National Hospice and Palliative Care Organization
Compliance Clips

OIG's List of Excluded Individuals/Entities (LEIE)

Compliance for Hospice Providers

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DISCLAIMER

This Compliance Guidance has been gathered and interpreted by NHPCO from various resources and is provided for informational purposes. This should not be viewed as official policy of CMS or the Medicare Administrative Contractors (MACs). It is always the provider's responsibility to determine and comply with applicable CMS, MAC and other payer requirements.

The Office of Inspector General ("OIG") released Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs in 2013 which updates the 1999 "Special Advisory Bulletin". The Special Advisory Bulletin is a "must-read" resource for compliance officers, as well as legal counsel, human resources, finance and other managers who work to ensure that health care providers do not employ or contract with individuals and organizations that have been excluded from a Federal health care program[i].

The OIG's List of Excluded Individuals and Entities ("LEIE"), available at http://oig.hhs.gov/exclusions

What is the List of Excluded Individuals/Entities (LEIE)?

The Office of the Inspector General's (OIG) List of Excluded Individuals/Entities (LEIE) provides information to the health care industry, patients and the public regarding individuals and entities currently excluded from participation in Medicare, Medicaid and all other Federal health care programs. The OIG imposes exclusions under the authority of sections 1128 and 1156 of the Social Security Act which outline conditions and timeframes for exclusion. Individuals and entities who have been reinstated are removed from the LEIE[ii].

Why is there an LEIE in place?

The Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100-93, expanded and revised OIG's administrative sanction authorities by establishing certain additional mandatory and discretionary exclusions for various types of misconduct. The enactment of the Health Insurance Portability and Accountability Act (HIPAA), Public Law 104-191, in 1996 and the Balanced Budget Act (BBA) of 1997, Public Law 105-33, further expanded OIG's sanction authorities[iii].

What is the extent and effect of LEIE exclusion?

The scope of exclusion is from all Federal health care programs including:

- Medicare
- Medicaid, and
- All other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan)[iv].

The effect of exclusion is that no payment will be made by any Federal health care program for any items or services furnished, ordered or prescribed by an excluded individual or entity. No program payment will be made for anything that an excluded person furnishes, orders, or prescribes. This payment prohibition applies to:

- The excluded person,
- Anyone who employs or contracts with the excluded person.
- Any hospital or other provider for which the excluded person provides services, and
- Anyone else.

The exclusion applies regardless of who submits the claims and applies to all administrative and management services furnished by the excluded person[v].

What happens if a claim is submitted from an excluded individual/entity?

Financial penalties:

- An excluded person that submits a claim for payment to a Federal health care program, or causes such a claim to be submitted, **may be subject to civil monetary penalties (CMP) of $10,000 for each claimed item or service** furnished during the period that the person was excluded.
- The person may also be subject to an **assessment of up to three times the amount claimed for each item or service**.
- An excluded person may be civilly liable under the False Claims Act for knowingly presenting or causing to be presented a false or fraudulent claim for payment[vi].

What happens if a health care provider contracts with an excluded individual for services?

- If a health care provider arranges or contracts (by employment or otherwise) with a person that the provider knows or should know is excluded by OIG, the provider may be subject to CMP liability if the excluded person provides services payable, directly or indirectly, by a Federal health care program. OIG may impose CMPs of **up to $10,000 for each item or service** furnished by the excluded person for which Federal program payment is sought, as well as an **assessment of up to three times the amount claimed**, and program exclusion.

Criminal penalties:

- Violation of an exclusion is grounds for OIG to deny reinstatement to Federal health care programs. Such exclusion violations may lead to criminal prosecutions or civil actions in addition to the CMPs for violation of OIG exclusion. An excluded person that knowingly conceals or fails to disclose any action affecting the ability to receive any benefit or payment with the intent to fraudulently receive such benefit or payment may be subject to criminal liability. Other criminal statutes may also apply to such violations[vii].

