PRACTICE® MANAGEMENT INSTITUTE

Improving the business of medicine through education

Welcome to PMI's Webinar Presentation

Brought to you by:
Practice Management Institute®
pmiMD.com

Meet the Presenter…

Heidi Kocher,
JD, MBA, CHC

On the topic:

Medicare Exclusion: New OIG Rule Expands Exclusion Authority

Welcome to Practice Management Institute's Webinar and Audio Conference Training. We hope that the information contained herein will give you valuable tips that you can use to improve your skills and performance on the job. Each year, more than 40,000 physicians and office staff are trained by Practice Management Institute. For 30 years, physicians have relied on PMI to provide up-to-date coding, reimbursement, compliance and office management training. Instructor-led classes are presented in 400 of the nation's leading hospitals, healthcare systems, colleges and medical societies.

PMI provides a number of other training resources for your practice, including national conferences for medical office professionals, self-paced certification preparatory courses, online training, educational audio downloads, and practice reference materials. For more information, visit PMI's web site at www.pmiMD.com

Please be advised that all information in this program is provided for informational purposes only. While PMI makes all reasonable efforts to verify the credentials of instructors and the information provided, it is not intended to serve as legal advice. The opinions expressed are those of the individual presenter and do not necessarily reflect the viewpoint of Practice Management Institute. The information provided is general in nature. Depending on the particular facts at issue, it may or may not apply to your situation. Participants requiring specific guidance should contact their legal counsel.

Practice Management Institute®
8242 Vicar | San Antonio, Texas 78218-1566
tel: 1-800-259-5562 | fax: (210) 691-8972
info@pmimd.com

Medicare Exclusion: New OIG Rule Expands Exclusion Authority

April 20, 2017

HEIDI KOCHER, ESQ.
LILES PARKER LLC

LILES PARKER Attorneys & Counselors at Law

Disclaimer

This outline is provided as general information only. It does not constitute legal advice and should not be used as a substitute for seeking legal counsel.

Outcomes may differ depending on specific facts.

2

LILES PARKER Attorneys & Counselors at Law

To "exclude"

Merriam-Webster dictionary definition:

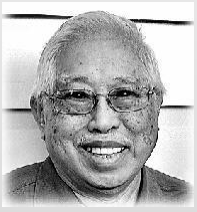
- to bar from participation, consideration, or inclusion
- to expel or bar especially from a place or position previously occupied

3

LILES PARKER Attorneys & Counselors at Law

Exclusion Basics

- Authorized by Sections 1128 (42 U.S.C. §1320a–7) and 1156 (42 U.S.C. § 1320c–5) of Social Security Act
- Enforcement agency = US Department of Health and Human Services Office of Inspector General, aka the OIG
- Exclude individuals and entities from Federally funded health care programs
- OIG maintains a list of all currently excluded individuals and entities called the List of Excluded Individuals and Entities (LEIE)
- First exclusion in 1977 – Pablo Chan, MD (born Jan. 1930, died Jan. 2016) – still excluded based on claims for excessive charges or failure to provide quality health care (1128(b)(6))



4

LILES PARKER Attorneys & Counselors at Law

Other Sources of Sanctions Screening Requirement

Besides the Social Security Act –

- New Condition of Participation for Home Health Agencies!
  - new CMS rule effective July 1, 2017 (https://www.gpo.gov/fdsys/pkg/FR-2017-01-13/pdf/2017-00283.pdf)
- Compliance Program guidances: https://oig.hhs.gov/compliance/compliance-guidance/index.asp
- OIG Compliance Program effectiveness considerations: https://oig.hhs.gov/compliance/101/files/HCCA-OIG-Resource-Guide.pdf
- Medicare Advantage plans compliance effectiveness requirement: https://tinyurl.com/n3zu3bn
- Implied in DOJ Evaluation of Corporate Compliance Programs guidance: https://www.justice.gov/criminal-fraud/page/file/937501/download
- Corporate Integrity Agreement language

5

LILES PARKER Attorneys & Counselors at Law

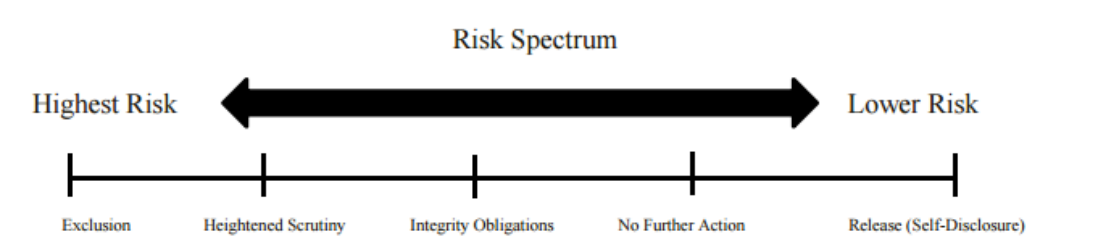
Exclusion Basics

- Effect of exclusion: no payment will be provided for any items or services furnished, ordered, or prescribed by an excluded individual or entity
- Anyone who hires an individual or entity on the LEIE may be subject to civil monetary penalties (CMP)
- Anyone who hires or contracts with excluded individual or entity may be subject to exclusion themselves
- Health care providers MUST check LEIE to ensure that new hires, current employees, prescribing/referring physicians, health care partners are not on LEIE
- https://exclusions.oig.hhs.gov/

6

LILES PARKER Attorneys & Counselors at Law

OIG Risk Evaluation



7

LILES PARKER Attorneys & Counselors at Law

Exclusion Basics

Mandatory versus Permissive

8

LILES PARKER Attorneys & Counselors at Law

Mandatory Exclusions

- OIG is **required** by law to exclude
- Reasons for exclusion:
  - Medicare or Medicaid fraud
  - Other offenses related to the delivery of items or services under Medicare, Medicaid, SCHIP, or other State health care programs
  - Patient abuse or neglect
  - Felony convictions for other health care-related fraud, theft, or other financial misconduct
  - Felony convictions relating to unlawful manufacture, distribution, prescription, or dispensing of controlled substances

