Jeff Landry
Attorney General

State of Louisiana
DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

March 18, 2019
OPINION 19-0030

Mr. Daryl G. Purpera
Louisiana Legislative Auditor
1600 North Third Street
P.O. Box 94397
Baton Rouge, LA 70804

61 – LAWS - General
90-C – PUBLIC RECORDS

La. R.S. 47:1508
La. R.S. 46:440.4, et seq.

The Louisiana Department of Revenue is not legally prohibited from disclosing statistical data requested by the Task Force on Coordination of Medicaid Fraud Detection and Prevention Initiative.

Dear Mr. Purpera:

In your position as the Chairman of the Task Force on Coordination of Medicaid Fraud Detection and Prevention Initiative (the "Task Force") and as the Louisiana Legislative Auditor, you have requested an opinion concerning the dissemination of data by the Louisiana Department of Revenue ("LDR"). The Task Force was created by Act 420 of the 2017 Regular Legislative Session. The purpose of the Task Force is to study and identify the policies, processes, laws, and rules by which the State of Louisiana implements Medicaid fraud detection and prevention efforts and to develop recommendations for improving those fraud prevention efforts. La. R.S. 46:440.6.[1]

---

[1] La. R.S. 46:440.6 identifies the entire purpose of the Task Force as follows:

> The purposes of the task force shall include the following:
> (1) To study and evaluate on an ongoing basis the laws, rules, policies, and processes by which the state implements Medicaid fraud detection and prevention efforts.
> (2) To identify and recommend opportunities for improving coordination of Medicaid fraud detection and prevention initiatives across state agencies and branches of state government.
> (3) To identify any systemic or systemwide issues of concern within the Medicaid program with respect to fraud, waste, and abuse.
> (4) To develop recommendations for policies and procedures by which to facilitate and implement all of the following:
> (a) Random sampling of Medicaid cases to be selected for verification of enrollee eligibility.
> (b) Improvements in the Medicaid program integrity functions of the Louisiana Department of Health.
> (c)(i) Optimization of data mining among state-owned data sets for purposes of Medicaid fraud detection and prevention.
> (ii) For purposes of this Subparagraph, "data mining" means the practice of electronically sorting data through statistical modeling, intelligent

In its efforts to carry out its statutory purposes, the Task Force asked LDR for some statistical information. Specifically, on September 4, 2018, on behalf of the Task Force, you sent a letter to the Secretary of the Louisiana Department of Health ("LDH") and the Secretary of LDR requesting assistance in the examination and comparison of Medicaid data. The Task Force requested that LDR use the adult population and Medicaid expansion population as of December 2017 as a sample and compare LDH data to 2017 tax data. The Task Force requested LDR and LDH report the following information to the Task Force:

1. The number of sample recipients who filed a 2017 Louisiana tax return.
2. The number of sample recipients whose Louisiana Tax Income matched LDH reported income.
3. For those who did not match:
    a. The number of sample recipients whose Louisiana Tax Income was less than LDH reported income.
    b. The number of sample recipients whose Louisiana Tax Income was more than LDH reported income:
        i. From $1 to $5,000
        ii. From $5,000 to $10,000
        iii. From $10,000 to $20,000
        iv. From $20,000 to $50,000
        v. From $50,000 to $100,000
        vi. From $100,000 and more

On December 3, 2018, you followed up on the September 4, 2018 letter, asking for an update regarding the information requested. On February 26, 2019, at the Task Force meeting, the Secretary of LDR stated that LDR would be unable to provide the requested information due to confidentiality issues. LDR also responded by letter on February 26, 2019, stating the same. Specifically, LDR asserts that the requested information falls under the confidentiality provisions of La. R.S. 47:1508(A)(1) and, thus, may not be provided to the Task Force.

Considering the specific facts contained in your request and the relevant attachments, you have asked whether LDR is legally authorized to provide the requested information to the Task Force. In short, LDR is not prohibited from providing the requested information, and it may provide that information to the Task Force.

---

technologies, and other methods in order to uncover patterns, relationships, and other indicators of actual or potential Medicaid fraud, waste, or abuse.

(5) To make reports to the governor and to the legislature in accordance with R.S. 46:440.7.

Louisiana Revised Statute 47:1508(A)(1) states that "the records and files of the secretary of the Department of Revenue ... are confidential and privileged, and no person shall divulge or disclose any information obtained from such records and files except in the administration and enforcement of the tax laws of this state or of a political subdivision of this state."[2] Section (B) of the statute provides forty-two (42) exceptions to this general confidentiality provision. Specifically, La. R.S. 47:1508(B)(2) provides that nothing herein shall be construed to prevent **"[t]he publication of statistics so classified as to prevent the identification of any return or report and the items thereof."**[3] Thus, while tax returns are indeed confidential, exceptions exist regarding statistical information as long as the individual returns are not able to be identified from the information provided.

The February 26, 2019, letter from LDR states that "[y]our request for analysis on the comparisons of Medicaid application data to tax return data is not within the scope of the La. R.S. 47:1508(B)(2) exception." The letter further suggests that the Task Force request "contemplates that [LDR] review and audit Medicaid application data and analyze this data against tax returns on file with [LDR]," and is not legally permitted under La. R.S. 47:1508(A)(1).

However, LDR's interpretation of this statute is incorrect. A review of what the Task Force is requesting based upon the September 4, 2018, letter to LDH and LDR reveals that the Task Force is asking for statistical information. As stated above, the Task Force specifically requested the number of recipients who filed tax returns, the number whose tax return income matched LDH income, and the variance for those who did match. This information is certainly within the exception of La. R.S. 47:1508(B)(2). The statute allows the publication of statistics so long as they are "classified" to "prevent the identification of any return or report." The information requested would be presented as numerical data of total recipients for each category. Publishing the number of recipients who filed tax returns, the number of returns whose income matched LDH income, and the variance for those who did not match, in no way identifies, or could conceivably lead to the identification of any individual return or report. We are unable to imagine a scenario in which such broad statistical data could lead to the identification of a taxpayer's return or confidential information. Rather, the information requested by the Task Force is an example of the very information excepted from confidentiality under La. R.S. 47:1508(B)(2).

Considering the foregoing, it is the opinion of this office that the information requested by the Task Force fits within the confidentiality exception under La. R.S. 47:1508(B)(2). It is further the opinion of this office that LDR may provide the information requested by the Task Force, and it is not legally prohibited from providing the statistical information requested by the Task Force.

---

2 La. R.S. 47:1508(A)(1).

3 La. R.S. 47:1508(B)(2).

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

JEFF LANDRY
ATTORNEY GENERAL

BY: ______________________

John C. Morris IV
Assistant Attorney General

JL/JCM