

An Audit of Deficit Reduction Act Compliance for Federal Fiscal Year 2018



Report Number 2019-04

June 28, 2019



Utah Office of
Inspector General

Gene Cottrell
Inspector General

June 28, 2019

To: Utah Department of Health

Please see the attached report, **An Audit of Deficit Reduction Act Compliance for Federal Fiscal Year 2018**, Report 2019-04. An Executive Summary is included at the inception of this report. The objectives and scope of the audit are explained on page 3 of this report.

Sincerely,

Gene Cottrell
Inspector General
Utah Office of Inspector General

cc: Justin Harding, Chief of Staff, Office of Governor Gary R. Herbert
J. Stuart Adams, President of the Utah Senate
Brad Wilson, Speaker of the Utah House of Representatives
Joseph Miner, MD, Executive Director, Utah Department of Health
Nathan Checketts, Deputy Director, Utah Department of Health, Director Medicaid and Health Financing
Emma Chacon, Utah Medicaid Division Operations Director
Shari Watkins, Chief Administrative Operations Director, Utah Department of Health
Tonya Hales, Assistant Division Director, Utah Department of Health
Aaron Eliason, Audit Liaison, Utah Department of Health
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TABLE OF CONTENTS

| | |
|--|----|
| Executive Summary | 1 |
| Introduction..... | 2 |
| Background..... | 2 |
| Objectives and Scope | 3 |
| Methodology..... | 3 |
| Finding 1: State Plan DRA Compliance Methodology Lacks Sufficient Detail | 5 |
| Recommendations | 5 |
| Glossary of Terms | 6 |
| Management Response..... | 7 |
| Evaluation of Management Response..... | 9 |
| Contact and Staff Acknowledgement | 10 |

EXECUTIVE SUMMARY

Medicaid is a joint state and federal government health insurance program established by Title XIX of the 1965 Social Security Act. State law designates the Utah Department of Health (DOH) the single state agency responsible for administration of the Utah Medicaid program. At the federal level, the Centers for Medicare and Medicaid Services (CMS) is responsible for regulation and oversight of Medicaid. Together, the State and federal government provide funding for Utah Medicaid at percentage rates determined by the federal medical assistance percentage (FMAP). Throughout this report, “Medicaid funds” refers to the shared federal and state taxpayer dollars used to fund Utah Medicaid.

On February 8, 2006, the President signed the Deficit Reduction Act of 2005 (DRA). The DRA contains a number of provisions focused on Medicaid fraud, waste, and abuse detection and enforcement. One of the provisions included in the DRA (Section 6032—Employee Education about False Claims Recovery) amended the Social Security Act to require all state Medicaid plans to include requirements for certain entities operating within the Medicaid program to establish policies and procedures to educate employees, managers, and contractors about various items including: the False Claims Act, administrative remedies for false claims, state false claims laws, and whistleblower protections available under such laws. State Medicaid programs were required to implement this provision by January 1, 2007. Section 4.42 of the Utah Medicaid state plan (State Plan) describes how Utah Medicaid implemented Section 6032 DRA requirements.

The State Plan requires all entities subject to Section 6032 DRA requirements to verify ongoing compliance by attestation and annual random audit. The Utah Office of Inspector General conducts the compliance verification pursuant to the Memorandum of Understanding between the DOH and the Utah Office of Inspector General (UOIG).

Audit Objective:

Determine if entities who receive or pay at least \$5,000,000 of Medicaid funds annually under the State Plan approved under Title XIX or under any waiver of the State Plan are compliant with Section 6032 of the Deficit Reduction Act.

Audit Findings:

One entity failed to return an Attestation of Compliance. Through this first instance of a failure to attest, the UOIG determined that although the State Plan includes compliance methodology about action taken against entities that fail to attest, the compliance methodology lacks detail necessary for compliance enforcement.

INTRODUCTION

BACKGROUND

Since January 1, 2007, entities¹ that receive or pay at least \$5,000,000 of Medicaid funds annually (based on federal fiscal year—October 1st through September 30th) under the Utah Medicaid State Plan (State Plan), or any waiver of the state plan, are required to comply with Section 6032 of the Deficit Reduction Act (DRA). Under the DRA, entities that meet the \$5,000,000 threshold are required to establish written policies for all employees that provide detailed information about the False Claims Act; administrative remedies for false claims and statements; state laws that provide civil or criminal penalties for making false claims and statements; and whistleblower protections under such laws. Those written procedures must also include detailed information about the entity's procedures for detecting and preventing fraud, waste, and abuse. Finally, any employee handbook for the entity should include a specific discussion of the laws described above, the rights of employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse (see U.S.C. § 1396a(a)(68)).

