

LIMITING YOUR QUI TAM EXPOSURE **by Kimberli Poppe-Smart**

Qui tam is a Latin abbreviation for “one who sues on behalf of the king as well as for himself”. A *qui tam*, case is one brought by a private citizen on behalf of the government. That private citizen is referred to as a “relator” or a “whistleblower”. In healthcare, this mechanism is being utilized to bring claims against providers for things such as violations of the anti-kickback statute and fraudulent billing practices. Often the relator is a former (or current) employee. Congress has created an incentive for individuals to bring such a claim by allowing them to share in the money the government collects from the proceeds of the action against the provider. While it was Congress’ intent to provide incentives to supplement government enforcement of requirements on healthcare providers by rewarding citizens with knowledge to step forward and report such violations, they have arguably created an opportunistic relationship between employees and their employer.

To manage your organization’s exposure to *qui tam* actions, here are some strategies to deploy:

- 1) Maintain a robust and effective compliance program with relevant compliance activities.
- 2) Develop and communicate to all employees a culture of compliance.
- 3) Develop and communicate to all employees the mechanisms for reporting compliance concerns.
- 4) Adopt a policy of non-retaliation for employees who report concerns.
- 5) Take reports of violations seriously and investigate all concerns brought forward and provide a response to employees who have reported concerns, limiting what is shared where necessary to avoid disclosing personnel actions.
- 6) Conduct exit interviews for all employees.
- 7) Educate staff about the common experience of government investigations and their options for responding or not to investigators who approach them on and off duty.

Staying abreast of industry requirements and administering compliance efforts in a transparent manner leaves little room for speculation about wrong-doing and can lower your organization’s exposure to whistleblower actions. The government reports that in the vast majority of cases, the whistleblower went to great efforts to solve the compliance concern internally before seeing their own attorney. Establishing and following a policy that promotes communication of concerns and follow-through is critical to reduce the risk of defending a *qui tam* action.

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