9

LILES PARKER Attorneys & Counselors at Law

Mandatory Exclusions

Mandatory Exclusions

Social Security Act	42 USC §	Amendment
1128(a)(1)	1320a-7(a)(1)	Conviction of program-related crimes. Minimum Period: 5 years
1128(a)(2)	1320a-7(a)(2)	Conviction relating to patient abuse or neglect. Minimum Period: 5 years
1128(a)(3)	1320a-7(a)(3)	Felony conviction relating to health care fraud. Minimum Period: 5 years
1128(a)(4)	1320a-7(a)(4)	Felony conviction relating to controlled substance. Minimum Period: 5 years
1128(c)(3)(G)(i)	1320a-7(c)(3)(G)(i)	Conviction of two mandatory exclusion offenses. Minimum Period: 10 years
1128(c)(3)(G)(ii)	1320a-7(c)(3)(G)(ii)	Conviction on 3 or more occasions of mandatory exclusion offenses. Permanent Exclusion

10

LILES PARKER Attorneys & Counselors at Law

Permissive Exclusions

- OIG has **discretion** to exclude
- Reasons for exclusions:
  - Misdemeanor convictions related to health care fraud other than Medicare or a State health program
  - Fraud in a program (other than a health care program) funded by any Federal, State or local government agency
  - Misdemeanor convictions relating to the unlawful manufacture, distribution, prescription, or dispensing of controlled substances
  - Suspension, revocation, or surrender of a license to provide health care for reasons bearing on professional competence, professional performance, or financial integrity
  - Provision of unnecessary or substandard services
  - Submission of false or fraudulent claims to a Federal health care program
  - Engaging in unlawful kickback arrangements
  - Defaulting on health education loan or scholarship obligations
  - Controlling a sanctioned entity as an owner, officer, or managing employee

11

LILES PARKER Attorneys & Counselors at Law

Permissive Exclusions

Permissive Exclusions

Social Security Act	42 USC §	Amendment
1128(b)(1)(A)	1320a-7(b)(1)(A)	Misdemeanor conviction relating to health care fraud. Baseline Period: 3 years
1128(b)(1)(B)	1320a-7(b)(1)(B)	Conviction relating to fraud in non- health care programs. Baseline Period: 3
1128(b)(2)	1320a-7(b)(2)	Conviction relating to obstruction of an investigation. Baseline Period: 3 years
1128(b)(3)	1320a-7(b)(3)	Misdemeanor conviction relating to controlled substance. Baseline Period: 3 years
1128(b)(4)	1320a-7(b)(4)	License revocation or suspension. Minimum Period: No less than the period imposed by the state licensing authority.
1128(b)(5)	1320a-7(b)(5)	Exclusion or suspension under federal or state health care program. Minimum Period: No less than the period imposed by federal or state health care program.
1128(b)(6)	1320a-7(b)(6)	Claims for excessive charges, unnecessary services or services which fail to meet professionally recognized standards of health care, or failure of an HMO to furnish medically necessary services. Minimum Period: 1 year
1128(b)(7)	1320a-7(b)(7)	Fraud, kickbacks, and other prohibited activities. Minimum Period: None
1128(b)(8)	1320a-7(b)(8)	Entities controlled by a sanctioned individual. Minimum Period: Same as length of individual's exclusion.
1128(b)(8)(A)	1320a-7(b)(8)(A)	Entities controlled by a family or household member of an excluded individual and where there has been a transfer of ownership/ control. Minimum Period: Same as length of individual's exclusion.

12

LILES PARKER Attorneys & Counselors at Law

Criteria OIG Uses for Permissive Exclusions

A. Circumstances of Misconduct and Seriousness of Offense
   1. Criminal sanction imposed?
   2. Physical harm to patients or financial harm to healthcare programs?
   3. Isolated incident or pattern of wrongdoing?
   4. Defendant's involvement active or passive?

B. Defendant's Response to Allegations and Determination of Unlawful Conduct
   1. Defendant's response? Credible, appropriate?
   2. Cooperation with investigators?
   3. Full Restitution?
   4. Payment of all fines and penalties?
   5. Steps taken to undo or mitigate effects of misconduct?
   6. Acknowledgement of misbehavior?

13

LILES PARKER Attorneys & Counselors at Law

Criteria OIG Uses for Permissive Exclusions (cont.)

C. Likelihood Misconduct Will Reoccur?
   1. Unique circumstance or reoccurrence likely?
   2. Conduct before and since exemplary or improper?
   3. Previous measures taken to ensure compliance?
      a. Any efforts to contact regulators about conduct?
      b. Any voluntary disclosures?
      c. An effective compliance program in place?
   4. What measures taken since to ensure compliance?

D. Financial Responsibility?
   1. Can defendant operate without bankruptcy or other threat to provide quality health care?

14

LILES PARKER Attorneys & Counselors at Law

Salt in the wound

- OIG also has ability to impose Civil Monetary Penalties for employment of / contracting with an excluded individual or entity
- Up to $10,000 per item or service provided or furnished by excluded individual or entity, plus treble damages
- OIG has imposed over $12 million in Civil Monetary Penalties over exclusion-related violations since only January 1, 2014
- And then there is the potential for derivative exclusion …

15

LILES PARKER
Attorneys & Counselors at Law

Mechanics of Checking Exclusion Status

OIG maintains public list of excluded individuals and reasons for exclusion

List of Excluded Individuals and Entities (LEIE)

16

LILES PARKER
Attorneys & Counselors at Law

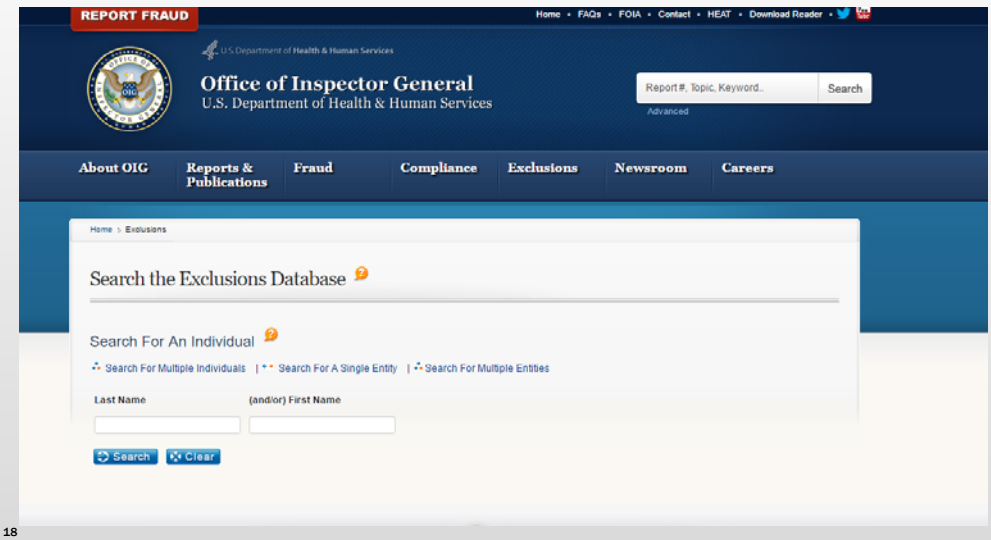
More About LEIE

- Currently over 66,400 excluded individuals and entities
  - Includes every type of health care facility and provider
  - Even includes accounting firms (9), billing companies (132), and lawyers (15)!
  - Physicians, practices, medical groups: 6,451
  - Nurses and nurses aides: 29,951
  - January 2017 – 147 exclusions, 13 reinstatements
- Currently longest exclusion imposed = 50 years!
- Updated monthly, with new exclusions and reinstatements

17

LILES PARKER Attorneys & Counselors at Law

LEIE Screenshot



18

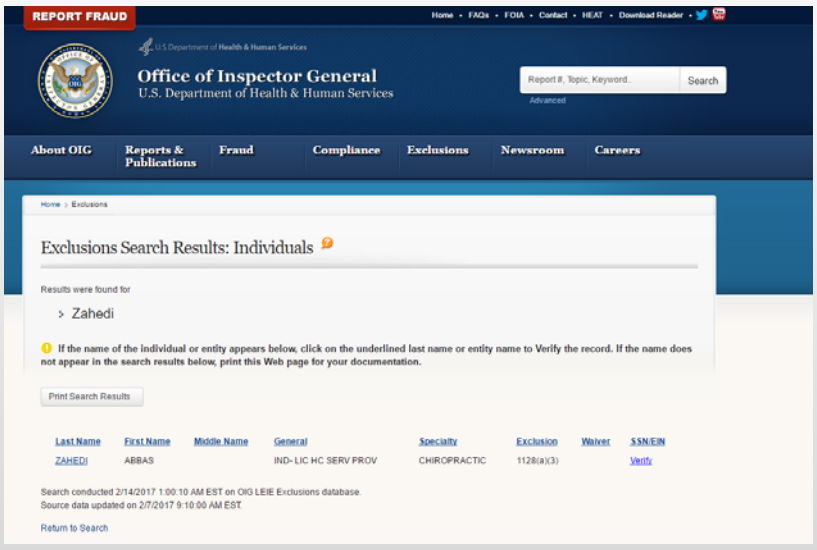
LILES PARKER Attorneys & Counselors at Law

