

PUBLICATION

Beware the Costs of Hiring Excluded Individuals

March 23, 2010

The Department of Health and Human Services Office of Inspector General (OIG) is continuing to emphasize enforcement of False Claims Act issues concerning billing related to excluded individuals. Last year, the OIG collected over \$2 million in settlements in 17 matters related to the employment or contracting of excluded individuals. These settlements demonstrate that the OIG continues to concentrate enforcement in this area.

On March 2, the U.S. Attorney's Office for the District of Connecticut announced that May Institute, a national behavioral health care provider, has agreed to pay nearly \$110,000 to settle allegations that it violated the False Claims Act by billing federal health care programs for services provided by individuals who had been excluded from participation in Medicare and Medicaid. The allegations against the May Institute involved claims filed on behalf of the company's Manchester, Connecticut facility, which provides community-based residential services, including group homes and off-site individual day programs, to adults with developmental disabilities.

Recent reported settlements provide examples of how a provider can be caught in the situation of having hired an excluded individual through placements made by staffing agencies. Last month, Premier Medical Staffing, Inc. (Premier) and Southern New Hampshire Medical Center (SNHMC) agreed to pay civil settlements totaling \$123,400 to resolve allegations related to the employment of an excluded individual. Premier is a staffing agency that provides temporary staffing services for health care providers. For approximately a year and a half, Premier employed a certified nursing assistant who had been excluded from federal health care programs. Premier placed this individual at several hospitals and other facilities where the individual performed services that were paid for by Medicare, Medicaid and other federal health care programs. Premier agreed to pay \$90,000 to resolve allegations that it violated the False Claims Act.

SNHMC is a not-for-profit acute care hospital located in Nashua, New Hampshire. Over the course of several years, SNHMC contracted with various temporary staffing agencies to obtain the services of the same excluded individual that Premier had placed. SNHMC agreed to pay \$33,400 to settle allegations that it violated the False Claims Act by submitting claims to federal health care programs that included services provided by this individual.

The OIG maintains the List of Excluded Individuals/Entities (LEIE), a database of individuals and entities that have been excluded from participating in federally funded health care programs, including Medicare and Medicaid. The primary reasons for exclusion are licensing board actions, convictions for program-related fraud, patient abuse or neglect convictions, and default on Health Education Assistance Loans. Federal Medicare and Medicaid dollars cannot be used to pay for anything (in whole or in part) that an excluded person furnishes, orders, or prescribes. Thus, the practical effect of an OIG exclusion is to bar employment of an excluded individual in any capacity by a health care practitioner, provider or supplier that receives reimbursement, indirectly or directly, from any federal health care program. This payment prohibition applies to the excluded person, anyone who employs or contracts with the excluded person, and any hospital or other organization where the excluded person provides services.

Given the high level of enforcement on this issue, providers need to be vigilant in ensuring that no employees or contractors are on the OIG's exclusion list. Before hiring or engaging any employee or contractor, providers

and suppliers must check the LEIE. In addition, providers must also check the list for vendors and suppliers. However, checking upon hiring or engagement is not enough. Companies must continue to check the list periodically to ensure that no employees, vendors, or contractors have been added. The greater the length of time between checks, the greater the amount of reimbursement (and additional fines) that a company is putting at risk. The LEIE is updated monthly, and it is advisable for providers to check all employees and major suppliers or contractors on a monthly basis. Large companies may have many thousands of vendors, so a practical rule of thumb is to check all suppliers initially and at contract renewal and to check on a monthly basis at least those vendors and suppliers that appear on the entity's cost report. When dealing with contract labor vendors for temporary administrative or clinical staff, providers should ensure that the vendor agrees to regularly check its employees and independent contractors against the LEIE.

In addition to the LEIE, providers should consider checking other federal databases to ensure that they are not employing or contracting with prohibited persons or entities. Providers should check the Excluded Parties List System, which is a single comprehensive list of individuals and firms excluded by federal agencies from receiving federal contracts or federally approved subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. Eligible providers should check new employees against the [National Practitioner Data Bank and Healthcare Integrity and Protection Data Bank](#) and the Department of Homeland Security E-Verify System. Providers should also consult the Specially Designated Nationals and Blocked Persons List (SDN List), which is published by the U.S. Treasury's Office of Foreign Assets Control (OFAC). OFAC administers and enforces economic and trade sanctions. The SDN List contains individuals and companies owned or controlled by, or acting on behalf of, targeted countries or individuals, and groups such as terrorists and narcotics traffickers. United States citizens and entities are generally prohibited from paying or providing benefits to or dealing with any person or entity on the SDN List.