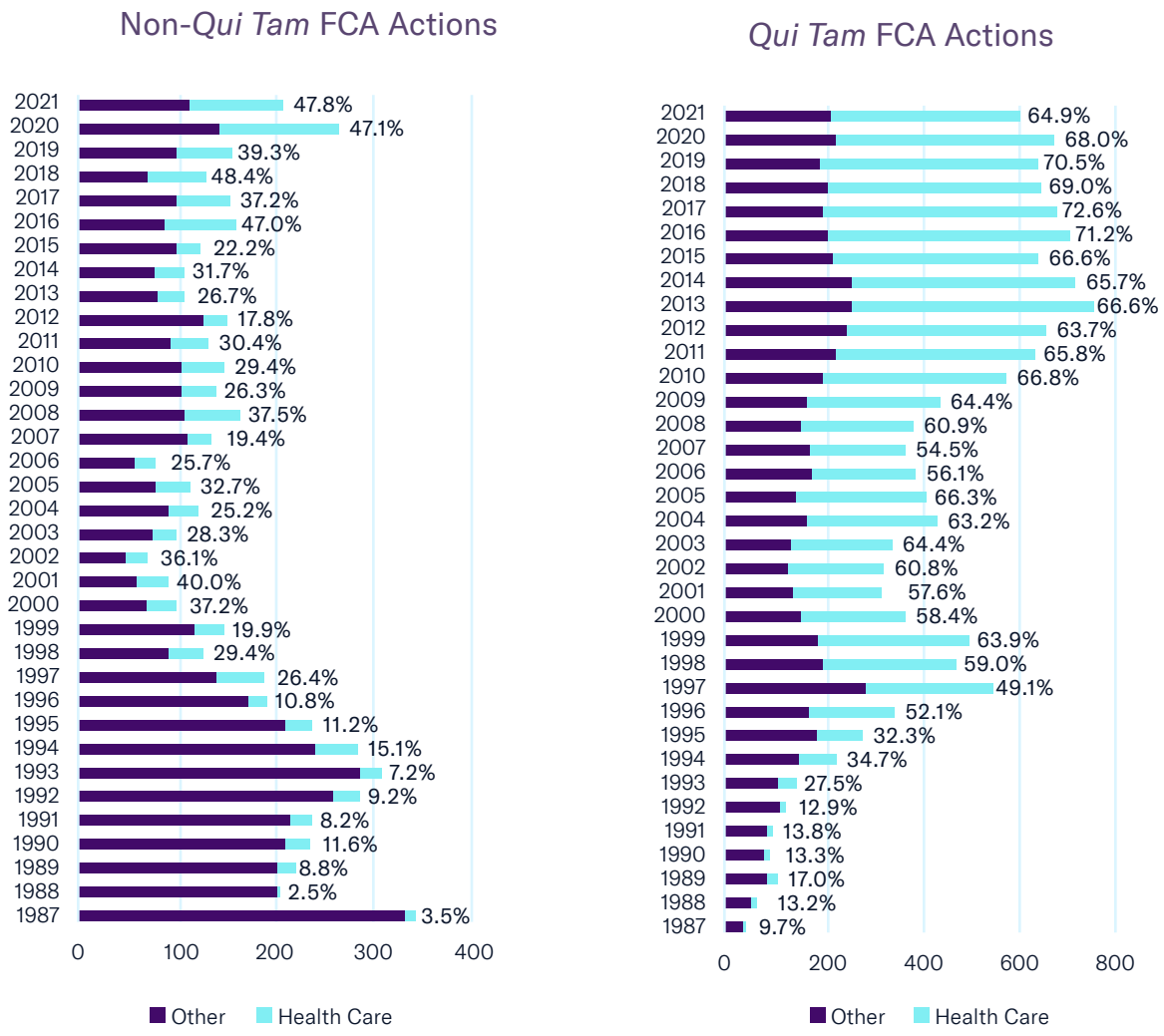
Figure 3: Health Care FCA Actions as a Percentage of Non-*Qui Tam* FCA Actions Brought Versus Health Care FCA Actions as a Percentage of *Qui Tam* FCA Actions Brought (1987-2021)[31]



Structure of the Health Care Industry and Claims Submission Process

One aspect of the health care industry renders it particularly vulnerable to large and unfair penalties under the FCA: the large volume of Medicare and Medicaid claims, especially claims for relatively low dollar amounts. In FY 2021, Medicare Administrative Contractors (MACs) processed around 1.1 billion Medicare claims on behalf of the Centers for Medicare & Medicaid Services (CMS).[32]

A single hospital may submit tens of thousands of Medicare claims every year. Medicare and Medicaid law and regulation are notoriously complex, and if a hospital makes even one small error consistently, the hospital can easily incur millions of dollars' worth of mandatory penalties.[33] A physician office visit may generate a claim of $120, but if a relator or the government believes that the visit was not medically necessary, that single visit may currently generate a civil penalty of $11,803. That, of course, is in addition to the treble damages that would result.

