Testimony of Cleveland Lawrence III, Co-Executive Director
Taxpayers Against Fraud
on
H. 120 – An Act Relating to Creating a Vermont False Claims Act
before the
House Committee on the Judiciary
Vermont General Assembly
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Introduction

Thank you, Members of this Committee, for inviting me to testify at this important hearing. My name is Cleveland Lawrence III and I am a Co-Executive Director of Taxpayers Against Fraud ("TAF") – an organization with which I have been affiliated for more than seven years. I am an attorney by training and prior to joining TAF, I spent more than six years as an associate at international law firm Weil, Gotshal & Manges, LLP, where among other things, my practice involved litigating claims brought under the federal False Claims Act. TAF, and its sister organization, Taxpayers Against Fraud Education Fund ("TAFEF"), are national non-profit organizations dedicated to combating fraud against taxpayer dollars through the promotion and protection of False Claims Act ("FCA") laws and their "*qui tam*" provisions. *Qui tam* is the mechanism that allows individuals with evidence of fraud against the government to file suit on behalf of the government and to recover the government's funds – and rewards them for doing so. TAF and TAFEF have participated in litigation as a *qui tam* plaintiff on behalf of the federal government; has filed briefs as *amicus curiae* in federal and state courts, including the United States Supreme Court; publishes a law journal on False Claims Act issues; and has provided testimony to Congress and to multiple state legislatures about False Claims Act issues.

Under FCA laws, those who commit fraud against the government are subject to treble damages and civil penalties. To date, twenty nine states and the District of Columbia have followed the federal government's lead and have enacted False Claims Act laws with *qui tam* provisions. Together with their federal counterpart, these laws have recovered more than $50 billion since the federal law was overhauled in 1986. As a 2013 Taxpayers Against Fraud Education Fund report concluded, for every dollar the government invests in investigating and prosecuting federal health care fraud under the False Claims Act, the government receives at least $20 in return.[1] False Claims Act laws prove that the concept of "incentivized integrity" works. I applaud the State of Vermont for recognizing the value of a False Claims Act to the State, and working to enact a law that will protect the State's tax dollars from liars, cheats, and thieves.

[1] Jack A. Meyer, *Fighting Medicare & Medicaid Fraud: The Return on Investment from False Claims Act Partnerships*, Prepared for Taxpayers Against Fraud Education Fund, Oct. 2013, *available at* http://www.taf.org/TAF-ROI-report-October-2013.pdf (last visited Feb. 10, 2015).

State FCAs Work

The federal FCA was amended and strengthened in 1986, and by the 1990s, states had begun enacting their own versions of the law and replicating the success seen at the federal level. The decades-long track record of these laws proves that False Claims Acts work. Not only has the federal law recovered nearly $30 billion in 30 years, but state FCAs have also been extremely successful – in both large and small states, and in both red and blue states. For example, in the past few years, California, Delaware, Florida, New York, North Carolina, Texas, and Virginia have all announced settlements under their respective FCA laws for hundreds of thousands – and even millions – of dollars. Whistleblowers were instrumental to the states' recoveries in nearly all of those cases, underscoring the importance of the *qui tam* component of these laws.

Not only do states with FCA laws realize the monetary benefits that come with recovering treble damages and civil penalties – funds that can be reinvested into government programs – but there are non-economic benefits as well. For instance, FCAs help states expose weaknesses in the administration and management of their programs. They allow states to put necessary controls in place, close loopholes, and otherwise level the playing field for those who deal honestly with the government. And the damages and civil penalties imposed against those who cheat the government deter future fraudulent conduct. Without a doubt, H. 120 is a step in the right direction, as it serves the interests of Vermont and the nation.

