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Op-Ed article on Pa. False Claims Act Legislation

In this time of widespread economic discontent, Pennsylvania legislators have the opportunity to effectively increase state revenue while also protecting the commonwealth from the fraud that has contributed to the nation's financial woes. The proposed Pennsylvania False Claims Act represents a way to combat fraudulent activities that affect state health-care and infrastructure costs and buttress the budget without raising taxes.

First, a little history. The federal False Claims Act (FCA), also known as the "Lincoln Law" for its original proponent, was enacted in 1863 to redress fraud perpetrated by companies that sold supplies to the Union Army during the Civil War. Since its enactment, the FCA has been amended three times - in 1943, 1986, and 2009. Since the 1986 amendments were signed into law, the FCA has returned more than \$28 billion to the federal treasury and has deterred even more fraudulent activity.

The *qui tam* provisions of the FCA permit whistle-blowers to recover between 15 and 30 percent of the United States' recovery. (*Qui tam* is short for a Latin phrase that roughly means "he who brings an action for the king as well as for himself.") The FCA thus encourages individuals to come forward with information of government contractor fraud and rewards them for their integrity.

In addition to the FCA, 27 states and the District of Columbia have enacted false-claims acts. New York, Chicago, and Allegheny County, Pa., (enacted in May) have their own versions.

False-claims acts typically enjoy broad bipartisan support. Indeed, the federal 1986 amendments were signed into law by President Ronald Reagan.

The FCA has been found to provide a return of \$15 for every \$1 invested in health-related enforcement activities. Moreover, since 2000, states that have enacted false-claims laws have recovered more than \$7 billion. FCA recoveries have consistently increased over the last several years, and this trend is expected to continue.

False-claims acts also promote public safety and the integrity of federal, state, and local programs, in that they punish and deter, for example, life-threatening, medically unnecessary

procedures; the distribution of adulterated drugs and medical devices; and substandard construction work.

In 2005, the Pennsylvania attorney general estimated that fraudulent activities consumed at least 10 percent of Pennsylvania's health-care costs, and about \$1.7 billion in Medicaid fraud.

At present, Pennsylvania lacks adequate protection from the fraud and abuse that drain millions every year from the state programs, from Medicaid to infrastructure projects.

A Pennsylvania False Claims Act would allow whistle-blowers who discover false or fraudulent claims to sue the perpetrators and recover the funds for the commonwealth.

The proposed legislation would provide for triple damages against those who perpetuate fraud and make Pennsylvania eligible for a federal incentive program that supplements a Medicaid-related false-claims award with a payment of 10 percent of the award amount.

In nearly every regular session of the state House since 1999, representatives from both parties have proposed a false-claims act. On June 24, House Bill 1725, authored by State Rep. Mike Gerber (D., Montgomery), was referred to the House Judiciary Committee, but the panel has not voted on it. While the bill languishes in committee, the commonwealth is missing the opportunity to deter fraud and recoup much-needed funds.

Benjamin Franklin once remarked, "There is no kind of dishonesty into which otherwise good people more easily and frequently fall than that of defrauding the Government."

Pennsylvania's legislators would do well to heed Franklin's words and enact the proposed Pennsylvania False Claims Act.