Because of the way that the FCA is structured, it is our small community and rural hospitals, physician practices, skilled nursing facilities, and other health care entities who must shoulder disproportionate, unfair, and potentially ruinous penalties. Judgments and settlements bring hospitals and other health care entities to the brink of bankruptcy and effectively put them out of business.[34] It is worth noting that these penalties can have devastating effects on an industry that is, in large

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percentage, nonprofit. For example, as of 2022, 2,960 of the 5,139 nonfederal hospitals in the country are nonprofit hospitals—nearly two-thirds.[35]

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In addition, in practice, very few FCA cases go to trial. A review of the few FCA health care cases that result in judgment rather than settlement confirms that the per-claim amount of actual damages is frequently far less than even the minimum mandatory penalty.[36] Because massive civil penalties may be imposed when little actual damages are sustained, an FCA plaintiff can easily leverage health care cases where little harm occurs into substantial settlements. As the U.S. District Court for the Northern District of Mississippi recently recognized, "if FCA plaintiffs with even factually weak claims are able to threaten [health care entities] with staggering sums in mandatory penalties in the event that liability is found by a jury, then this will give them great leverage to compel settlements on unjust terms."[37]

Given the dynamic, it is not surprising that the health care industry bears disproportionately the brunt of FCA actions.

Correcting the Discriminatory Impact of FCA Civil Penalties on Health Care

The anomaly of the disproportionate impact of FCA recoveries on the health care industry is unlikely to be redressed by courts and instead will require a legislative remedy.

Case Law Does Not Appear to Provide a Remedy

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."[38] The Supreme Court has held that "[t]he Excessive Fines Clause limits the government's power to extract payments, whether in cash or in kind, as punishment for some offense."[39] Although the Eighth Amendment could potentially apply to address the disparate impact the FCA has on the health care industry, courts, for the most part, have been reluctant to apply the Eighth Amendment to address this issue. The Eleventh Circuit's recent decision in *U.S. ex rel. Yates v. Pinellas Hematology & Oncology*[40] illustrates this issue.

In *Yates*, the jury found that defendant Pinellas Hematology & Oncology P.A., which operated a clinical laboratory, violated the FCA on 214 occasions, and that the United States had sustained merely $755.54 in damages.[41] This amounted to actual damages of only $3.53 per claim. Following that verdict, however, the district court imposed civil penalties of $1,177,000, or $5,500 for each of the 214 violations—the minimum civil penalty that could be imposed under the law during the relevant time period.[42]

The court in *Yates* ruled that the imposition of civil penalties did not run afoul of the Eighth Amendment prohibition on excessive fines.[43] In *Yates*, the court conceded that a judgment of $1.177 million based on $755.54 in actual damages "may raise an eyebrow."[44] But the court felt powerless to act under the Eighth Amendment because the "district court here imposed the lowest-possible statutory penalty of $5,500 for all of the 214 violations and treble damages are mandated by the FCA" and thus

"no matter the perspective, the monetary award imposed represents the lowest possible sanction under the FCA."[45] The court noted that penalties falling below the maximum statutory fines for a given offense receive a strong presumption of constitutionality.[46]

Proposed Legislative Fix so That FCA Is Equitably Applied

Congress can and should reform the FCA's civil penalty provision so that it can be applied more equitably, does not have a disproportionately negative impact on the health care industry and other industries that may be faced with small dollar claims, and does not foster FCA abuse by encouraging private plaintiffs, and counsel, to target the health care and other industries.

Currently, the FCA provides in relevant part:

> Liability for Certain Acts.—
>
> (1) In general.—Subject to paragraph (2), any person who—[commits a violation of this section] is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990, ... plus 3 times the amount of damages which the Government sustains because of the act of that person.[47]

As a fix, the following italicized language can be added to the FCA:

> (1) In general.—Subject to paragraph (2), any person who—[commits a violation of this section] is liable to the United States Government for a civil penalty of not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 *... unless the amount of damages which the Government sustains because of the act of that person is an amount less than $5,000, in which case the maximum civil penalty shall be no greater than the amount resulting from the act of that person,* plus 3 times the amount of damages which the Government sustains because of the act of that person.

