



March 21, 2011

Mr. Charles H. Hobgood  
Director, Medicaid Investigations Unit  
Department of Justice, State of North Carolina  
P.O. Box 629  
Raleigh, NC 27602

Dear Mr. Hobgood:

The Office of Inspector General (OIG) of the U.S. Department of Health & Human Services (HHS) has received your request to review the North Carolina False Claims Act, N.C. Gen. Stat. §§ 1-605 through 1-618, under the requirements of section 1909 of the Social Security Act (the Act). Section 1909 of the Act 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 1909(b) of the Act, as determined by the Inspector General of HHS in consultation with the U.S. Department of Justice (DOJ). After reviewing the law and consulting with DOJ, we have determined that the North Carolina False Claims Act does not meet the requirements of section 1909(b) of the Act.

On May 20, 2009, the Fraud Enforcement and Recovery Act of 2009 (FERA) made numerous amendments to the Federal False Claims Act, 31 U.S.C. §§ 3729-33. On March 23, 2010, the Patient Protection and Affordable Care Act (ACA) amended the Federal False Claims Act. Also, on July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) further amended the Federal False Claims Act. These three acts, among other things, amended bases for liability in the Federal False Claims Act and expanded certain rights of *qui tam* relators.

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 ACA, 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: (1) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (2) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (3) by the news media, unless the action is brought by the Attorney General or a person who is an original source of the information. See 31 U.S.C. § 3730(e)(4)(A). In contrast, the North Carolina False Claims Act requires a court to dismiss a broader category of cases based on a public disclosure, including, but not limited to, a disclosure in a hearing in which the State is not a party, and does not give North Carolina the opportunity to oppose the

dismissal. Therefore, the North Carolina False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

Further, the Federal False Claims Act, as amended by the ACA, defines “original source” as an individual who either: (1) prior to a public disclosure, voluntarily disclosed to the Government the information on which the allegations or transactions in a claim are based or (2) has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action. See 31 U.S.C. § 3730(e)(4)(B). In contrast, the North Carolina False Claims Act has a more restrictive definition of “original source.” Therefore, the North Carolina False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the Federal False Claims Act provides that when a relator brings a *qui tam* action under the Federal False Claims Act, no person other than the Government may intervene or bring a related action based on the facts underlying that *qui tam* action. See 31 U.S.C. § 3730(b)(5). In contrast, the North Carolina False Claims Act provides that when a relator brings a *qui tam* action under the North Carolina False Claims Act, the Federal False Claims Act, or any similar provision of law in any other State, no person other than the State may intervene or bring a related action based on the facts underlying the pending action. See N.C. Gen. Stat. § 1-608(b)(5). Therefore, the North Carolina False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

In addition, the North Carolina False Claims Act provides that no *qui tam* action may be brought by a current or former public employee or official if the allegations are based substantially upon allegations of wrongdoing or misconduct that such person had a duty or obligation to report or investigate within the scope of his or her public employment or office or upon information or records to which the person had access as a result of his or her public employment or office. See N.C. Gen. Stat. § 1-611(c). The Federal False Claims Act contains no such limitation. Therefore, the North Carolina False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

If the North Carolina False Claims Act is amended to address the issues noted above, please notify OIG for further consideration of the North Carolina False Claims Act. If you have any questions regarding this review, please contact me or have your staff contact Katie Arnholt,

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Senior Counsel, at 202-205-3203 or Tony Maida, Deputy Chief, Administrative and Civil Remedies Branch, at 202-205-9323.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson  
Inspector General