



A State False Claims Act Jeopardizes Patient Access to Care in Rural Communities

Research suggests that a state false claims act (FCA) would jeopardize the financial viability of struggling rural hospitals and likely would result in a net financial drain to the state.¹

The majority of the commonwealth’s rural hospitals operate in the red, providing critical care despite having negative operating margins.

In fact, Governor Wolf recently [acknowledged the financial vulnerability of rural hospitals](#) while promoting efforts for rural hospitals to “help achieve financial stability,” recognizing that doing so will “improve the overall health of the community.”² The Legislature recently passed Rural Health Redesign Center legislation in conjunction with the Governor’s Rural Health Payment Model.

Given their precarious financial landscape, many rural hospitals are only one frivolous lawsuit away from closing their doors

- Legal observers fear a state FCA will have unintended consequences on rural hospital viability and, in turn, on the physical and economic health of rural Pennsylvania
- Rural areas, whose residents are generally older, poorer, and sicker than suburban or urban residents, housed more than a quarter of all Pennsylvanians during 2018—almost 3.4 million people³, according to the [Center for Rural Pennsylvania](#)
- Beyond delivering critical health care to residents, rural hospitals are often the economic engine of their communities, supporting more than **88,000 jobs** for Pennsylvanians, nearly 50,000 of which were directly funded by hospitals

“Providing quality health care to residents living in rural communities has been one of the main priorities of the department under Governor Tom Wolf... Rural hospitals are essential members of our communities, and their success impacts the lives of every Pennsylvanian.” *Rachel Levine, MD, Secretary of Health*



Hospitals are also among the **top ten largest employers** in 39 of Pennsylvania’s 48 rural counties (that is, 39 of the 41 rural counties with hospitals).

A State FCA is Unnecessary, Redundant, and Ripe for Abuse

- The hospital industry already is heavily regulated by state and federal compliance entities
 - All hospitals maintain corporate compliance programs—which include written policies, a compliance officer and committee, education programs, a compliance hotline, and ongoing monitoring/auditing—to ensure that dollars go to patient care
- The Pennsylvania Office of Attorney General (OAG) **already** has authority to pursue criminal actions against individuals or businesses that defraud the commonwealth’s Medicaid Program
 - The OAG currently participates in federal FCA settlements
 - Fraud and Abuse provisions in state law cover the same violations as the federal FCA and authorize **recovery of twice** the amount of any actual losses, plus interest
- A state FCA would **be duplicative** of the federal FCA, which already applies to Medicaid fraud. Whistleblowers file most cases in federal courts under the federal FCA
- Most *qui tam* suits are meritless or frivolous; **87 percent of those declined by the government are ultimately dismissed in court.**⁴ By further incentivizing attorneys and whistleblowers, health care providers will be subject to meritless lawsuits



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Background

- The federal FCA allows the government to sue contractors (including hospitals caring for Medicaid beneficiaries) that it suspects made “false claims” to the government
- Pennsylvania lawmakers plan to introduce a bill to adopt a state FCA that, like the federal FCA, would allow third-party whistleblowers (“*qui tam* plaintiffs”) to sue on behalf of the state government and pocket a large part (15% to 30%) of any **state** funds recovered, plus attorney’s fees and costs
- Under a state FCA, the commonwealth could choose to intervene and sue. However, if the state finds a case frivolous and declines, *a whistleblower could sue independently*

A State FCA Would Be a Financial Drain—Not a Windfall—For the State Budget

Proponents of a state FCA argue that the state would benefit because it would be eligible for an increased share of the recovery. Currently, the state’s share of the recovery may be 50 percent, with federal government taking the other 50 percent. With the incentive, the state would be entitled to 60 percent and the federal government to 40 percent.

What’s wrong with this math?

- First, eligibility for the 10 percentage point bonus is speculative; after each state enacts an FCA, the federal Health and Human Services’ Office of Inspector General (OIG) must approve that the statute meets certain criteria and currently has deemed [eight states’ FCAs ineligible for the incentive bonus](#).⁵
- Any possible federal financial incentive would be outweighed by the state’s increased costs to litigate *qui tam* actions and payments to whistleblowers
 - To be eligible for the “incentive,” the OAG will have to investigate all claims brought to its attention, no matter how small
 - If more cases are brought forward, the OAG would have to cover administrative costs (like hiring additional staff) to investigate and prosecute claims
 - Currently, Pennsylvania’s OAG can and does investigate legitimate claims, coordinating cases with the U.S. Department of Justice
- Only the federal government currently pays whistleblowers who file *qui tam* lawsuits disclosing fraud against the Pennsylvania Medicaid program; the state pays nothing. Under a state false claims statute, Pennsylvania will pay an average of 20 percent of its recovery in each case to whistleblowers—retaining no more revenue in each case than it would today. The whistleblowers, however, stand to vastly increase their reward
- At a minimum, before considering a state FCA, the Legislative Budget and Finance Committee should consider the merits and costs and consider how much of the 10 percentage point incentive is offset by new mandated state payments to the whistleblower

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¹ Hyer AM. [The good, the bad, and the ugly: the unnecessarily broad impact of qui tam civil False Claims Act cases on rural health care providers](#). Health Matrix Cleveland. 2013 Fall;23(2):459-91.

² [Wolf Administration Announces Newest Participants in Rural Health Model](#). Press release 12/26/19.

³ Center for Rural Pennsylvania. [Demographics: Quick Facts](#). Last accessed: 1/21/2020.

⁴ U.S. Chamber Institute for Legal Reform. [The Great Myths of State False Claims Acts: Alternatives to State Qui Tam Statutes](#). October 2013.

⁵ [State False Claims Act Reviews](#). U.S. Department of Health and Human Services, Office of the Inspector General.