Searching LEIE

19

LILES PARKER
Attorneys & Counselors at Law

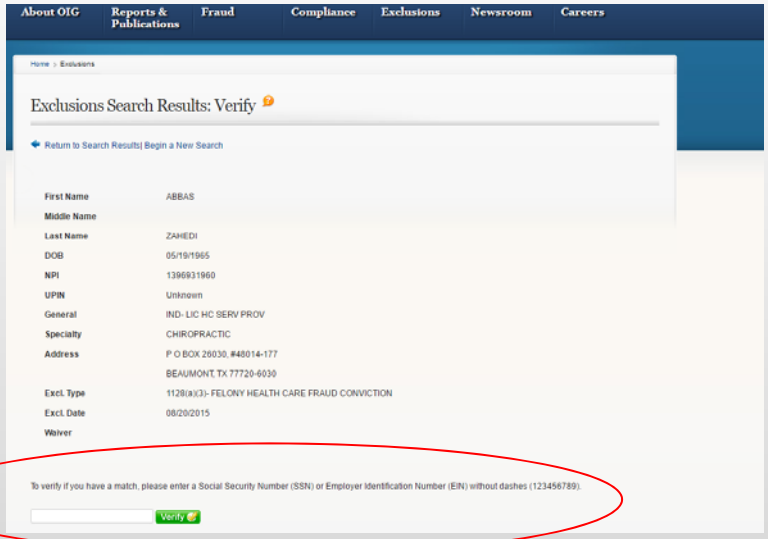
Sample Hit



20

LILES PARKER
Attorneys & Counselors at Law

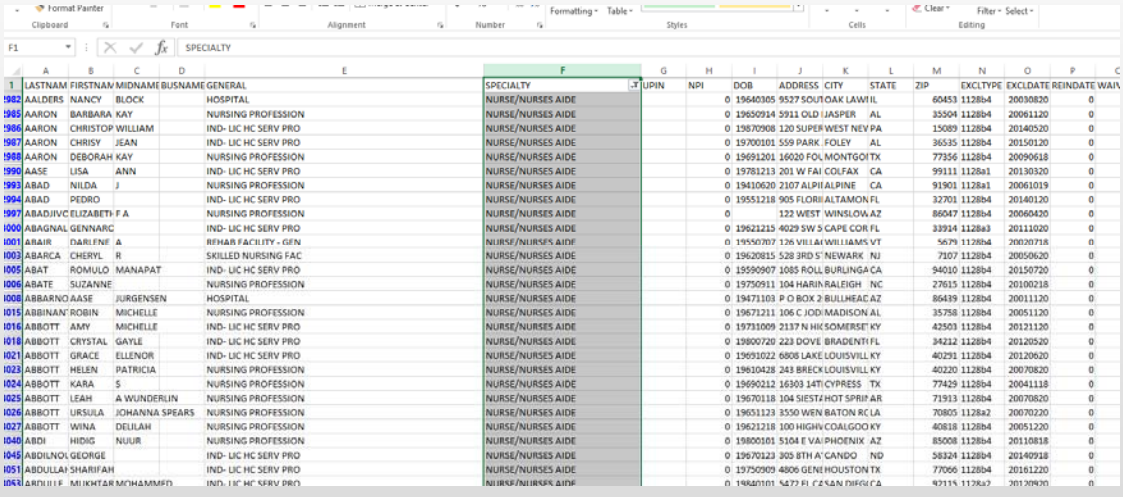
Sample Hit



21

LILES PARKER Attorneys & Counselors at Law

Downloadable LEIE Database



	LASTNAM	FIRSTNAM	MIDNAME	BUSNAME	GENERAL	SPECIALTY	UPIN	NPI	DOB	ADDRESS	CITY	STATE	ZIP	EXCLTYPE	EXCLDATE	REINDATE	WAI
1982	AALDERS	NANCY	BLOCK		HOSPITAL	NURSE/NURSES AIDE		0	19640305	9527 SOUT	OAK LAWI	IL	60453	1128b4	20030820	0	
1985	AARON	BARBARA	KAY		NURSING PROFESSION	NURSE/NURSES AIDE		0	19650914	5911 OLD	JASPER	AL	35504	1128b4	20061120	0	
1986	AARON	CHRISTOP	WILLIAM		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19870908	120 SUPER	WEST NEV	PA	15089	1128b4	20140520	0	
1987	AARON	CHRISY	JEAN		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19700101	559 PARK	FOLEY	AL	36535	1128b4	20150120	0	
1988	AARON	DEBORAH	KAY		NURSING PROFESSION	NURSE/NURSES AIDE		0	19691201	16020 FOL	MONTGOI	TX	77356	1128b4	20090618	0	
1990	AASE	LISA	ANN		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19781213	201 W FAI	COLFAX	CA	99111	1128a1	20130320	0	
1993	ABAD	NILDA	J		NURSING PROFESSION	NURSE/NURSES AIDE		0	19410620	2107 ALPII	ALPINE	CA	91901	1128a1	20061019	0	
1994	ABAD	PEDRO			IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19551218	905 FLORII	ALTAMON	FL	32701	1128b4	20140120	0	
1997	ABADJIVC	ELIZABETH	F A		NURSING PROFESSION	NURSE/NURSES AIDE		0		122 WEST	WINSLOW	AZ	86047	1128b4	20060420	0	
1000	ABAGNAL	GENNARC			IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19621215	4029 SW S	CAPE COR	FL	33914	1128a3	20111020	0	
1001	ABAIR	DARLENE	A		REHAB FACILITY - GEN	NURSE/NURSES AIDE		0	19550707	126 VILLA	WILLIAMS	VT	5679	1128b4	20020718	0	
1003	ABARCA	CHERYL	R		SKILLED NURSING FAC	NURSE/NURSES AIDE		0	19620815	528 3RD S	NEWARK	NJ	7107	1128b4	20050620	0	
1005	ABAT	ROMULO	MANAPAT		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19590907	1085 ROLL	BURLINGA	CA	94010	1128b4	20150720	0	
1006	ABATE	SUZANNE			NURSING PROFESSION	NURSE/NURSES AIDE		0	19750911	104 HARIN	RALEIGH	NC	27615	1128b4	20100218	0	
1008	ABBARNO	AASE	JURGENSEN		HOSPITAL	NURSE/NURSES AIDE		0	19471103	P O BOX 2	BULLHEAD	AZ	86439	1128b4	20011120	0	
1015	ABBINAN	ROBIN	MICHELLE		NURSING PROFESSION	NURSE/NURSES AIDE		0	19671211	106 C JOD	MADISON	AL	35758	1128b4	20051120	0	
1016	ABBOTT	AMY	MICHELLE		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19731009	2137 N HK	SOMERSET	KY	42503	1128b4	20121120	0	
1018	ABBOTT	CRYSTAL	GAYLE		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19800720	223 DOVE	BRADENTI	FL	34212	1128b4	20120520	0	
1021	ABBOTT	GRACE	ELLENOR		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19691022	6808 LAKE	LOUISVILL	KY	40291	1128b4	20120620	0	
1023	ABBOTT	HELEN	PATRICIA		NURSING PROFESSION	NURSE/NURSES AIDE		0	19810428	243 BRECK	LOUISVILL	KY	40220	1128b4	20070820	0	
1024	ABBOTT	KARA	S		NURSING PROFESSION	NURSE/NURSES AIDE		0	19690212	16303 14TI	CYPRESS	TX	77429	1128b4	20041118	0	
1025	ABBOTT	LEAH	A WUNDERLIN		NURSING PROFESSION	NURSE/NURSES AIDE		0	19670118	104 SIESTA	HOT SPRII	AR	71913	1128b4	20070820	0	
1026	ABBOTT	URSULA	JOHANNA SPEARS		NURSING PROFESSION	NURSE/NURSES AIDE		0	19651123	3550 WEN	BATON RC	LA	70805	1128a2	20070220	0	
1027	ABBOTT	WINA	DELILAH		NURSING PROFESSION	NURSE/NURSES AIDE		0	19621218	100 HIGHV	COALGOO	KY	40818	1128b4	20051220	0	
1040	ABDI	HIDIG	NUUR		NURSING PROFESSION	NURSE/NURSES AIDE		0	19800101	5104 E VA	PHOENIX	AZ	85008	1128b4	20110818	0	
1045	ABDILNOL	GEORGE			IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19670123	305 8TH A	CANDO	ND	58324	1128b4	20140918	0	
1051	ABDULLAH	SHARIFAH			IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19750909	4806 GENI	HOUSTON	TX	77066	1128b4	20161220	0	
1053	ABDULLE	MUKHTAR	MOHAMMED		IND- LIC HC SERV PRO	NURSE/NURSES AIDE		0	19840101	5472 EL C	SAN DIEG	CA	92115	1128a2	20120920	0	

22

LILES PARKER Attorneys & Counselors at Law

Exclusion Process

- Process varies a bit, depending on reason for exclusion
- OIG sends Notice of Intent to Exclude
- Individual/entity has 30 days to respond with evidence why exclusion is not warranted or mitigating circumstances
- OIG sends Notice of Exclusion
- Exclusion effective 20 days after mailing date
- Decision can be appealed to ALJ and Departmental Appeals Board
- Mandatory exclusions for 5 years: usually no Notice of Intent to Exclude
- Some permissive exclusions allow chance to present oral argument before OIG

23

LILES PARKER Attorneys & Counselors at Law

Exclusion Process

- For exclusions based on fraud, also opportunity for hearing
  - Notice of Intent to Exclude – 30 day response
  - Notice of Proposal to Exclude – contains more information about why OIG sought exclusion
  - Defendant then has 60 days to file written request for hearing
  - If no hearing request filed, OIG sends Notice of Exclusion 60 days after date of Notice of Proposal to Exclude
  - Exclusion is effective 20 days after date of Notice of Exclusion

24

LILES PARKER Attorneys & Counselors at Law

Appeal Rights

- Exclusions can be appealed to an administrative law judge (ALJ)
- After ALJ, can appeal to Departmental Appeals Board
- After DAB, can appeal to federal district court

