



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-NINTH LEGISLATURE, 2018**

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**ON THE FOLLOWING MEASURE:**

SB 2744, S.D.2 RELATING TO FALSE CLAIMS TO THE STATE

**BEFORE THE:** Committee on Judiciary

**DATE:** March 14, 2018 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Conference Room 325

**TESTIFIER(S):** Russel A. Suzuki, Acting Attorney General  
Michael L. Parrish, Deputy Attorney General

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Chair Nishimoto and Members of the Committee:

The Department of the Attorney General supports this measure, which provides a necessary amendment to the Hawaii False Claims Act (HFCA). This amendment will increase HFCA civil monetary damage provisions to comport with those in the Federal False Claims Act (FFCA), 31 U.S.C. § 3729(a). FFCA damage amounts have been, and will be, incrementally adjusted as a corollary to section 1909(b)(4) of the Federal Civil Penalties Inflation Adjustment Act Improvements Act.

Hawaii is entitled to an additional ten percent of shared damages in parallel state and federal False Claims Act cases; particularly those involving fraud perpetrated against government medical assistance programs. However, Hawaii will lose its entitlement to the additional ten percent if the damage amounts in the HFCA are not commensurate with those in the FFCA. Presently Hawaii maintains its entitlement despite previous increases to the FFCA damages provision. This is because Hawaii has been operating under a waiver from the Federal Government, which waiver will expire on December 31, 2018, as explained in the attached copy of the letter from the Inspector General of the United States Department of Health and Human Services.

This bill will ensure compliance with this federal mandate by automatically matching the FFCA damages. It will enable incremental upward adjustments to the HFCA, as may occur from time to time in the FFCA, by simply referencing and adopting the FFCA civil monetary damages provision in toto.

For the reasons stated above, the Department of the Attorney General urges passage of this measure in order to preserve Hawaii's entitlement to an additional ten percent of civil monetary recoveries in parallel False Claim Act cases.



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
**OFFICE OF INSPECTOR GENERAL**

WASHINGTON, DC 20201



**DEC 28 2016**

The Honorable Douglas S. Chin  
Department of the Attorney General  
State of Hawaii  
425 Queen Street  
Honolulu, HI 96813

Attn: Michael Parrish, Deputy Attorney General

Dear Mr. Attorney General:

The Office of Inspector General (OIG), U.S. Department of Health & Human Services (HHS), previously received your request to review the Hawaii False Claims Act, Haw. Rev. Stat. §§ 661-21 through 661-31, under the requirements of section 1909 of the Social Security Act (the Act) and determined that the Hawaii False Claims Act met those requirements. Section 1909 of the Act provides a financial incentive for a State to enact a law imposing liability for the submission of 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 1909(b) of the Act, as determined by the Inspector General of HHS in consultation with the U.S. Department of Justice (DOJ). As explained below, after consulting with DOJ, we have determined that the Hawaii False Claims Act no longer meets the requirements of section 1909 of the Act.

Section 1909(b)(4) of the Act requires the State law to contain a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of the Federal False Claims Act. The Federal False Claims Act expressly provides for an adjustment of civil penalties under the Federal Civil Penalties Inflation Adjustment Act of 1990. See 31 U.S.C. § 3729(a). The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 amended the Federal Civil Penalties Inflation Adjustment Act of 1990 and mandated an increase in the civil penalties authorized under the Federal False Claims Act. Effective August 1, 2016, the civil penalties authorized under the Federal False Claims Act increased from a range of \$5,500 to \$11,000 per false claim to a range of \$10,781 to \$21,563 per false claim. The increased civil penalty applies to civil penalties assessed after August 1, 2016, and for violations occurring after November 2, 2015.

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Your State statute provides for penalties of not less than \$5,500 and not more than \$11,000. See Haw. Rev. Stat. §§ 661-21(a). These penalties do not meet the mandatory minimum or maximum range of the Federal False Claims Act. Accordingly, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, your State statute is no longer in compliance with section 1909 of the Act.

The civil penalties authorized under the Federal False Claims Act are expected to increase annually on August 1 in subsequent years. It is therefore recommended that your State statute reference the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 or the Federal False Claims Act in its civil penalties provision rather than state the exact dollar amount of the civil penalties authorized under your State statute.

Hawaii will be granted a grace period, ending December 31, 2018, to amend the Hawaii False Claims Act and resubmit it to OIG for approval. Until December 31, 2018, Hawaii will continue to qualify for the incentive under section 1909 of the Act. Resubmission to OIG of an amended act will toll the expiration of the grace period until OIG issues a letter deeming the act either compliant or not compliant with section 1909 of the Act. To continue to qualify for the incentive after December 31, 2018, or after the expiration of any tolling period, if applicable, Hawaii must amend the Hawaii False Claims Act to meet the requirements of section 1909 of the Act, submit it for review, and receive approval by OIG. Please note that States will be afforded only one grace period to comply with the increase in civil penalties authorized under the Federal False Claims Act. States will not be granted additional grace periods for the subsequent statutorily expected annual increase in Federal civil penalties, and we reiterate our recommendation to simply reference the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 or the Federal False Claims Act rather than specifying an exact dollar amount of the civil penalties authorized under your State statute.

If you have any questions regarding this review, please contact me or have your staff contact Lisa Veigel or Susan Gillin at 202-619-0335.

Sincerely,



Daniel R. Levinson  
Inspector General

**SB-2744-SD-2**

Submitted on: 3/13/2018 10:26:11 AM

Testimony for JUD on 3/14/2018 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Dara Carlin, M.A.	Individual	Support	No

Comments: