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Special Advisory Bulletin on the Effect of Exclusion from Participation in the Federal Health Care Programs

The OIG originally published a Special Advisory Bulletin in September 1999 on the effect of exclusion from participation in Federal health care programs. The 1999 Bulletin has been the primary source of published guidance from the OIG in this area until now. On May 8, 2013, the OIG published an updated Special Advisory Bulletin which describes the scope and effect of the legal prohibition on payment by Federal health care programs for items or services furnished by (1) an excluded person; or (2) at the medical direction or on the prescription of an excluded person. (See <http://oig.hhs.gov/exclusions/files/sab-05092013.pdf>.)

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 the OIG, the provider will be obligated to return all payments made to that employee or vendor and may also be subject to CMP liability. The 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. The OIG may also assess up to three times the amount claimed, and also exclude a provider from the Medicaid and Medicare programs for doing business with or employing the excluded person.

OIG program exclusion information is found in the List of Excluded Individuals and Entities ("LEIE") on the OIG website: <http://oig.hhs.gov/exclusions>. To avoid potential liability, providers should check the LEIE prior to employing or contracting with persons, and periodically check the LEIE to determine the exclusion status of current employees and contractors. When checking the LEIE, providers should maintain documentation of the name search performed (such as a printed screen-shot showing the results of the name search). A provider's responsibility to screen persons contracted with it includes the responsibility to screen employees of subcontractors for Federal program exclusion. If a provider relies on subcontractors to screen their own employees, the provider should ensure that its subcontractor agreements require the subcontractors to indemnify the provider for damages in the event the OIG imposes any CMPs. The provider should also have mechanisms to periodically check that the subcontractors are performing exclusion checks on their employees.

The OIG updates the LEIE monthly, so screening persons and entities each month is the most effective way to minimize potential overpayment and CMP liability.