



AHLA/HCCA Fraud & Compliance Forum

Exclusions and Administrative Sanctions

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Overview of Exclusions and Administrative Sanctions

- Civil Monetary Penalties (CMP) Law
- Mandatory and Permissive Exclusion Authorities
- Billing and Excluded Persons



OIG CMPs: Key Points

- Most common: 42 USC 1320a-7a
- Typical remedies: CMP, assessment, and exclusion
- Burden: preponderance of the evidence
- Statute of limitations: 6 years
- Procedures: administrative rules apply



CMP Scien^{ter}

- Generally: “knows or should know”
- Similar to FCA: more than negligence
- “Should know” defined:
 - “Acts in deliberate ignorance of the truth or falsity of the information” *or*
 - “Acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required”



Recent CMPs

- United Shockwave Services \$7.35 million
- West Valley Imaging \$2.26 million
- Cochlear Americas \$880,000
- Harvey Montijo, M.D. \$650,000



Mandatory Exclusions

- Typically based on criminal convictions (state, federal, misdemeanor, felony):
 - Medicare/Medicaid fraud
 - Patient abuse or neglect
 - Felony health care fraud
 - Felony controlled substance
- Imposed for at least 5 years



Permissive Exclusions

- OIG may impose exclusions for:
 - Certain convictions
 - Professional license revocation or suspension
 - Fraud, kickbacks, and other prohibited activities
 - False statements
 - Other statutory circumstances
- Term varies by authority and facts



Top 6 Exclusions by Type

- license revocation or suspension - 21,612
- program-related conviction - 11,631
- patient abuse or neglect - 5,055
- HEAL loan default - 2,296
- felony health care fraud conviction - 2,085
- felony controlled substance conviction - 1,815



Scope and Effect of Exclusion

- Federal health care programs
 - Applies to items and services that are furnished, directed, or prescribed
 - Applies to all methods of Federal program reimbursement
 - OIG Special Advisory Bulletin
- Private payors
- Employment law implications



Reinstatement

- Not automatic, but must apply to OIG
- Within discretion of OIG to grant/deny
- No judicial review of decision to deny
- Billing while excluded most common reason for denial



Recent Enforcement Actions for Employment of Excluded Persons

- Total of 29 CMP cases in 2009 and 2010 for employing/contracting with excluded persons
 - Huguley Memorial Medical Center (Adventist) \$68,831 (SDP)
 - East Boston Neighborhood Ctr. \$200,962 (SDP)
 - AdCare Hospital \$254,820 (SDP)
 - Univ. of Arkansas for Medical Sciences \$201,690 (SDP)
 - Elder Service Plan of North Shore \$308,709 (not SDP)
 - Walgreen Louisiana Co. \$1.05 million (SDP)



Excluded Persons: Self Disclosures

- With greater awareness of need for exclusion screening and more robust compliance, more entities are discovering excluded individuals in their employment
- Benefits of self-disclosure



Screening for Excluded Persons

- Best practices (not legal requirements)
 - Screen at hiring with employee/contractor certification
 - Screen periodically (e.g., monthly, quarterly, annually)
 - Require immediate disclosure by an employee or contractor who receives a notice of intent
 - Verify reinstatement
- OIG List of Excluded Individuals and Entities (LEIE)
 - <http://exclusions.oig.hhs.gov>
- GSA Excluded Parties List System (EPLS)
 - <https://www.epls.gov>
- Some states maintain their own exclusion lists



Questions

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