

An Audit of Deficit Reduction Act Section 6032 Compliance
Federal Fiscal Year 2021



Report Number A2022-02

June 15, 2022



Utah Office of
Inspector General

Gene Cottrell
Inspector General

June 15, 2022

To: Utah Department of Health

Please see the attached report, **An Audit of Deficit Reduction Act Section 6032 Compliance for Federal Fiscal Year 2021**, Report A2022-02. 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 D. Cottrell

Gene Cottrell
Inspector General
Utah Office of Inspector General

cc: Jon Pierpont, Chief of Staff, Office of Governor Spencer Cox
Sophia Di Caro, Executive Director Governor's Office of Management and Budget
J. Stuart Adams, President of the Utah Senate
Jacob L. Anderegg, Senate Chair, social Services Appropriations Subcommittee
Brad Wilson, Speaker of the Utah House of Representatives
Paul Ray, House Chair, Social Services Appropriations Subcommittee
Tracy Gruber, Executive Director of Utah Department of Human Services
Nate Checketts, Executive Director, Utah Department of Health
Tonya Hales, Assistant Deputy Director, Utah Department of Health
Jennifer Strohecker, Medicaid Director, Division of Medicaid and Health Financing
Eric Grant, Medicaid Assistant Division Director
Brian Roach, Medicaid Assistant Division Director
Aaron Eliason, Medicaid Audit Liaison
Daniel Clayton, Internal Audit Director, Utah Department of Health

TABLE OF CONTENTS

Executive Summary.....	1
Introduction.....	2
Background.....	2
Objectives and Scope.....	3
Methodology.....	4
Prior Audit Recommendations	4
Conclusion	5
Finding 1: Medicaid’s revision to R414-1-31 titled “Withholding of Payments” lacks Section 6032 measures for entities audited and found noncompliant	6
Recommendations.....	8
Finding 2: Medicaid does not have an SOP for corrective action for DRA noncompliance or partial compliance.....	9
Recommendations.....	9
Finding 3: The Medicaid website and provider manuals do not include DRA Section 6032 requirements, guidance or tools to assist providers implementation.....	10
Recommendations.....	10
Appendix A: Utah Medicaid State Plan, Section 4.42.....	11
Appendix B: Utah Medicaid State Plan, Attachment 4.42-A.....	14
Appendix C: Utah Administrative Rule R414-1-31 Withholding of Payment.....	15
Appendix D: DRA 2005 Section 6032	16
Appendix E: Example DRA Section 6032 Checklist	18
Glossary of Terms.....	20
Management Response	21
Evaluation of Management Response	22
Contact and Staff Acknowledgement	23

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 (UDOH) as the single state agency responsible for administration of the Utah Medicaid program (Utah Medicaid). At the federal level, the Centers for Medicare and Medicaid Services (CMS) is responsible for regulation and oversight of Medicaid. Together, Utah and the federal government jointly fund Utah Medicaid at percentage rates determined by the federal medical assistance percentage (FMAP). Throughout this report, “Medicaid funds” refers to the federal and state taxpayer dollars used to fund Utah Medicaid.

On February 8, 2006, President Bush signed the Deficit Reduction Act of 2005 (DRA) into law. Several provisions in the DRA changed the Medicaid program. One of those changes requires any entity that received payments of at least \$5,000,000 annually of Medicaid funds to have written policies and procedures in place. Specifically, under DRA Section 6032, these entities must establish written policies to provide employees, managers, and contractors with detailed information about the following:

- 1 False Claims Act;
- 2 Administrative remedies for false claims and statements;
- 3 State laws pertaining to civil or criminal penalties for false claims and statements;
- 4 Whistleblower protections available under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs; and
- 5 Policies and procedures for detecting and preventing fraud, waste, and abuse.

State Medicaid programs were required to impose requirements of DRA Section 6032 by January 1, 2007, and amend their State Plan no later than March 31, 2007. The amendments to Utah’s Medicaid State Plan (State Plan) are located in Section 4.42 and Attachment 4.42-A. The State Plan requires all entities subject to DRA Section 6032 requirements to verify compliance by attestation and/or annual audit. The Utah Office of Inspector General (UOIG) performs ongoing compliance verification pursuant to the Memorandum of Understanding (MOU) between UDOH and UOIG.

Audit Objectives:

- 1 Determine if entities that received or paid at least \$5,000,000 of Medicaid funds, during federal fiscal year (FFY) 2021 complied with DRA Section 6032.
- 2 Determine if Utah Medicaid implemented the prior recommendations.

