Provider Notification

The purpose of this notification is to advise providers and other entities of the employee educational requirements directed by Section 6032 of the Federal Deficit Reduction Act (DRA) of 2005.

Effective January 1, 2007, all providers and other entities that receive or make annual Medicaid payments of $5 million or more must educate employees, contractors, and agents about federal and state fraud and false claims laws, and the whistleblower protections available under those laws.

For the purposes of Section 6032 of the DRA:

- An "entity" includes a governmental agency, organization, unit, corporation, partnership, provider, or other business arrangement (including any Medicaid managed care organization), 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 million 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 this law apply if the aggregate payments to that entity meet the $5 million annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.
- The entity is the largest separate organizational unit that furnishes Medicaid health care items or services, and includes all sub-units of that organizational unit that furnish Medicaid health care items or services.
- 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).
- An entity will meet the $5 million annual threshold as of January 1, 2007, if it received or made payments in that amount in federal fiscal year 2006 (October 1, 2005 to September 30, 2006). Future determinations will be made by January 1 of each subsequent year, based on the amount of Medicaid payments received or made during the preceding federal fiscal year.
- An "employee" includes any officer, manager, or employee of the entity.
- A "contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who on behalf of the entity, furnishes or authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in monitoring of health care provided by the entity.
- If the contractor is performing administrative functions for the State Medicaid Agency, the contractor would be neither an entity nor a contractor for purposes of Section 6032 compliance.

As a condition of receiving Medicaid payments, all impacted providers or other entities must:

1.) Establish written policies for all entity employees, contractors, or agents of the entity that provide detailed information about the False Claims Act, administrative remedies for false claims and statements, any state laws pertaining to civil or criminal penalties for false claims, and whistleblower protections under such laws.
2.) Include as part of such written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.
3.) Revise any existing employee handbook to include information on the above laws and employee protections, as well as policies and procedures for detecting and preventing fraud, waste, and abuse.

For purposes of compliance, the Health and Human Services Commission (HHSC), HHSC operating agencies, and HHSC administrative contractors will incorporate the requirements of Section 6032 into new provider contracts. Providers with existing contracts must comply in accordance with those contracts, which require compliance with all federal and state laws, regulations, and rules. HHSC, HHSC operating agencies, and HHSC administrative contractors will be implementing monitoring plans and activities to ensure compliance with Section 6032 of the DRA. Each monitoring agency will send information about monitoring plans and activities to its providers.

Additional Resources—Relevant laws and rules include, but are not necessarily limited to:

- Section 6032 of the Deficit Reduction Act of 2005 (Public Law 109-171) (establishes Section 1902(a)(68) of the Social Security Act, 42 U.S.C. 1396a(a))
- The Civil Monetary Penalties Law, 42 U.S.C. 1320a-7a: Civil Monetary Penalties Law
- The False Claims Act, 31 U.S.C. §§3729-3733: 31 U.S.C. Sections 3729, 3730, 3731, 3732, 3733
- Pertinent Texas Statutes and Rules:
  - Texas Human Resources Code Chapter 32, Sections 32.039 and 32.0391;
  - Texas Human Resources Code Chapter 36;
  - Texas Government Code Chapter 531, Subchapter C, Sections 531.101 et seq.;
  - Texas Administrative Code, Title 1, Part 15, Chapter 371
- Centers for Medicare and Medicaid Services (CMS) Guidance:
  - State Medicaid Directors Letter #06-025;
  - State Medicaid Directors Letter #07-003;
  - Frequently Asked Questions;
  - Official Description of the False Claims Act.
- Texas Waste, Abuse, and Fraud Hotline: 1-800-436-6184
- Texas Health and Human Services Office of Inspector General: www.hhs.state.tx.us/OIG