

COMPLIANCE EDUCATION AND TRAINING REQUIRED SOON FOR DEFICIT REDUCTION ACT COMPLIANCE

The January 1, 2007 deadline for compliance with the education and training component of the Deficit Reduction Act of 2005 (the "DRA") is near. Hospitals, health systems, nursing homes and other entities that receive annual Medicaid payments of \$5 million or more must provide employees, contractors, vendors and agents with detailed information about the False Claims Act, any state laws that pertain to civil or criminal penalties for making false claims and statements, and whistleblower protection. Compliance with the DRA provisions are a condition of continued Medicaid reimbursement. Failure to meet the deadline may result in false claims exposure, and exclusion from participation in the Medicare and Medicaid programs.

Health care organizations must develop and implement compliance policies to educate and notify employees, contractors, vendors and agents about false claims, false statements and whistleblower protections under applicable federal and state fraud and abuse laws and update employee handbooks with the same information. The DRA does not clarify or explain the "detailed information" that is expected to be included in the written policies, however, it states that compliance policies must include "detailed information" about the following:

- The Federal False Claim Act;
- The administrative remedies for false claims and statements pursuant to the Program Fraud Civil Remedies Act of 1986;
- The California False Claims Act Government Code Sections 12650-12656;
- Whistleblower protections under federal and state laws;
- The roles of these laws in preventing and detecting fraud, waste and abuse, and applicable criminal penalties; and
- The health care organization's policies and procedures for detecting and preventing fraud, abuse and waste of government health care programs.

While most health care organization compliance policies currently reference federal fraud and abuse regulations, state law is often overlooked and whistleblower protections are not routinely referenced or emphasized. For national health care organizations, the educational requirements will need to be tailored for each state in which the health care organization operations. In addition, the DRA mandates that employee handbooks or manuals include all of the above-referenced information, and the rights of employees to be protected as whistleblowers. This will likely require health care organizations to revise, update, gain approval for, and disseminate new employee handbooks. Furthermore, while employee training is not specifically required, the provisions clearly contemplate that entities will inform their employees of their policies. Compliance with the DRA will require entities, at a minimum, to:

- Examine and analyze each and every one of the Federal and State laws and regulations cited above;
- Evaluate, and update if necessary, existing entity policies regarding detecting, preventing and addressing fraud, waste and abuse;
- Review existing Compliance Program's Code of Conduct to ensure that it includes the required description of the false claims laws, penalties and remedies and whistleblower protections.
- Create a policy(ies) that includes detailed information regarding the above laws and including, at a minimum, the laws and regulations. The policies should contain, at a minimum, a description of the individual laws: (a) purpose/aims; (b) contents; (c) definitions; (d) applicability; (e) requirements; (f) procedures; (g) afforded rights; (h) protections; (i) enforcement provisions; and (j) penalties
- Update Employee Handbooks and other similar employee or vendor materials, to include the information required by the DRA and mirror the information contained in newly created policies.

- Have the newly created policies and procedures, and the revised Employee Handbook, reviewed by legal counsel for completeness and accuracy.
- Determine how the new policies and revised Employee Handbook will be disseminated to employees, implement the decision, and notify, educate and train employees on the new policies.

It is important to note that the DRA requirements extend not only to employees and agents of the health care organization, but also extends to employees of contractors of the health care organization. As a result, health care organizations must ensure that every vendor is aware of and adheres to the DRA requirements (and may need to revise vendor contracts to require such compliance). Health care organizations are encouraged to act now, as the penalties for noncompliance can result in a forfeiture of all Medicaid payments during the period of noncompliance and/or a future inability to bill for Medicaid and/or Medicare services. A detailed documented plan for compliance with the DRA is mandatory. CMS has promised guidance about the DRA requirements, but to date nothing has been issued. Until specific guidance is issued, health care organizations will need to work with legal counsel to establish policies. SORTM has assembled a team of experienced health care law attorneys who assist health care organizations in health care compliance and enforcement matters, including compliance education and training, governmental investigations, and civil/criminal fraud and abuse litigation. We can provide practical advice as you develop and implement your DRA compliance strategy. If you have any questions about complying with the DRA or would like additional information, please contact Michael Dowell at mdowell@sortm.com or the lawyer in the firm who generally handles your legal matters.