



**Southwest Behavioral Health
Management, Inc.
in Collaboration with
COMCARE, PACDAA, PACA MH/DS**

DPW's Mandate to Perform Monthly Sanction Screenings: Implications and Strategies for County Government MH/DS and SCAs

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http://www.hms.com/our_services/services_program_integrity.asp

Overview

- Review exclusion and debarment in the federal health care programs
- Understand who should be screened and what the risks are for failure to do so
- Explore proactive steps you can be taking now to minimize exposures with your labor force and contractors

PA Dept. of Public Welfare's (DPW) MA Bulletin 99-11-05 (Aug.15, 2011)

- Requires Medicaid providers to do monthly screenings for excluded individuals and entities
 - OIG List of Excluded Individuals and Entities (“LEIE”) <http://oig.hhs.gov/exclusions/index.asp>
 - GSA’s Excluded Parties List System (EPLS) <https://www.epls.gov/>
 - DPW’s Mediceck List http://www.dpw.state.pa.us/learnaboutdpw/fraudandabuse/medicheckprecludedproviderslist/S_001152

Which Programs Are Affected?

- Federal health care programs
 - Any plan or program providing health care benefits, whether directly through insurance or otherwise, that is funded directly, in whole or part, by the US Gov't (other than the Federal Employees Health Benefits Program), or any State health care program

Which Programs Are Affected?

- State health care program includes
 - Approved Medicaid State Plan (Title XIX)
 - Any program receiving funds under Title V or from an allotment to a State under Title V (Maternal and Child Health Services Block Grant program)
 - Any program receiving funds under Title XX or from any allotment to a State under Title XX (Block Grants to States for Social Services)

Mandatory Grounds for Exclusion

Exclusion Period: Minimum 5 Years	Exclusion Period: Minimum 10 Years	Exclusion Period: Permanent
Conviction of program-related crimes	Conviction of two mandatory exclusion offenses	Conviction on 3 or more occasions of mandatory exclusion offenses
Felony conviction: health care fraud		
Conviction relating to patient abuse or neglect		
Felony conviction: controlled substance		

OIG Permissive Grounds for Exclusion

Period of Exclusion: 3 Years Minimum	Period of Exclusion: 1 Year Min.
Misdemeanor conviction relating to health care fraud	Claims for excessive charges, unnecessary services or services which fail to meet professionally recognized standards of health care, or failure of an HMO to furnish medically necessary services
Conviction relating to fraud in non- health care programs	Failure to meet statutory obligations to provide medically necessary services meeting professionally recognized standards of health care (Peer Review Organization (PRO) findings
Conviction for obstruction of an investigation	
Misdemeanor conviction: controlled substances	

OIG Permissive Grounds for Exclusion

Exclusion Runs with Underlying Determination	No Minimum Period of Exclusion
License revocation or suspension	Fraud, kickbacks, and other prohibited activities
Exclusion or suspension under federal or state health care program	Failure to take corrective action.
Entities controlled by a sanctioned individual	Failure to grant immediate access
Entities controlled by a family or household member of an excluded individual and where there has been a transfer of ownership/ control	Failure to disclose required information, supply requested information on subcontractors and suppliers; or supply payment information

OIG Permissive Grounds for Exclusion

No Minimum Period of Exclusion	Other Periods of Exclusion
Making false statement or misrepresentations of material fact	Default on health education loan or scholarship obligations: Exclusion: until default has been cured or obligations have been resolved to Public Health Service's (PHS) satisfaction
	Individuals controlling a sanctioned entity. Exclusion: same period as entity

Effect of Exclusion

- No Federal health care program payment may be made for any items or services:
 - Furnished by an excluded individual or entity or
 - Directed or prescribed by an excluded provider

Effect of Exclusion

- Items or services furnished at medical direction or prescription of an excluded individual or entity are:
 - **Not reimbursable** when Entity furnishing the services knows or should know of the exclusion
 - **Even when** payment is made to a non-excluded provider, practitioner or supplier

Effect of Exclusion

- Payment prohibition extends to:
 - Payment for administrative and management services not directly related to patient care
 - Coverage of an excluded individual's salary, expense or fringe benefits, regardless of whether they provide direct patient care

Effect of Exclusion

- Prohibition continues to apply to an excluded individual even if he/she changes professions while excluded
- 900 OIG exclusions in 1990
- 3340 OIG exclusions in 2010
- 48,890 excluded providers on LEIE as of December 1, 2011

Who Should Be Screened?

