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CMS ISSUES GUIDANCE ON IMPLEMENTING THE EMPLOYEE EDUCATION REQUIREMENTS OF THE DEFICIT REDUCTION ACT OF 2005: DEADLINE JANUARY 1, 2007

On December 13, 2006, Centers for Medicare & Medicaid Services (CMS) issued its long awaited guidance (Guidance) to State Medicaid agencies in implementing the "Employee Education About False Claims Recovery" provisions within the Deficit Reduction Act of 2005. CMS provided a State Plan Preprint along with this Guidance.

The Deficit Reduction Act of 2005 (DRA), which was signed by the President on February 8, 2006, enacted significant changes to many aspects of both Medicare and Medicaid. Among other provisions, the DRA established incentives for States to enact state level False Claims Act statutes and imposed compliance program and education requirements for health care entities that receive \$5 million or more in annual Medicaid reimbursement. Health care entities subject to these compliance and education requirements are required to update their employee handbooks, compliance policies, and compliance program education materials by January 1, 2007. Because compliance with these DRA provisions is a condition of payment, health care entities that do not comply with these requirements may render themselves as ineligible to receive Medicaid payments.

In addition to adding §1909 to the Social Security Act that encourages States to adopt false claims acts similar to the Federal False Claims Act, the DRA added § 6033 requiring any entity that receives annual Medicaid payments of at least \$5 million to:

- Establish written policies for all employees, contractors, and agents, including management, that provide detailed information about the Federal False Claims Act, related federal statutes and regulations, any State laws pertaining to civil or criminal penalties for false claims, as well as whistleblower protection under such laws;
- Include detailed provisions in these policies regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and
- Include in any employee handbook a specific discussion of those laws outlined in the entity's written policies, employee whistleblower protections rights, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

The Guidance clarifies many questions raised since DRA was enacted, including:

- Defining "entity" to include: a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for-profit or not-for profit, which receives or makes payments, under a State Medicaid plan totaling at least \$5,000,000 annually.
- These education requirements apply to entities that furnish items or services at more than a single location or under more than one contractual or other payment arrangement.
- There is no requirement that an entity create employee handbook if none already exists.
- Unless delayed pursuant to state legislative action, these requirements must be implemented no later than January 1, 2007. State Medicaid agencies are required to amend their State plans no later than March 31, 2007.

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