

OIG Updates Guidance on Exclusion Screening

On May 8, 2013, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) issued a “Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs” as an update to guidance it previously issued in 1999. The updated Bulletin reiterates earlier guidance on the scope and effect of OIG exclusion; provides “best practice” guidance on the scope and frequency of exclusion screening; clarifies the scope of payment prohibition and potential CMP liability, and informs providers that the OIG Advisory Opinion process is available to offer formal guidance on whether an employment or contractual arrangement may constitute grounds for the imposition of sanctions.

Scope of OIG Exclusion

The OIG’s exclusion from participation in Federal healthcare programs, in effect, prohibits payment for any items or services furnished by an excluded individual or entity or at the medical direction or on the prescription of an excluded individual or entity. This payment prohibition applies to all methods of Federal health care program payment received as a result of services provided by an excluded individual or entity, including payments received by way of itemized claims, cost reports, fee schedules, capitated payments, a prospective payment system or other bundled payment. It is not only services that are directly billed and paid by a Federal health care program such as physician services that are at risk, but any items or services, including indirect patient

care, administrative and management services, and items or services furnished at the medical direction of an excluded person. It also includes not only services provided by employees, but also contractors, volunteers, and anyone who has a relationship with the provider.

Frequency of Screening

The OIG recommends that providers screen all employees and contractors against the OIG’s List of Excluded Individuals and Entities (LEIE), which is available at <http://oig.hhs.gov/exclusions>, not only upon hire/initial contract, but monthly thereafter to ensure that all employees and contractors affiliated with the organization remain in good standing with all Federal programs such as the OIG and the Centers for Medicare and Medicaid Services (CMS). While providers are not required by federal statute or regulation to check the LEIE, failure to do so puts an organization at significant risk for potential civil and perhaps even criminal liability. The OIG updates the LEIE monthly and has advised in its new Bulletin that “screening employees and contractors each month best minimizes potential overpayment and CMP liability.” In addition, CMS has previously recommended that all states require providers to screen employees and contractors on a monthly basis. As a result, many states already require monthly screening.

Exclusion Liability

Potential liability for employing or contracting with an excluded individual

may include repayment for any items or services furnished by an excluded individual or entity for which Federal health care program reimbursement was paid, civil monetary penalties of \$10,000 per claim or item furnished, treble damages (three times the amount claimed for each item or service), and criminal prosecution or civil action for knowingly presenting or causing a false or fraudulent claim to be presented.

Examples of Excluded Payments

The new Bulletin provides a number of examples of excluded payments, some of which include:

- Federal payment made to a hospital for items or services furnished by an excluded nurse.
- Federal payment for prescription drugs where the pharmacist or individual who input the prescription information for billing were excluded.
- Federal payment for ambulance services where the driver or dispatcher is excluded.
- Federal payments to an organization where an individual in an executive or leadership role (e.g. CEO, CFO, general counsel, director of health information management, director of human resources, physician practice office manager) is excluded.
- Federal payment for services that were processed by someone in health information technology services and support, strategic planning, or billing and accounting who was excluded.

These are just a few examples that demonstrate the breadth and scope of the possible payments that are at risk for failure to properly screen all executives, board members, employees, vendors, contractors and volunteers for Federal program exclusion.

Exclusion Screening Best Practices

The following is a list of “best practices” all providers should consider as a means to protect an organization from the severe penalties associated with payments derived from conducting business with an excluded individual:

- Develop and implement exclusion screening policies and procedures as part of your compliance program to ensure its effectiveness.
- Monitor the OIG’s List of Excluded Individuals and Entities (LEIE), available at <http://oig.hhs.gov/exclusions>, and screen all individuals affiliated with your organization.
- At a minimum, based on the recommendation of the OIG and CMS, check the LEIE prior to employing or contracting with any individual or entity and re-check the LEIE monthly thereafter to determine if any employees or contractors have been excluded.
- When screening, maintain documentation of the initial name search performed (i.e. printed screen-shot showing the results of the name search) and any additional searches performed.
- Ensure that all vendor contracts contain provisions regarding the vendor’s cooperation in exclusion screening and the prohibition or disclosure of the vendor’s employment of excluded individuals.
- Consider screening not only employees and contractors, but also executives, board members, referring providers, and volunteers, and require all individuals affiliated with the organization to provide an annual attestation regarding their exclusion status.
- When contracting with an outside vendor to perform exclusion screening, ensure that the contract includes indemnity provisions for failure to conduct appropriate screening. Regardless of who conducts the screening, the receiving provider is responsible to the government for failure to identify an excluded provider and retains potential liability for civil money penalties.
- Screen contractors, subcontractors and employees of contractors. When relying on screening conducted by the contractor, validate that the screening is being conducted (e.g. request screening documentation from the contractor).
- Be aware of other exclusion databases such as the General Services Administration’s (GSA) System for Award Management (SAM), the National Practitioner Data Bank (NPDB), the Healthcare Integrity and Protection Databank, and individual state databases, and utilize these databases in conjunction with, but not in lieu of, the OIG LEIE.
- Know your state’s exclusion screening requirements and determine whether your state maintains its own database of excluded individuals and entities.

How HDJN Can Help

If you have questions regarding exclusion screening, would like additional information regarding the OIG’s LEIE or recent guidance, need assistance in developing exclusion screening policies or reporting an exclusion to the OIG, or would like other compliance guidance, training or education, please feel free to contact Mary Malone, mmalone@hdjn.com, or Michelle Calloway, mcalloway@hdjn.com, by email or phone, (804) 967-9604. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

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