1. THE FEDERAL CIVIL FALSE CLAIMS ACT

The **Civil False Claims Act** (31 U.S.C. § 3729 *et seq.*) imposes civil liability on any person who:

- knowingly presents, or causes to be presented, a false or fraudulent claim, record, or statement for payment or approval;

- conspires to defraud the government by getting a false or fraudulent claim allowed or paid;

- uses a false record or statement to avoid or decrease an obligation to pay the government; or

- commits other fraudulent acts enumerated in the above statutes.

The term **"knowingly"** as defined in the Civil False Claims Act ("FCA") includes a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term **"claim"** includes any request or demand for money or property if the United States government provides any portion of the money requested or demanded.

Potential civil liability under the FCA currently includes penalties of between $5,500 and $11,000 per claim, triple damages, and the costs of any civil action brought to recover such penalties or damages.

The **Attorney General of the United States** is required to diligently investigate violations of the FCA and may bring a civil action against any potentially responsible person. Before filing suit, the Attorney General may issue an investigative demand requiring production of documents and written answers and oral testimony.

The FCA also provides for **Actions by Private Persons** *(qui tam* lawsuits) who can bring a civil action in the name of the government for a violation of the Act. Generally, the action may not be brought more than six years after the violation, but in no event more than ten. When the action is filed it remains under seal for at least 60 days. The United States government may choose to intervene in the lawsuit and assume primary responsibility for prosecuting, dismissing, or settling the action. If the government chooses not to intervene, the private party who initiated the lawsuit has the right to conduct the action.

In the event the government proceeds with the lawsuit, the *qui tam* plaintiff may receive 15-20% of the proceeds of the action or settlement. If the *qui tam* plaintiff proceeds with the action without the government, the plaintiff may receive 25-30% of the recovery. In either case, the plaintiff may also receive an amount for reasonable expenses plus reasonable attorneys' fees and costs. If the civil action is frivolous, clearly vexatious, or brought primarily for harassment, the plaintiff may have to pay the defendant its fees and costs. If the plaintiff planned or initiated the violation, the plaintiff's share of proceeds may be reduced. If found guilty of a crime associated with the violation, the plaintiff will not receive any share of the amount recovered from the defendant.

Whistleblower Protection. The Civil False Claims Act also provides for protection for employees from retaliation. An employee who is discharged, demoted, suspended, threatened, harassed, or discriminated against in terms and conditions of employment because of lawful acts conducted in furtherance of an action under the FCA may bring an action in federal District Court seeking reinstatement, twice the amount of back pay plus interest, and other enumerated costs, damages, and fees.

2. FEDERAL PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

The **Program Fraud Civil Remedies Act of 1986** ("Administrative Remedies for False Claims and Statements'" at 38 U.S.C. § 3801 *et seq.*) establishes an administrative remedy against any person who presents or causes to be presented to certain federal agencies (including the Department of Health and Human Services) a claim or written statement that the person knows or has reason to know is false, fictitious, or fraudulent due to an assertion or omission.

The term **"knows or has reason to know"** is defined in the Act as a person who has actual knowledge of the information, acts in deliberate ignorance of the truth or falsity of the information, or acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

The term **"claim"** includes any request or demand for property or money (e.g., grants, loans, insurance, or benefits) when the United States government provides or will reimburse any portion of the money. The applicable federal department may investigate and commence proceedings if the claim is$150,000. A hearing must begin within six years from the submission of the claim. The Act allows for **civil monetary sanctions** to be imposed in administrative hearings, including penalties of $5,000 per claim and an assessment (in lieu of damages) of not more than twice the amount of the original claim.

3. CONNECTICUT VENDOR FRAUD LAW

Under Connecticut's **Vendor Fraud** statute (C.G.S. § 53a-290) a company or individual is considered to have committed vendor fraud, when, with intent to defraud, the company or the individual:

- presents for payment any claim for goods or services that is false;
- accepts payment for goods or services in excess of the amount actually due or the amount allowed by law for those goods or services;
- attempts to provide services or sell goods to a resident knowing the resident does not need the goods or services;
- sells goods or services to a resident without prior authorization from the Department of Social Services when a prior authorization is required; or
- accepts from any person or source additional compensation in excess of the amount allowed under the law.

Such acts are considered fraudulent whether done by an employee or contractor on his or her own behalf or on behalf of another person or entity. Any person found guilty of vendor fraud may be subject to imprisonment, monetary penalties, exclusion from participation in the Medicaid program, and/or revocation of any license held by that person.

4. CONNECTICUT HEALTH INSURANCE FRAUD LAW

Under Connecticut's **Health Insurance Fraud** law (C.G.S. § 53-440 *et seq.*), a person is guilty of health insurance fraud when, with the intent to defraud, the person:

- makes any written or oral statement as part of (or in support of) an application for health insurance or claim for payment knowing the statement is false, incomplete, deceptive, or misleading, or omitting material information whether for himself or herself, a family member, or third party; or
- assists, solicits, or conspires with another to prepare or present any written or oral statement to any insurer or agent in connection with an application or claim for health care benefits knowing that the statement contains false, deceptive, or misleading information.

"Misleading" information includes falsely representing that goods or services were medically necessary or that they met professionally recognized standards. The term "insurer" includes any private or governmental agency that provides medical benefits to Medicare or Medicaid recipients. C.G.S. § 53-441(c). Health insurance fraud is punishable by imprisonment and/or fines and may result in exclusion from participation in the Medicaid program and/or loss of license.

5. CONNECTICUT LARCENY STATUTE

Under C.G.S. § 53a-119, a person is guilty of larceny against the government when he or she:

- authorizes, certifies, attests, or files a claim for benefits or reimbursement from a local, state, or federal agency knowing it is false; or

- knowingly accepts the benefits from a claim he or she knows is false.

Larceny is a crime punishable by imprisonment and/or fines.

6. WHISTLEBLOWER PROTECTION UNDER CONNECTICUT LAW

The following Connecticut statutes prohibit discrimination and/or retaliation against individuals who report fraud or abuse:

C.G.S. § 619a-498a. Discriminatory Practices Prohibited. No health care facility may discriminate or retaliate in any manner against an employee for submitting a complaint or initiating or cooperating in an investigation relating to the care, services or conditions in the facility.

C.G.S. § 619a-532. Discrimination Against Complainants. No nursing home may discharge, discriminate or retaliate against any patient, employee or other person for filing a complaint, instituting a proceeding, testifying in a proceeding or exercising any rights.

C.G.S. § 631-51m. Protection of Employee Who Discloses Employer's Illegal Activities or Unethical Practices. Civil Action. No employer may discharge, discipline or otherwise penalize any employee because that person reports a violation or suspected violation of any state or federal law or regulation or because the employee is requested by a public body to participate in an investigation, hearing or inquiry.

C.G.S. § 64-61dd. Whistleblowing. Large state contractors. No employee or officer of a large state contractor may take or threaten to take any personnel action against an employee in retaliation for disclosing information of any matter involving corruption or violation of state or federal laws or regulations.

7. OTHER RELEVANT LAWS, PURSUANT TO DSS DRAFT REG. § 17b-262-773

C.G.S. § 53a-155 (Tampering With Or Fabricating Physical Evidence)
C.G.S. § 53a-157b (False Statement Intending To Mislead Public Servant)
C.G.S. § 17b-25a (Toll-Free Vendor Fraud Telephone Line)
C.G.S. § 17b-102 (Financial Incentive For Reporting Vendor Fraud)
C.G.S. § 31-51m (Protection of Employee Who Discloses Employer's Illegal Activities Or Unethical Practices)
C.G.S. § 31-51q (Liability Of Employer For Discipline Or Discharge Of Employee On Account Of Employee's Exercise Of Certain Constitutional Rights)
Conn. Reg. § 17-83k-1 et seq. (Administrative Sanctions)
Conn. Reg. § 17b-102-01 et seq. (Financial Incentive For Reporting Vendor Fraud And Requirements For Payments For Reporting Vendor Fraud)
Conn. Reg. § 4-61dd-1 et seq. (Rules Of Practice For Contested Case Proceedings Under The Whistleblower Protection Act)