Audit Findings:

- 1 Medicaid’s revision to R414-1-31 lacks Section 6032 measures for entities audited and found noncompliant.
- 2 Medicaid does not have an SOP for taking corrective action for DRA noncompliance or partial compliance.
- 3 The Medicaid website and provider manuals do not include DRA Section 6032 requirements, guidance or tools to assist implementation by providers.

INTRODUCTION

BACKGROUND

Since January 1, 2007, entities that receive or pay at least \$5,000,000 of Medicaid funds annually under the State Plan, or any waiver of the State Plan, are required to comply with DRA Section 6032. Entities that meet the \$5,000,000 threshold are required to establish written policies for all employees, managers, and contractors that provide detailed information about:

- False Claims Act;
- Administrative remedies for false claims and statements;¹
- State laws that provide civil or criminal penalties for making false claims and statements;
- 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; and
- Policies and procedures for detecting and preventing fraud, waste, and abuse.

Additionally, employee handbooks must include a specific discussion of the items listed above.

Compliance Oversight: 3 Year Cycle

As part of the implementation process, CMS required each state with a Medicaid program to amend their State Plan to define the manner and methodology of DRA Section 6032 compliance oversight. Attachment 4.42-A of the Utah's State Plan defines a 3-year cycle for DRA Section 6032 compliance. During the first year of the compliance cycle, all entities that meet the \$5,000,000 threshold are required to complete compliance attestation. In the subsequent two years, new entities paying or receiving at least \$5,000,000 of Medicaid funds annually are required to complete compliance attestation. Attachment 4.42-A also defines an annual audit of all entities that meet the \$5,000,000 threshold. Entities selected for review are required to produce copies of written policies and procedures and handbooks for compliance review.

Roles and Responsibilities

UDOH delegated responsibility for “perform[ing] compliance reviews and conduct[ing] audits to ensure entities comply with the requirements of Section 6032 of the Deficit Reduction Act of 2005 as described in the Utah Medicaid State Plan Section 4.42 and Attachment 4.42-A” to UOIG through a Memorandum of Understanding (MOU).²

¹ In 1986, Congress enacted the Program Fraud Civil Remedies Act (PFCRA), codified at 31 U.S.C. §§ 3801-3812. The PFCRA provides administrative remedies for false claims and statements when the liability is \$150,000 or less and the Department of Justice declines to pursue FCA remedies. Importantly, while PFCRA and FCA are complementary laws and similar in many respects, they are two different federal laws.

² “Utah Department of Health Memorandum of Agreement.” August 2017.

Utah Code Section 63A-13-201 created the Utah Office of Inspector General of Medicaid Services (UOIG) “as an independent entity within the Department of Administrative Services.”² In doing so, the UOIG is independent from the UDOH, the single state agency responsible to administer the Utah Medicaid program. UOIG’s placement outside of UDOH is intentional and, as is the case with other inspectors general, is critical to the independent and objective work of the office. Defining the duties and powers of UOIG, Utah law states, “[t]he office may not, in fulfilling the duties of Subsection (1), amend the state Medicaid program or change the policies and procedures of the state Medicaid program.”³

In Utah, state law designates UDOH as the single state agency responsible for administration of the Utah Medicaid program. Program operating responsibilities, such as development of policies and procedures necessary to administer the Utah Medicaid State Plan, are the responsibility of UDOH pursuant to Utah Code Section 26-1-18.

Prior 3-year Compliance Cycle (FFY 2018–2020)

During the prior 3-year compliance cycle, UOIG found that the compliance methodology outlined in the State Plan lacks sufficient detail for enforcement in instances of failure to return an attestation of DRA Section 6032 compliance. UDOH concurred with the finding and provided implementation dates for UDOH to clearly define in policy and rule the necessary actions and timelines for non-compliant entities.

UOIG also recommended that UDOH review the State’s manner and methodology for DRA Section 6032 compliance oversight to develop clear, certain, and complete compliance criteria to ensure entity compliance with DRA Section 6032 and consistent compliance verification. UDOH disagreed with this recommendation and did not act on UOIG’s recommendation to review Utah’s compliance guidance for completeness.

FUNDING SOURCE

Utah receives matching payments from the federal government to pay for health care coverage and long term services for Utah Medicaid recipients. The matching payment rates, the federal medical assistance percentage (FMAP), are set every federal fiscal year. Federal matching payments range from 50-100%.

OBJECTIVE AND SCOPE

Audit Objectives:

1. Determine if entities that received at least \$5,000,000 of Medicaid funds during the period October 1, 2020 through September 30, 2021 under the State Plan, under Title XIX or under any wavier of the State Plan are compliant with DRA Section 6032.
2. Determine if Utah Medicaid implemented the prior recommendations.

² As of July 1, 2021 the three Departments of Administrative Services, Technology Services and Human Resource Management consolidated to become the Department of Government Operations.

