



C A L I F O R N I A D E P A R T M E N T O F

Mental Health

1600 9th Street, Sacramento, CA 95814
(916) 654-2309

June 11, 2007

DMH INFORMATION NOTICE NO.: 07-12

TO: LOCAL MENTAL HEALTH DIRECTORS
LOCAL MENTAL HEALTH PROGRAM CHIEFS
LOCAL MENTAL HEALTH ADMINISTRATORS
COUNTY ADMINISTRATIVE OFFICERS
CHAIRPERSONS, LOCAL MENTAL HEALTH BOARDS

SUBJECT: THE DEFICIT REDUCTION ACT (DRA) OF 2005
§ 6032 EMPLOYEE EDUCATION & TRAINING ABOUT FALSE
CLAIMS RECOVERY

The Department of Mental Health (DMH) is sending this letter to inform Mental Health Plans (MHPs) and All County Mental Health Directors of the requirements of § 6032 of the Deficit Reduction Act of 2005 (DRA) and current actions taken by DMH. Subsequent letters concerning the DRA may be issued as necessary.

BACKGROUND:

DRA § 6032 became effective on January 1, 2007. DRA § 6032 requires compliance by all states, entities, contractors and agents as described herein. Although federal regulations are not required for this section of the DRA, the Centers for Medicare and Medicaid Services recently published final guidance for this section.

This letter is not intended to provide extensive or comprehensive instruction to MHPs. Instead this letter is intended to provide a summary of those portions of DRA § 6032 that require further clarification. The topics of this letter are: (1) Requirements of DRA § 6032; (2) Definition of Entity, Contractor or Agent; (3) Compliance with DRA § 6032; and (4) Website links to CMS Guidance, and the Department of Health Services web page.

REQUIREMENTS OF DRA § 6032:

DRA § 6032 requires that any entity receiving or making annual payments under the State Medicaid Plan of at least \$5 million or more, as a condition of receiving such payments, must do the following:

- a) Establish written policies for all employees that include information about the False Claims Act established under 31 USC s. 3729 – 3733, administrative remedies for false claims under Chapter 38 of Title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements (Cal Govt.

Code Section 12650 – 12656), and whistleblower protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs;

- b) Include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse; and;
- c) Include in any employee handbook for the entity, a specific discussion of the laws described in section (a) above, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

DEFINITION OF ENTITY, CONTRACTOR or AGENT:

DRA § 6032 includes several important definitions to clarify who is an “**entity**”, an “**employee**”, a “**contractor**” and an “**agent**” as follows:

- (a) An “**entity**” includes 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 Plan approved under title XIX or under any waiver of such plan, totaling at least \$5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an “entity” (e.g., a state mental health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity.

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in Federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made by January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding Federal fiscal year.

- (b) An “**employee**” includes any officer or employee of the entity.

- (c) A “**contractor**” or “**agent**” includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity, furnishes, or otherwise authorizes the furnishing of, Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.

COMPLIANCE WITH DRA § 6032:

All information mentioned in sections (a), (b), and (c), shown above, must be in writing, on paper or in electronic format, and must be made readily available, by the **entity**, to all **employees, contractors or agents**. The information provided by the **entity** may be presented in either written format and should be incorporated into any existing employee handbooks, flyers or brochures.

Additionally, and as a supplement to the written format(s), **entities** may provide this information through training workshops, conferences, or in-service sessions to **employees, contractors or agents**. Policies and procedures of the **entity** must incorporate all of the required information specified in DRA § 6032 and should require that all **employees, contractors and agents** adopt and abide by the written policies of the **entity**. The Centers for Medicare and Medicaid Services (CMS) previously advised that any failure to comply with DRA § 6032 may result in the forfeiture of funding for any period of noncompliance measured from January 1, 2007, the effective date of DRA § 6032.

The information included in this letter can be accessed on the Department of Health Services Medi-Cal Provider website at: <http://www.medi-cal.ca.gov/> by clicking on the link “[Federal Deficit Reduction Act 2005: Employee Education on False Claims Recovery](#)”.

Federal guidance to DRA § 6032 was published by CMS in State Medicaid Director Letters (SMDL) #06-024 and # 07-003. SMDL # 06-024 can be found at: <http://www.cms.hhs.gov/smdl/downloads/SMD121306.pdf>. SMDL # 07-003 can be found at <http://www.cms.hhs.gov/smdl/downloads/SMD032207.pdf>.

There are two enclosures to SMDL # 07-003 (see link above) that provide further clarification of the requirements and definitions included in DRA § 6032. All entities, contractors or agents should refer to the SMDL guidance and enclosures when developing or modifying policies in compliance with this section. The enclosures can be found at: <http://www.cms.hhs.gov/smdl/downloads/SMD032207Att1.pdf> and <http://www.cms.hhs.gov/smdl/downloads/SMD032207Att2.pdf>.

DMH has been working in collaboration with the California Mental Health Director’s Association and the California Institute of Mental Health to further the technical assistance and training needs of the MHPs and to ensure successful implementation of § 6032 of the DRA and other pertinent DRA requirements. Additional information will be issued as it becomes available.

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DMH appreciates the cooperation it receives from all mental health directors regarding this matter. If any questions arise concerning this, please contact your MHP County Contract Manager. A list of current County Operation staff can be found at:

<http://www.dmh.ca.gov/CountyOps/contact.asp> .

Sincerely,

Original signed by:

STEPHEN W. MAYBERG, Ph.D.

Director

cc: Michael Borunda, Acting Deputy Director, Systems of Care Division
Rollin Ives, Deputy Director, Program Compliance Division
Loren Suter, Acting Deputy Director, Administration Division