In August of 2017, the Utah Department of Health (DOH) and the Utah Office of Inspector General (UOIG), entered into a Memorandum of Understanding (MOU). Along with other program integrity responsibilities, the terms of the MOU delegates responsibility for verifying compliance with Section 6032 of the Deficit Reduction Act of 2005 (DRA) to the UOIG. Compliance verification follows a three-year cycle, as defined by Attachment 4.42-A of the State Plan. During the first year, all entities that meet the \$5,000,000 threshold are required to complete compliance attestation. In the subsequent two years, any new entities paying or receiving at least \$5,000,000 of Medicaid Funds annually are required to complete compliance attestation. The State Plan also requires an annual "random audit of all entities to determine compliance with section 6032 of the DRA." Entities selected for random audit produce copies of their written policies and procedures for compliance review.

FUNDING SOURCE

The federal government and the State of Utah jointly fund Utah's Medicaid program. Funding rates are set every federal fiscal year (FFY) by the Federal Medical Assistance Percentage (FMAP). For program costs, the federal participation ranges from no less than 50% and no more than 83%. Administrative funding rates are generally 50%, but can be as much as 100% federal funds.

¹ As defined by the Utah Medicaid state plan, "[a]n "entity" includes a governmental agency, organization, unit, corporation, partnership, or other business arrangement (including any Medicaid managed care organization, irrespective of the form of business structure or arrangement by which it exists), whether for profit or not for profit[.]" "Utah Medicaid State Plan." Accessed May 6, 2019. <https://health.utah.gov/stplan/>.

OBJECTIVES AND SCOPE

Audit Objective:

Determine if entities who receive or pay at least \$5,000,000 of Medicaid funds annually under the State Plan approved under Title XIX or under any waiver of the State Plan are compliant with Section 6032 of the Deficit Reduction Act (DRA).

Audit Scope:

The scope of the audit covered October 1, 2017 through September 30, 2018 (Federal Fiscal Year 2018) for entities or contractors that received or paid at least \$5,000,000 of Medicaid funds under the Utah Medicaid State Plan, or any waiver of the State Plan.

METHODOLOGY

To carry out the audit objective, the UOIG executed the two methods of compliance verification defined in Attachment 4.42-A of Utah Medicaid's State Plan: compliance attestation and random audit.

The UOIG conducted fieldwork between January and May of 2019. Initial fieldwork included a review of federal and state laws; Section 4.42 and Attachment 4.42-A of the Utah Medicaid's State Plan; administrative rules related to the audit objective; Utah Medicaid's Provider Agreement; and Section 33 of the Memorandum of Understanding between the DOH and the UOIG.

Using the Medicaid Data Warehouse, the UOIG obtained a list of entities that paid or received \$5,000,000 or more of Medicaid Funds during the audit scope period. For the annual random compliance audit, the UOIG randomly selected a ten (10) percent sample from the 65 entities that matched the \$5,000,000 criteria. Every entity that matched the \$5,000,000 criteria, but was not part of the ten (10) percent random audit sample, participated in the required compliance attestation for this first year of a new three year compliance cycle.

The UOIG mailed notice letters to the entities selected for random compliance audit and the entities required to complete compliance attestation. Any entity that did not respond within the specified deadline received courtesy follow-up by phone, letter, and/or email. The UOIG reviewed the Attestations of Compliance to verify that the document included an attestation signature. Additionally, the UOIG also reviewed the documents provided in response to the notice of random compliance audit.

Finally, the UOIG met with Utah Medicaid's Program Integrity Committee to discuss State compliance requirements.

CONCLUSION

The UOIG determined that sixty-five (65) entities received or made payments of Medicaid funds totaling at least \$5,000,000 or more during FFY 2018.

Of the fifty-eight (58) entities required to complete compliance attestation, fifty-seven (57) entities signed Attestations of Compliance verifying compliance with Section 6032 of the DRA. One entity failed to return an attestation.

The UOIG received a mixture of documents from the seven (7) entities selected for random compliance audit including policies, procedures, handbooks, manuals, and training materials.

To aid states in the implementation of DRA Section 6032 requirements, the Centers for Medicare and Medicaid Services (CMS) issued a letter of guidance to State Medicaid Directors in December of 2006. CMS issued a second letter in March of 2007 to address questions and provide additional guidance. In the letters, CMS instructs, “[e]ach State must determine the manner by which it will ensure an entity’s compliance with the requirements of section 6032, including the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis.”² State must include a description of their compliance methodology in the State Plan.