<https://utahpolicy.com/politics/60116-say-hello-to-the-new-department-of-government-operations>

³ <https://utahpolicy.com/politics/60116-say-hello-to-the-new-department-of-government-operations>

Audit Scope:

The scope of the audit covered FFY 2021 for entities that received or paid at least \$5,000,000 of Medicaid funds under the State Plan, or any waiver of the State Plan. FFY 2021 is year one of the three year cycle described in Attachment 4.42-A of the Utah's State Plan for DRA Section 6032 compliance. See Appendix B.

METHODOLOGY

The UOIG performed the two methods of compliance verification defined in Attachment 4.42-A of the State Plan: compliance attestation and audit.

The UOIG conducted fieldwork between January and April of 2022. Initial fieldwork included review of federal and state laws; Section 4.42 and Attachment 4.42-A of the State Plan; federal policy guidance; and Section 5.2 of the Memorandum of Understanding between the UDOH and the UOIG.

Using the Medicaid Data Warehouse, the UOIG obtained a list of entities that received at least \$5,000,000 of Medicaid funds during the audit scope period. The UOIG reviewed all of the entities by tax identification number that received at least \$5,000,000. The UOIG randomly selected 10% of the entities to audit documentation of DRA compliance. The 90% of entities not selected for a detail compliance audit received notices of compliance attestation requiring certification of compliance.

The UOIG mailed notice letters to the entities selected for the compliance attestation and required the entities to complete certification of compliance within the 45 days required by the State Plan. Any entity that did not respond within 30 days received a courtesy follow-up by phone or email. The UOIG reviewed the Attestations of Compliance to verify the document included a signature. Finally, the UOIG reviewed the documents provided by entities in response to the notices of compliance audit.

Prior Audit Recommendations

1.1 Utah Medicaid should review its manner and methodology for DRA Section 6032 compliance oversight and develop clear, certain, and complete measures—by compliance checklist or otherwise—to ensure entity compliance with DRA Section 6032 and consistent compliance verification. UOIG will continue to be available for discussion and to provide information on its research of checklists used by other states.

Department Response:

“The Department concurs with this recommendation.”

Contact: Emma Chacon, Interim Director Division of Medicaid and Health Financing.
Implementation Date: December 31, 2021

Status: Open, Not yet implemented

1.2 Utah Medicaid should clearly define action for entities that fail to meet DRA Section 6032 compliance to ensure consistency in how the State handles instances of non-compliance.

Department Response:

“The Department concurs with this recommendation. The Department is in the process of amending R414-1-31 to outline the consequences if a provider fails to comply with the DRA. The rule was filed on June 15, 2021.”

Status: Incomplete for Audits of Compliance (See Finding 1 below)

Other recommendations also remain open but are dependent on the implementation of recommendation 1.1 and potentially, updating of the MOU.

CONCLUSION

The UOIG determined that 70 entities received or made payments of Medicaid funds totaling at least \$5,000,000 during FFY 2021. Of the 70 entities that reached the \$5,000,000 threshold, UOIG randomly selected seven entities for a compliance audit. UOIG requested that the seven selected for compliance audits provide copies of policies and procedures; codes of conduct/ethics; employee manuals/handbooks; training materials; and compliance plans. In response to the compliance audit, UOIG received policies and procedures; codes of conduct/ethics; employee manuals/handbooks; training materials; and compliance plans for six of the seven entities selected for compliance audit. Delta Dental Insurance Company (Delta Dental) received payments from Utah Medicaid totaling \$18,040,893.92 during FFY2021. Delta Dental stated they had no program in Utah during FFY 2021 and hence did not comply with the UOIG audit request for the applicable policies and procedures, or employee handbook.

UOIG determined only three of the six entities written policies and procedures, manuals and handbooks complied with all Section 6032 requirements. The 63 entities not selected for a compliance audit received requests for attestations of compliance. The UOIG received attestations of compliance from all but one of the 63 during fieldwork. The one entity not compliant with the request for a signed attestation during the fieldwork finally did comply with a signed attestation on May 21.

Medicaid, during 2021, amended Utah Administrative Rule R414-1-31 (the Rule) entitled “Withholding of Payments” to include withholding of payments to providers determined by the UOIG or DOH to be noncompliant. The Rule correctly refers to compliance with Section 6032 of the DRA for performance of the *attestations of compliance*, but only refers to two of the five Section 6032 requirements for the *audit of compliance*. Appendix C contains the complete R414-1-31 for reference.