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TAF has worked very closely with several states on FCA initiatives, as we know that it is imperative that states enact their own FCA provisions and protect their state dollars from fraud. The federal FCA only applies to frauds against the federal government; outside the Medicaid arena, the federal law does not guard against frauds against state funds. Vermont, for example, has scores of millions of dollars in its State Employee Retirement System and also invests large sums of money in infrastructure investments. All of these funds may be subject to fraud – which the federal FCA could not prevent or remedy. Other states are actively using their FCAs to recover non-Medicaid dollars, as they are litigating large-dollar claims alleging frauds against state pension funds, defective guard rails, and faulty water pipes, to name a few. There's no better tool than a Vermont False Claims Act law to safeguard Vermont's fisc.

Even in the Medicaid arena, where the federal FCA can help recover Vermont's stolen dollars, unless the State enacts a False Claims Act law of its own, it will only realize a fraction of the recoveries it could receive. In an attempt to streamline efforts to fight Medicaid fraud between the federal government and the states, Congress passed the Deficit Reduction Act of 2005 (DRA) and created incentives to encourage states to pass FCA legislation. Section 6031 of the DRA announced monetary rewards to states that enact False Claims Act laws that are at least as effective as the federal FCA in combating Medicaid fraud and facilitating *qui tam* lawsuits. States deemed to have qualifying statutes – as determined by the Office of the Inspector General for the U.S. Department of Health and Human Services (HHS-OIG) – will receive a 10-percentage point increase in their share of Medicaid recoveries under their respective state laws. The following example illustrates the potential impact to the State.

Let's assume that, unfortunately, a fraudster has cheated Vermont's Medicaid program out of $10 million. Without a False Claims Act of its own, Vermont would have to rely on a federal False Claims Act lawsuit to recover its 46% of those funds – nearly $5 million. And while the federal government's damages could be subject to trebling, Vermont's damages could not. Consequently, the federal government could recover more than $16 million in damages, but Vermont's recovery would be capped at its original $4.6 million loss.

However, if the State enacts a DRA-compliant False Claims Act, then the numbers change dramatically. Now, the State would be entitled to a 56% share of the recovery – $5.6 million. And after trebling, the State would be entitled to $16.8 million – more than enough to pay even a maximum reward, if a relator was involved.

HHS-OIG invites states to submit proposed legislation for informal review regarding DRA-compliance. I encourage the Committee to take the Office up on its offer, to ensure that any questions or issues the Office might have regarding H. 120 legislation might be resolved as early as possible in the legislative process. Having said that, in my personal opinion, the bill was clearly crafted to honor the purposes of the federal FCA, and as a result, is very nearly DRA-compliant. While the bill even extends the federal law's protections in some important respects – including by providing additional protections to employee-relators – it also includes a fee-shifting provision that differs from the federal law, and which may jeopardize DRA-compliance.

Under both the federal law and H. 120, successful relators are entitled to recover their reasonable attorneys' fees and costs from the defendant. The federal FCA also authorizes courts to order a relator to pay a defendant's "reasonable attorneys' fees and expenses if the defendant prevails in the action and the court finds that the claim of the person bringing the action [relator] was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment."[2] H. 120 includes a similar fee-shifting provision, but the standard included in the bill is arguably lower than that adopted by Congress. H. 120 authorizes courts to award defendants' attorney's fees and expenses "upon a written finding that such action was pursued in bad faith or was wholly insubstantial, clearly frivolous, and advanced for the purpose of causing the defendant undue burden, unnecessary expense or harassment."[3] If this section of H. 120 is indeed intended to mimic the federal law, then I recommend that the bill be modified accordingly in order to avoid confusion and prevent misapplications and misinterpretations of the law. However, if the fee-shifting provision in H. 120 is intended to adopt a lower standard than the federal law, then I believe that the legislation will not be deemed DRA-compliant, leaving Vermont ineligible for the 10-percentage point increase in Medicaid recoveries. TAF has substantial experience and expertise in this arena, and I invite the Committee to draw upon our resources, if we may be of assistance.

Thank you for allowing me to testify before this Committee. I am available to answer your questions.

[2] 31 U.S.C. § 3730 (d)(4).
[3] H. 120 § 4308 (a).