UOIG determined that of the fifty-eight (58) entities required to complete compliance attestation, one entity failed to return an attestation. This is the first instance the UOIG has reported a failure to return an attestation. Without the required attestation, the UOIG does not have written assurance that the entity is in compliance.

Attachment 4.42-A of the State Plan outlines compliance methodology for DRA Section 6032 compliance. Regarding measures for cases of failing to return an attestation or meet compliance, the State Plan calls for “appropriate action to be taken,” but provides no further details on penalties, sanctions, or follow-up to correct deficiencies. The appropriate course of action, including timelines, for the entity that failed to return an attestation is unclear in the State Plan.

Without clear information that adequately explains the specific action(s) Utah Medicaid will take, Utah Medicaid is susceptible to irregularities in the response to instances of failure to return an attestation or meet compliance. As previously identified, the State Plan broadly calls for “appropriate action” without defining steps, timelines for corrective action, or specifying penalties or sanctions for failure to attest or meet compliance.

Recommendations

- 1.1 Utah Medicaid should clearly define action and timelines for entities that fail to return an attestation or meet DRA Section 6032 compliance, to ensure consistency in how the State handles instances of failure to demonstrate or provide written assurance of compliance.

² “CMS Letter from CMS Director, Dennis G. Smith to State Medicaid Director.” March 22, 2007. Accessed April 11, 2019. <https://downloads.cms.gov/cmsgov/archived-downloads/SMDL/downloads/SMD032207.pdf>.

GLOSSARY OF TERMS

| <u>Term</u> | <u>Description</u> |
|-------------|--|
| CMS | Centers for Medicare and Medicaid Services |
| DOH | Utah Department of Health |
| DRA | Deficit Reduction Act |
| FMAP | Federal Medical Assistance Percentage |
| FFY | Federal Fiscal Year |
| MOU | Memorandum of Understanding |
| State Plan | Utah Medicaid State Plan |
| UOIG | Utah Office of Inspector General |

MANAGEMENT RESPONSE



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Utah Department of Health

JOSEPH K. MINER, MD, MSPH, FACPM
Executive Director

Division of Medicaid and Health Financing

NATE CHECKETTIS
Deputy Director, Utah Department of Health
Director, Division of Medicaid and Health Financing

June 28, 2019

Gene Cottrell
Inspector General
Office of the Inspector General of Medicaid Services
P.O. Box 14103
Salt Lake City, Utah 84114

Dear Mr. Cottrell:

Thank you for the opportunity to respond to the audit titled *Audit of Deficit Reduction Act Compliance for Federal Fiscal Year 2018* (Report 2019-04). We appreciate the effort and professionalism of you and your staff in this review. Likewise, our staff spent time collecting information for your review, answering questions, and planning changes to improve the program. We believe that the results of our combined efforts will make a better, more efficient program.

We concur with the recommendation in this report. The Department of Health is committed to the efficient and effective use of taxpayer funds and values the insight this report provides on areas that need improvement.

Sincerely,

A handwritten signature in black ink that reads "Nate Checkettis".

Nate Checkettis
Deputy Director, Department of Health
Division Director, Medicaid and Health Financing



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Response to Recommendations

Recommendation 1.1

Utah Medicaid should clearly define action and timelines for entities that fail to return an attestation or meet DRA Section 6032 compliance, to ensure consistency in how the State handles instances of failure to demonstrate or provide written assurance of compliance.

Department Response:

We concur with this recommendation. The Department will clearly define, in policy and rule, the necessary actions and timelines for entities that fail to return an attestation or meet DRA Section 6032 compliance

Contact: Emma Chacon, Operations Director, Division of Medicaid and Health Financing, 801-538-6577

Implementation Date: January 1, 2020



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EVALUATION OF MANAGEMENT RESPONSE

The Department of Health (Department) concurs with the recommendation of this report. The Department's response includes designation of a person responsible for implementing the policy and rule changes within a specified deadline. The response is appropriate to create and implement a clearly defined policy and rule, the necessary actions and timelines for entities that fail to return at attestation or meet DRA Section 6032 compliance.

UTAH OIG CONTACTS AND STAFF ACKNOWLEDGEMENT

UTAH OIG CONTACT



Rachel Buchi
Auditor

Neil Erickson
Audit Manager

UTAH OIG MISSION STATEMENT

The Utah Office of Inspector General of Medicaid Services, on behalf of the Utah Taxpayer, will comprehensively review Medicaid policies, programs, contracts and services in order to identify root problems contributing to fraud, waste, and abuse within the system and make recommendations for improvement to Medicaid management and the provider community.

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