

BEWARE: Employing and Excluded Provider May Result in Your Practice Being Excluded From Medicare & Medicaid

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Many practices are not aware that the employment of an “excluded employee” can result in the entire practice itself being excluded from Medicare and Medicaid. Prior to employing a physician or any other employee, it is vital to know whether the potential new hire has been classified as “excluded.” The Office of Inspector General (OIG), which administers the Exclusion Program, defines an excluded provider as one who has been convicted of committing acts of fraud and abuse related to federal healthcare programs, such as Medicare and Medicaid. Additionally, New Jersey prohibits providers from submitting claims to the Medicaid program for services rendered by suspended, debarred and/or disqualified providers or employees. A provider or employee can be suspended, debarred and/or disqualified for a variety of offenses, as determined by the Division of Medical Assistance and Health Services.

Pursuant to both of these programs, an excluded provider or employee is barred from obtaining reimbursement from the federal and state healthcare programs, for items and services furnished. Moreover, all services provided at the direction of an excluded provider or employee will not be paid for when the deliverer of the services either knew or should have known of the provider or employee’s exclusion.

I. The Statutes

The Health Insurance Portability and Accountability Act (“HIPAA”) and the Balanced Budget Act (“BBA”) mandate the exclusion of practitioners from participating in all federally funded healthcare programs. Additionally, the BBA permits the assessment of a civil monetary penalty (“CMP”) against providers who employ an excluded provider or employee.

In New Jersey, N.J.A.C. § 10:49-11.1 renders ineligible suspended, debarred and disqualified providers and employees from participation in Medicaid. Further, supervising providers are prohibited from submitting claims for reimbursement for services rendered by any such excluded provider.

On both the state and federal levels, there are numerous possible infractions that may warrant exclusion which include, but are not limited to: convictions for patient abuse, billing fraud, receiving kickbacks and defaulting on loans related to medical education. If a provider or employee is on either the federal or state excluded list, then you know that the provider or employee was found guilty of one or more of these or similar violations.

II. The Penalties

Pursuant to the BBA, employers may be assessed CMPs for any violations of these statutes. The OIG may impose a CMP of a maximum of \$10,000 for each item furnished or service rendered as well as a maximum of three times the amount claimed. Additionally, the OIG may also exclude the employer for a violation of these statutes, but this requires the OIG to affirmatively prove that the employer who submitted such claims knew or should have known that the person whose claims it submitted was an excluded provider or employee.

The New Jersey Medicaid statute does not specify the penalties for a violation of its provisions, other than stating that any claim submitted in violation of the statute will not be reimbursed.

III. How to Search

The online databases are maintained on the Internet at the following addresses: Federal: <http://oig.hhs.gov/fraud/exclusions/listofexcluded.html> and New Jersey: <http://www.state.nj.us/treasury/debarred>, Both lists are updated regularly. If a provider or employee has been excluded, the databases will list the reason for the exclusion and in the Federal database, the state in which the provider or employee was practicing when he or she was excluded. If a provider or employee has not been excluded, the databases will return a screen which read, “No results were found for [that provider or employee].”

It is vital to print out the “No results” screens and keep such print-outs on file as evidence of a good faith effort. Moreover, all employers should have a representation and warranty in all employment agreements that the employee has not been excluded from any federally funded healthcare programs.

IV. Conclusion

Every practice should take the few steps outlined above as part of its routine procedure when hiring new employees. Additionally, it is important to periodically check the status of existing employees, at least quarterly, as the practice may still be held responsible under these statutes for status changes of existing employees. By maintaining these online databases, the burden is on the employer to regularly enter the names of its employees and prospective hires in the databases to avoid violating these statutes.