



STATE OF MARYLAND

DHMH

Maryland Department of Health and Mental Hygiene

Office of Health Care Quality

Spring Grove Center • Bland Bryant Building

55 Wade Avenue • Catonsville, Maryland 21228-4663

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – Joshua M. Sharfstein, M.D., Secretary

TO: DDA Licensed Service Providers

FROM: Renata J. Henry, Deputy Secretary for Behavioral Health and Disabilities 

DATE: June 30, 2011

RE: Medicaid Exclusion List

The Developmental Disabilities Administration (DDA) is issuing this memo to strengthen the integrity of the Medicaid program and help Maryland reduce improper payments to providers. It has come to the attention of the DDA that some DDA-licensed providers are unaware of their responsibilities in ensuring staff and contactors have not been excluded from participation in any federal health care program (as defined in section 1128B(f)¹).

DDA-licensed agencies that are paid to provide services to people in the waiver (e.g.: Community Pathways and New Directions) are federal program beneficiaries. Federal program beneficiaries cannot employ or enter into contracts with excluded individuals for the provision of services or items. The attached legal background from the OIG website <http://oig.hhs.gov/index.asp>, explains that the prohibitions being described apply to items and services provided, directly or indirectly, to federal program beneficiaries.

To protect against payments for items and services furnished or ordered by excluded parties, the DDA is advising all current providers and providers applying to participate in the Medicaid program to take the following steps to determine whether their employees and contractors are excluded individuals or entities:

- Providers are obligated to screen all employees and contractors to determine whether any of them have been excluded.
- Providers can search the HHS-OIG website² by the names of any individual or entity.
- Providers should search the HHS-OIG website regularly to capture exclusions and reinstatements that have occurred since the last search.
- Providers must immediately report any exclusion information discovered to the DDA.

The purpose of this letter is twofold. First, it is to inform you of your responsibility to screen all employees and contractors to determine whether any of them have been excluded from participation in Medicaid. Second, it is to inform you of the potential impact employment with excluded personnel can have on your agency's future. (Please see attachment entitled "Legal Background.") In addition to jeopardizing your agency's future as a provider that receives federal health care funding, civil monetary penalties may be imposed against your agency (Section 1128A(a)(6) of the Act; and 42 CFR section 1003.102(a)(2) (attached). Please see the attached memorandum (Providers' Responsibility to Screen for Excluded Parties) dated April 17, 2009. This document issues guidance on screening your staff and contractors.

Thank you for your attention to this important issue. If you have questions, please contact Amy Daugherty, Statewide Quality Assurance Chief of DDA, at 410-767-5586.

¹ A compilation of the Social Security Laws can be viewed at: http://www.ssa.gov/OP_Home/ssact/title11/1128B.htm#act-1128B-f.

² The Federal List of Excluded Individuals and Entities (LEIE) can be viewed at: http://oig.hhs.gov/fraud/exclusions/exclusions_list.asp
The State List of Excluded Medicaid Providers can be viewed at: <http://www.dhmh.state.md.us/oig/html/rellinks.htm>. (Scroll down to "State" and click first link.)

Legal Background

In an effort to protect the health and welfare of the nation's elderly and low income, the US Congress implemented legislation to prevent certain individuals and businesses from participating in Federally-funded health care programs. The Office of the Inspector General (OIG), under this Congressional mandate, established a program to exclude individuals and entities affected by these various legal authorities, contained in sections 1128 and 1156 of the Social Security Act, and maintains a list of all currently excluded parties called the List of Excluded Individuals/Entities.

Exclusion from Federal 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 (1) furnished by an excluded individual or entity, or (2) directed or prescribed by an excluded physician (42 CFR 1001.1901). This payment ban applies to all methods of Federal program reimbursement, whether payment results from itemized claims, cost reports, fee schedules or a prospective payment system (PPS). 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.³ In addition, no Federal program payment may be made to cover an excluded individual's salary, expenses or fringe benefits, regardless of whether they provide direct patient care.

