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The "Oops" That Could Become a Big "Ouch" - Doing Business with OIG-Excluded Individuals and Entities

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Let's start with a simple, basic rule: Hospices may not receive reimbursement from any federal health care program for an item or service which is a) reimbursed in whole or part by a federal health care program and b) provided, directly or indirectly, by an individual or company that the federal Office of Inspector General has excluded from participating in federal health care programs. "Federal health care programs" include, among others, Medicare, Medicaid, TriCare and Veterans' Administration programs. The rule applies to any excluded individual or entity (corporations, LLCs, sole proprietorships, etc.) and not just doctors, nurses or the obvious players in health care.

The OIG excludes individuals and entities from federal health care programs if they are convicted of a program-related crime (including patient abuse under state or federal laws); have submitted false, fraudulent or otherwise "improper" claims for payment; or have submitted payment claims during a period of OIG exclusion. The ban on payment for items or services ordered or submitted by excluded providers applies whether the items or services are "ordered by," "provided by" or "directed by" the provider; paid under a fee schedule, by a PPS rate or by cost report; or billed separately or as part of a larger "bundled" service. The ban also applies whether the payment is made to the excluded provider or to another provider who is not excluded, if the item was ordered, provided or directed by someone who is excluded. That includes some not so obvious arrangements, such as a non-excluded provider using a billing service or quality management review service that has been excluded. In such cases, a claim for payment even by the non-excluded provider is illegal.

So, in short, the prohibition is extremely broad and means you may not hire, contract with or, in essence, do business with any person or company that has been excluded by the OIG. Moreover, all providers are charged by law with knowing the exclusion status of individuals and entities with which they do business. From this obligation arises the requirement to check the OIG's List of Excluded Individuals and Entities ("LEIE") on the OIG website at <http://oig.hhs.gov/fraud/exclusions.asp>. Technically, there is no legal requirement per se that you check the LEIE, but since you are required to know the exclusion status of providers you deal with, and this is the "official" OIG list for that information, the end result is the same - you must check the LEIE.

There are currently about 44,000 individuals and entities excluded by the OIG. Because a provider's exclusion status can change over time, you should check the LEIE for all new hires and periodically for existing employees and contractors. You are allowed to rely upon the LEIE as the authoritative source for exclusion status, so if for some reason it's not current, you are not responsible. However, if you have information suggesting that someone is excluded, and that person does not show up as such on the LEIE, you should inquire further, ask the provider to resolve any discrepancies between the information you have and the LEIE, and proceed cautiously until you can confirm his or her status. For example, we've had clients with a name similar to that of an excluded company that flags for its ancillary vendors. In such cases, both parties are smart to resolve any questions, provide documentation that the two companies are not the same, and delay entering hiring or contractual arrangements until that is completed.



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Why all this caution? Because the penalties for hiring or contracting with an excluded provider are severe. Any provider who submits claims in violation of these rules is subject to a civil money penalty of up to \$10,000 for each item or service claimed (head's up - each day of Medicare care, for example, is a separate claim and thus a separate fine), plus three times the amount claimed for each item or service. Such claims can also be viewed as independent false claims under the federal False Claims Act and, in extreme cases, can result in exclusion for the provider who submitted the claim. With the LEIE easily accessible and easy to navigate on the OIG's website, there's no reasonable legal basis to argue that you didn't know someone's exclusion status.

Also remember that reinstatement in federal health care programs after an exclusion is not automatic. The excluded provider must request and be approved for reinstatement. So, as long as that provider's name remains on the LEIE, you should assume the provider is still excluded. If a provider brings you written documentation that it is no longer excluded (a letter from the OIG, for example), but its name still appears on the LEIE, contact the OIG to make sure you know the facts before entering a business arrangement or hiring/contract relationship.

Finally, there are some exceptions to the exclusion rules we've explained in this article, but they are very narrow. You should assume that an excluded individual or entity can have no role in your health care. If you really feel the need to work with an excluded company or individual, and that entity or person's work for you is totally separate from any aspect of federally reimbursed services, you should use caution and seek guidance from the OIG or legal counsel before you proceed with the arrangement. This is one case where the old adage "penny-wise and pound-foolish" really applies.

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