

DHHS POLICY AND PROCEDURE MANUAL

Section V:	Human Resources
Title:	Recruitment Services
Chapter:	Employment/Pre-Employment – Medicaid Fraud/Abuse Exclusion
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Purpose

To ensure the department's compliance with the US Department of Health and Human Service (DHHS) Office of the Inspector General's (OIG) medicaid fraud/abuse exclusion program and to prevent the employment of excluded individuals (see Item E below) or entities as mandated by federal law.

Policy

Persons or entities who have engaged in fraud or abuse of any kind are excluded from participating in the administration of Medicare, Medicaid and other federal health care programs as mandated by Section 1128. *[42 U.S.C. 1320a-7]*.

Implementation

1. The following steps are required for compliance with this federal mandate:
 - A. Human resources (HR) managers shall partner with the division, facility and school management to determine which positions [by classification title and position number] and personal service contracts are subject to the OIG exclusions (those who participate in the administration of Medicare, Medicaid and other federal health care programs) and maintain that information in the local HR office.
 - B. HR managers shall specify a person on the HR staff to be responsible for accessing the US DHHS OIG website to conduct employment and pre-employment checks for employees in, or applicants for positions deemed to be subject to the [OIG exclusions](#). This also includes checks during the review process of individuals being considered for a personal service contract.
 - C. In the event an employee is identified on the OIG website, management shall notify the employee within five (5) days in writing of this information. Once notified, the employee has 15 days to provide documentation that the OIG

information is incorrect. Pre-dismissal proceedings shall be initiated upon the employee's inability to provide the necessary documentation. For applicants, it is within the discretion of the director to allow the applicant up to 15 days to resolve the "exclusion or disbarment" issue depending upon the urgency to fill the position. Individuals on personal service contracts shall be notified by the division, facility or school business/purchase contract agent or other appropriate party in the event of an identified exclusion. Personal service contracts shall either not be entered into or be immediately terminated if the contractor cannot resolve the OIG exclusion within 15 days.

D. A copy of a notification to an employee of an "exclusion or disbarment" issue shall be maintained in the employee's personnel file. If the employee resolves the issue to the satisfaction of the division, school or facility director, the documentation of notification shall be removed from the employee's personnel file. Notification to an applicant shall be included with the applicant file and may be removed pending resolution of the issue and a decision made regarding the applicant's prospective employment.

E. Exclusion from Health Care Programs:

The effect of an OIG exclusion from federal health care programs is that no federal health care program payment may be made for any items or services:

- Furnished by an excluded individual or entity, or
- Directed or prescribed by an excluded physician.

F. Any items and services furnished by an excluded individual or entity are not reimbursable under federal health care programs. In addition, any items and services furnished at the medical direction or prescription of an excluded physician are not reimbursable when the individual or entity furnishing the services either knows or should know of the exclusion. This prohibition applies even when the federal payment itself is made to another provider, practitioner or supplier that is not excluded. The prohibition against federal program payment for items or services furnished by excluded individuals or entities also extends to payment for administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to federal program beneficiaries. This prohibition continues to apply to an individual even if he or she changes from one health care profession to another while excluded.⁽¹⁾ In addition, no federal program payment may be made to cover an excluded individual's salary, expenses or fringe benefits, regardless of whether the excluded individual provides direct patient care.

G. Examples of Items and Work Performed by NC DHHS Employees and Personal Service Contractors Subject to OIG Exclusions:

Some of the types of items or services that are reimbursed by federal health care programs which, when provided by excluded parties, violate an OIG exclusion are listed below. These examples also demonstrate the kinds of items and services that excluded parties may be furnishing which will subject their employer or contractor to possible civil money penalty liability.

1. Services performed by excluded nurses, technicians or other excluded individuals 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 by a federal health care program, even if the individuals do not furnish direct care to federal program beneficiaries;
2. 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 any federal health care program;
3. Services performed by excluded ambulance drivers, dispatchers and other employees involved in providing transportation reimbursed by a federal health care program, to hospital patients or nursing home residents;
4. Services performed for program beneficiaries by excluded individuals who sell, deliver or refill orders for medical devices or equipment being reimbursed by a federal health care program;
5. Services performed by excluded social workers to provide services to federal program beneficiaries, and whose services are reimbursed, directly or indirectly, by a federal health care program;
6. Administrative services, including the processing of claims for payment, performed for a Medicare intermediary or carrier, or a Medicaid fiscal agent, by an excluded individual; and
7. 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 federal health care program;
8. Items or services provided to a program beneficiary by an excluded individual who works for an entity that has a contractual agreement with, and is paid by, a federal health care program.

2. Violation Penalty

An excluded party is in violation of the OIG's exclusionary provisions if the excluded party furnishes to federal program beneficiaries items or services for which federal

health care program payment is sought. An excluded individual or entity that submits a claim for reimbursement to a federal health care program, or causes such a claim to be submitted, may be subject to a civil money penalty of \$10,000 for each item or service furnished during the period that the person or entity was excluded. The individual or entity may also be subject to treble damages for the amount claimed for each item or service.

3. Employing an Excluded Individual or Entity

The Federal Balanced Budget Act (BBA) authorizes the imposition of civil money penalties against health care providers and entities that employ or enter into contracts with excluded individuals or entities to provide items or services to federal program beneficiaries.

A provider or entity that receives federal health care funding may only employ an excluded individual in limited situations. Those situations would include instances where the provider is both able to pay the individual exclusively with private funds or from other non-federal funding sources, and where the services furnished by the excluded individual relate solely to non-federal program patients.

Reference

The OIG was established in the US DHHS to identify and eliminate fraud, waste, and abuse in the department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through a nationwide program of audits, inspections, and investigations. In addition, the OIG has been given the authority to exclude from participation in Medicare, Medicaid and other federal health care programs ⁽²⁾ individuals and entities who have engaged in fraud or abuse, and to impose civil monetary penalties (CMP) for certain misconduct related to federal health care programs.

For questions or clarification on any of the information contained in this policy, please contact [Human Resources](#). For general questions about department-wide policies and procedures; contact the [DHHS Policy Coordinator](#).