

KROKIDAS & BLUESTEIN

ATTORNEYS

CLIENT ALERT

PROVIDER ORGANIZATIONS SHOULD REGULARLY SCREEN FOR EXCLUDED INDIVIDUALS AND ENTITIES

We want to bring to your attention this recent and startling statistic: 57% of Civil Monetary Penalties (“CMPs”) imposed by the federal Health and Human Services’ Office of the Inspector General (the “OIG”) related to the employment of individuals who were excluded from participation in federal health care programs. We strongly recommend that organizations receiving funds, directly or indirectly, from federal health care programs (broadly defined as discussed in more detail below), update their policies and procedures regarding screening for excluded individuals and entities and confirm that the frequency and effectiveness of their compliance in this area is adequate.

Excluded individuals and entities are found on two different lists:

1. The OIG’s [List of Excluded Individuals/Entities](#) (“LEIE”); and
2. The General Services Administration’s Excluded Parties List System (“EPLS”), contained within the [System for Award Management](#) database.

We recommend that clients check both lists at the times suggested below with respect to employees, contractors, vendors, and board members.

Federal Health Care Programs

Our experience suggests that the OIG broadly construes federal health care programs to include not only Medicare, Medicaid (MassHealth), and Tri-Care, but also programs funded through state funds that have a federal match, such as state funded “waivered” programs or Health Safety Net funds. In essence, the OIG views any health-related funding program involving as little as a “drop” of federal money, either direct or indirect, as a federal health care program.

Excluded Individuals and Entities

Federal health care programs will not reimburse for services provided by employees, contractors, or vendors who have been excluded from participating in such programs. Exclusion may result from a variety of causes such as:

- Loss of professional licensure (even if now working in an unrelated field);
- Conviction of a felony or misdemeanor;
- Default on student loans; and
- Continued provision of substandard services.

Screening for Excluded Individuals and Entities

Since 2009, MassHealth has required participating providers to screen all of their employees, contractors, and vendors on a monthly basis ([All Provider Bulletin 196](#)). Further, settlement agreements with the OIG require organizations to screen their board members.

Organizations receiving federal health care program funds should review both the LEIE and EPLS for all employees (even if the individual is working in a non-healthcare position), contractors, vendors and board members at the following times:

- Before hiring an individual, bringing on a new board member or contracting with an entity; and
- On a monthly basis thereafter.

The initial review should be documented in the individual's personnel file or in the contractor's or vendor's file. Information on each board member should also be maintained with each board member's conflict of interest statements. The organization should also maintain a log of its monthly reviews. Many organizations opt to outsource the monthly review to a third party to reduce the internal administrative burden.

We recommend that our clients receiving federal health care funds appoint a senior manager to be responsible for the screening process. Other suggestions for this process include (1) requiring a certification in the organization's employment application that an applicant is not excluded from participating in the federal health care programs, (2) updating the organization's internal policies and procedures, including its employee handbook, to ensure compliance with these requirements, and (3) periodically monitoring the effectiveness of the implementation of the organization's policies.

Penalties for Not Screening

Hiring or contracting with an excluded individual and entity can result in substantial penalties for an organization. Not only could the organization be subject to CMPs and the repayment of funds, but the OIG may pursue more drastic sanctions, such as criminal liability under the False Claims Act or exclusion of an entire company or organization from participation in federal health care programs.

More Information

Please contact Attorneys Anthony Cichello (ajc@kb-law.com), Jennifer Gallop (jgallop@kb-law.com), Robert Griffin (rgriffin@kb-law.com), or Emily Kretchmer (ekretchmer@kb-law.com) if you have any questions or if you would like assistance in ensuring compliance with this fundamental provider requirement.