MEDICAL ASSISTANCE BULLETIN

COMMONWEALTH OF PENNSYLVANIA ● DEPARTMENT OF PUBLIC WELFARE

ISSUE DATE	EFFECTIVE DATE	NUMBER
September 7, 2007	January 1, 2007	99-07-13

SUBJECT:
Updated Regarding False Claims Provisions of Deficit Reduction Act of 2005 – Employee Education About False Claims Recovery

Michael Nardone, Deputy Secretary
Office of Medical Assistance Programs

IMPORTANT REMINDER: All Medical Assistance providers, regardless of method of claims submission will be required to register an NPI number with DPW. Learn more about the registration process and requirements at http://www.dpw.state.pa.us/Business/NPIinfo/

PURPOSE:

The purposes of this bulletin are to remind Medical Assistance (MA) providers, including MA Managed Care Organizations (MCOs) of the requirements of Section 6032 of the Federal Deficit Reduction Act (DRA) of 2005, P.L. 109-171 (S 1932) (Feb. 8, 2006), which pertains to employee education about false claims recovery; to notify entities subject to Section 6032 that the deadline for submission of their initial Attestation of Compliance has been changed to September 30, 2007; and to provide a revised Attestation form for use by entities.

SCOPE:

This Bulletin applies to any entity, including MA MCOs, that annually receives or makes payment of at least $5 million from the MA Program.

BACKGROUND/DISCUSSION:

On January 2, 2007, the Office of Medical Assistance Programs (OMAP) issued MA Bulletin 99-07-01 to notify MA providers, including MA MCOs, of the requirements of Section 6032 of the Deficit Reduction Act (DRA) of 2005, P.L. 109-171 (S 1932) (Feb. 8, 2006) which pertains to employee education about false claims recovery. Section 6032 imposes a new condition of payment on any entity that receives or makes payment of at least $5 million in annual MA payments (covered entity). As specified in MA Bulletin 99-07-01, Section 6032 requires a covered entity to:

COMMENTS AND QUESTIONS REGARDING THIS BULLETIN SHOULD BE DIRECTED TO:

The appropriate toll free number for your provider type

Visit the Office of Medical Assistance Programs website at www.dpw.state.pa.us/omap

(A) establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of Title 31, United States Code, administrative remedies for false claims and statements established under Chapter 38 of Title 31, United States Code, any State laws pertaining to civil or criminal penalties for false claims and statements, 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 (as defined in Section 1128B(f) [42 U.S.C.A. § 1320a-7b(f)]);

(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 subparagraph (A), the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste and abuse.

In MA Bulletin 99-07-01, we identified procedures for covered entities to follow in order to comply with Section 6032. In addition, we transmitted an Attestation Form for covered entities to sign and submit to the Department's Bureau of Program Integrity (BPI) to certify their compliance with Section 6032 of the DRA. We also established a deadline of December 31, 2007 for covered entities to submit their initial annual Attestation Form.

At the time we issued MA Bulletin 99-07-01, CMS had provided some minimal guidance and information to State Medicaid Agencies on compliance with Section 6032. We provided a link to CMS' initial guidance in our Bulletin. On March 22, 2007, CMS issued State Medicaid Director Letter (SMDL) #07-003 to provide its "final guidance" on section 6032.[1] In a series of Frequently Asked Questions (FAQs) transmitted with the SMDL, CMS expanded and clarified its interpretation of what entities are subject to Section 6032. According to CMS:

- Individuals and organizational units (governmental agencies, organizations, units, corporations, partnerships, or other business arrangements) can be entities for purposes of Section 6032.

[1] This Bulletin only references portions of CMS' guidance on Section 6032. If you are required to submit an Attestation of Compliance on behalf of a covered entity, you should review CMS' initial and final guidance on Section 6032. You can access CMS' initial and final guidance in their entirety and the Department of Justice official description of the Federal False Claims Act on CMS' website at: http://www.cms.hhs.gov/SMDL/SMD/itemdetail.asp?filterType=none&filterByDID=0&sortByDID=1&sortOrder=descending&itemID=CMS1197237&intNumPerPage=10.

- An entity is the largest separate organizational unit within an organization 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, even if the components are separately incorporated or located in separate States. Depending on the corporate structure of an organization, an organizational unit may include multiple subsidiaries, locations and FEINs or provider numbers.

- If a corporate parent provides Medicaid health care items or services, it is an entity, and all payments made to components of the corporate organization that provide Medicaid health care services or items are considered in determining whether the $5 million threshold is met and the requirements of Section 6032 apply.

- Except for health systems, each organizational unit within an organization is viewed separately for purposes of determining whether the $5 million threshold is met and the other requirements of Section 6032 apply; i.e., whether the organizational unit is a covered entity.

- In the case of a health system, the entire organization is considered the entity for purposes of Section 6032 because all units and sub-units of a health system are "all integrally involved in furnishing Medicaid items or services." Consequently all Medicaid payments to the health system are considered in determining whether the health system is a covered entity.

- A separate organizational unit within an organization that does **not** furnish Medicaid health care items or services is not subject to Section 6032 even though other organizational units within the same organization are covered entities for purposes of Section 6032.

