

OMIG COMPLIANCE WEBINAR #1- ADDRESSING EXCLUDED PERSONS IN MEDICAID EMPLOYMENT AND CONTRACTING-NEW YORK JUNE 2010

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OMIG WEBINARS-FULFILLING OMIG'S SECTION 32 DUTY-

- “17. to conduct educational programs for medical assistance program providers, vendors, contractors and recipients designed to limit fraud and abuse within the medical assistance program”
- These programs will be scheduled as needed by the provider community. Your feedback on this program, and suggestions for new topics are appreciated.
- Next program in July on PPACA 6402: Mandatory Disclosure of Overpayments

Program Exclusions

- Exclusions
 - Mandatory
 - Permissive
 - Remedial in purpose
 - protection of federal health care programs and beneficiaries
 - improper payment
 - improper/abusive practices
 - No further program reimbursement (with few exceptions)

Program Exclusions

- Statute
- Regulation
- Federal OIG Guidance
- Federal CMS Guidance
- State Guidance Mandated by CMS
- Condition of NY provider enrollment or NY state contract
- Virtually no case law (criminal, civil, or administrative) on extent and effect of exclusion

PROGRAM EXCLUSION

- Federal authority and requirement on providers
 - No claims based on work of excluded persons
- Federal authority and mandate on state Medicaid programs
 - No state Medicaid claims to CMS based on work of excluded persons

PROGRAM EXCLUSION

- Why are persons excluded?
 - Sexual assault
 - Patient abuse
 - Failure to repay HEAL loans
 - Criminal convictions related to program
 - Criminal convictions related to controlled substances

NEW YORK MEDICAID REMEDIES FOR PROVIDER INAPPROPRIATE PRACTICES

- Censure: Persons remain in Medicaid program, but are under intense scrutiny for future efforts
- Exclusion: Persons are not allowed to participate in the Medicaid program, due to having committed a crime related to the provision of health care, or having engaged in conduct characterized as “unacceptable practices” in the provision of health care
- If the OIG excludes a person from Medicare, State must exclude that person from New York Medicaid
- Termination: an end to a provider’s contractual relationship with the Medicaid program-can be for cause or without cause. See NYCRR 504.7 for complete details.
- Starting January 1, 2011, under Section 6501 of PPACA, if CMS revokes a provider’s Medicare billing privileges (of providers and suppliers who are convicted of certain felonies). 42 C.F.R. § 424.535(a)(3), States are required to terminate the individuals or entities from Medicaid programs . The felonies include financial crimes, such as extortion, embezzlement, income tax evasion, insurance fraud and other similar crimes for which the individual was convicted, including guilty pleas and adjudicated pretrial diversions.

PROGRAM EXCLUSION

EXAMPLE-Dr. Ioni Sisodia

- New York psychiatrist, entered a plea of guilty on 11/20/2007 to petty larceny related to submission of Medicaid claims and paid \$75,645.83 in fines and restitution in People of the State of New York v. Ioni Sisodia, Kingston City Court, Dkt. No. 07-56074 (2007)
- Dr. Sisodia asked the court at her sentencing for “added protection for [her]self . . . that through institution there will be billing or company billing that it would be allowed.” In response, the court stated, “that’s going to be between you and your employer, they’re going to have to do the best they can.”
- OIG notice of exclusion March 31, 2008; upheld by DAB Decision No. 2224 “the plain language of section 1128(c)(3)(B) of the Act requires the duration of Petitioner’s exclusion to be no less than five years.”
- Excluded 04/20/08 by OMIG, as required by federal law
- March 30, 2009-consent censure and reprimand by NY Office of Professional Medical Conduct, permitted to retain her medical license

PROGRAM EXCLUSION

EXAMPLE-Nabil Elhadidy, M.D

- Medicaid undercover investigator visited asking for prescription pain medication for himself and his fictitious wife. Although Elhadidy had never seen the wife, he supplied prescriptions for the requested drugs (Tylenol 3 and Ambien – schedule III and IV controlled substances), accepting \$50 in cash. Petitioner then manufactured a medical record for the bogus wife, which listed vital signs, descriptions of organs, and diagnoses.
- pled guilty to one misdemeanor count.(2007) His conviction was “conditionally discharged” upon his completion of community service and payment of \$160 in fines and surcharges.
- state court decision precluded the OMIG for the State of New York from imposing an exclusion
- OIG excluded Dr. Elhadidy- DAB Decision No. CR2000 (2009)
- OMIG excluded 3/15/2009 as required based on OIG exclusion
- No public OPMC action

