



JUL 24 2008

Washington, D.C. 20201

Richard E. Lober
Director of Medicaid Fraud
Office of the Attorney General
State of Florida
PL-01, The Capitol
Tallahassee, Florida 32399-1050

Dear Mr. Lober:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Florida False Claims Act, Fla. Stat. § 68.081 through 68.09, 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. 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 law and consultation with DOJ, we have determined that the Florida False Claims Act does not meet the requirements of section 6031(b) of the DRA.

Section 6031(b)(2) of the DRA requires the state law to contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false and fraudulent claims as those described in sections 3730 through 3732 of the Federal False Claims Act. The Federal False Claims Act provides that, where the government does not proceed with the action, the court may award the defendant reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the relator's claim was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment. See 31 U.S.C. § 3730(d)(4). In contrast, the Florida False Claims Act provides that, where the state does not proceed with the action, the court shall award the defendant reasonable attorney's fees and costs against the relator if the defendant is the prevailing party. See Fla. Stat. § 68.086(3). Based on this provision, the Florida False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

If the Florida False Claims Act is amended to address the issue noted above, please notify OIG for further consideration of the Florida 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,

A handwritten signature in cursive script that reads "Daniel R. Levinson".

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS