



**Nov 15 2011**

Mr. Nicholas J. Diez  
Assistant Attorney General  
State of Louisiana Department of Justice  
P.O. Box 94005  
Baton Rouge, LA 70804-9005

Dear Mr. Diez:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your office's request to review Louisiana's amended Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §§ 46:437 through 46:440, under the requirements of section 1909 of the Social Security Act (the Act). Section 1909 of the Act provides a financial incentive for a State to enact a law that establishes 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 1909(b) of the Act, as determined by the Inspector General of HHS in consultation with the U.S. Department of Justice (DOJ). We have determined, after consulting with DOJ, that the amended Louisiana Medical Assistance Programs Integrity Law does not meet the requirements of section 1909(b) of the Act.

Section 1909(b)(1) of the Act requires the State law to establish liability for false or fraudulent claims described in the Federal False Claims Act with respect to any expenditure described in section 1903(a) of the Act. The Federal False Claims Act, as amended by the Fraud Enforcement and Recovery Act of 2009, establishes liability for, among other things, conspiring to commit a violation of another subsection of section (a)(1) of the Federal False Claims Act. See 31 U.S.C. § 3729(a). In contrast, the amended Louisiana Medical Assistance Programs Integrity Law does not establish liability for the same breadth of conduct as the Federal False Claims Act, as amended.

Section 1909(b)(2) of the Act 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, as amended by the Patient Protection and Affordable Care Act, provides that the court shall dismiss an action or claim under the Federal False Claims Act, unless opposed by the Government, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed (i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) by the news media, unless the action is brought by the Attorney General or the person bringing the action is an original source of the information. See 31 U.S.C. § 3730(e)(4)(A). In contrast, the amended Louisiana Medical.

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Assistance Programs Integrity Law adds punctuation to subsections (i), (ii), and (iii) that causes the phrase “unless the action is brought by the Attorney General or the person bringing the action is an original source of the information” to apply only to allegations or transactions that were publicly disclosed by the news media. Therefore, the amended Louisiana Medical Assistance Programs Integrity Law is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

If the Louisiana Medical Assistance Programs Integrity Law is amended to address the issues noted above, please notify OIG for further consideration of Louisiana’s law. If you have any questions regarding this review, please contact me or your staff may contact Karen Glassman at 202-708-9777 or Susan Gillin at 202-205-9426.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson  
Inspector General