25

LILES PARKER
Attorneys & Counselors at Law

Waiver of Exclusion

- In some limited circumstances, OIG will agree to waiver of exclusion
- Must be sole community physician or sole source of essential specialized services in community
- Waiver may ONLY be requested by state or federal health program administrator. Excluded individual cannot request waiver
- Waiver usually comes with conditions or limitations
- 21 waivers in effect currently
  - Example – Gary Trauger, D.C., indefinitely excluded for default on a Health Education Assistance Loan, but only chiropractor who provides chiropractic services to Medicaid patients in McKenzie County, ND, along border with Montana. Largest county by land area in ND. 2010 population = 6,360

26

LILES PARKER
Attorneys & Counselors at Law

Reinstatement to Medicare

- Reinstatement to Medicare is possible
- Reinstatement is NOT automatic
- Can apply 90 days before end of exclusion period
- Individual/entity must write to OIG and request reinstatement application
- Documents supporting application must be notarized and returned
- OIG considers information and issues written decision. Process usually takes about 120 days
- If reinstatement denied, individual/entity can reapply in one year
- **OBTAINING PROVIDER NUMBER FROM MEDICARE ≠ REINSTATEMENT!**

27

LILES PARKER Attorneys & Counselors at Law

State Exclusion Screening

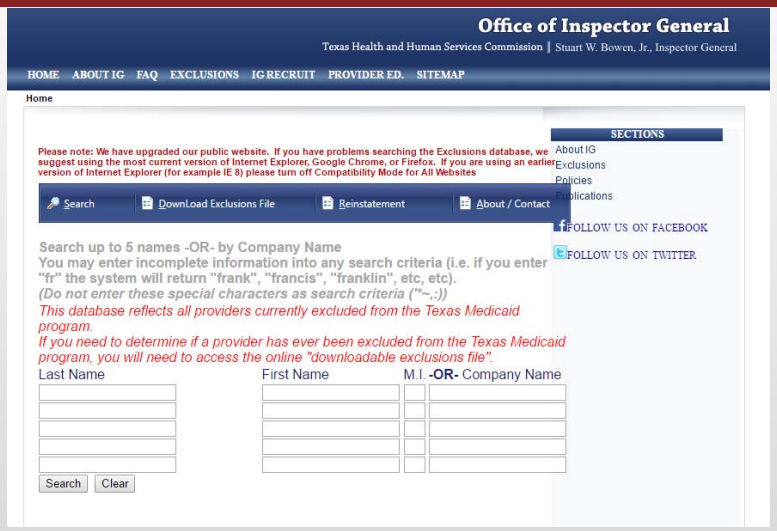
- 39 states have excluded provider lists
- Not all states called them "excluded providers"
  - ❖ Example – California: "Suspended and Ineligible Providers"
- Not all states have searchable websites
  - ❖ Example - California has Excel spreadsheet to download
- States also have differing authorities for exclusion
- State data does not always make it up to LEIE!
- State data can take a while to be included in LEIE
- Make sure to screen state lists monthly!

28

LILES PARKER Attorneys & Counselors at Law

State Medicaid Exclusion Lists

Example Texas



29

LILES PARKER Attorneys & Counselors at Law

Exclusion as a Collateral Consequence

- Licensure suspension, surrender, or revocation
  - Individual just doesn't want to fight licensure action, particularly in secondary state. Domino effect → exclusion
- Nolo contendere / no contest considered guilty plea! See Gupton v. Leavitt, 575 F.Supp.2d 874 (E.D. Tenn. 2008). Dr. G prescribed Ritalin after patient threatened his life and police . Nolo contendere plea expunged after completion of diversionary program.
- DUI, drug possessions – Licensure action, domino effect → exclusion
- Default on a Health Education Assistance Loan
- Business partner or entity becomes excluded

30

LILES PARKER Attorneys & Counselors at Law

Effect of Exclusion on Private Payers

- Also, virtually ALL private insurance companies required participating providers to be Medicare participants:

2.4 Physician Representations.

2.4.1 General Representations. Physician represents and covenants, as applicable, that: (a) it has, and shall maintain throughout the term of this Agreement all appropriate license(s) and certification(s) mandated by governmental regulatory agencies, including without limitation an unrestricted DEA certification and license to practice medicine in the state(s) in which Physician maintains offices and provides Covered Services to Members; (b) as applicable to Physician, Physician is board certified board eligible if approved by Company's exception process in the specialty for which Physician provides Physician Services; (c) that neither Physician nor any Provider Related Parties (as defined in Section 2.4.3) has (i) been excluded from participation in any federal or state-funded health program; or (ii) been listed in an Exclusion List (as defined in Section 2.4.3.1 (d)); (d) it is, and will remain throughout the term of this Agreement, in compliance with all applicable Federal and state laws and regulations

31

LILES PARKER Attorneys & Counselors at Law

So I had a match on my sanctions screening, now what? ....

- Validate match on OIG/state website
- Immediately notify counsel!
- Cease affected activities – place employee on leave, stop contract work, refuse referrals
- Determine how long excluded individual/entity worked for you, had contract with you, referred patients to you.
- Self-disclosure and repayment almost certain
- For employee, usually individual's salary + benefits, times multiplier
- For contractor, referring physician – all claims relating to contract or referrals
- Remember – overpayments must be repaid within 60 days of identification

32

LILES PARKER Attorneys & Counselors at Law

LATEST UPDATES

33

LILES PARKER Attorneys & Counselors at Law

New OIG Rule on exclusions

- Published Jan. 12, 2017 in Federal Register
- https://www.gpo.gov/fdsys/pkg/FR-2017-01-12/pdf/2016-31390.pdf
- Effective February 13, 2017
- Added ability to exclude individuals/entities who receive funds directly or indirectly from federal health care programs
- Expanded 1128(b)(2) exclusion for conviction of obstruction of an investigation to now include interference or obstruction of investigations or audits relating to federal health care programs
- Now can be excluded for "referring for furnishing" or falsely certifying need for items or services
- For exclusion for making false statement or misrepresenting material fact, expanded information can consider to include information from private insurance companies, federal contractors such as MACs and ZPICs, state licensing agencies and law enforcement agencies

34

LILES PARKER Attorneys & Counselors at Law

New OIG Rule on exclusions (cont.)

