



AUG 3 1 2011

The Honorable Greg Abbott
Office of the Attorney General
State of Texas
P.O. Box 12548
Austin, TX 78711-2548

Dear Mr. Attorney General:

This letter supplements the March 21, 2011, letter from the Office of Inspector General (OIG) of the U.S. Department of Health & Human Services (HHS) regarding OIG's review of the Texas False Claims Act, Tx. Hum. Res. Code Ann. §§ 36.001 through 36.132, 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). As explained in the March 21, 2011, letter, we have determined, after consulting with DOJ, that the Texas False Claims Act no longer meets the requirements of section 1909 of the Act.

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Federal False Claims Act by, among other things, establishing a 3-year statute of limitations for retaliation actions. See 31 U.S.C. § 3730(h)(3). The Texas False Claims Act does not provide at least a 3-year statute of limitations for retaliation actions. Therefore, the Texas 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 “[a] civil action ... may not be brought (1) more than 6 years after the date on which the violation ... is committed, or (2) more than 3 years after the date when 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 10 years after the date on which the violation is committed, whichever occurs last.” See 31 U.S.C. § 3731(b). In contrast, the Texas False Claims Act does not provide for as long a statute of limitation for *qui tam* actions. See U.S. ex rel. Foster v. Bristol-Myers Squibb Co., 587 F. Supp. 2d 805, 817-18 (E.D. Tex. 2008). Therefore, the Texas False Claims Act is not at least as effective in rewarding and facilitating *qui tam* actions as the Federal False Claims Act.

Because these statute of limitations issues were not raised in the March 21, 2011, letter, OIG will extend Texas's grace period to August 31, 2013. Accordingly, until August 31, 2013, Texas 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 August 31, 2013, or after the expiration of any tolling period, if applicable, Texas must amend the Texas False Claims Act to address the issues identified in this letter and the March 21, 2011, letter; submit it for review; and receive approval by OIG. If any provision of the Federal False Claims Act that is relevant to section 1909 of the Act is amended further, Texas will again be granted a 2-year grace period from the date of enactment of any such amendments in which to amend its act to conform with the amended Federal False Claims Act and resubmit it to OIG for approval.

If you have any questions, please contact me or have your staff contact Katie Arnholt, Senior Counsel, at 202-205-3203 or Susan Gillin, Deputy Chief, Administrative and Civil Remedies Branch, at 202-205-9426.

Sincerely,

/Daniel R. Levinson/

Daniel R. Levinson
Inspector General