

HHS-OIG Issues New Guidance on the Effect of Exclusion from Participation in Federal Health Benefits Programs.



(May 21, 2013) On May 8, 2013, the Office of Inspector General of HHS (HHS-OIG) issued a Special Advisory Bulletin on the effects of exclusion from participation in Federal health care programs. As background, among other things, the statute prohibits payment for services under a Federal health care program that are provided by excluded individuals. Additionally, the statute also provides for the imposition of CMPs against providers that employ or enter into contracts with excluded persons to provide items or services payable by Federal health care programs.

The statute has been interpreted broadly to cover direct and indirect payments. Thus, it has been considered a violation of the prohibition for an excluded person to deliver services even where the payment is not made directly for the payment for the services that the excluded person provides, e.g. where a hospital employs an excluded nurse to provide inpatient hospital services that are reimbursed under Medicare inpatient PPS. For this, and many other, reasons knowledgeable attorneys have advised clients to check whether their employees and contractors are listed as excluded on the OIG's List of Excluded Individuals and Entities (LEIE) at <http://oig.hhs.gov/exclusions>, both at time of employment or contracting, and also periodically. This would include, for example, checking employees who service a facility on a temporary basis. Knowledgeable counsel have also recommended including a requirement in its contract with an entity with which a provider contracts that the contractor performs the screening of its employees periodically, and the provider should periodically monitor the performance of this function by that entity. Finally, knowledgeable counsel have included a review of a target's compliance with this requirement as part of its due diligence in an acquisition.^[1]

The Special Advisory Bulletin answers a number of questions in greater specificity than previously. For example, many providers questioned how frequently they must screen their employees and contractors after hiring or retention. Although the Bulletin states that there is no frequency required by statute or regulation, it indicates that the LEIE is now updated monthly. The OIG thus recommends that providers screen their employees and contractors against the LEIE at hiring or contracting (or at time of use in the case of workers retained through a temporary agency), and on a monthly basis.

The Bulletin also suggests that the LEIE be the primary source of information about HHS-OIG exclusions because, although the GSA's SAM list lists HHS-OIG exclusions as well as debarment actions taken by other agencies, it does not contain the same level of detail as the LEIE. Additionally, the Bulletin recommends that where a provider relies on a contractor to screen its employees and includes a provision to this effect in the contract, that it validate that the contractor is conducting screening by such mechanisms as requesting and maintaining screening documentation by the contractor. Moreover, the Bulletin makes clear that the prohibition covers services performed by volunteers.



Liles Parker attorneys are experienced in issues such as the prohibition on billing Federal health programs for services provided by excluded individuals, protecting providers from violating that provision as part of their compliance programs and in due diligence in acquisitions, and in addressing violations that they discover. Any person having questions in the area should contact [Michael Cook](#) for a free consultation at (202) 298-8750

[1] Often this has also included checking a target's compliance with screening of employees and contractors not only on the LEIE, but also on the GSA's excluded person's list (GSA EPLS which was recently merged into another list referred to as the SAM, <https://www.sam.gov>).