



NOV - 4 2008

Anne Milgram
Attorney General
State of New Jersey
P.O. Box 080
Trenton, New Jersey 08625-0080

Dear Ms. Milgram:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the New Jersey False Claims Act, found at N.J. Stat. Ann. §§ 2A:32C-1 through 2A:32C-17, 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 New Jersey 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 31 U.S.C. §§ 3730 through 3732, which are part of the Federal False Claims Act. The Federal False Claims Act allows the relator to continue as a party even if an investigation was underway before the relator filed the *qui tam* action, unless the *qui tam* action was based on a public disclosure of the allegations or transactions in such investigation and the relator was not an original source. See 31 U.S.C. §§ 3730(c)(3), (e)(4). In contrast, the New Jersey False Claims Act provides that “[i]f a person brings an action under this act and the action is based upon the facts underlying a pending investigation by the Attorney General, the Attorney General may take over the action on behalf of the State.” See N.J. Stat. Ann. § 2A:32C-5(e). Therefore, the New Jersey False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

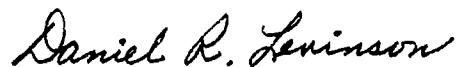
In addition, the Federal False Claims Act precludes actions that are based on allegations that are the subject of a current proceeding to which the Government is a party. See 31 U.S.C. § 3730(e)(3). In contrast, the New Jersey False Claims Act provides that “[a] person may not bring an action under this act based upon allegations

or transactions that are the subject of a pending action or administrative proceeding in the State.” See N.J. Stat. Ann. § 2A:32C-9(b). Because the New Jersey False Claims Act bars *qui tam* actions based on allegations and transactions that are the subject of an action or a proceeding to which the State is not a party, the New Jersey False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that the relator shall receive a certain percentage of the proceeds of the action or settlement of the claim and that the relator’s expenses, attorney’s fees, and costs shall be awarded against the defendant. See U.S.C. § 3730(d). In contrast, the New Jersey False Claims Act provides that “[p]ayment for [relator’s] reasonable attorney’s fees, expenses, and costs shall be made from the recovered proceeds before the distribution of any award.” See N.J. Stat. Ann. § 2A:32C-8(b). Because the payment of the relator’s reasonable attorney’s fees, expenses, and costs would result in a decreased relator’s share, the New Jersey False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

If the New Jersey False Claims Act is amended to address the issues noted above, please notify OIG for further consideration of the New Jersey False Claims Act. If you have any questions regarding this review, please contact me, or have your staff 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