



JUL 24 2008

Washington, D.C. 20201

James R. Murray
Assistant Attorney General
Department of Justice
State of Louisiana
P.O. Box 94005
Baton Rouge, Louisiana 70804-9005

Dear Mr. Murray:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has received your request to review the Louisiana Medical Assistance Programs Integrity Law, La. Rev. Stat. Ann. §§ 46:437 through 46:440, 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 Louisiana Medical Assistance Programs Integrity Law 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. Under the Federal False Claims Act, a relator is awarded a percentage of "the proceeds of the action or settlement of the claim." See 31 U.S.C. § 3730(d). The proceeds of the action or settlement may include damages, civil penalties, or both. See 31 U.S.C. § 3729. In contrast, the Louisiana Medical Assistance Programs Integrity Law expressly excludes civil monetary penalties from the relator's award. See La. Rev. Stat. Ann. §§ 46:439.4(A), 46:439.1(A). In addition, the Louisiana Medical Assistance Programs Integrity Law requires that "the medical assistance programs . . . be made whole through the payment of any and all actual damages prior to the disbursement of any funds related to the percentage of the liquidated damages to be received by the *qui tam* plaintiff." Id. at § 46:439.4(G). Based on these provisions, the Louisiana Medical Assistance Programs Integrity Law is not at least as effective in facilitating and rewarding *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that an action may not be brought after the later of: (1) six years after the date on which the violation is committed; or (2) three years after the date when the facts material to the right of action are known or reasonably should have been

known by the official of the United States charged with responsibility to act in the circumstances, but in no event more than ten years after the date on which the violation is committed. See 31 U.S.C. § 3731(b). The Louisiana Medical Assistance Programs Integrity Law has a shorter statute of limitations for relators. Specifically, the Louisiana Medical Assistance Programs Integrity Law provides that no *qui tam* action shall be instituted by a relator if he failed to serve the complaint and written disclosure of substantially all material evidence and information with the secretary or the attorney general within one year of the date the relator knew or should have known of the information forming the basis of the complaint. See La. Rev. Stat. Ann. §§ 46:439.1(C), 46:439.2(A)(2)(b). Based on this shorter statute of limitations for relators, the Louisiana Medical Assistance Programs Integrity Law is not at least as effective in facilitating and rewarding *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that, if the government elects to pursue its claim through an alternative remedy, such as an administrative proceeding to determine a civil money penalty, then the relator shall have the same rights in such proceeding as the relator would have had if the action continued under the Federal False Claims Act. See 31 U.S.C. § 3730(c)(5). In contrast, the Louisiana Medical Assistance Programs Integrity Law does not provide that the relator will have the same rights if the state elects to pursue its claim through an alternative remedy. See La. Rev. Stat. Ann. § 46:439.3. Based on this provision, the Louisiana Medical Assistance Programs Integrity Law is not at least as effective in facilitating and rewarding *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that the court may reduce the share awarded to the relator if the court finds that the relator planned and initiated the violation upon which the action was brought. See 31 U.S.C. § 3730(d)(3). In contrast, the Louisiana Medical Assistance Programs Integrity Law provides that the court may reduce the share awarded to the relator if the court finds that the relator participated in the violation that is the subject of the action. See La. Rev. Stat. Ann. § 46:439.4(D). Based on this provision, the Louisiana Medical Assistance Programs Integrity Law is not at least as effective in rewarding or facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act requires that a *qui tam* relator be an original source of the allegations only where the allegations are based upon a public disclosure. See 31 U.S.C. § 3730(e)(4). In contrast, the Louisiana Medical Assistance Programs Integrity Law requires all *qui tam* relators to be original sources of the information that serves as the basis for the allegations. See La. Rev. Stat. Ann. § 46:439.1(B)(1). Based on this provision, the Louisiana Medical Assistance Programs Integrity Law is not at least as effective in rewarding or facilitating *qui tam* actions as the Federal False Claims Act.

Lastly, where a *qui tam* action is based on a public disclosure and the relator, therefore, must be an original source of the information, the Federal False Claims Act does not require the *qui tam* relator to provide confirmation of his original source status by a third party. See 31 U.S.C. § 3730(e)(4). In contrast, if the *qui tam* action is based upon a disclosure through the media, the Louisiana Medical Assistance Programs Integrity Law requires that a person with knowledge of who provided the information confirm that a *qui tam* relator is an original source of the

information. See La. Rev. Stat. Ann. § 46:439.1(E)(2). Based on this additional requirement, the Louisiana Medical Assistance Programs Integrity Law is not at least as effective in rewarding or 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 the Louisiana Medical Assistance Programs Integrity Law. If you have any questions regarding this review, please contact me, or your staff may contact Susan Elter Gillin at 202-205-9426 or susan.gillin@oig.hhs.gov or Katie Arnholt at (202) 205-3203 or katie.arnholt@oig.hhs.gov.

Sincerely,

A handwritten signature in black ink that reads "Daniel R. Levinson". The signature is written in a cursive, flowing style.

Daniel R. Levinson
Inspector General

cc: Aaron Blight, CMS