Alternatively, maintaining this same principle, but rearranging the statutory language in a clearer fashion, the provision could read:

> Subject to paragraph (2), any person who—[commits a violation of this section] is liable to the United States Government for a civil penalty, plus 3 times the amount of damages which the Government sustains because of the act of that person. If the amount of damages which the Government sustains because of the act of that person is less than $5,000, the maximum civil penalty shall be no

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> greater than the amount resulting from the act of that person. If the amount of damages which the Government sustains because of the act of that person is equal to or exceeds $5,000, the maximum civil penalty shall be not less than $5,000 and not more than $10,000, as adjusted by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note; Public Law 104–410 [1]).

Either of these proposed reforms to the per claim penalty provision of the FCA will ensure that the statute is applied more equitably while still imposing a significant penalty for violations of the Act. In cases like *Yates*, where damages do not exceed $5,000, the United States still would be authorized to obtain what, in essence, would be quadruple damages: the treble damages authorized in the FCA plus an additional civil penalty of $755, the total amount the government paid on all claims. Such a reform would ensure that the FCA operates in a remedial fashion, that those operating in the health care and other sectors are not inappropriately targeted in the hope that the potential imposition of massive civil fines will compel them to settle weak actions, and that the plaintiff's ultimate recovery is not grossly disproportionate to the actual damages the government sustains.

Conclusion

For decades, the health care industry has been disproportionately impacted by the FCA. Because of its primarily low dollar amount per-claim payment structure, it has been unfairly targeted in FCA actions. Plaintiffs can leverage, on many occasions, weak allegations to obtain a settlement because of the massive, disproportionate amount of mandatory civil penalties they can potentially obtain if the case proceeds to trial. Courts are largely powerless to act. Thus, legislative reform is needed to level the playing field.

"Such reform will ensure that FCA settlements are based upon the merits, rather than the result of unfair leverage created by the application of mandatory civil penalties to an industry whose payment structure renders it unfairly susceptible to massive and devastating recoveries."

Such reform will ensure that FCA settlements are based upon the merits, rather than the result of unfair leverage created by the application of mandatory civil penalties to an industry whose payment structure renders it unfairly susceptible to massive and devastating recoveries. Reform is also needed to protect a vulnerable industry comprised of a significant number of non-profit enterprises that furnish a substantial amount of charity care, which otherwise may cease to exist, convert to for-profit status, or be required to curtail services if current FCA litigation trends continue without appropriate legislative reform.

Endnotes

[1] *See* 28 C.F.R. § 85.5. Prior to 1986, the FCA imposed civil penalties of $2,000 per violation. In 1986, Congress amended the FCA to impose civil penalties of between $5,000 to $10,000 per violation. False Claims Amendments Act of 1986, Pub. L. No. 99-562 § 2, 100 Stat. 3153, 3153 (1986). The amount of civil penalties is subject to adjustment by the Federal Civil Penalties Inflation Adjustment Act of 1990. *See* 31 U.S.C. 3729(a)(1)(G). In 1999, DOJ adjusted the False Claims Act penalties range for the first time, to $5,500 to $11,000. DOJ, Civil Monetary Penalties Inflation Adjustment, 64 Fed. Reg. 47099, 47103 (Aug. 30, 1999). The Bipartisan Budget Act of 2015 changed the method for adjusting for inflation, requiring the government to adjust the civil penalties each year. Bipartisan Budget Act of 2015, Pub. L. No. 114-74 § 701, 129 Stat. 584, 599-600 (2015). $11,803 to $23,607 is the current range of FCA penalties.

[2] *See Universal Health Servs. v. U.S. ex rel. Escobar*, 579 U.S. 176, 182 (2016); *Cook Cnty. v. U.S. ex rel. Chandler*, 538 U.S. 119, 130 (2003); *Vt. Agency of Natural Res. v. U.S. ex rel. Stevens*, 529 U.S. 765, 784 (2000).

[3] Press Release, DOJ, Justice Department's False Claims Act Settlements and Judgments Exceed $5.6 Billion in Fiscal Year 2021 (Feb. 1, 2022), https://www.justice.gov/opa/pr/justice-department-s-false-claims-act-settlements-and-judgments-exceed-56-billion-fiscal-year.

