

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Reimbursement Rates for Calendar Year 2006

AGENCY: Indian Health Service, HHS.
ACTION: Notice.

SUMMARY: Notice is given that the Director of Indian Health Service (IHS), under the authority of sections 321(a) and 322(b) of the Public Health Service Act (42 U.S.C. 248 and 249(b)), Public Law 83-568 (42 U.S.C. 2001 (a)), and the Indian Health Care Improvement Act (25 U.S.C. 1601 *et seq.*), has approved the following rates for inpatient and outpatient medical care provided by IHS facilities for Calendar Year 2006 for Medicare and Medicaid beneficiaries and beneficiaries of other Federal programs. The Medicare Part A inpatient rates are excluded from the table below as they are paid based on the prospective payment system. Since the inpatient rates set forth below do not include all physician services and practitioner services, additional payment may be available to the extent that those services meet applicable requirements. Public Law 106-554, section 432, dated December 21, 2000, authorized IHS facilities to file Medicare Part B claims with the carrier for payment for physician and certain other practitioner services provided on or after July 1, 2001.

| | Calendar year 2006 |
|--|--------------------|
| Inpatient Hospital Per Diem Rate (Excludes Physician/Practitioner Services): | |
| Lower 48 States | \$1,660 |
| Alaska | 2,131 |
| Outpatient Per Visit Rate (Excluding Medicare): | |
| Lower 48 States | 242 |
| Alaska | 406 |
| Outpatient Per Visit Rate (Medicare): | |
| Lower 48 States | 193 |
| Alaska | 348 |
| Medicare Part B Inpatient Ancillary Per Diem Rate: | |
| Lower 48 States | 340 |
| Alaska | 625 |

Outpatient Surgery Rate (Medicare)

Established Medicare rates for freestanding Ambulatory Surgery Centers.

Effective Date for Calendar Year 2006 Rates

Consistent with previous annual rate revisions, the Calendar Year 2006 rates

will be effective for services provided on/or after January 1, 2006 to the extent consistent with payment authorities including the applicable Medicaid State plan.

Dated: June 27, 2006.

Charles W. Grim,

Assistant Surgeon General, Director, Indian Health Service.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Publication of OIG's Guidelines for Evaluating State False Claims Acts

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: Under section 1909 of the Social Security Act (the Act), 42 U.S.C. 1396h, the Inspector General of the Department of Health and Human Services is required to determine, in consultation with the Attorney General, whether a State has in effect a law relating to false or fraudulent claims submitted to a State Medicaid program that meets certain enumerated requirements. If the Inspector General determines that a State law meets these requirements, the State medical assistance percentage, with respect to any amounts recovered under a State action brought under such a law, shall be increased by 10 percentage points. This notice sets forth the Inspector General's guidelines for evaluating whether a State law meets the requirements of section 1909 of the Act.

DATES: Effective Date: These guidelines are effective on August 21, 2006.

FOR FURTHER INFORMATION CONTACT: Roderick T. Chen, Office of Counsel to the Inspector General, (202) 401-4134, or Joel Schaer, Office of External Affairs, (202) 619-0089.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1909 of the Act, added by section 6031 of the Deficit Reduction Act of 2005 (Pub. L. 109-171), creates a financial incentive for States to enact legislation that establishes liability to the State for individuals or entities that submit false or fraudulent claims to the State Medicaid program. This incentive takes the form of an increase in the State's share of any amounts recovered from a State action brought under a

qualifying law.¹ In order for a State to qualify for this incentive, the State law must meet certain enumerated requirements, as determined by the Inspector General of the Department of Health and Human Services in consultation with the Attorney General.

Medicaid, authorized under Title XIX of the Act, 42 U.S.C. 1396-1396v, is a joint Federal and State program that pays for medical and other related benefits provided to needy beneficiaries. States that participate in Medicaid administer their own programs within broad Federal guidelines and receive matching funds from the Federal government. The Federal share generally varies between 50 percent and 83 percent, depending on the State per capita income.