Attestations

The State Plan Section 4.42-A attachment requires notification of the attestation of compliance to entities who received at least \$5,000,000 (applicable entities) in payments during the prior FFY. The State Plan requires recipients of the notification if compliant, to sign attesting to compliance and return within 45 days. The Utah State Plan requires attestation of compliance from all applicable entities every three years and from newly applicable entities for years two and three of the cycle.

UOIG sends attestations during year one of the three-year cycle to all applicable providers, except to those selected for a detail audit. UOIG also sends attestations during years two and three to provider entities who received at least \$5,000,000 in Medicaid payments during the most recent FFY but not during the prior year(s) of the three-year cycle.

The Rule now provides the consequence of withholding payments to entities not submitting an attestation of compliance as requested. (See Appendix C)

Audits

The State Plan Section 4.42-A methodology requires Medicaid to conduct an audit annually using a randomly selected sample of all entities to test for compliance with Section 6032 of the DRA.

The UOIG notifies the entities randomly selected for testing to provide written policies and procedures, and an employee handbook if any that illustrate compliance by Section 6032. The UOIG audits for inclusion of the five elements required by Section 6032 (See Appendix D).

Deficiencies of the Utah Administrative Rule 414-1-31 for audits of compliance:

1. The rule does not provide consequences for entities whose policies and procedures are deficient in any or all of the elements required by Section 6032 of the DRA of 2005.
2. The rule implies an employee handbook is a requirement. Section 6032 and the State Plan state “...include in any handbook...” In other words, if one exists it must include ...
3. The rule does not include contractors, agents, specifically included in Section 6032.

The deficiencies of R414-1-31 make it unenforceable for entities whose policies and procedures lack the elements required by Section 6032.

The table illustrates how entity policies and procedures can be noncompliant with Section 6032 while compliant with Rule 414-1-31. In other words, the rule is ineffective, unenforceable for compliance audits of entities whose policies do not comply with Section 6032.

The table below compares the DRA Section 6032 requirements to Rule 414-1-31 requirements.

DRA Section 6032 Requirements	Rule 414-1-31 Requirements
	The Department or the Utah Office of the Inspector General may determine a provider to be noncompliant if the provider cannot submit, upon request:
(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,	Not Included
Administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code	Not Included
any State laws pertaining to civil or criminal penalties for false claims and statements,	Not Included
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));	Not Included
(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;	(ii) the provider'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; (Note: “in any” makes it optional)	(iii) an employee handbook containing a specific discussion of the rights of employees to be protected as whistleblowers and the provider's policies and procedures for detecting and preventing fraud, waste, and abuse. (Rule infers handbooks are required)

Recommendations

- 1.1 Medicaid should modify the Utah Administrative Rule 414-1-31 to include the five elements required by the DRA of 2005 Section 6032, “to establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity:
 - 1.1.1 that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code;
 - 1.1.2 administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code;
 - 1.1.3 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;
 - 1.1.4 include as part of such written policies, detailed provisions regarding the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse;
- 1.2 Medicaid should modify the Utah Administrative Rule 414-1-31 to “in any employee handbook” or similar words to avoid making employee handbooks mandatory. The Section 6032 requirements are mandatory in written policies and procedures and in any employee handbooks *if any* exists.

**FINDING
2**

Medicaid does not have an SOP for taking corrective action for DRA noncompliance or partial compliance.

Medicaid does not have a documented standard operating procedure (SOP) to activate the corrective action for providers not complying with the State plan section 4.72 for which Utah Administrative Rule R414-1-31 provides the withholding of payments for noncompliant providers.

The provision added to Utah Administrative Rule R414-1-31 states that either UOIG or DOH determines a provider is noncompliant, that DOH issues written notification to the noncompliant provider and DOH withholds payment until the provider is determined compliant.

An SOP is necessary to ensure consistency in the application and communication of the corrective action specified in R414-1-31, the conditions, actions and authority necessary to withhold payment, and the conditions to release the hold.

UOIG did not receive an attestation of compliance from one of the entities (the Entity) requested despite the initial USPS mailing and the follow up efforts by multiple phone calls and emails. The State Plan Section 4.42 requires return of the response within 45 days of the notice date. The Entity did not return the attestation until May 21 or 90 days after the notice date. About a third of all entities did not respond and the UOIG followed-up with emails and phone calls.

UOIG reviewed the content of the written policies and procedures, and employee handbooks of the randomly selected sample of six entities for compliance with the Section 6032 requirements and only three of the six entities complied with all five requirements. Of the three entities not in compliance, one lacked three of the five requirements, one lacked two of the five and one lacked one of the requirements.

Recommendations

2.1 Medicaid should document an SOP by which to administer consistent, fair treatment in the corrective process now stipulated in Utah Administrative Rule R414.1.31 for entities determined noncompliant by the UOIG. The SOP should initiate with the receipt of communication from UOIG of the noncompliant entities and should document the criteria, authorities, and procedure for withholding payment and the conditions and timing on which to resume payment.