PROGRAM EXCLUSION EXAMPLE-

Sandra Hernandez/a/k/a Sandra Meza

- registered nurse employed as a surveyor for the Texas Department of Aging and Disability Services, the state agency responsible for nursing home inspections. She accepted \$2000 from Bill Lofton, the administrator of a nursing home whose facility she was charged with inspecting.
- On August 14, 2006, she pled no contest in a Texas State Court to one misdemeanor count of “Gift to Public Servant by Person in his Jurisdiction.” The court entered an order of deferred adjudication. She was sentenced to one year of probation, allowed to complete 32 hours of community service work in lieu of serving four days in jail, and required to pay \$2000 in restitution, a \$1000 fine, and various court costs and supervision fees.
- Excluded from Medicare for five years DAB Decision No. CR1994(2009)
- Texas nursing license revoked by state

limiting fraud and abuse within the program

- “Abuse means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also includes recipient practices that result in unnecessary cost to the Medicaid program.” 42 CFR 455.2-similar provision in state regulations 18 NYCRR 515.1 (b) (1)
- “Abuse” does not require intent

Impact of Exclusion on health care employers

- Once exclusion occurs, health care providers:
 - May employ or contract with excluded persons, but may not allow excluded persons to provide or to direct the ordering or delivery of services or supplies, or to undertake certain administrative duties
 - Whether or not direct care activities are involved
 - If any part of the task is reimbursed by federal program dollars
 - Note: Staffing agencies must screen potential candidates to ensure that they have not been excluded prior to being sent to providers for work. Providers must develop and enforce contractual agreements to ensure prescreening occurs.

EXCLUSIONS-FEDERAL LAW-STATE MEDICAID MANAGED CARE PLANS

- section 1932(d)(1) of the Social Security Act (42 U.S.C. 1396u-2):
 - A) In general.—A managed care entity may not knowingly—
 - (i) have a person described in subparagraph (C) (i.e., an excluded person) as a director, officer, partner, or person with beneficial ownership of more than 5 percent of the entity's equity, or
 - (ii) have an employment, consulting, or other agreement with a person described in such subparagraph for the provision of items and services that are significant and material to the entity's obligations under its contract with the state.
 - Thus, a managed care plan may not knowingly contract with excluded persons to provide services to Medicaid managed care enrollees.
 - Compare with fee-for-service: “ knew or had reason to know of the exclusion.” 42 CFR 1001.1901 (b)

Searching the OMIG Web Site

NYS Office of the Medicaid Inspector General - Windows Internet Explorer provided by NYS OMIG

File Edit View Favorites Tools Help

http://www.omig.state.ny.us/data/component/option,com_physiciandirectory/

NYS Office of the Medicaid Inspector General

NEW YORK STATE
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Home

List of Excluded, Terminated, Sanctioned Search
Search up to 5 names.
List reflects most recent action taken against provider.

Name:

Name:

Name:

Name:

Name:

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Restricted, Terminated or Excluded Individuals or Entities

Please Read: [An explanation and disclaimers regarding the list of excluded or terminated individuals or entities.](#)

List Options:

1. [Search](#). A flexible search capability with a variety of search parameters to customize your search.
2. [Formatted list](#). A complete, formatted list. If printing, please note that the list has thousands of records.
3. [Tab delimited list](#). A complete list suitable for importing into applications or desktop spreadsheets.
4. [Export to Excel](#). A complete list in an Excel format.
5. [Short List](#). A daily list of providers who have been added to the complete list within the last 30 days.

Additional Resources for Provider Information:

1. [Professional Discipline](#). This web site, hosted by the Office of Professions within the New York State Department of Education, contains summary information of disciplinary actions taken against licensees by the Board of Regents in New York State since January 1, 1994.
2. [Professional Misconduct and Physician Discipline](#). This web site, hosted by the Office of Professional Medical Conduct within the New York State Department of Health, offers a search capability for public documents regarding Professional Misconduct and Physician Discipline actions taken since 1990 for physicians, physician assistants and specialist assistants.
3. [Exclusion Program](#). This web site, hosted by the Office of the Inspector General with the federal Department of Health and Human Services (HHS), outlines their exclusion program and includes a searchable version of their List of Excluded Individuals/Entities (LEIE).
4. [State Education License Search](#). This web site, hosted by the Office of Professions within the New York State Department of Education, contains searchable information regarding professional individuals, establishments and entities which have been granted licenses or permits by the Office of Professions.
5. [Physician Profiles](#). This web site, hosted by the New York State Department of Health and required by the New York Patient Health Information and Quality Improvement Act of 2000, makes it possible for all citizens of New York to get information about physicians (doctors).

U.S. Department of Health & Human Services Office of Inspector General

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OIG Home > Fraud >

Exclusion Program

► [List of Excluded Individuals/Entities](#)

For many years the Congress of the United States has worked diligently to protect the health and welfare of the nation's elderly and poor by implementing legislation to prevent certain individuals and businesses from participating in Federally-funded health care programs. The OIG, under this Congressional mandate, established a program to exclude individuals and entities affected by these various legal authorities, contained in sections [1128](#) ^d and [1156](#) ^d of the Social Security Act ^d, and maintains a list of all currently excluded parties called the List of Excluded Individuals/Entities.

Bases for exclusion include convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans.

The effect of an exclusion (not being able to participate) is:

- No payment will be made by any Federal health care program for any items or services furnished, ordered, or prescribed by an excluded individual or entity. Federal health care programs include Medicare, Medicaid, and all other plans and programs that provide health benefits funded directly or indirectly by the United States (other than the Federal Employees Health Benefits Plan). For exclusions implemented prior to August 4, 1997, the exclusion covers

Exclusions Program

[Online Searchable Database](#)

[LEIE Downloadable Databases](#)

[Exclusion Authorities](#)

[Applying for Reinstatement](#)

[Special Advisory Bulletin on the Effect of Exclusion](#)

[Frequently Asked Questions](#)

[Additional Links](#)

[Contact the Exclusion Program](#)

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[Authorities & Federal](#)

The Federal Acquisition Streamlining Act of 1994 requires that exclusion from any federal program is exclusion from all

- mandates and expands the government-wide effect of all debarments, suspensions, and other exclusionary actions to federal procurement, as well as non-procurement programs.
- Section 2455: "No agency shall allow a party to participate in any procurement or nonprocurement activity if any agency has debarred, suspended, or otherwise excluded (to the extent specified in the exclusion agreement) that party from participation in a procurement or nonprocurement activity."
- THE GSA AND OIG LISTS ARE NOT INTEGRATED-EACH MUST BE CHECKED
- List of parties excluded from federal procurement and nonprocurement programs
<https://www.epls.gov>

- No public discussion of this provision by CMS or OIG that OMIG could find
- NOTE THAT EXCLUSION FROM ONE STATE'S MEDICAID PROGRAM DOES NOT RESULT IN EXCLUSION FROM ALL STATE MEDICAID PROGRAMS, AND THAT INDIVIDUAL STATE EXCLUSIONS ARE NOT REPORTED ON ANY FEDERAL DATABASE
- After January 1, 2011, any state's "termination" of a person will require that all states "terminate" that person (PPACA Section 6501).

THE CMS EXCLUSION REGULATION

- “No payment will be made by Medicare, Medicaid or any of the other federal health care programs for any item or service furnished by an excluded individual or entity, or at the medical direction or on the prescription of a physician or other authorized individual who is excluded when the person furnishing such item or service knew or had reason to know of the exclusion.” 42 CFR 1001.1901 (b)
- Focus is not on the relationship but on the payment.

THE FEDERAL GUIDANCE

- Special Advisory Bulletin on the Effect of Exclusion (OIG-September, 1999)
- Frequently Asked Questions (OIG)
- STATE MEDICAID DIRECTOR LETTERS(CMS)
 - SMDL #09-001 January 16, 2009
 - SMDL #08-003 June 12, 2008

THE NEW YORK STATE EXCLUSION REGULATION

- 18 NYCRR 515.5 Sanctions effect: (a) No payments will be made to or on behalf of any person for the medical care, services or supplies furnished by or under the supervision of the person during a period of exclusion or in violation of any condition of participation in the program.