- Individuals excluded for controlling a sanctioned entity now excluded for same amount of time as the entity itself, regardless if individual ends relationship with entity
- Added permissive exclusion for misrepresentation of material fact in enrollment application
- Increased financial loss threshold as aggravating factor from $5,000 to $15,000 and $50,000 in some cases
- Now a 10 year statute of limitations on exclusion actions (parallels False Claims Act)
- Added early reinstatement process for individuals whose exclusion is based on action taken against license for reasons of professional competence, professional performance, or financial integrity. Reduced presumption against reinstatement from 5 years to 3 years
  - Factors include obtaining new license, resolving underlying issues

35

LILES PARKER Attorneys & Counselors at Law

The 50 year exclusion case

- Roben Brookhim, DDS – practice in New Jersey and New York, Associated Dental NP
- 1999 – New Jersey suspends license on multiple allegations of insurance fraud and patient records violations
- August 2000 – OIG excludes Brookhim
- 2004 – New Jersey permanently revokes license, as Brookhim treated patients while license suspended and billed under other dentist's name
- 2005 – 2011 – Brookhim continues to treat patients and bill under other dentists, including to NJ Medicaid
- Oct. 14, 2011 – John Kirkland, DDS renews license and dies following day. License valid until 2013.
- Brookhim assumes Kirkland's identity, continues to treat patients and submit claims in Kirkland's name
- 2012 – NJ authorities receive information about his activities and conduct undercover operation and then execute search warrant

36

LILES PARKER Attorneys & Counselors at Law

The 50 year exclusion case

- October 2012 – Brookhim arrested and jailed, $75,000 bond
- Brookhim charged with unlicensed practice of dentistry, identity theft, and healthcare claims fraud
- June 2013 - pleaded guilty
- January 2014 – sentenced to 3 years
- Released after 9 months in NJ prison
- After prison, started Dentek Management
- Jan 2017 – Brookhim also settled with OIG
  - $1.1 million fine
  - 50 year exclusion
- Brookhim currently a student at NYU, according to his public Facebook page

37

LILES PARKER
Attorneys & Counselors at Law

Tips for Providers

- Implement a policy and procedure on exclusions screening (see sample provided)
- Explicitly assign responsibility for sanctions screening
- Garbage in, garbage out – make sure you have full relevant data for individuals, including dates of birth, NPIs, tax ID numbers, and Social Security numbers
- Keep thorough documentation
- Ask about exclusion status upfront during the hiring or contracting process
- Make sure there are provisions regarding exclusion status in all relevant contracts
- Determine if job or contract is directly or indirectly payable by Medicare or Medicaid funds, to help decide if should include in screening process

38

LILES PARKER
Attorneys & Counselors at Law

Tips for Providers

- Screen carefully and frequently enough (monthly for states, at least annually for federal)
- Beware of nicknames ("Billy"), maiden names, hyphenated last names, etc. Consider using only first initial
- Make sure you screen volunteers, contract staff, vendors, and referring physicians
- If you have a potential match, quickly verify if it is an actual match
- Remember that if you have a match, you likely also have a repayment obligation – that 60 day clock is now ticking!
- Involve legal counsel. Suspension or contract termination may result in further legal actions. You also need to consider ramifications of self-disclosure
- Consider outsourcing the sanctions screening!

39

LILES PARKER Attorneys & Counselors at Law

At the end of the process, hopefully

40

LILES PARKER Attorneys & Counselors at Law

Resources to learn more about exclusions

- https://oig.hhs.gov/exclusions/advisories.asp
- *Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs*, Special Advisory Bulletin, May 2013
- *The Effect of Exclusion from Participation in Federal Health Care Programs*, Special Advisory Bulletin, September 1999
- Exclusions FAQs, https://oig.hhs.gov/faqs/exclusions-faq.asp

41

LILES PARKER Attorneys & Counselors at Law

Questions?

Heidi Kocher, Esq.
Liles Parker PLLC
Dallas, TX
hkocher@lilesparker.com
214-952-5169

42

LILES PARKER Attorneys & Counselors at Law

***POLICY TITLE*:** INELIGIBLE PERSONS SCREENING	***APPROVED*:** FEBRUARY ___, 2011
REFERENCE NUMBER:	***EFFECTIVE DATE:*** FEBRUARY ___, 2011
	***REVISED*:**

I. BACKGROUND AND PURPOSE

Under Federal law, the Federal government, through the Office of Inspector General ("OIG") of the U.S. Department of Health and Human Services, has the right to exclude individuals and companies from participation in federally-funded programs, such as Medicare and Medicaid. In addition, the Federal government may exclude, sanction, debar, suspend or otherwise prohibit certain persons or entities from receiving federal contracts, participating in certain subcontracts, or receiving federally-funded benefits or payments. This status is often referred to as being excluded, sanctioned or ineligible. If an entity or person is excluded, no payment may be made using funds from a federal program, for any services provided, prescribed or recommended by that excluded person or entity. For the purposes of this policy, such individuals or entity are called "Ineligible Persons".

In accordance with this, the OIG has issued a compliance guidance that calls for screening all employees, contract personnel and prescribing physicians against the OIG List of Excluded Individuals and Entities (LEIE) (located at http://exclusions.oig.hhs.gov/) and the General Services Administration's System for Award Management (SAM) (located at https://www.sam.gov/portal/SAM/##11) to ensure that they are not Ineligible Persons. Furthermore, if an individual or party has recently been convicted of healthcare related criminal offense, the OIG recommends that no contract be signed with such individual or party.

Accordingly, Provider will conduct appropriate screening of employees, contract staff, agents, business partners and prescribing healthcare providers to ensure that they have not been sanctioned, excluded or barred from participating in any federal programs by a federal or state law enforcement, regulatory or licensing agency.

II. POLICY

Provider will not knowingly employ or do business with any individual, entity or party who is an Ineligible Person.

Each applicant for employment with Provider must disclose whether he or she has been convicted of a healthcare crime, is the subject of an exclusion or other sanctioning or licensure discipline action. As part of the application, the individual must also agree to notify management in writing within five (5) calendar days of any written or oral notice of any actual or potential adverse action.

All final candidates for employment will be checked against the OIG's List of Excluded Individuals and Entities, the General Services Administration's System for Award Management and state Medicaid excluded provider lists prior to being offered a position at Provider. Provider will not employ individuals who are found to be a match with an excluded or sanctioned individual on those lists unless and until the exclusion or sanction has been removed.

All entities, parties or individuals who wish to enter into a contract or business arrangement with Provider will be checked against the OIG's List of Excluded Individuals and Entities and the General Services Administration's System for Award Management prior to finalizing and signing a contract with Provider. Provider will not enter into a contract or business relationship with parties who are found to be a match with an excluded or sanctioned individual or entity on those lists unless and until the exclusion or sanction has been removed.