**FINDING
3**

The Medicaid website and provider manuals do not include DRA Section 6032 requirements, guidance or tools to assist providers implementation.

Medicaid requires providers to complete an application prior to delivering services to recipients. The Medicaid agreement includes the DRA Section 6032 requirements and the provider signs the agreement at the time of application. However, the Medicaid provider manuals and website do not refer to the DRA Section 6032 requirements and do not provide instructional assistance, discussion, example materials, nor checklist for implementation. See Appendix E for an example checklist implemented by the State of Arizona.

The October 2021 Medicaid Information Bulletin referenced the DRA Section 6032 requirements and the update to Utah Administrative Rule R414-1-31 stating Medicaid may stop payments to noncompliant providers.

The audit randomly chose a sample of seven entities from the seventy that received at least \$5,000,000 during FFY 2021 for the detail audit of compliance. All but one of the audited entities provided the policies and procedures, and employee manuals.

The UOIG reviewed the policies and procedures, employee manuals of the six entities for compliance with the DRA Section 6032 required by the Utah State Plan Section 4.72. Of the six entities audited for compliance, only three complied in all areas. Three of six did not include one or more of the primary requirements of Section 6032 in their policies and procedures or employee handbook.

Recommendations

3.1 We recommend Utah Medicaid include guidance on its website or in the provider manual to help providers properly implement the DRA Section 6032 requirements.

Appendix A: Utah Medicaid State Plan, Section 4.42

Revision: HCFA-PM-92-2 (HSQB)
March 1992

Page 79y(1)

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT MEDICAL ASSISTANCE PROGRAM

State: _____ UTAH _____

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

Citation
1902(a)(68) of
the Act,
P.L. 109-171
(section 6032)

4.42 Employee Education About False Claims Recoveries

(a) The Medicaid agency meets the requirements regarding establishment of policies and procedures for the education of employees of entities covered by section 1902(a)(68) of the Social Security Act (the Act) regarding false claims recoveries and methodologies for oversight of entities' compliance with these requirements.

(1) Definitions.

- (A) An "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, which receives or makes payments under a State Plan approved under Title XIX or under any waiver of such plan totaling at least \$5,000,000 annually.

If an entity furnishes items or services at more than a single location or under more than one contractual or other payment arrangement, the provisions of section 1902(a)(68) apply if the aggregate payments to that entity meet the \$5,000,000 annual threshold. This applies whether the entity submits claims for payments using one or more provider identification or tax identification numbers.

A governmental component providing Medicaid health care items or services for which Medicaid payments are made would qualify as an "entity" (e.g., a state mental

T.N. # _____ 07-002 _____

Approval Date _____ 6-29-07 _____

Supersedes T.N. # _____ New _____

Effective Date _____ 1-1-07 _____

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: UTAH

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

Citation
1902(a)(68) of
the Act,
P.L. 109-171
(section 6032)

4.42 Employee Education About False Claims Recoveries
(Continued)

health facility or school district providing school-based health services). A government agency which merely administers the Medicaid program, in whole or part (e.g., managing the claims processing system or determining beneficiary eligibility), is not, for these purposes, considered to be an entity.

An entity will have met the \$5,000,000 annual threshold as of January 1, 2007, if it received or made payments in that amount in federal fiscal year 2006. Future determinations regarding an entity's responsibility stemming from the requirements of section 1902(a)(68) will be made by January 1 of each subsequent year, based upon the amount of payments an entity either received or made under the State Plan during the preceding federal fiscal year.

- (B) An "employee" includes any officer or employee of the entity.
- (C) "A contractor" or "agent" includes any contractor, subcontractor, agent, or other person which or who, on behalf of the entity, furnishes or otherwise authorizes the furnishing of Medicaid health care items or services, performs billing or coding functions, or is involved in the monitoring of health care provided by the entity.
- (2) The entity must establish and disseminate written policies, which must also be adopted by its contractors or agents. Written policies may be on paper or in electronic form, but must be readily available to all employees, contractors, or agents. The entity need not create an employee handbook if none already exists.

T.N. # 07-002

Approval Date 6-29-07

Supersedes T.N. # New

Effective Date 1-1-07

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: UTAH

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

Citation
1902(a)(68) of
the Act,
P.L. 109-171
(section 6032)

4.42 Employee Education About False Claims Recoveries
(Continued)

(3) An entity shall establish written policies for all employees (including management), and of any contractor or agent of the entity, that include detailed information about the False Claims Act and the other provisions named in section 1902(a)(68)(A). The entity shall include in those written policies detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. The entity shall also include in any employee handbook a specific discussion of the laws described in the written policies, the rights of employees to be protected as whistleblowers, and a specific discussion of the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

(4) The requirements of this law should be incorporated into each state's provider enrollment agreements.

