

May 10, 2013

On May 8, 2013, the United States Department of Health & Human Services Office of Inspector General ("HHS OIG") issued a nineteen page *Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs* ("Updated Bulletin") to update the 1999 Special Advisory Bulletin¹ ("1999 Bulletin") that provided guidance to providers, broadly defined to include direct and indirect recipients of Federal health care program ("FHCP")² receivables, on the same topic.³

The Updated Bulletin generally provides a number of significant clarifications to the implications of FHCP exclusion since the 1999 Bulletin and includes practical examples for implementation, where applicable. For example, HHS OIG states that the prohibition on paying for items or services furnished or prescribed by an excluded person continues to apply even if the person changes professions while excluded or the person is involved only in indirect patient care or other administrative or management activities. Similarly, the prohibition applies to all methods of payment by a Federal health care program including, but not limited to, itemized claims, cost reports, fee schedules, capitated payments, bundled payments, or other payment systems.

HHS OIG further emphasizes that both the excluded individual and any entity that employs or enters into a contract with an excluded person to provide items or services payable by a FHCP may be subject to liability, including civil monetary penalties, other assessments and/or exclusion. HHS OIG has provided a searchable and downloadable List of Excluded Individuals and Entities ("LEIE") for entities to use for verification of the status of employees and contractors. To assist with this review, HHS OIG will soon be adding social security and employer identification numbers for individuals and entities excluded after 2009. HHS OIG recommends that entities use the LEIE as the primary source for verifying the exclusion status of an individual or entity.

Although entities are not required to verify the status of employees and contractors against the LEIE, HHS OIG recommends that verification occur at the time of employment or contracting and monthly thereafter in order to minimize liability. HHS OIG also emphasizes in the Updated Bulletin that an entity may be liable for employing or contracting with an excluded individual or entity even if the screening is performed by another entity.

HHS OIG reminds individuals and entities that the OIG Advisory Opinion process is available to offer formal guidance related to exclusion.⁴

For questions about the implications of the Updated Special Advisory Bulletin for your organization or for assistance with submitting an OIG Advisory Opinion request, please contact one of the attorneys listed here.

Notes

1. 64 Fed. Reg. 52791 (Sept. 30, 1999).
2. Section 1128B(f) of the Social Security Act defines a "Federal health care program" to mean "any plan or program that provides health benefits, whether directly, through insurance, or otherwise, and that is funded directly, in whole or in part, by the U.S. Government" or a State health care program. This includes, by way of example, Medicare, Medicaid, TRICARE, and the veterans' programs.
3. The HHS OIG has provided additional guidance regarding the effects of exclusion in a small number of Advisory Opinions.
4. More information related to the process and procedure for submitting an advisory opinion is available [here](#).

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