False or fraudulent claims presented to State Medicaid programs by participating providers and others may give rise to civil liability under the Federal False Claims Act (FCA), 31 U.S.C. 3729-3733. Under the FCA, any person who knowingly submits a false or fraudulent claim to a State Medicaid program is liable to the Federal Government for three times the amount of the Federal Government's damages plus penalties of \$5,000 to \$10,000 for each false or fraudulent claim. Any recovery of damages to the State Medicaid program will be shared with the State in the same proportion as the State's share of the costs of the Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would be entitled to receive 40 percent of the damages and the Federal Government would retain 60 percent of the damages.

Under the *qui tam* provisions of the FCA, private persons (known as relators) may file lawsuits in Federal court against individuals and/or entities that defraud the Federal government by filing false or fraudulent Medicaid claims. The Department of Justice (DOJ) has an opportunity to investigate the relator's allegations, and DOJ may intervene and take over the prosecution of the action. If DOJ chooses not to intervene, the relator has the right to conduct the action. In general, with respect to recoveries of Federal damages and penalties in cases in which DOJ has intervened, the relator is entitled to between 15 and 25 percent of the recovery of Federal damages and penalties depending upon the extent to which the relator substantially contributed to the case. In general, the relator is entitled to between 25 and 30

¹ The increase results from a 10-percentage point decrease in the Federal share of any recovery from a State action brought under a qualifying law.

percent of any recoveries of Federal damages and penalties if DOJ has not intervened in the case. Because the FCA applies only to false claims against the Federal Government, the relator is not entitled to a share of the State portion of a Medicaid recovery under the FCA.

Many States have enacted their own false claims acts that establish civil liability to the State for individuals and entities that submit false or fraudulent claims to the State Medicaid program. Generally, these laws include *qui tam* provisions that reward relators with a share of the State portion of recoveries in cases of Medicaid fraud. Currently, if a State obtains a recovery as the result of a State action relating to false or fraudulent claims submitted to its Medicaid program, it must share the damages recovered with the Federal Government in the same proportion as the Federal Government's share in the cost of the State Medicaid program. For example, if a State's Medicaid share is 40 percent, then the State would retain 40 percent of any damages recovered from an individual or entity that has defrauded Medicaid, and the Federal Government would be entitled to the remaining 60 percent of damages.

II. Section 1909 of the Social Security Act

In order to encourage States to pursue Medicaid fraud, Congress added a new section 1909 to the Act, effective January 1, 2007. Under this section, if a State has in effect a State false claims act that meets certain enumerated requirements, the Federal medical assistance percentage will be decreased by 10 percentage points with respect to any amount recovered under a State action brought under such a law. Therefore, the State's share of any recovery in an action under such a law will be increased by 10 percentage points. For example, if a State has a qualifying State false claims act and the State's Medicaid share is 50 percent, the State would be entitled to 60 percent of the amount of the recovery, while the Federal Government would receive the remaining 40 percent.

Section 1909(b) of the Act requires the Inspector General to determine, in consultation with the Attorney General, whether a State has in effect a false claims act that meets the following requirements:

1. The law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729 with respect to any expenditure described in section 1903(a) of the Act;
2. The law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false

or fraudulent claims as those described in 31 U.S.C. 3730–3732;

3. The law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General; and

4. The law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729.

A State that, as of January 1, 2007, has a law in effect that meets the enumerated requirements shall be considered in compliance with such requirements so long as the law continues to meet such requirements.

The effective date of section 1909 of the Act is January 1, 2007. Thus, a State with a law in effect that meets the enumerated requirements will qualify for a 10 percentage point increase in its share of any amounts recovered from a State action brought under the law if the recovery is received on or after January 1, 2007. A State may enact a law before, on, or after January 1, 2007. Furthermore, the action that gives rise to the recovery may be commenced before, on, or after January 1, 2007. As long as the State's law meets the enumerated requirements on or after January 1, 2007, and the recovery from the action brought under the qualifying law is received by the State on or after January 1, 2007, the State will qualify for a 10 percent increase in its share of the amount recovered.

