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Compliance Date Approaching Quickly: Certain Health Care Entities Must Have False Claims Act Compliance Policies Established by the New Year

Under section 6032 of the Deficit Reduction Act of 2005 (the "DRA"),[1] health care providers and health plans that make or receive five million dollars or more in annual Medicaid reimbursement must establish, by January 1, 2007, written policies for all employees (including management), contractors and agents that provide detailed information about certain fraud and abuse laws and about the whistleblower protections included in such laws. Specifically, these policies must include the following:

- **Detailed Information About State and Federal False Claims Laws**. The written compliance policies must provide "detailed information" regarding the False Claims Act and similar state anti-fraud statutes. Descriptions of the whistleblower provisions of such statutes must be included.
- **Detailed Provisions About Relevant Policies and Procedures**. The written policies must include "detailed provisions" regarding the entity's policies and procedures for detecting and preventing fraud, waste and abuse.
- **Whistleblower Protections Outlined in Employee Handbook**. The entity's employee handbook must include a "specific discussion" about the False Claims Act, similar state anti-fraud statutes, the federal Program Fraud Civil Remedies Act of 1986 and the whistleblower protections related to these laws. The employee handbook must also describe the "rights of employees to be protected as whistleblowers" and it must restate the entity's policies concerning false claims laws and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

Section 6032 does not require active education or training of employees, contractors or agents about these written policies. The original Senate bill required such compliance training, but the final legislation does not.

Compliance Strategies

Compliance with section 6032 is a condition of participating in Medicaid. Thus,

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entities that do not comply with section 6032 risk forfeiting their Medicaid payments. Further, non-compliance exposes entities to false claims lawsuits and could result in their exclusion from federal health care programs.

The Centers for Medicare and Medicaid Services (CMS) has yet to issue guidance regarding section 6032. For example, CMS has not yet clarified what it means to provide "detailed information" of the False Claims Act and similar state anti-fraud statutes.

Despite the lack of guidance from CMS, in order to come into compliance, all entities that meet the five million dollar threshold of section 6032 should review their state's applicable false claim laws, related whistleblower protections and any other anti-fraud requirements. Next, entities covered by section 6032 should review their existing policies and employee handbooks to determine what revisions, if any, need to be made to such materials. Once such revisions are made, entities should distribute these materials to their employees, contractors and agents.

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[1] Section 6032 of the DRA, signed into law by President Bush on February 8, 2006, amends Section 1396(a) of the Social Security Act.