[4] In 2020, there were 5,139 community hospitals around the country. These hospitals provided $42.7 billion in charity care in 2020 alone. *See* AHA, Fact Sheet: Uncompensated Hospital Care Cost (Feb. 2022), https://www.aha.org/fact-sheets/2020-01-06-fact-sheet-uncompensated-hospital-care-cost.

[5] David J. Ryan, *The False Claims Act: An Old Weapon with New Firepower Is Aimed at Health Care Fraud*, 4 Annals Health L. 127-128 (1995).

[6] Act of Mar. 2, 1863, Ch. 67, 12 Stat. 696 (1863). The word "fictitious" has since been removed.

[7] The FCA was amended on a smaller scale on several other occasions, including by the Fraud Enforcement and Recovery Act (FERA) of 2009, Pub. L No. 111-21, 123 Stat. 1617 (2009), and Patient Protection and Affordable Care Act (PPACA), Pub. L. No. 111-148, 124 Stat. 119 (2010).

[8] *See* S. REP. NO. 99-345, *reprinted in* 1986 U.S.C.C.A.N. 4266.

[9] HHS Office of Inspector General ("OIG"), Medicare Payments for Clinical Laboratory Services: Vulnerabilities and Controls, Statement Before the Expert Committee on Medicare Payment Methodology for Clinical Laboratory Services of the Institute of Medicine by George Grob, Deputy Inspector General for Evaluation and Inspections, HHS (Jan. 2000), https://oig.hhs.gov/oei/reports/oei-05-00-00070.pdf.

[10] *See* Douglas E. Roberts et al., *A new era of laboratory fraud, Part 1: Operation LabScam redux*, Compliance Today, Sept. 2016, at 22, 23.

[11] H.R. Rep. No. 105-846 at 277-78 (1999).

[12] Health Care Claims Guidance Act, H.R. 3523, 105th Congress (1998).

[13] *Id.*

[14] Memorandum from Eric H. Holder, Jr., Deputy Attorney General to All United States Attorneys, All First Assistant United States Attorneys, All Civil Health Care Fraud Coordinators in the Offices of United States Attorneys and All Trial Attorneys in the Civil Division, Commercial Litigation Section (June 3, 1998); Robert Salcido, *Recent False Claims Act prosecutions fall flat*, Nat'l L. J., July 4, 2005, at 2.

[15] *See* Melissa Ballengee Alexander, *Bajakajian: New hope for escaping excessive fines under the civil false claims act*, 27 J. L., Med. & Ethics 366, 376 n.24 (1999).

[16] *See* Salcido, *supra* note 14, at 1-2.

[17] *FCA FY2021 Statistics*, DOJ (Feb. 1, 2022), https://www.justice.gov/opa/press-release/file/1467811/download.

[18] 31 U.S.C. § 3730(d).

[19] *U.S. ex rel. LaCorte v. Wagner*, 185 F.3d 188, 191 (4th Cir. 1999).

[20] CMS projections suggest that the percentage of GDP spent on health care decreased in 2021, likely as a result of the pandemic. *See* Press Release, CMS, CMS Office of the Actuary Releases 2021-2030 Projections of National Health Expenditures (Mar. 28, 2022), https://www.cms.gov/newsroom/press-releases/cms-office-actuary-releases-2021-2030-projections-national-health-expenditures.

[21] *Historical Tables*, Office of Management and Budget (OMB) (2022), https://www.whitehouse.gov/omb/budget/historical-tables/.

[22] *FCA FY2021 Statistics*, *supra* note 17.

[23] OMB, *supra* note 21; *FCA FY2021 Statistics*, *supra* note 17.

[24] *FCA FY2021 Statistics*, *supra* note 17.

[25] *Id.*

[26] 31 U.S.C. § 3730(d)(1).

[27] *Id.* § 3730(d)(2).

[28] *Hughes Aircraft Co. v. U.S. ex rel. Schumer*, 520 U.S. 939, 949 (1997) ("As a class of plaintiffs, qui tam relators are different in kind than the Government. They are motivated primarily by prospects of monetary reward rather than the public good.").

[29] *FCA FY2021 Statistics*, *supra* note 17.

[30] *Id.*

[31] *Id.*

[32] CMS, What's a MAC, https://www.cms.gov/Medicare/Medicare-Contracting/Medicare-Administrative-Contractors/What-is-a-MAC (last modified Jan. 12, 2022).