It is important to note that section 1909 of the Act does not require a State to have in effect a false claims act or to enact a false claims act that meets these minimum requirements. States may choose not to enact false claims acts, or may choose to enact false claims acts that do not meet the enumerated requirements. However, a State that does not have such a law in effect will not qualify for the 10 percentage point increase in its share of any recoveries from an action brought under such a law.

III. OIG Guidelines for Evaluating State False Claims Acts

Section 1909(b) of the Act sets forth four requirements that a State law must meet if the State is to qualify for the 10 percentage point increase in any State Medicaid share recovered under the law. The Inspector General is required to determine, in consultation with the Attorney General, whether a State law meets these requirements. After reviewing section 1909 of the Act and consulting with DOJ, OIG has developed guidelines to use in evaluating whether a State law meets the enumerated requirements. It is important to note that these guidelines are not model statutory

provisions. OIG is not requiring any specific language to be included in State false claims acts. Rather, the guidelines reflect the provisions relevant to OIG's review of whether a State law meets the requirements of section 1909(b) of the Act.

A. Liability for False or Fraudulent Claims

Under section 1909(b)(1) of the Act, the State law must establish liability to the State for false or fraudulent claims described in 31 U.S.C. 3729, with respect to any expenditure described in section 1903(a) of the Act. Section 1903(a) of the Act describes expenditures related to State Medicaid plans, including all expenditures for medical assistance under a State Medicaid plan. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(1) of the Act, OIG will consider whether the law provides for the following:

1. Liability to the State for false or fraudulent claims with respect to Medicaid program expenditures, including:
 - Knowingly presenting, or causing to be presented, a false or fraudulent claim for payment or approval to the Medicaid program;
 - Knowingly making, using, or causing to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Medicaid program;
 - Conspiring to defraud the Medicaid program by getting a false or fraudulent claim allowed or paid;
 - Knowingly making, using, or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Medicaid program.

2. Definitions for the terms “knowing” and “knowingly” meaning that a person, with respect to information: (a) Has actual knowledge of the information; (b) acts in deliberate ignorance of the truth or falsity of the information; or (c) acts in reckless disregard of the truth or falsity of the information. In addition, no proof of specific intent to defraud should be required.

B. Qui Tam Provisions

Under section 1909(b)(2) of the Act, a State law must contain provisions that are at least as effective in rewarding and facilitating *qui tam* actions for false or fraudulent claims as those described in 31 U.S.C. 3730–3732. When evaluating a State law to determine whether it meets the requirements of section 1909(b)(2) of the Act, OIG will consider

whether the law provides for the following:

1. A provision that authorizes a person (relator) to bring a civil action for a violation of the State false claims act for the person and for the State, which will be brought in the name of the State.

2. A provision that requires a copy of complaint and written disclosure of material evidence and information to be served on the State Attorney General in accordance with State Rules of Civil Procedure.

3. A provision that provides that when a relator brings a *qui tam* action, no person other than the State may intervene or bring a related action based on the facts underlying the pending action.

4. Provisions that set forth rights of parties to *qui tam* actions, including:

- If the State proceeds with the action, the State has primary responsibility in the action, but the relator shall have the right to continue as a party to the action; and
- If the State elects not to proceed with the action, the relator may conduct the action but the State may intervene at a later date upon a showing of good cause.

5. Provisions that reward a relator with a share of the proceeds of the action or settlement of the claim, including:

- If the State proceeds with an action brought by the *qui tam* relator, the relator receives at least 15 percent of the proceeds of the action or settlement of the claim, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action;
- If the State does not proceed with an action, the relator receives at least 25 percent of the proceeds of the action or settlement, and may receive a higher percentage depending on the relator's contribution to the prosecution of the action; and
- The court is authorized to award the relator an amount for reasonable expenses, including attorneys' fees and costs, to be awarded against the defendant.