Physicians who submit prescriptions for Provider products will be checked against OIG's List of Excluded Individuals and Entities and the General Services Administration's System for Award Management prior to Provider's acceptance of the prescription and supplying the product. Provider will not accept a prescription from a physician who is found to be a match with an excluded or sanctioned individual or entity on those lists unless and until the exclusion or sanction has been removed.

Each employee, contract or business partner, and prescribing physician will be checked against the OIG's List of Excluded Individuals and Entities and the General Services Administration's System for Award Management on a monthly basis to ensure that there has been no change in the individual's or entity's exclusion or sanction status. Results indicating that an individual or entity may be an Ineligible Person will cause Provider to temporarily suspend or halt doing business with the individual or entity, during which time the individual or entity will have the opportunity to demonstrate why Provider should not make the suspension of employment or business relationship permanent.

Corporate Human Resources and the Credentialing Departments will be responsible for applying and implementing this policy regarding the hiring of new Provider employees, contract staff or personnel, volunteers and prescribing or referring physicians. Legal will be responsible for applying and implementing this policy regarding entering into a new or initial contract with a contracted business partner. Compliance will be responsible for conducting the ongoing quarterly screenings of existing Provider employees and contract staff, contract partners and prescribing physicians.

III. DEFINITIONS

"Ineligible Person" means an individual or entity (a) currently excluded, suspended, debarred, or otherwise ineligible to participate in Federally funded health care programs or in federal procurement or non-procurement programs or (b) that has been convicted of a

criminal offense that falls within the ambit of 42 USC § 1320a-7(a) (see References, below) but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

"Federally-funded healthcare programs" means Medicare, Medicaid/MediCal, managed Medicare/Medicaid/MediCal, TriCare/VA/ CHAMPUS, SCHIP, Federal Employees Health Benefit Plan, Indian Health Services, Health Services for Peace Corp Volunteers, Railroad Retirement Benefits, Black Lung Program and Services Provided to Federal Prisoners.

"Exclusion Lists" means Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE), the General Services Administration (GSA) System for Award Management (SAM), any applicable state healthcare exclusion or sanctions list, and, as applicable, the National Practitioner Databank (NPDB).

IV. PROCEDURES

1. All Provider employment applications will require the applicant to disclose any criminal conviction of a healthcare related crime or exclusion, sanctions or licensure discipline action by a relevant regulatory, enforcement or licensing agency of any federal or state government.

2. All Provider employment applications must include an attestation that, if hired, the applicant will notify Provider management within five (5) calendar days of any written or oral notice of an actual or intended licensure, sanction or exclusion action that would make the individual an Ineligible Person or the filing of any criminal charges or actions related to healthcare. Failure to notify Provider management of such an occurrence is grounds for immediate termination.

3. All Provider employment applications must notify the applicant that prior to be hired, he or she will be screened against the Exclusion Lists, and, if appropriate, the relevant state licensure databases. Any negative results may prevent the applicant from being hired.

4. All Provider contract partners (including independent contractors, distributors and sales agents) must be screened by the Legal Department or Compliance Department against the Exclusion Lists and, if appropriate, the relevant state licensure databases. Any negative results may prevent Provider from entering into a contract with the prospective contract partner. All contracts will include a representation and warranty that the contractor is not an Ineligible Person and an affirmative obligation to notify Provider within five (5) business days if the contract partner receives notification that it is has become an Ineligible Person or received notice, whether in writing or verbally, that it is the subject of a proposed or pending exclusion or sanctions action or has been charged with crimes related to healthcare or fraud.

5. All vendors who do not sign a contract must be screened by the Compliance Department against the Exclusion Lists and, if appropriate, the relevant state licensure databases prior to being set up in Provider's accounts payable system and prior to any payment being made for services or products provided by the vendor. Any negative results may prevent Provider from conducting business with the prospective vendor.

6. All Provider employees, contract partners and vendors, and prescribing physicians will be screened on a monthly basis against the Exclusion Lists, and, if appropriate, the relevant state licensure databases.

7. If a person or entity appears to be an Ineligible Person during either the initial or monthly screening, the responsible department, in conjunction with the Compliance Department, will conduct a further investigation to determine if the individual or entity is, in fact, an Ineligible Person. Such further investigation will be documented and maintained by the responsible department and the Compliance Department. As part of the investigation, the person or entity who appears to be an Ineligible Person will be given the opportunity to demonstrate that he, she or it is not in fact an Ineligible Person, or has been reinstated to participation in Federal healthcare programs.

8. If an employee is determined to have become an Ineligible Person, he or she will be immediately suspended without pay for up to 90 days. During that time, he or she will have the opportunity to demonstrate why he or she should not be terminated or to provide documentation of reinstatement to participation in Federal healthcare programs. If the employee is unable to do so, at the end of 90 days, he or she will be terminated. The employee may be eligible for rehire at a future date once he or she is reinstated to participate in Federal healthcare programs. In such a circumstance, the employee will be considered a new applicant and must go through the standard application and hiring process for new applicants.

9. If a contracted party is determined to have become an Ineligible Person during the contract period, Provider will immediately suspend doing business with that party for 90 days. During this time period, Provider will not make any payments to the contracted party, regardless of services provided. During this time period, the contracted party will have the opportunity to demonstrate why the contract should not be terminated or to provide documentation of reinstatement to participation on Federal healthcare programs. If the contracted party is unable to do so, at the end of 90 days, Provider will terminate the contract, pursuant to the provisions for termination within the contract. The contracted party may be eligible to enter into a new contract with Provider at a future date once the individual or entity is reinstated to participate in Federal healthcare programs. At that time, the prospective partner will be considered a new partner or party and must go through the standard vetting process for new contracts.

10. If an individual, contract party or entity is determined to have become an Ineligible Person, Provider will promptly determine whether it has received reimbursement from Federally-funded healthcare programs for services or products provided by or to or prescribed by the Ineligible Person. If Provider has not yet submitted a claim for such products or services, the Billing Department will ensure that no claim is, in fact, ever submitted for such items or services. If a claim has been submitted, but payment has not yet been received, Accounts Receivable will immediately contact the payer to notify the payer of the situation and to ask that the payer not pay the claim. If Provider has already received reimbursement for the claim, Accounts Payable will promptly refund the relevant amounts and will document such refund. The documentation of all such work will be provided to the Compliance Department, which will keep such documentation as part of its Compliance Program files.

