U.S. SENATE COMMITTEE ON
Finance
SENATOR CHUCK GRASSLEY, OF IOWA - CHAIRMAN
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For Immediate Release
Tuesday, March 21, 2006

Grassley Works to Implement New Incentives for States to Fight Medicaid Fraud

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, is urging the federal government to help states qualify for a new Medicaid provision designed to reward state governments for passing groundbreaking anti-fraud legislation. Grassley drafted the new provision and worked to include it in the Deficit Reduction Act signed into law last month.

"This represents a new partnership between the states and the federal government in fighting Medicaid fraud," Grassley said. "It gives states an increased share of any money recovered for Medicaid fraud, if the state chooses to pass a state False Claims Act."

A long-standing champion of the federal False Claims Act, Grassley was the Senate author of the 1986 whistleblower amendments improving the False Claims Act, in addition to drafting the new Medicaid provision contained in the Deficit Reduction Act. Grassley wrote to Department of Health and Human Services Inspector General Daniel Levinson and Attorney General Alberto Gonzales detailing the various requirements a state must meet to receive this new federal incentive. The text of his letter follows.

March 17, 2006

Via Electronic Transmission

The Honorable Daniel R. Levinson
Inspector General
Department of Health and Human Services
330 Independence Avenue, SW
Washington, D.C. 20201

The Honorable Alberto Gonzales
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington D.C. 20535

Dear Inspector General Levinson and Attorney General Gonzales:

The United States Senate, Committee on Finance (Committee) has exclusive jurisdiction over, among other things, the Medicare and Medicaid programs. Accordingly, as Chairman of the Committee I have a responsibility to protect these programs, the 80 million Americans who receive healthcare under these programs, as well as the billions of American taxpayer dollars supporting these vital programs.

Recently, the President signed the Deficit Reduction Act of 2005 (DRA) into law. The DRA contains various reforms designed to slow the increasing cost of the Medicaid program and further the long-term sustainability of Medicaid. One of the most significant reforms in the DRA is section 6032, which provides incentives for states to enact state False Claims Acts (state FCAs) modeled after the federal False Claims Act (FCA). This provision was included in an effort to contain the escalation of fraud and waste and abuse in the Medicaid program, as outlined in a two-day Medicaid fraud hearing the Committee held on June 28-29, 2005.

The federal FCA has long been recognized as a valuable tool for the government in detecting and preventing fraud, waste, and abuse in government programs. Originally signed into law by President Lincoln to prevent war profiteering, the FCA has evolved over the years, including a major revision I sponsored in 1986. The passage of the DRA marks another step forward in the evolution of the FCA by offering states a greater share in any Medicaid fraud recoveries through enactment of a state FCA. Specifically, section 6032 of the DRA states, in pertinent part that, "…if a state has in effect a law relating to false or fraudulent claims that meets [certain] requirements," the state will receive a 10% increase to the state share of any recovery obtained under the state FCA.

As you are aware, the DRA requires certain provisions in the state FCAs in order for the state to qualify for a 10% increase in the state share of any Medicaid fraud recoveries. Further, the DRA requires that the Department of Health and Human Services, Office of Inspector General, work in consultation with the Department of Justice to make a determination that the state FCAs contain the provisions necessary for obtaining the increased share of recoveries. As the author of Section 6032 of the DRA and a long term proponent of the federal FCA, I write today emphasizing the importance of the requirements contained in section 6032 in determining whether a state FCA meets the qualifications for an increased share of recoveries.

Section 6032 of the DRA specifically outlines four requirements for determining if a state FCA is compliant:

(1) *The law establishes liability to the State for false or fraudulent claims described in* [the federal FCA] *with respect to any expenditure described in* [Title 19, the Medicaid Program];

(2) *The law contains provisions that are at least as effective in rewarding and facilitating qui tam actions for false or fraudulent claims as those described in* [the federal FCA];

(3) *The law contains a requirement for filing an action under seal for 60 days with review by the State Attorney General;* and,

(4) *The law contains a civil penalty that is not less than the amount of the civil penalty authorized* [by the federal FCA].

While each of these provisions are important to ensure that a state FCA is a powerful tool for fighting fraud, I write today specifically to emphasize the second requirement relating to *qui tam* provisions in state FCAs.

The *qui tam* provisions contained in the federal FCA relate to the effectiveness of the law and allow private individuals to bring an action in court on behalf of the government. In drafting the second requirement for state FCAs to qualify for the 10% recovery increase, it was envisioned that a state FCA would contain *qui tam* provisions and that the state FCA would be <u>at least</u> as effective as the provisions contained in the federal FCA. A further dissection of the second requirement reveals the

necessary elements. Specifically, for a state FCA to meet the second requirement, at the least, it must (1) contain a *qui* tam mechanism for relators, (2) facilitate a system for relators to file suit on behalf of the government, and (3) reward a *qui* tam relator with a portion of the recoveries. The importance of meeting each element of the *qui tam* requirement cannot be understated; the FCA works to detect and prevent fraud and abuse because of the *qui tam* provisions.

It has come to my attention that many state legislatures are in the process of crafting state FCA legislation to meet the requirements set forth in section 6032. It has also come to my attention that there are some states drafting state FCAs with various modifications and deviations from the requirements outlined in section 6032. I am concerned that these modifications and deviations may ultimately undermine the ability of whistleblowers to file *qui tam* complaints on behalf of the government. As you complete this statutorily mandated review of state FCAs to determine if they qualify for the increased share of recoveries, I request that you ensure state FCAs contain the requirements set forth in section 6032, including the *qui tam* provisions, as intended by Congress.

During my time in the Senate, I have fought continually on behalf of the American taxpayer to ensure that tax dollars are spent appropriately and not lost to fraud, waste, or abuse.

Unfortunately, even under the most watchful eyes, tax dollars are squandered away. The passage of the DRA ushered in a new era for the FCA and it is hoped that any new state FCAs passed as a result of this act will provide yet another tool for ensuring that taxpayer dollars are used to provide care for the most vulnerable populations and not to line the pockets of those who seek to defraud the government.

Sincerely,

Charles E. Grassley
Chairman

Cc: The Honorable Michael O. Leavitt
The Honorable Mark McClellan
National Governors Association
National Conference of State Legislatures