

Compliance Policies for Educating Employees about False Claims Recovery

The Deficit Reduction Act of 2005 established the “Employee Education about False Claims Recovery.” Section 6032 of the Deficit Reduction Act of 2005 amended § 1902(a) of the Social Security Act. The revised act now requires entities that receive or make payments totaling at least \$5,000,000 annually under a State Plan approved under Title XIX or under any waiver of such a plan, to provide detailed information to employees about the False Claims Act. This includes entities that provide items or services in more than a single location, or under more than one contractual or payment arrangement if the aggregate payments to that entity meet the \$5,000,000 annual threshold. The Arkansas Medicaid Provider Manual § 142.800 requires providers to comply with the “Employee Education about False Claims Recovery.” This is a condition of participation in the Arkansas Medicaid Program.

Arkansas Medicaid Provider Manual § 142.800 explains that the entity must establish written policies for all employees including management, contractors, and agents that feature thorough information about the False Claims Acts and other named provisions in section 1902(a)(68)(A). The Social Security Act § 1902(a)(68)(A) states that those entities meeting the compliance requirements under the False Claims Act must include within the written policies a discussion of the False Claims Act, administrative remedies for false claims and statements, state laws pertaining to civil or criminal liabilities, and whistleblower protections. The entity must also include in the written policies a discussion of the entity’s procedures for the prevention of fraud, waste, and abuse. The Social Security Act § 1902(a)(68)(A) dictates that qualifying facilities shall include within the employee’s handbook all laws mentioned in the written policies, an explanation of a whistleblower’s rights, and the entity’s specific policies for preventing fraud, waste, and abuse. The entity is not required to create an employee handbook if it is not already in existence. These written policies can be made available in either paper or electronic format, but the policies must be established and circulated to all employees.

Office of the Medicaid Inspector General, through its Program Integrity Unit, may request Certification of Compliance with the Employee Education about False Claims Recovery. The Certification submitted shall state that the entity:

- (1) Has written policies that include detailed information about the False Claims Act and other provisions named in § 1902(a)(68)(A); and
- (2) The policies include:
 - (a) The entity’s policies and procedures for detecting and preventing fraud, waste, and abuse;
 - (b) A specific discussion of the laws described in the written policies; and
 - (c) A specific discussion of the rights of employees to be protected as whistleblowers.
- (3) The policies are readily available, in paper or electronic form, to all employees, contractors, or agents.
- (4) The False Claims policy must be added to the provider’s employee handbook if the provider has such a handbook. Employee handbooks will be reviewed for compliance as part of an audit by the Office of the Medicaid Inspector General.

The Office of the Medicaid Inspector General (OMIG) has drafted guidelines to follow when complying with the “Employee Education about False Claims Recovery” under Section 6032 of the Deficit Reduction Act of 2005. First, the education program should extend to all persons obligated to abide by the entity’s codes of conduct and compliance. False Claims Recovery Education should be included within new employee training as well as annual policy reviews. Designating a Chief Compliance Officer or supervisor to field questions concerning fraud, waste, abuse or whistleblower protections will ensure employees’ understanding of the False Claims Act.

Employees should learn the required materials through the use of innovative, wide-ranging teaching methods such as PowerPoint slideshows or Q and A’s. When presenting, it may be helpful to give a brief synopsis of the Medicaid program and how it impacts the business environment. Entities should define Medicaid fraud and illegal Medicaid participation as promulgated under federal and state law. Describing the functions of the Office of the Inspector General and the OMIG will put the compliance program in perspective for employees. More specifically, providers’ False Claims Act Recovery Education Programs should include discussions of laws such as the Program Fraud Civil Remedies Act of 1986 (*31 U.S.C. §§ 3801 to 3802*), Arkansas Medicaid Fraud False Claims Act (*Ark. Code Ann. §§ 20-77-901 to 20-77-911*), and any other relevant federal and state laws. Consider sharing current False Claims Act violations and the corresponding sentences to inform employees of the magnitude of these laws.

The relevant laws should be explained in a clarifying manner so as to provide a comprehensive understanding of the laws and the legal ramifications for violating such laws. Some entities may choose to go so far as to create short, post-tests for employees following a False Claims Recovery Act Education Program. Upon completion of the education program, facilities may require each employee to sign and certify his or her understanding of the law. Providers should strive for employees to be able to recognize and avoid high-risk activities or relationships that involve fraud, waste, or abuse. Not only should employees understand the differences between fraud, waste, and abuse, but employees should distinguish between fraud and mistake. Essentially, entities should endeavor for their employees to have a working understanding of the False Claims Act and a sense of responsibility to not commit fraud, waste, and abuse. In addition, whistleblower laws should be highlighted and closely explained in the policy manual as well as the employee handbook, if an employee handbook exists. Providers should have a system in place that allows whistleblower protection, whether that is setup through a reporting hotline or a locked comment box. Basically, entities need employees who can easily recognize what practices may constitute fraud, waste, and abuse, and they need a reporting system in place that can protect those whistleblower employees.