(5) The State will implement this State Plan Amendment on January 1, 2007.

(b) ATTACHMENT 4.42-A describes, in accordance with section 1902(a)(68) of the Act, the methodology of compliance oversight and the frequency with which the State will re-assess compliance on an ongoing basis.

T.N. # 07-002
Supersedes T.N. # New

Approval Date 6-29-07
Effective Date 1-1-07

Appendix B: Utah Medicaid State Plan, Attachment 4.42-A

ATTACHMENT 4.42-A

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
MEDICAL ASSISTANCE PROGRAM

State: UTAH

SECTION 4 - GENERAL PROGRAM ADMINISTRATION (Continued)

Citation
1902(a)(68) of
the Act,
P.L 109-171

- (1) All entities covered under 4.42(A) must be in compliance with section 6032 of the Deficit Reduction Act of 2005.
- (2) Initial Compliance: Upon approval of the State Plan Amendment, notice shall be sent to all entities as described in 4.42(A) requiring compliance with section 6032 of the DRA. The notice shall include a compliance attestation that must be returned to the Department within 45 days of the date of the notice.
- (3) Ongoing compliance: At the end of the first calendar quarter of every third year after 2007, notice and compliance attestation will be sent to each entity as described in 4.42(A). Compliance verification must be received by each entity noted above no later than June 30 of that year.
- (4) In between each third year, at the end of each first calendar quarter, a list of all entities will be checked and reviewed for all new entities meeting the requirements as noted in 4.42(A). Notice and compliance attestation will be sent as directed in #2 above.
- (5) Annually, the Department will conduct a random audit of all entities to determine compliance with section 6032 of the DRA. The Department will use sampling methodology to make this determination and the audits will be completed by the end of the State Fiscal Year.
- (6) If compliance is not met or there is a failure to return attestations within the stated time frame, appropriate action will be taken against the entity according to the current State and Department Program Integrity Rules in effect at the time notice was given to the entity.

T.N. # 07-002

Approval Date 6-29-07

Supersedes T.N. # New

Effective Date 1-1-07

Appendix C: Utah Administrative Rule R414-1-31 Revised

Utah Administrative Rule R414-1-31 below includes Medicaid's changes through November 15, 2021.

R414-1-31. Withholding of Payments.

- (1) In addition to other remedies allowed by law and unless specified otherwise, the Department may withhold payments to a provider or contractor if:
 - (a) the provider or contractor fails to provide the requested information within 30 calendar days from the date of a written request for information;
 - (b) the provider or contractor has an outstanding balance owing the Department for any reason; or
 - (c) the provider or contractor receives more than \$5,000,000 in reimbursement annually from the Department and fails to comply with Section 6032 of the Deficit Reduction Act. The Department or the Utah Office of the Inspector General may determine a provider to be noncompliant if the provider cannot submit, upon request:
 - (i) an attestation of compliance with Section 6032 of the Deficit Reduction Act;
 - (ii) the provider's policies and procedures for detecting and preventing fraud, waste, and abuse; and
 - (iii) an employee handbook containing a specific discussion of the rights of employees to be protected as whistleblowers and the provider's policies and procedures for detecting and preventing fraud, waste, and abuse.
- (2) The Department shall provide written notice before withholding payments.
- (3) When the Department rescinds withholding of payments to a provider or contractor, it will, without notice, resume payments according to the regular claims payment cycle.

Date of Last Change: November 15, 2021

Notice of Continuation: December 13, 2021

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-34-2

Appendix D: DRA 2005 Section 6032

1. The below is an excerpt from the DRA 2005 Section 6032

SEC. 6032. EMPLOYEE EDUCATION ABOUT FALSE CLAIMS RECOVERY.

(a) IN GENERAL.—Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) is amended—

(1) in paragraph (66), by striking “and” at the end;

(2) in paragraph (67) by striking the period at the end and inserting “; and”; and

(3) by inserting after paragraph (67) the following:

†(68) provide that any entity that receives or makes annual payments under the State plan of at least \$5,000,000, as a condition of receiving such payments, shall—

“(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));

“(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.”.

(b) EFFECTIVE DATE.—Except as provided in section 6035(e), the amendments made by subsection (a) take effect on January 1, 2007.

2. Section 1902(a) of the Social Security Act (42 U.S.C. 1396a(a)) Paragraph 68:

https://www.ssa.gov/OP_Home/ssact/title19/1902.htm

(68) provide that any entity that receives or makes annual payments under the State plan of at least \$5,000,000, as a condition of receiving such payments, shall—

(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^[47], 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));

(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;

Appendix E: Example check sheet to assist provider implementation of DRA 2005 Section 6032



Provided by Arizona OIG (see WP 204.05). Copy of checklist used by the Arizona OIG to verify ongoing DRA Section 6032 compliance.

STATE OF ARIZONA
 ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Committed to Excellence in Health Care
 OFFICE OF INSPECTOR GENERAL



WP 480.01
 RB 6/4/2021
 Page 1 of 2
 NB 8/30/2021

DEFICIT REDUCTION ACT (DRA) ENTITY COMPLIANCE CHECKLIST

Entities selected for a False Claims Act (FCA) audit must complete a compliance checklist indicating they have **established and distributed** policies, and **trained** employees (including management, contractors, students and agents) regarding the FCA. Entities must also participate in a Compliance Audit Review with AHCCCS Office of Inspector General (OIG) staff.

Instructions: Indicate compliance and references to your entity policy materials below (include page references where indicated).

1. Establishment and Availability of Policies

		YES/NO
1A	Policies with <i>detailed</i> information regarding the False Claims Act (FCA) have been established and distributed to all individuals (including management, contractors, students and agents of the entity).	<input type="checkbox"/> YES <input type="checkbox"/> NO
1B	Individuals (including management, contractors, students, and agents of the entity) have been trained and are aware of the FCA policies.	<input type="checkbox"/> YES <input type="checkbox"/> NO

2. Entity's Written Policies Stating the Following Information

		YES/ NO	Page Reference
2A	Knowingly presenting (or causing to be presented) to the Federal Government a false or fraudulent claim for payment can constitute a violation of the FCA.		
2B	Knowingly using (or causing to be used) a false record or statement to conceal, avoid, or decrease an obligation to pay money or transmit property to the Federal Government can constitute a violation of the FCA.		
2C	Conspiring with others to cause a false or fraudulent claim to be paid by the Federal Government can constitute a violation of the FCA.		
2D	The FCA covers fraud involving any federally funded contract or program, with the exception of tax fraud.		
2E	The civil penalty for violating the FCA is three times the dollar amount being defrauded from the Government (i.e., " <i>treble damages</i> ") and that civil penalties between \$5,500 to \$11,000 for each offense could be awarded.		
2F	An employee can share in a percentage of a government recovery in an FCA action or settlement if they file an action on behalf of the United States as a " <i>qui tam</i> " lawsuit.		
2G	The FCA protects these <i>qui tam</i> relators (also known as "whistleblowers") against discharge, demotion, harassment, or other discrimination by their employer as a result of the claims they make under the FCA.		



**ARIZONA HEALTH CARE COST
CONTAINMENT SYSTEM (AHCCCS)
OFFICE OF INSPECTOR GENERAL (OIG)**
PROMOTING HONESTY AND INTEGRITY



RB 6/4/2021
Page 2 of 2
ME 9/30/2021

Douglas A. Ducey
Governor

Jeni Snyder
Director

3. Additional Requirements

		YES/ NO	Page Reference
3A	The entity's policies reference the <i>Arizona statutes</i> (A.R.S. 13-1802, A.R.S 13-2002, A.R.S. 13-2310, A.R.S. 13-2311, A.R.S. 36-2918) regarding civil or criminal penalties for false claims and statements.		
3B	The entity has written policies regarding the detection and prevention of fraud, waste, and abuse (which can take the form of a compliance program).	<input type="checkbox"/> YES	<input type="checkbox"/> NO
3C	The entity has a hotline or reporting system in place for individuals to submit false claim reports anonymously.	<input type="checkbox"/> YES	<input type="checkbox"/> NO

Provide a detailed response to any "NO" questions

In accordance with Section 6032 of the Deficit Reduction Act (PL) 109-171, and as indicated on this Compliance Checklist, I certify that as an Authorized Representative of the entity listed below, I have reviewed and approve the Compliance Checklist information herein and that this organization has established and distributed written policies and trained its employees (including management, contractors, students, and agents) as required under the Deficit Reduction Act.

