



OIG's Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs

On May 8, 2013, the U.S. Department of Health & Human Services, Office of Inspector General (“[OIG](#)”) issued an [Updated Special Advisory Bulletin](#) on the Effect of Exclusion from Participation in Federal Health Care Programs. This bulletin updates and supersedes a Special Advisory Bulletin originally published by the OIG in September 1999.

The updated bulletin addresses frequently asked questions that arise in determining the effect of exclusion across the broad spectrum of items and services that are furnished, directly or indirectly, within the health care industry and payable by Federal health care programs.

Effect of OIG Exclusion

The effect of an OIG exclusion is that no Federal health care program payment may be made for any items or services furnished (1) by an excluded person or (2) at the medical direction or on the prescription of an excluded person. The bulletin emphasizes that the payment prohibition applies to all methods of Federal health care program payment, whether from itemized claims, cost reports, fee schedules, capitated payments, a prospective payment system or other bundled payment, or other payment system and applies even if the payment is made to a State agency or a person that is not excluded.

The prohibition on Federal health care program payment for items or services furnished by an excluded individual includes items and services beyond direct patient care. For example, the prohibition applies to services performed by excluded individuals who work for or under an arrangement with a health care provider when such services are related to services that are payable by Federal healthcare programs (e.g., preparation of surgical trays or review of treatment plans), regardless of whether such services are separately billed or are included in a bundled payment.

The OIG extends the prohibition on excluded persons from furnishing administrative and management services that are payable by a Federal health program even if the services are not separately billable. For example, an excluded individual may not serve in an executive or leadership role (e.g., officer, management position, etc.) at a provider that furnishes items or

services payable by a Federal health care program. Further, an excluded individual may not provide other types of administrative and management services such as health information technology services and support, strategic planning, billing and accounting, staff training and human resources, unless wholly unrelated to any Federal health care programs.

Consequences of Using an Excluded Person

Health care providers that arrange with, contract with or employ an individual or entity that the provider knows or should know is excluded may be subject to civil monetary penalties (CMPs) of up to \$10,000 for each claimed item or service furnished by the excluded individual or entity, and up to three times the total amount claimed for such items or services. CMPs apply if an excluded person participates in any way in the furnishing of items or services that are payable by a Federal health care program. This includes providing direct services, indirect services, administrative services or management services paid directly or indirectly with Federal health care program funds. CMPs can apply even if the excluded individual does not receive payment from the provider for his or her services (such as an excluded health care professional who works at a health center as a volunteer).

In addition, violations of exclusion can result in the OIG denying reinstatement to Federal health programs. Criminal prosecutions or civil actions can also occur in such cases.

Limited Circumstances in Which Providers Can Use an Excluded Person

The bulletin clarifies that a provider may employ or contract with an excluded individual or entity without CMP liability only if no Federal health care program pays, directly or indirectly, for the items or services being provided by the excluded individual, or if the excluded person furnishes items or services solely to non-Federal health care program beneficiaries. The provider must also ensure that no claims are submitted to, and no payment is received from, Federal health care programs for items or services that the excluded individual or entity provides and that such items or services relate solely to non-Federal health care program beneficiaries.

OIG Recommended Screening Procedures

Although there is no statutory or regulatory Federal requirement to screen individuals for exclusion, the OIG recommends that providers screen individuals for exclusion when they are hired and thereafter on a monthly basis. This applies to all those individuals who provide services that are directly or indirectly payable by a Federal health care program, whether they are employees, independent contractors or subcontractors. The OIG states that screening should be performed through the use of its List of Excluded Individuals and Entities (“[LEIE](#)”), which is accessible through a [searchable](#) online database and downloadable data files and is updated monthly. The OIG also cautions against relying on other databases, such as the General Service Administration’s System for Award Management or the National Practitioner Data Bank, as a provider’s primary source of exclusion screening.

The OIG also advises that providers should maintain documentation of the initial search performed on the LEIE (such as printed screen shots or the results of a name search) and any

additional searches conducted in order to verify results of potential name matches. The OIG acknowledges that providers may contract with an outside entity to perform the searches, but cautions that the provider remains liable for any CMP if there is an error and the provider bills for services performed by an excluded person, and should request screening documentation from the contractor.

Self-Disclosure Protocol in the Event of Discovery of a Potential CMP Liability

The OIG suggests that providers who identify potential CMP liability for employing or contracting with an excluded individual or entity use the OIG's recently updated Self-Disclosure Protocol to disclose and resolve any potential CMP liability.

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