

Screening potential and existing employees, contractors and vendors: A way to avoid potentially significant penalties

Brandon B. Graef, JD, Reinhart Boerner Van Deuren s.c.

Health care professionals should not underestimate the importance of assuring that potential and current employees, contractors, and vendors are not considered excluded providers for purposes of federal health care reimbursement programs (including Medicare and Medicaid). Excluded providers have been convicted of fraud and abuse related to federal health care programs pursuant to the Exclusion Program administered by the Office of Inspector General (OIG), which prohibits excluded providers from receiving Medicare or Medicaid payments for items and services that they furnish. Although the potential penalties for inadequate screening can be significant, the burden of conducting the screening is diminutive.

The effect of an OIG exclusion from federal health care programs is that no federal health care program payment may be made for any items or services (1) furnished by an excluded individual or entity, or (2) directed or prescribed by an excluded physician (See *42 CFR § 1001.1901*). The prohibition against federal program payment for items or services furnished by excluded individuals or entities also extends to payment for administrative and management services not directly related to patient

care but that are a necessary component of providing items and services to federal program beneficiaries.

Health care professionals face significant civil monetary penalties (CMP) if they submit Medicare or Medicaid claims for health care items or services provided by an excluded provider. These CMPs can reach \$10,000 for each item or service provided. Treble damages may be assessed as well. Such liability could be disastrous when multiplied by the number of items and services that just a single excluded provider may perform over a relatively short period of time.

Liability will only be imposed upon providers who submit claims for health care items or services furnished by an individual or entity that the provider knew or should have known was excluded from participation in the federal health care programs. However, providers and contracting entities have an affirmative duty to check the program exclusion status of individuals and entities prior to entering into employment or contractual relationships, or run the risk of CMP liability if they fail to do so. Additional information on CMPs for claims submitted for excluded provider services is available at www.oig.hhs.gov/fraud/docs/alertsandbulletins/effected.htm.

Health care professionals can protect themselves from incurring costly CMPs by confirming that potential and current provider employees, contractors, and vendors are not on the

OIG's List of Excluded Individuals and Entities (LEIE). In order to check an individual or entity, simply go to the OIG's Web site at <http://oig.hhs.gov/fraud/exclusions/listofexcluded.html>. Once there, enter the name of the individual or entity into the online searchable database of excluded providers. If the person or entity is on the LEIE, the database will provide details regarding the exclusion. If the person or entity is not on the LEIE, the database will return a screen saying "No results were found for [the provider entered]." For all of their employees, contractors, and vendors, health care professionals should print a copy of the "No results" page and place it in the employee's or entity's file to evidence its good faith effort. This procedure should be made routine for all new employees, contractors, and vendors. Furthermore, because the LEIE is updated regularly, it is also important that health care professionals periodically search it for all current employees, contractors, and vendors. Providers entering into employment, contractor, or vendor agreements should also ensure that any such agreement allows for immediate termination if the employee, contractor, or vendor is excluded from participation in a federal health care program.

Health care professionals should be aware that additional screening requirements may be required under state or federal law and should consult with their legal counsel for information on any additional screening requirements.

Mr Graef is a health care attorney in the Milwaukee office of Reinhart Boerner Van Deuren s.c. He can be reached at 414.298.8739 or at bgraef@reinhartlaw.com.

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