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Client Alert: Best Practices for Exclusion Screenings

INDUSTRY SECTOR

Health Care

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Exclusion Screening: LEIE, SAM and state exclusion lists

Despite having potentially devastating consequences, health care providers are often unsure of their obligations for exclusion screening. This uncertainty exists because no federal statutory or regulatory requirements are imposed on providers, apart from ensuring that routine monitoring occurs under an effective compliance plan. Nevertheless, providers should consider engaging in exclusion screening at least monthly as a preventative, best-practices measure.

Why? – Providers are not permitted to receive federal health payments for items or services furnished by an excluded individual or entity. Because violations of this prohibition will require repayments, in addition to possible civil monetary penalties and/or assessments, they can be costly. The goal of timely exclusion screening is to minimize these costs.

Who? – Providers should review job categories and contractual relationships and consider whether an item or service is directly or indirectly, in whole or in part, payable by a federal health program. Providers should consider screening for exclusions, at least monthly, all persons who provide such items or services. During screenings, all variations of the person's name should be searched, including, without limitation, maiden names, hyphenated/combined names, and/or name diminutives.

Frequency? – The above prohibition on payments applies when a provider knows or should know of an exclusion. Because the Office of Inspector General (OIG) has repeatedly emphasized that exclusion screening should occur at least monthly, providers will likely be deemed to have constructive knowledge of information they would have known upon performing a monthly screen.

Where? – Providers should screen the OIG's List of Excluded Individuals/Entities (LEIE) and any state's exclusion lists, where persons providing items or services may be excluded.

The LEIE contains the names of individuals and entities excluded from participation in federal health care programs. The OIG recommends providers use LEIE as the "primary" source of exclusion screening. The OIG sends monthly updates about exclusions to Centers for Medicare & Medicaid Services (CMS) and the General Services Administration (GSA).

Federal law permits states to exclude individuals from participating in Medicaid for the same reasons that would support an exclusion from federal programs. Thus, providers should include within their monthly exclusion screenings a review of the states' lists where a person may be excluded.

Providers could also consider screening GSA's System for Award Management (SAM). SAM lists the individuals and entities suspended, debarred, and proposed for debarment by any federal executive agency. Given its expansive scope, and absent some error in searching or delay in reporting, the names in LEIE should also be included within SAM. Thus, screening SAM may be perceived as duplicative of a LEIE screening. However, members of the exclusion screening industry contend that screening both LEIE and SAM is a best-practices measure. Beyond that, certain provider contracts may also require SAM screenings.

Results? – Providers should maintain records and documentation of all screenings, even when no match is revealed. Such documentation could include, without limitation, informational logs concerning the search details (i.e., dates of searches, lists of names searched, search terms, search variations, search results, etc.), website screen-shots, verification of the individual performing the screening, among other pertinent information. These records should help demonstrate a provider's good-faith attempt to comply with the OIG's recommendations, in addition to helping demonstrate the effectiveness of the provider's compliance plan. CMS guidance suggests retaining records of results for 10 years. If a screen results in a positive identification that has been verified as a match, providers should immediately consult with counsel.

Vendor Assistance? – A simple online search reveals a variety of vendors available to assist providers with exclusion screening. However, even if an outside vendor performs exclusion screening, the provider will ultimately be responsible for overpayments and/or potential CMPs and assessments. So, as the saying goes, buyer beware.

If you have questions, please contact Adam Galat at 419.321.1385 or agalat@shumaker.com.