

CLIENT ALERT



HEALTH CARE/LABOR & EMPLOYMENT April 19, 2006

The Deficit Reduction Act of 2005: Fraud and Abuse Compliance Policies and Procedures Required for Medicaid Providers

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005 (“Act”). The Act contains provisions aimed at curbing Medicaid fraud, including a provision that requires certain Medicaid providers to create compliance policies and procedures to detect fraud and abuse and mandates employee (and contractor and agent) education.

Effective January 1, 2007, the Act requires any healthcare provider that receives at least \$5,000,000 in Medicaid payments each year, as a condition of participation, to create and disseminate written policies for the purpose of educating employees (including management-level employees and agents and contractors and their employees) about healthcare fraud laws, the provider’s policies and procedures for preventing and detecting fraud and abuse and the rights of employees to act as whistleblowers.

Specifically, large Medicaid providers will be required to establish and disseminate written policies that provide “detailed information” about the federal civil False Claims Act, federal administrative remedies for false claims and statements, state laws pertaining to civil and criminal penalties for false claims and the protection for whistleblowers created under these laws. The policies must explain the role of these federal and state laws in preventing and detecting fraud, waste and abuse. The written policies are also required to include “detailed provisions” that explain the provider’s own policies and procedures for detecting and preventing waste, fraud and abuse. In addition, each provider must include in its employee handbook a specific discussion of each of the elements required to be set forth in the written policy, including the rights of employees to be protected as whistleblowers.

At the urging of the Office of Inspector General (“OIG”), U.S. Department of Health and Human Services, many providers, of course, have adopted voluntary compliance programs consistent with guidance for such programs issued by the OIG. The Deficit Reduction Act of 2005 for the first time mandates that certain providers adopt policies and procedures to combat fraud and abuse and to educate their employees on both anti-fraud laws and the providers’ specific related procedures to detect fraud, abuse and waste. As a result, each covered provider that has already adopted a Compliance Program must review it and modify it, where necessary, to comply with the specific provisions mandated in the Act. Providers who have not adopted a comprehensive Compliance Program need to adopt one that at least meets the requirements of the Act in order to continue to be eligible to receive Medicaid reimbursement.

Contact Information

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