THE NEW YORK STATE EXCLUSION REGULATION

- 18 NYCRR 515.5 Sanctions effect (continued):
 - (b) No payment will be made for medical care, services or supplies ordered or prescribed by any person while that person is excluded, nor for any medical care, services or supplies ordered or prescribed in violation of any condition of participation in the program.
 - (c) A person who is excluded from the program cannot be involved in any activity relating to furnishing medical care, services or supplies to recipients of medical assistance for which claims are submitted to the program, or relating to claiming or receiving payment for medical care, services or supplies during the period.
- (d) Providers reimbursed on a cost-related basis may not claim as allowable costs any amounts paid or credited to any person who is excluded from the program or who is in violation of any condition of participation in the program.
- (e) Providers reimbursed on a fee-for-services basis may not submit any claim and cannot be reimbursed for any medical care, services or supplies furnished by any person who is excluded from the program or which are furnished in violation of any condition of participation in the program.

THE NEW YORK GUIDANCE

DOH Medicaid Update June 2005

Vol. 20, No. 7

- DOH Medicaid Update June 2005 Vol. 20, No. 7
- CREDENTIALING
- Medicaid providers need to ensure that they do not employ, or are affiliated with, any individual who has been excluded from either the Medicare or the Medicaid program.
- Pursuant to federal regulations and department regulations at 18 NYCRR 515.5, an excluded person cannot be involved in any activity relating to the furnishing of medical care, services or supplies to recipients of medical assistance for which claims are submitted to Medicaid.
- The same prohibition applies to activities related to the Medicare program. Activities include both furnishing and ordering (i.e., prescribing) medical care, services or supplies.
- This prohibition extends to group affiliations and to employers (hospitals, nursing homes, pharmacies, etc.) who cannot be associated with, or employ, an excluded individual.
- Eligible Medicaid providers are prohibited from submitting claims or ordering services for excluded individuals

THE NEW YORK GUIDANCE

DOH Medicaid Update June 2007

Vol. 23, No. 6

- Disqualified Provider List

Do Not Hire!

It is important for all employers and individuals conducting business with the New York State Medicaid program to examine the list of providers not allowed to order before hiring an individual.

- The New York State Department of Health's providers not allowed to order list includes:
 - previously enrolled Medicaid providers who have been disqualified from the Medicaid program for various reasons; and
 - individual providers who have never been enrolled in the Medicaid program, but have been disqualified from the Medicare program and therefore are not allowed to enroll in the New York State Medicaid program, or disqualified from the New York State Medicaid program and not allowed to enroll.

THE NEW YORK GUIDANCE

DOH Medicaid Update April 2010 Vol. 26, No. 6

- “The Office of the Medicaid Inspector General (OMIG) reminds providers that they have an obligation to screen employees, prospective employees, and contractors, both individuals and entities, to determine if they have been excluded or terminated from participation in federal health care programs or New York Medicaid.”

THE NEW YORK GUIDANCE

DOH Medicaid Update April 2010

Vol. 26, No. 6

- “Web searches should be performed for each individual upon hire and all employees, vendors, and referral sources should be rescreened on a monthly basis, at a minimum.”
- “Providers must use the OMIG Web site at www.omig.state.ny.us to perform this process. Direct access to the disqualified individuals list is available on the home page.

THE LISTS

- List of Excluded Individuals/Entities (LEIE) [\(OIG\)](http://www.oig.hhs.gov/fraud/exclusions/exclusions/about.asp)
<http://www.oig.hhs.gov/fraud/exclusions/exclusions/about.asp>
- List of Parties Excluded From Federal Procurement and Nonprocurement Programs
<http://www.epls.gov>
- Restricted, Terminated or Excluded Individuals or Entities [\(Note explanation and disclaimer for restricted, terminated or excluded individuals or entities\)](http://www.OMIG.state.ny.us)
www.OMIG.state.ny.us

DATA MINING: CREDENTIALING AND EXCLUSION

- WHERE ARE THEY NOW? PROBLEM DOCTORS , NURSES, PHARMACISTS, THERAPISTS, AND PROVIDERS-STRAIGHTFORWARD FALSE CLAIM ACTION-CMS, OIG CITE 1999 STANDARD
- KEEPING BAD AND EXCLUDED PROVIDERS OUT OF HEALTH CARE--USING AUTOMATED BACKGROUND CHECKS, PRIOR LICENSE ACTIONS, PRIOR EXCLUSIONS (state and federal)
- NEW JERSEY PROJECT X