Violation of an OIG Exclusion By an Excluded Individual or Entity

An excluded party is in violation of its exclusion if it 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 Monetary Penalty (CMP) of \$10,000 for each item or service furnished during the period that the person or entity was excluded (section 1128A(a)(1)(D) of the Act). The individual or entity may also be subject to treble damages for the amount claimed for each item or service. In addition, since reinstatement into the programs is not automatic, the excluded individual may jeopardize future reinstatement into Federal health care programs (42 CFR 1001.3002).

Employing an Excluded Individual or Entity

As indicated above, Balanced Budget Act (BBA) authorizes the imposition of Civil Monetary Penalties (CMPs) 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 (section 1128A(a)(6) of the Act; 42 CFR 1003.102(a)(2)). This authority parallels the CMP for health maintenance organizations that employ or contract with excluded individuals (section 1857(g)(1)(G) of the Act). Under the CMP authority, providers such as hospitals, nursing homes, hospices and group medical practices may face CMP exposure if they submit claims to a Federal health care program for health care items or services provided, directly or indirectly, by excluded individuals or entities.

EXCLUSION OF CERTAIN INDIVIDUALS AND ENTITIES FROM PARTICIPATION IN MEDICARE AND STATE HEALTH CARE PROGRAMS

Sec. 1128. [42 U.S.C. 1320a-7] (a) Mandatory Exclusion.—The Secretary shall exclude the following individuals and entities from participation in any Federal health care program (as defined in section [1128B\(f\)](#)):

(1) Conviction of program-related crimes.—Any individual or entity that has been convicted of a criminal offense related to the delivery of an item or service under title XVIII or under any State health care program.

(2) Conviction relating to patient abuse.—Any individual or entity that has been convicted, under Federal or State law, of a criminal offense relating to neglect or abuse of patients in connection with the delivery of a health care item or service.

(3) Felony conviction relating to health care fraud.—Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996^[41], under Federal or State law, in connection with the delivery of a health care item or service or with respect to any act or omission in a health care program (other than those specifically described in paragraph (1)) operated by or financed in whole or in part by any Federal, State, or local government agency, of a criminal offense consisting of a felony relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct.

(4) Felony conviction relating to controlled substance.—Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law, of a criminal offense consisting of a felony relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(b) Permissive Exclusion.—The Secretary may exclude the following individuals and entities from participation in any Federal health care program (as defined in section [1128B\(f\)](#)):

(1) Conviction relating to fraud.—Any individual or entity that has been convicted for an offense which occurred after the date of the enactment of the Health Insurance Portability and Accountability Act of 1996, under Federal or State law—

(A) of a criminal offense consisting of a misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—

(i) in connection with the delivery of a health care item or service, or

(ii) with respect to any act or omission in a health care program (other than those specifically described in subsection (a)(1)) operated by or financed in whole or in part by any Federal, State, or local government agency; or

(B) of a criminal offense relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct with respect to any act or omission in a program (other than a health care program) operated by or financed in whole or in part by any Federal, State, or local government agency.

(2) Conviction relating to obstruction of an investigation.—Any individual or entity that has been convicted, under Federal or State law, in connection with the interference with or obstruction of any investigation into any criminal offense described in paragraph (1) or in subsection (a).

(3) Misdemeanor conviction relating to controlled substance.—Any individual or entity that has been convicted, under Federal or State law, of a criminal offense consisting of a misdemeanor relating to the unlawful manufacture, distribution, prescription, or dispensing of a controlled substance.

(4) License revocation or suspension.—Any individual or entity—

(A) whose license to provide health care has been revoked or suspended by any State licensing authority, or who otherwise lost such a license or the right to apply for or renew such a license, for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity, or

(B) who surrendered such a license while a formal disciplinary proceeding was pending before such an authority and the proceeding concerned the individual's or entity's professional competence, professional performance, or financial integrity.

(5) Exclusion or suspension under federal or state health care program.—Any individual or entity which has been suspended or excluded from participation, or otherwise sanctioned, under—

(A) any Federal program, including programs of the Department of Defense or the Department of Veterans Affairs, involving the provision of health care, or

(B) a State health care program,

for reasons bearing on the individual's or entity's professional competence, professional performance, or financial integrity.

