

October 4, 2006

Employee Education on False Claims Recovery

The Deficit Reduction Act's¹ ("DRA") requirements that manufacturers educate employees about false claims laws take effect on January 1, 2007. The DRA also created a number of significant changes in the Medicaid Rebate program, to the calculation of AMP and Best Price, and in reimbursement methodology, which changes have been summarized in a previous Covington & Burling LLP update.²

Companies that receive or make annual Medicaid payments of at least \$5 million must comply with the DRA's false claims education provisions.³ Those manufacturers are required to develop and adopt new policies and modify the company's employee handbook.

Manufacturers must establish written policies for all employees (including management), and any contractor or agent, that provide detailed information about the federal False Claims Act, administrative remedies for false claims and statements, any state laws pertaining to civil or criminal penalties for false claims and statements, and whistleblower protections under such laws. Detailed provisions regarding the manufacturer's policies and procedures for detecting and preventing fraud, waste, and abuse must be included as part of such written policies.

The manufacturer's employee handbook must include a specific discussion of the laws described above, the rights of employees to be protected as whistleblowers, and the manufacturer's policies and procedures for detecting and preventing fraud, waste, and abuse.

Manufacturers will need to decide the level of detail to provide to employees given that the DRA is largely silent on the amount of information that must be communicated. In addition to the preparation, review, revision and adoption of these provisions, manufacturers should consider what training should be given to employees on these changes. The Senate's original proposal included a requirement that employers provide false claims training, but the final bill requires only written policies. While the DRA is silent about training, a prudent approach would be to communicate these changes in the same manner that the company has communicated other policy and handbook changes in the past.

With a January 1, 2007 implementation date rapidly approaching, companies should begin revising their policies and employee handbooks to permit thoughtful and orderly implementation of the changes by the new year.

¹ Pub. Law No. 109-171

² Covington & Burling's March 3, 2006 update

³ Pub. Law No. 109-171, Section 6032

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