



JUL 24 2008

Washington, D.C. 20201

Don D. Brown
Director of Patient Abuse & Medicaid Fraud Unit
Office of Attorney General
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

Dear Mr. Brown:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Oklahoma Medicaid False Claims Act, Okla. Stat. tit. 63 §§ 5053.1 through 5053.7, under the requirements of section 6031(b) of the Deficit Reduction Act (DRA). Section 6031 of the DRA provides a financial incentive for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. See 42 U.S.C. § 1396h. For a state to qualify for this incentive, the state law must meet certain requirements enumerated under section 6031(b) of the DRA, as determined by the Inspector General of HHS in consultation with the Department of Justice (DOJ). Based on our review of the Oklahoma Medicaid False Claims Act and consultation with DOJ, we have determined that the Oklahoma Medicaid False Claims Act does not meet the requirements of section 6031(b) of the DRA.

Section 6031(b)(2) of the DRA requires that the state law contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions as those described in sections 3730 through 3732 of the Federal False Claims Act. The Federal False Claims Act does not bar *qui tam* complaints that are based on allegations or transactions known by the government at the time the complaint is filed. In contrast, the Oklahoma Medicaid False Claims Act provides that no action may be brought that is based on allegations or transactions that the person bringing the action knew or had reason to know were known to the Attorney General or other law enforcement officials of the state prior to that person's filing of the action or serving of the disclosure of the material evidence. See Okla. Stat. tit. 63 § 5053.5(C). Based on this provision, the Oklahoma Medicaid False Claims Act is not at least as effective in facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that the court may reduce the share awarded to the person bringing the *qui tam* action if the court finds that the person planned and initiated the violation upon which the action was brought. See 31 U.S.C. § 3730(d)(3). In contrast, the Oklahoma Medicaid False Claims Act allows the court to limit the share awarded to the person bringing the *qui tam* action to no more than 10 percent where the court finds that the action was brought by a person who planned, initiated, or participated in the alleged violation. See Okla.

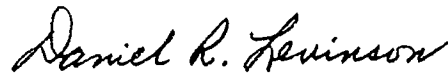
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Stat. tit. 63 § 5053.4(C). Based on this provision, the Oklahoma Medicaid False Claims Act is not at least as effective in rewarding or facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act does not limit the share awarded to the person bringing the *qui tam* where that person did not disclose the allegations to the *qui tam* defendant before filing a complaint. In contrast, the Oklahoma Medicaid False Claims Act limits the share awarded to the person bringing the *qui tam* action to no more than 10 percent where the action is based upon allegations or transactions of which that person became aware while employed by, under contract to, or serving as an agent for the defendant and that person failed to make an effective disclosure of the allegations or transactions under the defendant's corporate compliance plan. See Okla. Stat. tit. 63 § 5053.4(D). Based on this provision, the Oklahoma Medicaid False Claims Act is not at least as effective in rewarding or facilitating *qui tam* actions as the Federal False Claims Act.

If the Oklahoma Medicaid False Claims Act is amended to address the issues noted above, please notify OIG for further consideration of a revised Oklahoma Medicaid False Claims Act. If you have any questions regarding this review please contact me, or your staff may contact Susan Elter Gillin at 202-205-9426 or susan.gillin@oig.hhs.gov or Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,



Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS