



DEPARTMENT OF HEALTH AND HUMAN SERVICES
OFFICE OF INSPECTOR GENERAL

WASHINGTON, DC 20201



December 28, 2016

The Honorable Matt Denn
Delaware Department of Justice
Carvel State Building
820 North French Street
Wilmington, DE 19801

Attn: Kate Keller, Director, Medicaid Fraud Control Unit

Dear Mr. Attorney General:

The Office of Inspector General (OIG), U.S. Department of Health and Human Services (HHS), previously received your request to review the Delaware False Claims and Reporting Act, Del. Code Ann. tit. 6, §§ 1201 through 1211, under the requirements of section 1909 of the Social Security Act (the Act) and determined that the Delaware False Claims and Reporting Act met those requirements. 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 below, after consulting with DOJ, we have determined that the Delaware False Claims and Reporting Act no longer meets 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.

Your State statute provides for penalties of not less than \$5,500 and not more than \$11,000 for each violation. See Del. Code Ann. tit. 6, § 1201(a). These penalties do not meet the mandatory minimum or maximum range of the Federal False Claims Act. Accordingly, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, your State statute is no longer in compliance with 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.

Delaware will be granted a grace period, ending December 31, 2018, to amend the Delaware False Claims and Reporting Act and resubmit it to OIG for approval. Until December 31, 2018, Delaware will continue to qualify for the incentive under section 1909 of the Act. Resubmission to OIG of an amended act will toll the expiration of the grace period until OIG issues a letter deeming the act either compliant or not compliant with section 1909 of the Act. To continue to qualify for the incentive after December 31, 2018, or after the expiration of any tolling period, if applicable, Delaware must amend the Delaware False Claims and Reporting Act to meet the requirements of section 1909 of the Act, submit it for review, and receive approval by OIG. Please note that States will be afforded only one grace period to comply with the increase in civil penalties authorized under the Federal False Claims Act. States will not be granted additional grace periods for the subsequent statutorily expected annual increase in Federal civil penalties, and we reiterate our recommendation to simply reference the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 or the Federal False Claims Act rather than specifying an exact dollar amount of the civil penalties authorized under your State statute.

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

Sincerely,

Daniel R. Levinson
Inspector General