



DEC 21 2006

Mr. L. Clayton Roberts
Deputy Attorney General
Office of the Attorney General
State of Florida
The Capitol
Tallahassee, Florida 32399

Dear Mr. Roberts:

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 (FFCA), Fla. Stat. §§ 68.081-68.09, 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. See 42 U.S.C. § 1396h. 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 FFCA and consultation with DOJ, we have determined that the FFCA does not meet the requirements of section 6031(b) of the DRA.

First, section 6031(b)(1) of the DRA requires a state law to establish liability to the state for “false or fraudulent claims” described in the Federal False Claims Act, 31 U.S.C. § 3729. Among other things, the Federal False Claims Act creates liability for knowingly presenting, or causing to be presented, to an officer or employee of the United States Government a false or fraudulent claim for payment or approval. See 31 U.S.C. § 3729(a)(1). In contrast, the FFCA provides that only persons who “[k]nowingly present or cause to be presented to an officer or employee of an agency a false claim for payment or approval” are liable to the state. See Fla. Stat. § 68.082(2)(a). The FFCA does not appear to extend liability to the state for knowingly presenting, or causing to be presented, *fraudulent* claims for payment or approval. Therefore, OIG has determined that the FFCA does not meet the requirements of section 6031(b)(1) of the DRA.

Second, 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 as those described in the Federal False Claims Act, 31 U.S.C. §§ 3730-3732. Among other things, the Federal False Claims Act permits an action to be filed no more than six years after the date the violation is committed, or three years after the date when facts material to the right of action are known or reasonably should have been known by the state official charged with the responsibility to act in the

circumstances, whichever occurs last but in no event more than ten years after the date on which the violation is committed. See 31 U.S.C. § 3731(b). In contrast, the FFCA provides that a cause of action may be brought no more than five years after the date of the violation, or no more than two years after the date when facts material to the right of action are known or reasonably should have been known by the responsible state official; and in any event, no more than seven years after the date on which the violation was committed, whichever occurs last. See Fla. Stat. § 68.098. Because the FFCA's statute of limitations is not as effective in facilitating *qui tam* actions as the provisions of the Federal False Claims Act, OIG has determined that the FFCA does not meet the requirements of section 6031(b)(2) of the DRA.

If the FFCA is amended to address these issues, please notify OIG for further consideration of a revised FFCA. If you have any questions regarding this review, please contact me, or have your staff contact Joseph Hudzik at (202) 401-4133 or Joseph.Hudzik@oig.hhs.gov.

Sincerely,

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

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS

Christa Calamas, Secretary, Florida Agency for Health Care Administration