

ALERTS

OIG Special Advisory - The Effect of Exclusion from Participation in Federal Health Care Programs

HEALTH CARE CLIENT ALERT

07.2013

On May 9, 2013, the Office of Inspector General (the "OIG") for the U.S. Department of Health and Human Services issued a Special Advisory Bulletin (the "SAB") titled "The Effect of Exclusion from Participation in Federal Health Care Programs." The SAB defined "Federal Health Care Programs" as all programs that provide health benefits funded by the United States or any State, including Medicare, Medicaid, Tricare, and Veteran's programs. The OIG issued the SAB to update its original 1999 Special Advisory Bulletin concerning the effect of exclusion. The current SAB reminds providers and other participants in Federal Health Care Programs about the impact of exclusion, addresses questions received by the OIG since its original guidance from 1999, and includes recommendations concerning the procedure and frequency for screening of employees and contractors to determine if they are excluded persons.

No Federal Health Care Program Payment for Items or Services Provided by or Under Order of an Excluded Individual.

The SAB reminds providers and excluded persons that no Federal Health Care Program payment can be made for any items or services furnished by an excluded person or at the medical direction of or on the prescription of an excluded person, even if the billing provider is not excluded. For example, a hospital, laboratory, pharmacy, or home health agency providing items or services on the prescription of a physician or other authorized prescriber must ensure, before the item or service is provided, that the prescriber is not excluded. The prohibition on payment applies not only to services and items that are separately billable but also to services provided by an excluded person that are not separately billable, including direct or indirect patient care services as well as transportation services and administrative and management services.

Applicable Penalties and Other Sanctions.

Any provider who employs or contracts with a person that the provider knows or should know is excluded by the OIG is subject to sanctions under the Civil Monetary Penalties ("CMP") Law if the excluded person participates in any way in the furnishing of items or services payable by any federal government healthcare program. Under the CMP Law, the OIG may impose penalties of up to \$10,000 per item or service furnished by the excluded individual, plus three times the amount claimed for the item or service, in addition to exclusion of the billing provider. CMPs also apply to any individual who provides, orders or prescribes items and services while excluded. A provider is not subject to sanctions for employing or contracting with an excluded individual if the excluded individual performs services solely for non-government health care program beneficiaries or if the items and services are not covered by Federal Health Care Programs. A provider may have CMP liability even if it contracts with an excluded individual through a third party staffing

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agency or uses a third party agency to perform necessary checks of the OIG List of Excluded Individuals and Entities ("LEIE").

Procedures for OIG LEIE Database Searches.

The SAB includes updated links on the OIG website concerning the information included on the LEIE. The LEIE can be searched online (see <http://exclusions.oig.hhs.gov/>) or by downloading a searchable data file (see http://oig.hhs.gov/exclusions/exclusions_list.asp). The OIG website also includes tips for searching the database at <http://oig.hhs.gov/exclusions/tips.asp>.

Importantly, the OIG notes that as it updates the LEIE monthly, providers may best protect themselves by screening all employees and contractors each month. The OIG also recommends that providers carefully review each job category or contractual relationship to determine which employees and contractors should be screened.

LEIE as Compared with Other Federal Databases.

Finally, the OIG recommends that providers use the LEIE as the primary source of information about OIG exclusions as opposed to other databases. For example, the OIG notes that the Government Services Administration System for Award Management does not provide complete information about OIG exclusions and that the National Practitioner Data Bank collects information about other types of sanctions such as medical malpractice payments, adverse licensing and privileging actions, as well as information previously collected by the Health Care Integrity and Protection Databank (such as health care related criminal convictions, civil judgments, etc.).

For a complete copy of the SAB, please [click here](#).