Entity Name:	Entity Address:	
PRINTED Name of Authorized Entity Personnel:	Title:	
Signature:	Date:	Telephone Number:

GLOSSARY OF TERMS

<u>Term</u>	<u>Description</u>
CMS	Centers for Medicare & Medicaid Services
DRA	Deficit Reduction Act of 2005
FFY	Federal Fiscal Year <i>The fiscal year for the federal government begins on October 1st and ends on September 30th.</i>
FMAP	Federal Medical Assistance Percentage
Medicaid	See Utah Medicaid
MIB	Medicaid Information Bulletin <i>Bulletins released quarterly to provide Utah Medicaid policy and program updates.</i>
MOU	Memorandum of Understanding
PFCRA	Program Fraud Civil Remedies Act of 1986
SSA	Social Security Act
State Plan	Utah Medicaid State Plan <i>An agreement between the State of Utah and the federal government describing how the State administers its Medicaid program.</i>
UDOH	Utah Department of Health
UOIG	Utah Office of Inspector General
Utah Medicaid	Utah Medicaid Program <i>The Utah Medicaid Program is one of the health-related programs administered by the Utah Department of Health.</i>

MANAGEMENT RESPONSE



State of Utah

SPENCER J. COX
Governor

DEIDRE M. HENDERSON
Lieutenant Governor

Utah Department of Health

Nate Checketts, M.P.A.
Executive Director

Heather R. Borski, M.P.H., M.C.H.E.S.
Deputy Director

Michelle G. Hofmann M.D., M.P.H., M.H.C.D.S., F.A.A.P.
Deputy Director

June 15, 2022

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 *An Audit of Deficit Reduction Act Section 6032 Compliance Federal Fiscal Year 2021 (Report A2022-02)*. 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 recommendations 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 blue ink, appearing to read "Jennifer Strohecker".

Jennifer Strohecker (Jun 15, 2022 12:18 MDT)

Jennifer Strohecker, PharmD, BCPS
Medicaid Director
Director, Division of Integrated Healthcare

Recommendation 1.1

1.1 Medicaid should modify the Utah Administrative Rule 414-1-31 to include the five elements required by the DRA of 2005 Section 6032, “to establish written policies for all employees of the entity (including management), and of any contractor or agent of the entity:

- 1.1.1 that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code;*
- 1.1.2 administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code;*
- 1.1.3 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;*
- 1.1.4 include as part of such written policies, detailed provisions regarding the entity’s policies and procedures for detecting and preventing fraud, waste, and abuse;*

Department Response:

The Department agrees with this recommendation. The Department will modify Utah Administrative Rule 414-1-31 to include the five elements identified.

Contact: Brian Roach, Assistant Director, Division of Integrated Healthcare, 385-239-5906
Implementation Date: November 1, 2022

Recommendation 1.2

1.2 Medicaid should modify the Utah Administrative Rule 414-1-31 to “in any employee handbook” or similar words to avoid making employee handbooks mandatory. The Section 6032 requirements are mandatory in written policies and procedures and in any employee handbooks if any exists.

Department Response:

The Department agrees with this recommendation. The Department will modify Utah Administrative Rule 414-1-31 to clarify that producing an employee handbook is not mandatory.

Contact: Brian Roach, Assistant Director, Division of Integrated Healthcare, 385-239-5906
Implementation Date: November 1, 2022

Recommendation 2.1

2.1 Medicaid should document an SOP by which to administer consistent, fair treatment in the corrective process now stipulated in Utah Administrative Rule R414.1.31 for entities determined noncompliant by the UOIG. The SOP should initiate with the receipt of communication from UOIG of the noncompliant entities and should document the criteria, authorities, and procedure for withholding payment and the conditions and timing on which to resume payment.

Department Response:

The Department agrees with this recommendation. The Department will produce an SOP to clearly document the Department's process for handling entities determined noncompliant pursuant to Utah Administrative Rule 414-1-31.

Contact: Shandi Wanlass, Director, Bureau of Medicaid Operations, 801-538-6308
Implementation Date: January 1, 2023

Recommendation 3.1

3.1 We recommend Utah Medicaid include guidance on its website or in the provider manual to help providers properly implement the DRA Section 6032 requirements.

Department Response:

The Department agrees with this recommendation. The Department will evaluate the practices of other states, as offered by the Utah Office of Inspector General. After this evaluation, the Department will modify its website or provider manual to help providers implement the DRA Section 6032 Requirements.

Contact: Brian Roach, Assistant Director, Division of Integrated Healthcare, 385-239-5906
Implementation Date: November 1, 2022

EVALUATION OF MANAGEMENT RESPONSE

Management agreed with all the recommendations. Management specified the responsible managers and the implementation dates. UOIG will review the action taken following management's dates for implementation.

UTAH OIG CONTACTS AND STAFF ACKNOWLEDGEMENT

UTAH OIG CONTACT



Ron Sufficool
Lead 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.

ADDRESS

Utah Office of Inspector General
Dr. Martha Hughes Cannon Health Building
288 N 1460 W
Salt Lake City, Utah 84116

OTHER

Website: <http://www.oig.utah.gov/>
Hotline: 855.403.7283
