



AAPC

HEALTHCON



FALSE CLAIMS ACT (WHISTLEBLOWER) 101

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Want \$50,000? Just Bring Them In



Uncle Sam is letting everybody in on the ground floor of an opportunity to make a lot of money, more or less easily. All that is necessary to collect from \$1,000 to \$50,000 under Uncle Sam's newest plan for relieving unemployment and poverty, is to nab or cause the capture of one of the six匪 pictured above. Price tags placed on these outlaws under new law which permits Department of Justice to offer federal rewards are indicated. (Central Press)



**HELP FIGHT
FRAUD.
WASTE.
ABUSE.**











Do what you
feel in your heart
to be right—

for you'll be
criticized anyway.

—Eleanor Roosevelt





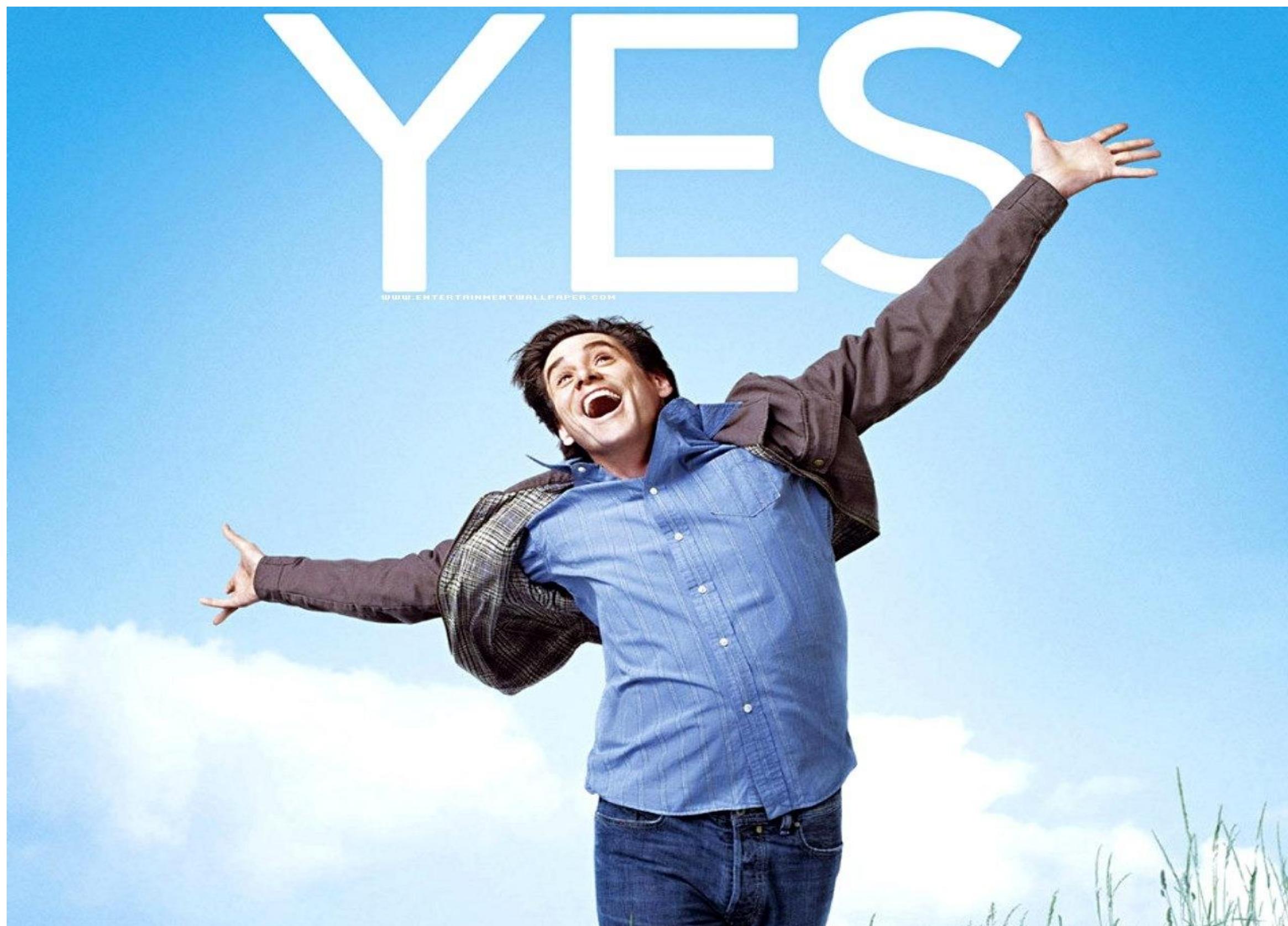
















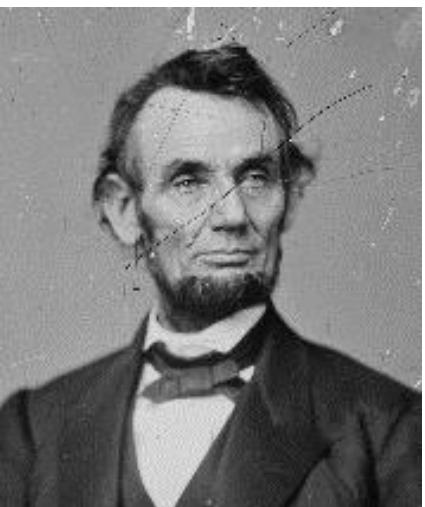




Origin of the FCA

Enacted in 1863 in response to rampant fraud against the Government committed during the Civil War:

“For sugar, it often got sand; for coffee, rye; for leather, something no better than brown paper; for sound horses and mules, spavined beasts and dying donkeys; and for serviceable muskets and pistols, the experimental failures of sanguine inventors or the ruse of shops and foreign armories.”



Originally Known As Lincoln's Law

The FCA 31 U.S.C. §§3729 et seq. essentially imposes liability for:

- (A) presenting, or causing to be presented, a false or fraudulent claim for payment or approval;
- (B) making, using, or causing to be made or used, a false record or statement material to a false or fraudulent claim;
- (C) conspiring to commit a violation of the FCA; and
- (G) Making, using or causing to be made or used a false record or statement material to an obligation to pay or knowingly conceal or knowingly and improperly avoid or decrease.

The False Claims Act

