

Updated Office of Inspector General (OIG) Exclusion Guidance Spells Out Recommended Employee Screening Procedures

Article By:

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On May 8, 2013, the **Office of Inspector General (OIG)** published an updated bulletin that spells out the frequency with which employers should check the OIG's List of Excluded Individuals and Entities and clarifies which employees should be checked as well as rules for volunteers. Each month, the OIG updates its searchable database of about 54,400 excluded individuals and about 2,800 excluded entities. According to the OIG, no federal health program payment will be made for goods or services provided by an excluded person or entity at the medical direction or based upon the prescription of an excluded person, regardless of the payment methodology (e.g., DRGs, cost reports, fee schedules, bundled payments, capitation). Providers that employ or contract with an excluded person are subject to civil monetary penalties of \$10,000 for each item of service provided by the excluded person, plus three times the amount billed to the federal health care program, assuming the provider acted with reckless disregard, deliberate ignorance, or actual knowledge in employing or contracting with the excluded person. The new guidance urges monthly screenings and clarifies who is subject to the screenings.

Volunteers

Both paid employees and volunteers are subject to the same exclusionary rules described above.

Previously Excluded Entities

An excluded entity or person must apply to the OIG for reinstatement after the term of their exclusion is over. The exclusion remains in place until affirmatively lifted by the OIG upon application from the excluded person or entity for reinstatement after the exclusionary period has ended.

Ancillary Service Providers

Ancillary service providers such as laboratories, durable medical equipment suppliers, pharmacies and radiology centers are prohibited from carrying out orders provided by excluded physicians, or other excluded providers.

Administrative and Management Personnel

Excluded persons are also precluded from providing administrative and management services that are payable by federal health programs. This means that excluded persons can't serve in executive or leadership roles, such as CEO, CFO, general counsel, director of health information management, director of human resources, or physician practice manager because federal health programs often reimburse for at least a portion of administrative costs related to the provision of health care.

Dual Funding Streams

If providers conduct non-federal business with excluded parties, they are not subject to the civil liability described above. However, providers have to ensure that no claims are submitted to federal health care programs for services provided by excluded individuals or entities. While the OIG has previously required separate funding streams for federal and nonfederal business to ensure that non-federal services (which can be provided by an excluded individual) are not commingled with federally-paid services, the new bulletin states that there is no need for dual funding streams. Federal and non-federal funds can be comingled as long as the excluded individual's responsibilities are separate from those provided to federal health care beneficiaries.

Contractors

According to the OIG, the liability risk is greatest for those persons who provide items or services that are integral to the provision of patient care. However, questions have arisen regarding whether a provider is required to screen for temporary workers, such as nurses who work for staffing companies. Although companies that employ such temporary workers will conduct screenings of their own employees, providers should not rely on screenings performed by other entities because each Medicare certified agency is still on the hook for overpayments stemming from reimbursement for goods or services furnished by excluded persons, despite the contractor status of the excluded party.

If a provider chooses to rely on a third party to screen its contracted employees, it should take measures to ensure that the third party effectively performs the screens. These measures could shield a provider from a civil monetary penalty, limiting the provider's liability for repayment of the overpayment.

Indirect Care Providers

Providers should screen staff who provide indirect patient care, such as surgical set-up personnel, treatment plan review staff and pharmacy technologists, because these services may be reimbursed by federal programs.

Screening Frequency

It is clear that to avoid overpayments to federal health programs and associated civil monetary penalties, providers should periodically use the OIG's database to screen current and prospective employees and volunteers, as well as vendors for exclusion. The OIG would like to see providers screening monthly for exclusion from federal health programs. As such, it is important to establish a monthly screening policy because showing a good faith effort to comply may reduce or prevent the payment of fines and penalties in the event of a violation.

Self Disclosure

If a provider employs an excluded person or entity, the OIG's Self-Disclosure Protocol can be used to resolve civil monetary penalty liability. If a provider had a policy in place to periodically check the OIG's database of excluded persons or entities, but still billed for services performed by an excluded person or entity anyway, a simple Medicare refund should resolve any issue.

The Bottom Line

- Screen all new hires
- Screen all existing employees on a monthly basis
- Screen all contracted employees, or contractually require that third party staffing agencies do so at least monthly
- Screen all volunteers and visiting staff
- Draft clear screening policies and educate management on those policies
- Remove any excluded employees from any role that is either directly or indirectly reimbursed through a federal health program
- Self-disclose any errors as soon as possible, with the assistance of legal counsel

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