



DEC 21 2006

Ms. Jennifer S. Martinez  
Assistant Attorney General  
Medicaid Fraud Control Unit  
Louisiana Department of Justice  
P.O. Box 94005  
Baton Rouge, Louisiana 70804

Dear Ms. Martinez:

The Office of Inspector General (OIG) of the U.S. Department of Health and Human Services (HHS) has reviewed Louisiana's Medical Assistance Programs Integrity Law (MAPIL), La. Rev. Stat. Ann. §§ 46:437.1 - 440.3, 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 MAPIL does not meet the requirements of sections 6031(b)(2) and (4) of the DRA.

Section 6031(b)(2) of the DRA provides that a state law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions as the provisions in the Federal False Claims Act, 31 U.S.C. §§ 3730-3732. Among other things, the Federal False Claims Act permits the Federal Government to intervene at a later date upon a showing of good cause even if the government initially elects not to proceed with the action. See 31 U.S.C. § 3130(c)(3). MAPIL does not appear to contain a similar provision permitting the State of Louisiana to intervene in an action at a later date upon a showing of good cause. Therefore, OIG has determined that MAPIL is not as effective as the Federal False Claims Act in facilitating *qui tam* actions in this regard.

In addition, MAPIL is not as effective in rewarding *qui tam* actions as the Federal False Claims Act. The Federal False Claims Act permits a relator to recover between 15% to 25% of the recovery if the Federal Government intervenes. See 31 U.S.C. § 3729(d)(1). In contrast, MAPIL sets the floor for the relator share at 10% of the recovery and a ceiling of 20% of the recovery in cases where the State of Louisiana intervenes. See La. Rev. Stat. Ann. § 46:439.4(A). Moreover, the Federal False Claims Act permits the relator to recover at least 25% when the Federal Government does not intervene. See 31 U.S.C. § 3729(d)(2). In contrast, MAPIL does not set a floor for the share awarded to a relator. See La. Rev. Stat. Ann. § 46:439.4(B).

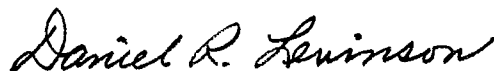
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Accordingly, OIG has determined that MAPIL is not at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as the Federal False Claims Act.

In addition, section 6031(b)(4) of the DRA provides that the state law must contain a civil penalty that is not less than the amount of the civil penalty authorized under the Federal False Claims Act, which authorizes civil penalties of not less than \$5,000 and not more than \$10,000. See 31 U.S.C. § 3729(a)(7). In contrast, MAPIL provides for civil penalties of up to \$10,000 for each false claim, but does not set a floor for civil penalties. See La. Rev. Stat. Ann. § 46:438.6(C). Consequently, OIG has determined that MAPIL does not contain a civil penalty that is not less than the amount of the civil penalty authorized under the Federal False Claims Act.

If MAPIL is amended to address the issues noted above, please notify OIG for further consideration of the law. If you have any questions regarding this review, please contact me, or have your staff contact Mark Wachlin at 202-205-6424 or [mark.wachlin@oig.hhs.gov](mailto:mark.wachlin@oig.hhs.gov).

Sincerely,

A handwritten signature in cursive script that reads "Daniel R. Levinson".

Daniel R. Levinson  
Inspector General

cc: Aaron Blight, CMS