- Imposes treble damages and civil penalties; and
- Actions under the FCA can be initiated by whistleblowers who are entitled to a share between 15-30%

DOJ Healthcare Fraud Statistics—FY 2016



Department of Justice recovered \$4.7 billion from FCA cases (settlements and judgments) in 2016

- \$2.6 billion from the health care sector
- most--all but \$100 million recovered in the health care cases are from *qui tam* actions

501 FCA health care fraud cases filed by whistleblowers

- \$ 2.5 billion recovered from health care whistleblower cases
- \$ 450 million paid in whistleblower awards
- \$ 71 million recovered from whistleblower cases declined by the Government

Types of Healthcare Cases

- Kickbacks
- Upcoding
- Pharma
- Devices
- Medically unnecessary services
- Cost report fraud
- Hospice and home health
- Skilled nursing facilities
- Nursing homes/worthless services



What does it mean to be a whistleblower?



- Risks and rewards
- Good information; don't have to be an insider, but must have knowledge
- Evidence to prove your case
- Specific examples of the fraud
- An issue that matters to the Government

Dynamics with Defendants

- Defendants dislike whistleblowers
- Legal protection from retaliation, 31 U.S.C. 3730(h), but may lose employment
- May bring counterclaims
- Confidentiality agreements and severance package agreements
- Defendants delay and deflect

Dynamics with Government

- It is the Government's case
- They investigate with assistance from CMS and OIG
- They determine whether to pursue the case
- Whistleblowers can still pursue without DOJ, but success is more difficult
- Most cases are not pursued by DOJ- only about 20%
- Cases on average take several years or more
- Rewards are not always large
- But can really right wrongs!

Questions?

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