11. To ensure compliance with this policy, the Compliance Department will annually audit a random sample of applications, new and renewed contracts, and any other applicable business arrangements. If such audit reveals an Ineligible Person who should not have been hired or contracted with, the above procedures will be followed. In addition, the responsible persons in the relevant departments who knew or should have known of the Ineligible Person will be disciplined according to Provider policy. In addition, the Compliance Department will evaluate whether the situation is serious enough to warrant a Voluntary Self-Disclosure to the OIG, under the OIG's Voluntary Self-Disclosure Protocol (see http://www.oig.hhs.gov/fraud/selfdisclosure.asp)

V. REFERENCES

42 U.S.C. §§ 1320a-7 through 1320a-7(c) and 1320c-5 – statutory authorities for mandatory and permissive exclusion

U.S. Sentencing Commission, Organizational Sentencing Guidelines (Nov. 1, 2016), §8B2.1 Effective Compliance and Ethics Program, available at http://www.ussc.gov/guidelines/2016-guidelines-manual/2016-chapter-8#NaN

OIG Compliance Program Guidance for Individual and Small Group Physician Practices, 65 Fed. Reg. 59434 (October 5, 2000)

42 C.F.R. 1001.1901

OIG's *Special Advisory Bulletin on The Effect of Exclusion From Participation In Federal Health Care Programs*, 64 FR 52791 (September 30, 1999), available at https://oig.hhs.gov/exclusions/effects_of_exclusion.asp

OIG's *Updated Special Advisory Bulletin on The Effect of Exclusion From Participation In Federal Health Care Programs*, (May 8, 2013), available at https://oig.hhs.gov/exclusions/files/sab-05092013.pdf

{State exclusion law}

Jurisdictions with Excluded/Sanctioned Provider Lists

Alabama
Alaska
Arizona
Arkansas
California
Connecticut
Florida
Georgia
Hawaii
Idaho
Illinois
Indiana
Iowa
Kansas
Kentucky
Louisiana
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Missouri
Montana
Nebraska
Nevada
New Jersey
New York
North Carolina
North Dakota
Ohio
Pennsylvania
South Carolina
Tennessee
Texas
Washington
Washington, DC
West Virginia
Wyoming

Exclusion Authorities

Scope

Social Security Act	42 USC §	Amendment
1128	1320a-7	Scope of exclusions imposed by the OIG expanded from Medicare and State health care programs to all Federal health care programs, as defined in section 1128B(f)(1).

Mandatory Exclusions

Social Security Act	42 USC §	Amendment
1128(a)(1)	1320a-7(a)(1)	Conviction of program-related crimes. Minimum Period: 5 years
1128(a)(2)	1320a-7(a)(2)	Conviction relating to patient abuse or neglect. Minimum Period: 5 years
1128(a)(3)	1320a-7(a)(3)	Felony conviction relating to health care fraud. Minimum Period: 5 years
1128(a)(4)	1320a-7(a)(4)	Felony conviction relating to controlled substance. Minimum Period: 5 years
1128(c)(3)(G)(i)	1320a-7(c)(3)(G)(i)	Conviction of two mandatory exclusion offenses. Minimum Period: 10 years
1128(c)(3)(G)(ii)	1320a-7(c)(3)(G)(ii)	Conviction on 3 or more occasions of mandatory exclusion offenses. Permanent Exclusion

Permissive Exclusions

Social Security Act	42 USC §	Amendment
1128(b)(1)(A)	1320a-7(b)(1)(A)	Misdemeanor conviction relating to health care fraud. Baseline Period: 3 years
1128(b)(1)(B)	1320a-7(b)(1)(B)	Conviction relating to fraud in non- health care programs. Baseline Period: 3
1128(b)(2)	1320a-7(b)(2)	Conviction relating to obstruction of an investigation. Baseline Period: 3 years
1128(b)(3)	1320a-7(b)(3)	Misdemeanor conviction relating to controlled substance. Baseline Period: 3 years
1128(b)(4)	1320a-7(b)(4)	License revocation or suspension. Minimum Period: No less than the period imposed by the state licensing authority.
1128(b)(5)	1320a-7(b)(5)	Exclusion or suspension under federal or state health care program. Minimum Period: No less than the period imposed by federal or state health care program.

1128(b)(6)	1320a-7(b)(6)	Claims for excessive charges, unnecessary services or services which fail to meet professionally recognized standards of health care, or failure of an HMO to furnish medically necessary services. Minimum Period: 1 year
1128(b)(7)	1320a-7(b)(7)	Fraud, kickbacks, and other prohibited activities. Minimum Period: None
1128(b)(8)	1320a-7(b)(8)	Entities controlled by a sanctioned individual. Minimum Period: Same as length of individual's exclusion.
1128(b)(8)(A)	1320a-7(b)(8)(A)	Entities controlled by a family or household member of an excluded individual and where there has been a transfer of ownership/ control. Minimum Period: Same as length of individual's exclusion.
1128(b)(9), (10), and (11)	1320a-7(b)(9), (10), and (11)	Failure to disclose required information, supply requested information on subcontractors and suppliers; or supply payment information. Minimum Period: None
1128(b)(12)	1320a-7(b)(12)	Failure to grant immediate access. Minimum Period: None
1128(b)(13)	1320a-7(b)(13)	Failure to take corrective action. Minimum Period: None
1128(b)(14)	1320a-7(b)(14)	Default on health education loan or scholarship obligations. Minimum Period: Until default has been cured or obligations have been resolved to Public Health Service's (PHS) satisfaction.
1128(b)(15)	1320a-7(b)(15)	Individuals controlling a sanctioned entity. Minimum Period: Same period as entity.
1128(b)(16)	1320a-7(b)(16)	Making false statement or misrepresentations of material fact. Minimum period: None. The effective date for this new provision is the date of enactment, March 23, 2010.
1156	1320c-5	Failure to meet statutory obligations of practitioners and providers to provide' medically necessary services meeting professionally recognized standards of health care (Peer Review Organization (PRO) findings). Minimum Period: 1 year

Note: except those imposed under section 1128(b)(7) [42 USC 1320a-7b(b)(7)], and those imposed on rural physicians under section 1156 [42 USC 1320C-5], all exclusions are effective prior to a hearing.

Top

Back to Exclusions