In addition to amplifying its guidance on what it considers to be an entity, CMS also clarified which payments should be considered for purposes of Section 6032. According to CMS, if an entity receives or makes payments during a Federal fiscal year (October 1 – September 30) that meet or exceed the $5 million threshold, the entity must comply as of January 1 of the next fiscal year. CMS also specified that only the actual payment amounts received from the State Medicaid agency are counted toward the threshold amount, not the amounts that were billed to the State Medicaid agency. CMS further specified that that patient pay amounts and amounts received from a Medicaid MCO ***do not*** count toward the threshold.

CMS also augmented its earlier guidance on how covered entities must comply with Section 6032 in regard to their contractors and agents. CMS clarified that a covered entity must disseminate its written policies and procedures to only those contractors or agents that perform billing or coding functions for the entity, furnish or authorize the furnishing of Medicaid health care items or services on behalf of the entity, or are involved in monitoring of health care provided by the entity. CMS also stated that the contractors that perform functions not associated with the provision of Medicaid health care items or services

(e.g., copy or shredding services, grounds maintenance, hospital cafeteria, or gift shop services) are excluded from the definition of contractor.

In addition to issuing guidance on Section 6032, CMS transmitted a preprinted State Plan Amendment (SPA) for States to complete and submit to incorporate provisions relating to Section 6032 into their Title XIX State Plans. On March 28, 2007, Pennsylvania submitted its proposed SPA to CMS. As required by CMS' preprinted form, we included a description of the methodology we would use to monitor compliance with Section 6032 and the frequency with which we would re-assess compliance on an ongoing basis. Specifically, we advised CMS that BPI would require each entity to annually certify that it complies with Section 6032 of the DRA by completing and submitting to BPI a form attesting compliance with Section 6032 of the DRA. We also advised CMS that the initial annual Attestation Form would be due no later than December 31, 2007 and, thereafter, the annual Attestation Form would be due on December 31st of each subsequent year.

Subsequently, CMS required the Department to make revisions to the SPA in order for it to be approved. Most significantly, CMS instructed the Department to change the deadline for the submission of the initial Attestation Form to September 30, 2007.

In light of the CMS' required revisions to the SPA and in consideration of the additional information contained in CMS' final guidance on Section 6032, we are revising the procedures announced in MA Bulletin 99-07-01. We are also providing a new Attestation Form for use by covered entities.

PROCEDURES:

Any entity, including an MA MCO, that receives or makes payments of at least $5 million from the MA Program during a Federal fiscal year (October 1 to September 30) is a Covered Entity and must comply with Section 6032.

To comply with Section 6032, a Covered Entity must ensure that it has implemented all of the following requirements:

1) The Covered Entity must establish written policies that provide detailed information about the Federal laws identified in Section 6032(A) and any Pennsylvania laws imposing civil or criminal penalties for false claims and statements, or providing whistleblower protections under such laws, including 62 P.S. §§ 1407 (relating to provider prohibited acts, criminal penalties and civil remedies) and 1408 (relating to other prohibited acts, criminal penalties and civil remedies), the Pennsylvania Whistleblower Law, 43 P.S. §§ 1421-1428;

2) The Covered Entity's written policies and procedures must also contain detailed information regarding the Covered Entity's own policies and procedures to detect and

prevent fraud, waste and abuse in Federal health care programs, including the Medicare and MA Programs.

3) The Covered Entity must provide a copy of its written policies and procedures to its employees (including management) and to any of its contractors or agents that performs billing or coding functions for the Covered Entity, or that furnishes or authorizes the furnishing of Medicaid health care items or services on behalf of the Covered Entity, or that is involved in monitoring of health care provided by the Covered Entity.

4) If it maintains an employee handbook, the Covered Entity must include its written policies and procedures in its employee handbook.

Each Covered Entity must complete and submit an Attestation of Compliance with Section 6032 of the Federal Deficit Reduction Act. The Attestation must be signed by an individual who possesses all necessary powers and authority to execute the Attestation and make the representation contained in the Attestation on behalf of the Covered Entity and any and all MA providers included in the Covered Entity. The Covered Entity must identify each MA Provider included in the Covered Entity by providing the information specified on Attachment A—Identification Of MA Providers.

A Covered Entity is only required to submit one Attestation of Compliance with Section 6032 of the Federal Deficit Reduction Act and one Attachment A—Identification Of MA Providers, even if the Covered Entity includes more than one MA Provider.

The initial Attestation Forms for the Compliance Period beginning January 1, 2007 must be submitted on or before September 30, 2007. Attestation Forms for subsequent Compliance Periods will be due on December 31st of each subsequent year, beginning December 31, 2008.

Attestation Forms must be submitted to the Bureau of Program Integrity at:

General Delivery Address
Commonwealth of Pennsylvania
Department of Public Welfare
Office of Medical Assistance Programs
Bureau of Program Integrity
PO Box 2675
Harrisburg, Pennsylvania 17105-2675

Federal Express Address
Commonwealth of Pennsylvania
Department of Public Welfare
Office of Medical Assistance Programs
Bureau of Program Integrity
Petry Bldg. # 17
3rd Floor DGS Annex Complex
1116 East Azalea Drive
Harrisburg, Pennsylvania 17110-3494

NOTE: If you have already submitted an Attestation of Compliance for the initial Compliance Period using the form attached to MA Bulletin 99-07-01, you are **not** required to

submit the Attestation Forms transmitted with this Bulletin. If you wish to replace your submitted Attestation for the initial Compliance Period, however, you may complete and submit Attestation Forms transmitted with this Bulletin to the Bureau of Program Integrity on or before September 30, 2007.