Exclusion Screening, LLC℠

"Your Exclusion Screening Experts"

Five Things Providers Need to Know About Exclusions!

1. What is an Exclusion and why do they Occur?

An **OIG Exclusion** is a **final** administrative action by the Health and Human Services Office of Inspector General (HHS/OIG) barring an individual or entity from **any** participation in federal health care programs (Medicare, TRICARE, etc.) because they pose **unacceptable risks** to patient safety and/or of financial fraud. There are two types of OIG Exclusions: Mandatory Exclusions are imposed as a consequence of certain drug or fraud related felonies and last at least 5 years, and Permissive Exclusions are discretionary and typically are related to professional licensing matters. The result in each, however, is "final" and re-admission is not automatic. Regardless of type, the underlying conduct in almost all OIG Exclusions are related to patient abuse or neglect, fraud or theft from patients, and/or the sale, use or abuse of drugs. States also have exclusion authority for their Medicaid and other State programs. The specifics of **State Exclusions** vary from State to State, however the underlying cause of the exclusions is much the same as with OIG Exclusions.

2. What are the Consequences of an Exclusion?

Neither Medicare or Medicaid will pay for any item or service that has been provided by an excluded person or entity. This so-called "payment prohibition" extends to all vendors and contractors – even to volunteers – if they contribute either directly or indirectly to a claim to either a Federal or State Program. As a result, anyone that is excluded is rendered "radioactive" when it comes to any health care program: any claim they contribute to is tainted and could give rise to civil money penalties, overpayments liability and other consequences.

3. What are Providers Required to Do?

The OIG requires that providers ensure that none of their employees, vendors or contractors are on its List of Excluded Individuals or Entities (LEIE) by checking that list **upon hire or the start of the contract and monthly thereafter**. States also require that providers check LEIE upon hire and monthly thereafter, and the 37 States that have their own Exclusion Lists require that they be screened as well. In addition, many States also impose additional, and extremely broad screening requirements as part of the enrollment/reenrollment process in their Medicaid programs. For example, the *Texas Administrative Code § 352.5* requires all providers to conduct an "internal investigation" upon enrollment or reenrollment to determine if **any** of its employees, vendors or contractors are excluded from **any State or Federal** health program, and it must "**certify**" the results on the application.

4. What are the Regulatory Risks of Failing to Screen?

The OIG can impose Civil Money Penalties (CMPs) on any provider that has an excluded employee, vendor or contractor unless the provider can prove that he has screened as required upon hire and monthly thereafter. In addition, because the "payment prohibition" taints any claim an excluded person contributes to, all such claims are potential overpayments that could turn into "False Claims" if not reported and repaid on a timely basis. Since all States also have the "payment prohibition" there are similar – if not the same – exposures depending on the specific State laws.

5. What are the Risks of Exclusions to Risk Management and Compliance Programs?

Excluded individuals or entities increase "risk" in almost every aspect of a practice's commitment to patient safety as well as to its financial integrity. In addition to the potential increased risk that an excluded employee poses with respect to patient care and safety, the following risks could also be associated with excluded employees: drug diversion; theft from patients; financial risk from access to billing and financial records; HIPAA and Cyber liability from access to data and patient records; general security and safety of the organization's environment; and HR issues such as reliability, performance, and disruption.

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