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NEW FEDERAL LAW REQUIRES ADOPTION OF ADDITIONAL FRAUD AND ABUSE POLICIES EFFECTIVE JANUARY 1, 2007

On February 8, 2006, President Bush signed into law the Deficit Reduction Act of 2005, Pub. L. No. 109-171 (DRA). This legislation is intended to control government spending on entitlement programs, such as Medicaid. Specifically, the DRA is estimated to reduce the growth of Medicaid spending by nearly \$5 billion over the next five years. To achieve this goal, the legislation contains new requirements aimed at eliminating Medicaid fraud, waste and abuse. These provisions take effect on **January 1, 2007**.

Section 6033 of the DRA requires all entities that *make* or *receive* at least \$5 million in annual Medicaid payments to establish, by January 1, 2007, specific written policies and procedures that inform employees and others about federal and state false claims and whistleblower laws that may be applicable to state Medicaid programs. To comply, any healthcare payor or provider that makes or receives \$5 million in annual Medicaid payments (including participation in a Medicaid rebate program) must review and revise its employee handbooks and corporate compliance policies and programs. The inclusion of both payors and providers makes these provisions applicable to a wide range of entities in the healthcare industry, including, for example, pharmaceutical manufacturers that pay rebates to state Medicaid programs.

New Employee Education and Compliance Requirements

To comply with the DRA, covered healthcare entities must establish written policies, applicable to all employees, including management, as well as any contractor or agent of the entity. The written policies must provide detailed information on:

- The federal False Claims Act;
- Federal administrative remedies for false claims and statements;
- State laws pertaining to civil or criminal penalties for false claims and statements; and
- Whistleblower provisions under the federal and state laws

as those laws are applicable to preventing and detecting fraud, waste and abuse in federal healthcare programs. The written policies and procedures must also detail the entity's policies and procedures for protecting against fraud, waste and abuse in federal healthcare programs. Although the obligation to develop these written policies applies to entities having \$5 million in annual Medicaid payments or revenues, the required written policies must cover all federal healthcare programs.

Implications For Employee Handbooks and Corporate Compliance Plans

The DRA also requires that a covered entity include in its employee handbook a specific discussion of the laws outlined above, the policies and procedures it has implemented for detecting fraud, waste and abuse, and the rights of employees to be protected as whistleblowers. Notably, the DRA does not require a covered entity to publish an employee handbook. Instead, if the entity maintains an employee handbook, the covered information must be included.



These are significant new requirements that covered entities must approach carefully. Presumably, covered healthcare entities have already developed certain written policies and procedures as part of their corporate compliance plans that will partially satisfy the DRA. It should be assumed that satisfaction of the DRA requirements will be a necessary element of any corporate compliance plan after January 1, 2007. The requirement to provide detailed information regarding various fraud and abuse laws in employee handbooks, combined with the discussion of whistleblower protections, could potentially be an invitation for trouble. Consequently, the new employee handbook provisions must be carefully drafted.

If you have any questions regarding the DRA or would like assistance in implementing the new compliance requirements, please contact:

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