

DEPARTMENT OF JUSTICE
HB 40: Including Reverse False Claims (Underpayment)
in Montana's False Claims Statute

Reverse False Claims

Rather than a claim based on an entity overcharging a state agency, a reverse false claim involves fraud that leads to an entity paying the state *less* than it should.

Montana's Drug Pricing Lawsuit

In 2002, the State of Montana sued a number of pharmaceutical manufacturers, charging that the companies' drug pricing practices defrauded the state, consumers and others of millions of dollars. In *State of Montana v. Abbott Labs, Inc., et al*, the state alleged that the named drug companies engaged in fraud by:

- **overstating the Average Wholesale Price (AWP)** of many of their prescription drugs, gouging consumers, taxpayers and the Medicare and Medicaid programs. The federal Medicare program, the state Medicaid program, and certain patients reimburse physicians and pharmacies for hundreds of prescription drugs based on the average wholesale price.
- **reporting false "Best Prices" used to calculate rebates** owed to the states, including Montana. Drug companies artificially inflated the "Best Price" of certain drugs by reporting higher prices and excluding discounts and other inducements. As a result, they paid lower rebates to the state, violating the federal Medicaid Rebate Statute and Agreement.

Problems with Montana's False Claims Act

Montana filed suit for both the Best Prices and AWP fraud, partially based on its False Claims Act, MCA §17-8-231. However, federal District Court Judge Saris dismissed the counts. The Court held that the language of Montana's False Claims Act only accounted for claims made for payment to a state agency and did not cover claims that lead to an underpayment (a reverse false claim) to the state.

Proposed Changes

The federal False Claims Act was amended in 1986 to provide for reverse false claims. The language in HB 40 is modeled on that federal legislation. The proposed language will clearly allow:

- civil and criminal prosecution of reverse false claims in Montana
- the state to establish liability when claims are made that lead to a financial underpayment to a state agency

Summary

Whether a person or business makes a false claim or a reverse false claim, it is the citizens of Montana who end up paying. False claims and reverse false claims have the same result – Montana is cheated of financial resources. This bill would clarify that both forms of fraud are punishable under our state law.