



JUL 24 2008

Washington, D.C. 20201

Elizabeth Staley
Director
Medicaid Fraud and Elder Abuse Division
State of New Mexico Attorney General's Office
111 Lomas Boulevard, NW, Suite 300
Albuquerque, New Mexico 87102

Dear Ms. Staley:

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 Mexico Fraud Against Taxpayers Act, N.M. Stat. §§ 44-9-1 through 44-9-14, 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 Mexico Fraud Against Taxpayers 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 no court shall have jurisdiction over an action that is based upon a public disclosure unless the action is brought by the Attorney General or by a relator who is an "original source" of the information. See 31 U.S.C. § 3730(e)(4). In contrast, the New Mexico Fraud Against Taxpayers Act, which provides that the court may dismiss an action if the elements of the alleged false or fraudulent claim have been publicly disclosed in the news media or in a publicly disseminated governmental report at the time the complaint is filed, does not provide an exception for a relator who is an "original source." See N.M. Stat. Ann. § 44-9-9(D). Because the New Mexico Fraud Against Taxpayers Act public disclosure provision does not include an original source exception, it is not at least as effective in facilitating and rewarding *qui tam* actions as the Federal False Claims Act.

If the New Mexico Fraud Against Taxpayers Act is amended to address the issue noted above, please notify OIG for further consideration of the New Mexico Fraud Against Taxpayers Act. If you have any questions regarding this review, please contact me, or your staff may contact Karla Hampton at (202) 205-3158 or karla.hampton@oig.hhs.gov.

Sincerely,

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

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS