



JUL 24 2008

Washington, D.C. 20201

Jeffrey S. Cahill  
Director  
Medicaid Fraud Control Unit  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, New Hampshire 03301-6397

Dear Mr. Cahill:

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 Hampshire False Claims Act, N.H. Rev. Stat. Ann. §§ 167:61-b through 167:61-e, 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 Hampshire 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 allows a relator to conduct the action if the government elects not to proceed with the action. See 31 U.S.C. § 3730(c)(3). In contrast, the New Hampshire False Claims Act does not allow a relator to proceed with the action if the state declines to proceed with the action. See N.H. Rev. Stat. Ann. § 167:61-c(II)(e)(2). Because the New Hampshire False Claims Act does not contain such a provision, it is not at least as effective in rewarding and facilitating *qui tam* actions for false and fraudulent claims as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that if the government does not proceed with the action, the relator shall receive 25 to 30 percent of the proceeds of the action or settlement. See 31 U.S.C. § 3730(d)(2). In contrast, the New Hampshire False Claims Act does not provide for an increased relator's share in the event that the relator proceeds without state intervention. See N.H. Rev. Stat. Ann. § 167:61-e. Accordingly, the New Hampshire False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions for false and fraudulent claims as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that a relator may not bring a *qui tam* action that is based upon allegations or transactions that are the subject of a civil suit or an administrative civil money penalty proceeding in which the government is already a party. See 31 U.S.C. § 3730(e)(3). In contrast, the New Hampshire False Claims Act provides that “no court shall have jurisdiction over an action brought under RSA 167:61-c . . . that is based on allegations or transactions that are the subject of a civil or criminal investigation, civil suit, or an administrative civil money penalty proceeding, in which the state is already a party.” See N.H. Rev. Stat. Ann. § 167:61-e(III)(c). Because this provision prohibits *qui tam* actions when there is already a civil or criminal investigation, it is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

If the New Hampshire False Claims Act is amended to address the issues noted above, please notify OIG for further consideration of the New Hampshire 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](mailto:susan.gillin@oig.hhs.gov) or Katie Arnholt at (202) 205-3203 or [katie.arnholt@oig.hhs.gov](mailto: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