

**Testimony Before the United States  
Senate Committee on Finance  
Medicaid Payments on Behalf of Louisiana Inmates  
April 25, 2001**

Good morning Mr. Chairman and members of the United States Senate Committee on Finance. Thank you for allowing me to offer my testimony here in Washington today.

In serving as Louisiana's Legislative Auditor, I have a number of responsibilities. I hold my appointive position within the Legislative Branch of Louisiana state government. I have served in that capacity since 1989. As Legislative Auditor, I serve as fiscal advisor to the Legislature and as auditor of the fiscal records of the state, its agencies, and political subdivisions. My responsibilities include financial and compliance, performance, and investigative audits.

As authorized by the United States Congress, I am also the auditor in Louisiana of federal monies received by the state. My annual single audit meets the requirements of the Single Audit Act as amended in 1996, and the associated U.S. Office of Management and Budget Circular A-133.

It is as auditor of the federal monies received by my state that I am here today. During my tenure as Legislative Auditor, I have issued several financial-related audits on Louisiana's Medicaid Program, which is administered by the state's Department of Health and Hospitals. Among these are the following: In 1995, I reported that Louisiana paid a national accounting firm approximately \$100 million to assist the state in enhancing

revenues from Medicaid disproportionate share payments. In that same year, I reported that Louisiana paid approximately \$20 million to an independent contractor to assist in establishing Medicaid eligibility for patients treated in state-operated hospitals.

At your invitation, I am here today to address my most recent, and yet unresolved, concern. Specifically, Louisiana is using Medicaid to fund health care of state-incarcerated prisoners who are afforded medical care in state-operated hospitals. The Louisiana State University Health Sciences Center, Health Care Services Division estimates that the cost to treat prisoners at its nine facilities has averaged approximately \$21 million over each of the past four years. The federal financial participation relative to Louisiana's Medicaid Program is, therefore, estimated to be approximately \$15 million each year for such care.

In November of 1996, my office sent a letter to the Health Care Financing Administration seeking clarification of Louisiana's practice of including prisoner days in the allocation formula for disproportionate share payments. Louisiana allocates disproportionate share payment adjustments to state-operated hospitals to cover costs incurred by the hospitals in serving patients who are not deemed Medicaid eligible. My staff expressed its view that Title 42, Part 435, Section 1008, of the Code of Federal Regulations provides that federal financial participation is not available in expenditures for services provided to individuals who are inmates of public institutions. In that letter, we stated it was our understanding that on June 11, 1996, HCFA approved an amendment to Louisiana's Medicaid State Plan. That amendment provided that prisoners receiving services in state hospitals are

deemed indigent in accordance with Louisiana law. Despite the applicable Code of Federal Regulations, this amendment allowed Louisiana to include prisoner days in the allocation formula for disproportionate share payments. Therefore, Medicaid contributes approximately \$15 million each year for the health care costs of state-incarcerated prisoners.

Throughout my career as Legislative Auditor, my general counsel has advised me that one cannot do indirectly what he/she is not allowed to do directly. I, therefore, question how HCFA can allow Louisiana (or any other state), simply by passing a state law, to include prisoner medical care in the Medicaid disproportionate share payments, when the Code of Federal Regulations specifically states such costs are not allowable.

HCFA offered no response to my 1996 letter. In 1999, I asked the state Department of Health and Hospitals to defend its position relative to this practice. The department provided an opinion from its counsel in Washington, Covington and Burling. They opined that Louisiana's practice is fully in accordance with law and the approved state plan. The department further contended that the regulations governing disproportionate share payments and those regarding direct Medicaid funds and eligibility are mutually exclusive.

Subsequent to receiving the department's legal opinion, I again wrote HCFA in 1999. After receiving no response, I decided later that year to send my concerns to the Inspector General of the U.S. Department of Health and Human Services. As of this date, I have not received any written communication from the appropriate federal agency either

supporting or challenging Louisiana's use of Medicaid to fund prisoners' health care through disproportionate share payments.

In conclusion, I will continue to try and determine if Louisiana's practice of using Medicaid to fund health care costs of state-incarcerated prisoners is permissible under current federal law. If the practice is found to be impermissible, I ask that Louisiana be afforded prospective treatment, since Louisiana feels it has acted in good faith and in accordance with its state plan that has been approved by HCFA. I am prepared to address any questions that the committee may have.