6. A statute of limitations period not shorter than 6 years after the date of the violation is committed, or 3 years after the date when facts material to the right of action are known or reasonably should have been known by the State official charged with the responsibility to act in the circumstances, whichever occurs last.

7. A provision that establishes the burden of proof, for each of the elements of the cause of action including damages, no greater than a preponderance of the evidence.

8. A provision that provides a cause of action for relators who suffer retribution from employers for whistleblower activities related to the State false claims act.

OIG is required to consider whether the State law is at least as effective in rewarding and facilitating *qui tam* actions when compared to the provisions at 31 U.S.C. 3730–3732. State false claims acts may include procedural rights, reductions in relator awards, jurisdictional bars, and other *qui tam* provisions similar to those found in the FCA that do not conflict with the requirements of section 1909(b)(2) of the Act. However, if such provisions are more restrictive than the provisions in the FCA, OIG may determine that a State law is not as effective in rewarding or facilitating *qui tam* actions. OIG will make such determinations on a case-by-case basis and in consultation with DOJ.

C. Seal Provisions

Under section 1909(b)(3) of the Act, a State law must contain a requirement for filing an action under seal for 60 days with review by the State Attorney General. When evaluating whether a State law meets the requirements of section 1909(b)(3) of the Act, OIG will consider whether the law provides a provision that requires the complaint to be filed in camera and to remain under seal for at least 60 days. In addition, OIG will consider whether the State law's seal provisions operate in a way that conflict with the Federal seal in a pendant FCA case.

D. Civil Penalty Provisions

Under section 1909(b)(4) of the Act, the State law must contain a civil penalty that is not less than the amount of the civil penalty authorized under 31 U.S.C. 3729. OIG will review a State law to determine if these provisions include a provision that sets at least treble damages (or double damages in instances of timely self-disclosure and full cooperation) and civil penalties at amounts of at least \$5,000 to \$10,000 per false claim.²

IV. OIG Procedures for Reviewing State False Claims Acts

As noted above, the effective date of section 1909 of the Act is January 1, 2007. A State that, as of January 1, 2007,

² DOJ is authorized to adjust the civil penalties under the FCA for inflation and has issued regulations that raise the FCA penalties. See Public Law 101–410, 104 Stat. 890 (Oct. 5, 1990); 28 CFR 85.3. However, the statutory provisions of the FCA identify the range of civil penalties as \$5,000 to \$10,000, and OIG will review State laws based on those statutory provisions.

has a law in effect that meets the enumerated requirements shall be deemed in compliance with such requirements for so long as the law continues to meet such requirements.

With the publication of these guidelines, OIG will accept requests for review of State laws to determine if they meet the requirements of section 1909(b) of the Act. In order to request OIG review of a State law, the State Attorney General's office should submit a complete copy of the State law, or any other relevant information, to the following address: Office of Inspector General, Department of Health and Human Services, Cohen Building, Mail Stop 5527, 330 Independence Avenue, SW., Washington, DC 20201, Attention: Roderick Chen, Office of Counsel to the Inspector General.

Submissions by telecopier, facsimile, or other electronic media will not be accepted. OIG will review the State law under these guidelines and in consultation with DOJ, and inform the State Attorney General's office in writing whether the State law meets the requirements of section 1909(b) of the Act.

Dated: August 16, 2006.

Daniel R. Levinson,

Inspector General.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for the Chittenango Ovale Amber Snail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; final revised recovery plan.

SUMMARY: We, the Fish and Wildlife Service (Service), announce availability of a final revised recovery plan for the endangered Chittenango ovate amber snail (*Novisuccinea chittenangoensis*). The final plan incorporates comments received during the public and peer review period and updates the objectives, criteria, and actions for recovering this endangered species.

ADDRESSES: A copy of the revised plan may be requested by contacting the Fish and Wildlife Service's New York Field Office (NYFO), 3817 Luker Road, Cortland, New York 13045. Copies will also be available for downloading from the NYFO's Web site at <http://www.fws.gov/northeast/nyfo/es/recoveryplans.htm>, and from the