



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



December 28, 2016

The Honorable Joseph Foster
Office of the Attorney General
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397

Attn: Director, Medicaid Fraud Control Unit

Dear Mr. Attorney General:

This letter supplements the July 24, 2008, letter from the Office of Inspector General (OIG), U.S. Department of Health and Human Services (HHS), regarding OIG's review of the New Hampshire False Claims Act, N.H. Rev. Stat. Ann. §§ 167:61-b through 167:61-e, 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 imposing liability for the submission of 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). As explained in the July 24, 2008, letter, after consulting with DOJ, we determined that the New Hampshire False Claims Act does not meet the requirements of section 1909 of the Act.

Section 1909(b)(4) of the Act requires the State law to contain a civil penalty that is not less than the amount of the civil penalty authorized under section 3729 of the Federal False Claims Act. The Federal False Claims Act expressly provides for an adjustment of civil penalties under the Federal Civil Penalties Inflation Adjustment Act of 1990. See 31 U.S.C. § 3729(a). The Federal Civil Penalties Inflation Adjustment Improvements Act of 2015 amended the Federal Civil Penalties Inflation Adjustment Act of 1990 and mandated an increase in the civil penalties authorized under the Federal False Claims Act. Effective August 1, 2016, the civil penalties authorized under the Federal False Claims Act increased from a range of \$5,500 to \$11,000 per false claim to a range of \$10,781 to \$21,563 per false claim. The increased civil penalty applies to civil penalties assessed after August 1, 2016, and for violations occurring after November 2, 2015.

These increased penalties are not reflected in the penalties authorized under your State statute, and this discrepancy provides an additional basis for OIG's determination that your State statute does not meet the requirements of section 1909 of the Act. The civil penalties authorized under the Federal False Claims Act are expected to increase annually on August 1 in subsequent years. It is therefore recommended that your State statute reference the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 or the Federal False Claims Act in its civil penalties provision rather than state the exact dollar amount of the civil penalties authorized under your State statute.

If the New Hampshire False Claims Act is amended to address the issues identified in this letter and the July 24, 2008, letter, please notify OIG for further consideration of the New Hampshire False Claims Act.

If you have any questions, please contact me or have your staff contact Lisa Veigel or Susan Gillin at 202-619-0335.

Sincerely,

Daniel R. Levinson
Inspector General