CMS-State Medicaid Directors

Letter 09-001

- Providers have an obligation to screen all employees and contractors to determine whether any of them have been excluded.
- States should explicitly require providers to agree to comply with this obligation as a condition of enrollment. (One reason for Medicaid Updates and this Webinar)
- Providers can search the HHS-OIG Web site by the names of any individual or entity.
 - (<http://www.epls.gov>)
- Providers should search the HHS-OIG Web site **monthly** to capture exclusions and reinstatements that have occurred since the last search
- Providers should immediately report to OMIG any employee or contractor who is on the excluded list

EXCLUSIONS-SMDL 09-001- PRECLUDES ALL MEDICAID PAYMENTS FOR EXCLUDED PERSONS

- 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.
- 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

Effect of Exclusion From Participation in Medicaid (SMDL 09- 001) No payment for:

- 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;

Effect of Exclusion From Participation in Medicaid (SMDL 09- 001)

- 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; and
- 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.

OIG POLICY GUIDANCE

- “For all new employees who have discretionary authority to make decisions that may involve compliance with the law or compliance oversight, billing companies should conduct a reasonable and prudent background investigation, including a reference check, as part of every such employment application. The application should specifically require the applicant to disclose any criminal conviction, as defined by 42 U.S.C. 1320a-7(i), or exclusion action. Pursuant to the compliance program, billing company policies should prohibit the employment of individuals who have been recently convicted of a criminal offense related to health care or who are listed as debarred, excluded or otherwise ineligible for participation in Federal health care programs.
- Similarly, with regard to current employees or independent contractors, if resolution of the matter results in conviction, debarment or exclusion, then the billing company should remove the individual from company.”
- OIG Billing Compliance Guidance for Third-Party Billers
- oig.hhs.gov/fraud/docs/complianceguidance/thirdparty.pdf (1998)

Notable Exceptions

- Pharmacy claims will pay as long as the prescription date by the excluded/terminated individual (previously enrolled or unenrolled) precedes the exclusion or termination date, for service dates up to and including 180 days from the date of the prescription.
- Medicare co-insurance and deductible amounts will be paid to the previously enrolled individual on dates of service after the exclusion/termination date as long as the individual remains eligible for Medicare; and
- Claims with dates of service prior to the exclusion date will be paid directly to the excluded provider or to other providers where the excluded practitioner is listed as the order source, even when the claim is processed after the exclusion date.

Impact on Employers

- Potential Liability for Employing or Contracting with Excluded Individuals/Entities
 - For the excluded individual/entity submitting claims:
 - \$10,000 fine for each item/service claimed or “caused to be” claimed (i.e., by another entity)
 - Plus treble damages = amount claimed for each item/service
 - Extension of existing exclusion period
 - Reinstatement is not automatic after exclusion
 - Provider must apply for reinstatement
 - Also potentially amounts to a false claim under Federal False Claims Act
 - Separate basis for administrative sanctions or exclusion

Exclusions under Section 1128(b)(4)

- 1128(b)(4) – License Revocation,
Suspension or Surrender
 - Any individual or entity whose license has been revoked, suspended, otherwise lost or voluntarily surrendered for reasons bearing on professional competence or professional performance or financial integrity.

Exclusions under Section 1128(b)(8)

- 1128(b)(8) – Entities Owned or Controlled by Sanctioned Person
 - Associated with an individual
 - Convicted under 1128(a) or 1128(b)
 - Had CMP or assessment imposed under 1128A
 - Excluded
 - Direct or indirect ownership or control interest of 5 percent or more in the entity, etc.

Exclusions under Section 1128(b)(15)

- 1128(b)(15) – Individuals Owning or Controlling Excluded Entity
 - Any individual who has a direct or indirect ownership/control interest in an excluded entity AND who knows or should know of action constituting the basis for exclusion or conviction

Waivers

continued

- Written request from the individual administering the federal or state health care program
- Limited geographical area
- Exclusion remains in effect elsewhere
- Program that requested waiver must contact OIG immediately if basis for waiver no longer exists

Waivers

- Waiver may be granted under sections 1128(a)(1), (a)(3) and (a) (4) if the subject is the:
 - Sole community physician
 - Sole source of essential specialized services in the community
 - **No waiver under section 1128(a) (2)**
- **Waiver may be granted under section 1128(b) if:**
 - The OIG determines that imposition of exclusion is not in the public's interest

STATE EXCLUSIONS

- Defined by state statute and regulation
- Not reciprocal
- Require specific action by a state to follow up on exclusion by another state

SAMPLE OIG EXCLUSION CASES- CIVIL MONEY PENALTIES

- 04-29-2010
 - After it self-disclosed conduct to the OIG, LRG Healthcare d/b/a Lakes Region General Hospital (LRGH), New Hampshire, agreed to pay \$42,900 for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that LRGH employed an individual that it knew or should have known was excluded from participation in federal health care programs.