Who Should Providers Screen for Exclusion?

- Providers should screen
    - Employees
    - Contractors
    - Volunteers

  to ensure they have not been excluded from a Federal health care program.

- Providers should screen physicians and other practitioners who order items and services that the provider renders.
    - **Referring physician** - it would be best practice to check referring physicians on the exclusion list for a few reasons. The OIG addressed this issue on page 6 of the above-linked Bulletin, which I am directly quoting for your convenience:

      "*An excluded provider may refer a patient to a non-excluded provider if the excluded provider does not furnish, order, or prescribe any services for the referred patient, and the non-excluded provider treats the patient and independently bills Federal health care programs for the items or services that he or she provides. Covered items or services furnished by a non-excluded provider to a Federal health care program beneficiary are payable, even when an excluded provider referred the patient.*"[viii]

- Providers will want to check that board members are not excluded. A board member would arguably fall within the OIG's broad scope, given that 42 C.F.R. § 418.200(b) defines a "governing body" as having "full legal authority and responsibility for the management of the hospice[ix].

What other exclusion data bases should be checked?

A provider must also screen employees and contractors against its State exclusion database. The states that currently maintain a separate excluded provider list are[x]:

- Alabama
- Alaska
- Arizona
- Arkansas
- California
- Maryland
- Massachusetts
- Michigan
- Minnesota
- Mississippi
- Tennessee
- Texas
- Washington
- Washington, DC
- West Virginia

- Connecticut
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Missouri
- Montana
- Nebraska
- Nevada
- New Jersey
- New York
- North Carolina
- North Dakota
- Ohio
- Pennsylvania
- South Carolina
- Wyoming

How Often Should Exclusion Checks Be Done?

While there is no statutory or regulatory requirement to check the LEIE, the OIG recommends that providers screen their employees, contractors and volunteers for exclusion **prior to employment or engagement** and on a **monthly** basis to minimize risk.

While the OIG does not require monthly checks, they suggest it be done at this frequency as guidance. Providers that conduct monthly checks may be in a better position to defend situations in which excluded persons are discovered on their payrolls or among their vendors and other contractors[xi].

[i] Office of the Inspector General. (2013, May 8). Special Advisory Bulletin and Other Guidance. Retrieved from http://oig.hhs.gov/exclusions/advisories.asp
[ii] Office of the Inspector General. (n.d.). Exclusions FAQ. Retrieved from http://oig.hhs.gov/faqs/exclusions-faq.asp
[iii] Office of the Inspector General. (n.d.). Exclusions FAQ. Retrieved from http://oig.hhs.gov/faqs/exclusions-faq.asp
[iv] Office of the Inspector General. (n.d.). Exclusions FAQ. Retrieved from http://oig.hhs.gov/faqs/exclusions-faq.asp
[v] Office of the Inspector General. (n.d.). Exclusions FAQ. Retrieved from http://oig.hhs.gov/faqs/exclusions-faq.asp
[vi] Office of the Inspector General. (n.d.). Exclusions FAQ. Retrieved from http://oig.hhs.gov/faqs/exclusions-faq.asp
[vii] Office of the Inspector General. (n.d.). Exclusions FAQ. Retrieved from http://oig.hhs.gov/faqs/exclusions-faq.asp
[viii] Office of the Inspector General. (2013, May 8). Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Retrieved from http://oig.hhs.gov/exclusions/files/sab-05092013.pdf
[ix] Office of the Inspector General. (2013, May 8). Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Retrieved from http://oig.hhs.gov/exclusions/files/sab-05092013.pdf
[x] American Association of Orthopedic Executives. (n.d.). Exclusion Lists: A Two-Part Series (Part Two). Retrieved from http://www.multibriefs.com/briefs/aaoe/exclusion_lists2.htm
[xi] Office of the Inspector General. (2013, May 8). Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Retrieved from http://oig.hhs.gov/exclusions/files/sab-05092013.pdf