



DEPARTMENT OF HUMAN SERVICES

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MEMORANDUM

DATE: July 9, 2010

TO: DHS Medicare/Medicaid Providers

FROM: Jerry Hofer, Secretary

SUBJECT: Office of Inspector General Excluded Provider List

Providers who utilize federal Medicaid or Medicare funds to pay for program services must be utilizing the "Excluded Provider List" on the Office of Inspector General's (OIG) website to screen all new program hires. The excluded provider list can be accessed at: <http://exclusions.oig.hhs.gov>. There is no cost to access this database. The OIG list is a database for individuals who have been charged or convicted of program related fraud and abuse.

Effective immediately all new employee applicants must be screened through the OIG database. If the applicant's name appears on the list, and there is not a reinstatement date, that person cannot be hired for any program using federal funds. Federal Medicaid or Medicare funds cannot be utilized to pay for any services rendered by any individual on the Excluded Provider List. Screening on the OIG list should be the first step in the hiring process. If an applicant is on the list, no further checking, i.e. references or background checks are needed as the applicant cannot be hired under this program. If an applicant who is on the list is hired, any claims to Medicaid for their services will be recovered by Medicaid from the provider; and these funds could include penalties.

Below is an excerpt from a letter that was sent from CMS to all State Medicaid Directors advising them of the States' responsibility to inform providers of their obligation to screen employees for excluded persons. Also included is a statement from the CMS Special Advisory Bulletin: The Effect of Exclusion from Participation in Federal Health Care Programs. Both excerpts provide information on what it means to be an excluded person and the consequences of receiving reimbursement for service provided by an excluded person. The complete letter from CMS and the Special Advisory Bulletin will be attached for reference.

Background

The HHS Office of Inspector General (HHS-OIG) excludes individuals and entities from participation in Medicare, Medicaid, the State Children's Health Insurance Program (SCHIP), and

all Federal health care programs (as defined in section 1128B(f) of the Social Security Act (the Act)) based on the authority contained in various sections of the Act, including sections 1128, 1128A, and 1156.

When the HHS-OIG has excluded a provider, Federal health care programs (including Medicaid and SCHIP programs) are generally prohibited from paying for any items or services furnished, ordered, or prescribed by excluded individuals or entities. (Section 1903(i)(2) of the Act; and 42 CFR section 1001.1901(b)) This payment ban applies to any items or services reimbursable under a Medicaid program that are furnished by an excluded individual or entity, and extends to:

- all methods of reimbursement, whether payment results from itemized claims, cost reports, fee schedules, or a prospective payment system;
- payment for administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to Medicaid recipients, when those payments are reported on a cost report or are otherwise payable by the Medicaid program; and
- payment to cover an excluded individual's salary, expenses or fringe benefits, regardless of whether they provide direct patient care, when those payments are reported on a cost report or are otherwise payable by the Medicaid program.

In addition, no Medicaid payments can be made for any items or services directed or prescribed by an excluded physician or other authorized person when the individual or entity furnishing the services either knew or should have known of the exclusion. This prohibition applies even when the Medicaid payment itself is made to another provider, practitioner or supplier that is not excluded. (42 CFR section 1001.1901(b))

The listing below sets forth some examples of types of items or services that are reimbursed by Medicaid which, when provided by excluded parties, are not reimbursable:

- Services performed by excluded nurses, technicians, or other excluded individuals who work for a hospital, nursing home, home health agency or physician practice, where such services are related to administrative duties, preparation of surgical trays or review of treatment plans if such services are reimbursed directly or indirectly (such as through a pay per service or a bundled payment) by a Medicaid program, even if the individuals do not furnish direct care to Medicaid recipients;
- Services performed 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 reimbursed, directly or indirectly, by a Medicaid program;
- Services performed by excluded ambulance drivers, dispatchers and other employees involved in providing transportation reimbursed by a Medicaid program, to hospital patients or nursing home residents;
- Services performed for program recipients by excluded individuals who sell, deliver or refill orders for medical devices or equipment being reimbursed by a Medicaid program;

- Services performed by excluded social workers who are employed by health care entities to provide services to Medicaid recipients, and whose services are reimbursed, directly or indirectly, by a Medicaid program;
- 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 Medicaid program;
- This list is drawn from the 1999 HHS-OIG Special Advisory Bulletin: The Effect of Exclusion from Participation in Federal Health Care Programs.
- Items or services provided to a Medicaid recipient by an excluded individual who works for an entity that has a contractual agreement with, and is paid by, a Medicaid program; and
- Items or equipment sold by an excluded manufacturer or supplier, used in the care or treatment of recipients and reimbursed, directly or indirectly, by a Medicaid program.

Consequences to States of Paying Excluded Providers

Because it is prohibited by Federal law from doing so, CMS shall make no payments to States for any amount expended for items or services (other than an emergency item or service not provided in a hospital emergency room) furnished under the plan by an individual or entity while being excluded from participation (unless the claim for payment meets an exception listed in 42 CFR section 1001.1901(c)). Any such payments actually claimed for Federal financial participation constitute an overpayment under sections 1903(d)(2)(A) and 1903(i)(2) of the Act, and are therefore subject to recovery. It is therefore incumbent on States to take all reasonable steps to prevent making payments that must ultimately be refunded to CMS. (*Center for Medicaid and State Operations January 16, 2009 letter to State Medicaid Directors*)

A provider or entity that receives Federal health care funding may only employ an excluded individual in limited situations. Those situations would include instances where the provider is both able to pay the individual exclusively with private funds or from other non-federal funding sources, and where the services furnished by the excluded individual relate solely to non-federal program patients. (*CMS Special Advisory Bulletin: The Effect of Exclusion From Participation in Federal Health Care Programs, 1999*)

For review purposes, all employee files should contain evidence that the OIG list was checked. A page can be printed from the OIG web page, or the file should contain documentation of the date the list was checked and the outcome of the check and who did the check. Background checks or screening information should also be contained in the personnel file and available to state program staff.

Any payments made for services provided by an employee found on the OIG Exclusionary list must be reported to DHS staff. Participating providers receiving state and federal Medicaid or Medicare dollars have an obligation to report any payments received in error to DHS. Failure to do so can result in charges of fraud. If an employee is identified before payment is made, notification would not necessarily be mandatory, since no Medicaid or Medicare dollars were dispersed.

Please contact applicable Department staff with any questions.