SAMPLE OIG EXCLUSION CASES- CIVIL MONEY PENALTIES

- 07-17-2009
 - After it self-disclosed conduct to the OIG, a cardiac catheterization provider agreed to pay \$15,133 for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that the provider employed an individual that it knew or should have known was excluded from participation in federal health care programs.

SAMPLE OIG EXCLUSION CASES-CIVIL MONEY PENALTIES

- 03-11-2009
 - After it self-disclosed conduct to the OIG, Walgreen Louisiana Co. (Walgreen), Louisiana, agreed to pay \$1,053,775 for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that Walgreen employed an individual that Walgreen knew or should have known was excluded from participation in federal health care programs.

SAMPLE OIG EXCLUSION CASES-CIVIL MONEY PENALTIES

- 03-25-2009
 - After it self-disclosed conduct to the OIG, St. Mary Medical Center (SMMC), Pennsylvania, agreed to pay \$172,617 for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that SMMC employed an individual that SMMC knew or should have known was excluded from participation in federal health care programs

SAMPLE OIG EXCLUSION CASES-CIVIL MONEY PENALTIES

- 12-29-2008
 - Haven Nursing Home, Inc. (Haven), Maryland, agreed to pay \$90,921 for allegedly violating the Civil Monetary Penalties Law. The OIG alleged that Haven employed an individual that Haven knew or should have known was excluded from participation in federal health care programs.

Connecticut Excluded Provider Project-(DOJ/HHS)

- July 2009, RELIANCE HOUSE, a behavioral healthcare provider, agreed to pay \$5,723.
- August 2009, GREENTREE MANOR, a skilled nursing and rehabilitation center, agreed to pay \$14,979.
- September 2009, STONINGTON INSTITUTE, a behavioral healthcare provider, agreed to pay \$21,430.
- January 2010, GROTON REGENCY, a skilled nursing and rehabilitation center agreed to pay \$42,363.
- March, 2010, THE MAY INSTITUTE, a behavioral health care provider, agreed to pay \$109,689 for services performed by two individuals who had been excluded from Medicare and Medicaid.
- "In each of these cases, the facility agreed to resolve allegations that it violated the False Claims Act by submitting or causing to be submitted claims to federal health care programs for services performed by an individual who had been previously excluded from Medicare and Medicaid."

CMS ON EXCLUSION DUTIES OF STATE PROGRAM INTEGRITY AGENCIES SMDL-09-001

- 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 recoupment.

HOW ?

- Should providers check exclusion lists?
- Often should they check?
- Should providers confirm name match?
- Disclose services provided or ordered by excluded person?
- Should states notify CMS and OIG?
- What about state and other governmental entities? School boards?

PROVIDER COMPLIANCE EXPECTATIONS (knew or should have known)

- Check 3 exclusion lists for each new hire.
- Check 3 exclusion lists for contractors.
- Check 3 exclusion lists for referral sources.
- Check 3 exclusion lists once each month for updates.
- Require contractors to conduct similar checks on their employees and contractors.
- Report each verified hit on current employees and current contractors from any of three exclusion lists to OMIG through disclosure protocol.
- Be prepared to review process as 1/1/11 approaches.

FREE STUFF FROM New York- OMIG Web site- WWW.OMIG.State.ny.us

- Model compliance programs-hospitals, managed care (coming soon)
- Nearly 2,000 provider audit reports, detailing findings in specific industry
- Work plan issued 4/24/09-shared with other states and CMS, OIG (2010-11 work plan forthcoming)
- Listserv (sign up via Web site:
www.omig.state.ny.us)
- New York excluded provider list
- Disclosure protocol

THANKS TO OMIG STAFF WHO MADE THIS WEBINAR POSSIBLE

- 700+ participating sites
- Wanda Fischer
- Bill Scialdo
- Steve Chartier
- Jason Moreland

QUESTION TIME

- Basis for Q/A
- Answers to be posted on OMIG Web site
(www.omig.state.ny.us)
- Next Webinar: July 14, 2010