[33] Indeed, as more than 50 courts have observed, Medicare and Medicaid statutes and regulations "are among the most completely impenetrable texts within human experience." *See, e.g., Rehab. Ass'n of Va., Inc. v. Kozlowski*, 42 F.3d 1444, 1450 (4th Cir. 1994). (Over 50 cases can be identified by searching "impenetrable texts" "human experience" and "Medicare or Medicaid" in a legal database.).

[34] In the case of Sacred Heart Hospital, for example, following an FCA *qui tam* settlement, the hospital—a charity hospital with a history of caring for indigent populations—could no longer operate as a non-profit and was forced to become a for-profit hospital. *See* Carolyn J. Pashke, *Qui Tam Provision of the Federal False Claims Act: The Statute in Current Form, Its History and Its Unique Position to Influence the Health Care Industry*, 9 J.L. & Health 163 (1994).

[35] American Hospital Association, Fast Facts on U.S. Hospitals, 2022, https://www.aha.org/statistics/fast-facts-us-hospitals.

[36] One of the most egregious examples of this in recent history occurred in *United States ex rel. Yates v. Pinellas Hematology & Oncology, P.A.*, 21 F.4th 1288 (11th Cir. 2021), discussed at more length below. In *Yates*, there were 214 FCA violations found to have resulted in $755.54 in damages (pre-trebling)—damages of just $3.53 per claim. The court applied civil penalties of $1,177,000, or $5,500 for each of the 214 violations. This year, in *United States ex rel. Walthour v. Middle Georgia Fam. Rehab, LLC*, No. 5:18-CV-378 (TES), 2022 WL 2127831, at *1 (M.D. Ga. June 9, 2022), the trial court found 796 false claims to have been submitted, resulting in pre-trebled damages of $74,163.74—or $279.51 per claim. The court applied the mandatory minimum per-claim penalty of $11,803 to levy total civil monetary penalties of $9,395,188. Over the last five years, a large number of health care FCA judgments involved per-claim allegations significantly less than the statutory mandatory minimum civil penalty. *See, e.g., United States ex rel. Lutz v. BlueWave Healthcare Consultants, Inc.*, No. 9:11-CV-1593-RMG, 2018 WL 11282049, at *7 (D.S.C. May 23, 2018), *aff'd sub nom. United States v. Mallory*, 988 F.3d 730 (4th Cir. 2021) (finding that 11,285 false claims resulted in $16,601,591 in pre-trebled damages, or $1,471.12 per claim, and finding that an additional 315 false claims resulted in $467,935 in pre-trebled damages, or $1,485.51 per claim); *c.f., United States v. Compassionate Home Care Servs., Inc.*, No. 7:14-CV-113-D, 2018 WL 11321934, at *1 (E.D.N.C. July 30, 2018) (finding that 1,060 false claims resulted in $434,768.46 in pre-trebled damages, or $1,230.48 per claim, but agreeing to limit application of mandatory minimum penalties to 158 claims "to avoid a successful Fifth or Eighth Amendment challenge").

[37] *United States ex rel. Jehl v. GGNSC Southaven*, LLC, No. 319CV00091MPMJMV, 2021 WL 2815974, at *4 (N.D. Miss. July 6, 2021).

[38] U.S. Const., amdt. 8.

[39] *Austin v. United States*, 509 U.S. 602, 609–10 (1993) (internal quotation marks omitted).

[40] *See* 21 F.4th 1288 (11th Cir. 2021).

[41] *Id.*, at 1295.

[42] *Id.* As noted, currently, the minimum civil penalty amount has risen to $11,803. *See* 28 C.F.R. § 85.5. Thus, if the same acts had occurred today, the court would impose civil penalties of $2,525,842—$11,803 per violation—an even starker comparison to the $755 in damages the United States sustained.

[43] 21 F.4th at 1314.

[44] *Id.*

[45] *Id.*

[46] *Id.*

[47] As noted previously, based upon an application of the civil penalty inflation adjustment, the current minimum FCA civil monetary penalty is $11,803; the maximum civil penalty amount that a court may award is $23,607. *See* 28 C.F.R. § 85.5.

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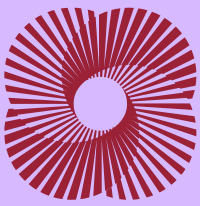

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