



Commonwealth of Massachusetts
Executive Office of Health and Human Services
Office of Medicaid
600 Washington Street
Boston, MA 02111
www.mass.gov/masshealth



MassHealth
All Provider Bulletin 196
October 2009

TO: All Providers Participating in MassHealth

FROM: Terence G. Dougherty, Interim Medicaid Director *TGD*

RE: Provider Obligation to Screen Employees and Contractors for Exclusion from Participation in Federal Health Care Programs

Background

This bulletin advises providers of their obligation to screen their employees and contractors, both individuals and entities, to determine if they have been excluded from participation in federal health care programs, including state Medicaid programs such as MassHealth.

Under various laws, including Sections 1128, 1128A, and 1156 of the Social Security Act, the U.S. Department of Health and Human Services, Office of Inspector General (OIG) may exclude individuals and entities from participation in federal health care programs, such as MassHealth, if such individuals and entities have engaged in certain program-related misconduct or have been convicted of certain crimes, including patient abuse or fraudulent submission of claims.

Once an individual or entity is excluded by OIG, federal regulations at 42 CFR 1001.1901(b) prohibit MassHealth from paying for any items or services furnished, ordered, or prescribed by the excluded individual or entity. (Details about the scope and effect of this prohibition may be found at 42 CFR 1001.1901(a), (b), and (c)).

The payment prohibition bars

- direct payment to excluded individuals and entities;
- payment to individuals or entities that employ or contract with excluded individuals or entities; and
- payment for administrative and management services furnished by excluded individuals or entities that are not directly related to patient care, but are a necessary component of providing items and services to MassHealth members.

The payment prohibition applies regardless of who submits the claim and applies to all methods of reimbursement.

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Background
(cont.)

The following examples, taken from a 1999 OIG Special Advisory Bulletin entitled the Effect of Exclusion from Participation in Federal Health Care Programs, illustrate some of the situations where payment is barred:

- 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 an excluded administrator, billing agent, accountant, claims processor or utilization reviewer that are related to and reimbursed, directly or indirectly, 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.

In addition to barring payment, federal regulations at 42 CFR 1003.102(a)(2) authorize OIG to impose civil money penalties directly upon individuals or entities that, by employment or otherwise, arrange or contract with an excluded individual or entity for the provision of items or services to enrollees within a federal health care program such as MassHealth.

What You Must Do

To protect against payments for items or services furnished, ordered, or prescribed by excluded individuals or entities, you must

- use OIG's List of Excluded Individuals/Entities, described below, to screen all employees and contractors to determine if OIG has excluded them from participation in federal health care programs, both upon initial hiring or contracting and on an ongoing monthly basis; and
- immediately report any discovered exclusion of an employee or contractor to the EOHHS Compliance Office by telephone at 617-348-5202, by fax at 617-210-5474, via e-mail at Compliance.Office@ehs.state.ma.us, or by U.S. mail addressed to Compliance Office, 600 Washington Street, #5276, Boston, MA 02111.

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Recommended Actions

In order to establish sound compliance practices with this federally mandated requirement we recommend that you:

- develop policies and procedures for regular review of OIG's List of Excluded Individuals/Entities, described below, at time of hire and contracting and on a monthly basis;
- develop reliable, auditable documentation of when these procedures are performed; and
- periodically conduct self-audits of internal documentation and compliance with this requirement.

For additional information, please refer to CMS State Medicaid Director Letter (SMDL) #09-001, dated January 16, 2009.

OIG's List of Excluded Individuals and Entities

OIG's List of Excluded Individuals/Entities (LEIE) is a public, Web-based, searchable database that provides information about currently excluded individuals and entities.

Web users can determine whether an individual or entity is currently excluded by entering the individual's or entity's name. If the entered name matches with the exclusion list, LEIE permits users to verify the uniqueness of the match with social security numbers, employer identification numbers, or tax identification numbers. OIG updates LEIE monthly, adding newly excluded individuals and entities and removing reinstated individuals and entities.

OIG also publishes a downloadable version of LEIE that varies in certain respects from the Web version.

The LEIE Web site is located at: www.oig.hhs.gov/fraud/exclusions.asp.

More detailed information about LEIE, its use, differences between the Web and downloadable versions, and additional links to other federal Web sites explaining OIG's exclusion program can be obtained at that Web site.

Questions

If you have any questions about the information in this bulletin, please contact the EOHHS Compliance Office by telephone at 617-348-5202, by fax at 617-210-5474, by e-mail at Compliance.Office@ehs.state.ma.us, or by U.S. mail addressed to Compliance Office, 600 Washington Street, #5276, Boston, MA 02111.