- All employees, vendors, contractors, service providers, and referral sources
 - Whose functions are a necessary component of providing items and services to Medicaid recipients or
 - Who are involved in generating a claim to bill for services, or are paid by Medicaid (including salaries that are included on a cost report submitted to DPW)

Effect of Exclusion: Examples

- Services performed by excluded nurses, technicians or other excluded individuals where such services are related to administrative duties, preparation of surgical trays or review of treatment plans, even if the individuals do not furnish direct care to Federal program beneficiaries

Effect of Exclusion: Examples

- Services by excluded pharmacists or other excluded individuals who input prescription information for pharmacy billing or who are involved in any way in filling prescriptions for drugs
- Services performed by excluded ambulance drivers, dispatchers and other employees involved in providing transportation reimbursed by a Federal health care program

Effect of Exclusion: Examples

- Services performed for program beneficiaries by excluded individuals who sell, deliver or refill orders for medical devices or equipment
- Services performed by excluded social workers who are employed by health care entities to provide services to Federal program beneficiaries, and whose services are reimbursed, directly or indirectly, by a Federal health care program

Effect of Exclusion: Examples

- Administrative services, including the processing of claims for payment, performed for a Medicare intermediary or carrier, or a Medicaid fiscal agent, by an excluded individual
- Services performed by an excluded administrator, billing agent, accountant, claims processor or utilization reviewer that are related to and reimbursed, directly or indirectly, by a Federal health care program

Effect of Exclusion: Examples

- Items or services provided to a program beneficiary by an excluded individual who works for an entity that has a contractual agreement with, and is paid by, a Federal health care program

Effect of Exclusion: Sanctions

- Excluded individual or entity
 - \$10,000 CMP for each item or service furnished during exclusion
 - Treble damages for the amount of each item or service
 - Possible non-reinstatement

Effect of Exclusion: Employer Sanctions

- Civil monetary penalties (CMP) exposure if provider submits claim for items or services, furnished directly or indirectly, by excluded individuals or entities
- Up to \$10,000 CMP for each item or service
- Assessment of up to three times the amount claimed
- Program exclusion

Effect of Exclusion: Employer Sanctions

- Penalties of up to \$10,000 per day for each day that an excluded person is an officer or managing employee or retains a direct or indirect ownership or control interest of 5 % or more in a Medicaid provider
- OIG recovered >\$10 million in settlements for over 60 cases in past 3 years

Effect of Exclusion: Employer Sanctions (Medicaid)

- Recoupment of Medicaid payments
 - Actual amount of Medicaid dollars that were expended for those items or services
 - Amount of expended Medicaid funds expended to pay an excluded individual's salary, expenses, or fringe benefits
- Termination from all federal health care programs, including Medicaid
- Exclusion

Effect of Exclusion: Sanctions

- Limited employment options
 - Pay excluded individual exclusively with private funds or from non-federal funding sources AND
 - Services furnished relate SOLELY to non-federal program patients

Proactive Employment Strategies

- Job applications
 - Exclusion inquiries: Have you ever been or are you currently excluded?
 - List all names you have used
 - Falsification is grounds for immediate termination
 - Advise that you are running exclusion checks

Proactive Employment Strategies

- Non-exclusion should be a condition of employment
 - Job descriptions -- Qualification/essential function
 - Advertisement for position
 - On-going obligation to notify of exclusion
- Collective Bargaining Agreements (CBAs)
 - Side agreement or memorandum of understanding

Discovery of an Excluded Individual

- Employee at will: willful misconduct?
- Employment contracts: do you have the right to terminate for exclusion?
- Union employee: review CBA management rights provisions and discipline/terminations
- Civil service: review civil service ordinances

Discovery of an Excluded Individual

- Notice to employee
- Predetermination opportunity to refute the charges
 - Possible defenses:
 - Not me
 - My exclusion was over a while ago
 - *Note: reinstatement is not automatic; individual must affirmatively seek reinstatement and be reinstated*

Compliance Suggestions



DPW's Suggestions

- Develop policies and procedures for screening of all employees and contractors at time of hire or contracting; and, thereafter, on an ongoing monthly basis to determine if they have been excluded
- Check the Medichex List, OIG LEIE and GSA EPLS monthly, as well as any state Medicaid list for any other state appearing on in individual's resume.
- Immediately self report any discovered exclusion of an employee or contractor, either an individual or entity, to the Bureau of Program Integrity.
 - ***Note: DPW's Bulletin does not discuss potential reporting to OIG. Providers are strongly encouraged to consult competent health care counsel upon discovery of an excluded individual or entity.***

DPW's Suggestions

- Develop and maintain auditable documentation of screening efforts, including dates the screenings were performed and the source data checked and its date of most recent update.
- Periodically conduct self-audits to determine compliance with this requirement.

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