(6) Claims for excessive charges or unnecessary services and failure of certain organizations to furnish medically necessary services.—Any individual or entity that the Secretary determines—

(A) has submitted or caused to be submitted bills or requests for payment (where such bills or requests are based on charges or cost) under title XVIII or a State health care program containing charges (or, in applicable cases, requests for payment of costs) for items or services furnished substantially in excess of such individual's or entity's usual charges (or, in applicable cases, substantially in excess of such individual's or entity's costs) for such items or services, unless the Secretary finds there is good cause for such bills or requests containing such charges or costs;

(B) has furnished or caused to be furnished items or services to patients (whether or not eligible for benefits under title XVIII or under a State health care program) substantially in excess of the needs of such patients or of a quality which fails to meet professionally recognized standards of health care;

(C) is—

(i) a health maintenance organization (as defined in section [1903\(m\)](#)) providing items and services under a State plan approved under title XIX, or

(ii) an entity furnishing services under a waiver approved under section [1915\(b\)\(1\)](#),

and has failed substantially to provide medically necessary items and services that are required (under law or the contract with the State under title XIX) to be provided to individuals covered under that plan or waiver, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals; or

(D) is an entity providing items and services as an eligible organization under a risk-sharing contract under section [1876](#) and has failed substantially to provide medically necessary items and services that are required (under law or such contract) to be provided to individuals covered under the risk-sharing contract, if the failure has adversely affected (or has a substantial likelihood of adversely affecting) these individuals.

(7) Fraud, kickbacks, and other prohibited activities.—Any individual or entity that the Secretary determines has committed an act which is described in section [1128A](#), [1128B](#), or [1129](#).

(8) Entities controlled by a sanctioned individual.—Any entity with respect to which the Secretary determines that a person—

(A)(i) who has a direct or indirect ownership or control interest of 5 percent or more in the entity or with an ownership or control interest (as defined in section [1124\(a\)\(3\)](#)) in that entity,

(ii) who is an officer, director, agent, or managing employee (as defined in section [1126\(b\)](#)) of that entity; or

(iii) who was described in clause (i) but is no longer so described because of a transfer of ownership or control interest, in anticipation of (or following) a conviction, assessment, or exclusion described in subparagraph (B) against the person, to an immediate family member (as defined in subsection (j)(1)) or a member of the household of the person (as defined in subsection (j)(2)) who continues to maintain an interest described in such clause—

is a person—

(B)(i) who has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection;

(ii) against whom a civil monetary penalty has been assessed under section [1128A](#) or [1129](#); or

(iii) who has been excluded from participation under a program under title XVIII or under a State health care program.

(9) Failure to disclose required information.—Any entity that did not fully and accurately make any disclosure required by section [1124](#), section [1124A](#), or section [1126](#).

(10) Failure to supply requested information on subcontractors and suppliers.—Any disclosing entity (as defined in section [1124\(a\)\(2\)](#)) that fails to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to the entity by the Secretary or by the State agency administering or supervising the administration of a State health care program—

(A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom the entity has had, during the previous 12 months, business transactions in an aggregate amount in excess of \$25,000, or

(B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between the entity and any wholly owned supplier or between the entity and any subcontractor.

(11) Failure to supply payment information.—Any individual or entity furnishing items or services for which payment may be made under title XVIII or a State health care program that fails to provide such information as the Secretary or the appropriate State agency finds necessary to determine whether such payments are or were due and the amounts thereof, or has refused to permit such examination of its records by or on behalf of the Secretary or that agency as may be necessary to verify such information.

(12) Failure to grant immediate access.—Any individual or entity that fails to grant immediate access, upon reasonable request (as defined by the Secretary in regulations) to any of the following:

(A) To the Secretary, or to the agency used by the Secretary, for the purpose specified in the first sentence of section [1864\(a\)](#) (relating to compliance with conditions of participation or payment).

(B) To the Secretary or the State agency, to perform the reviews and surveys required under State plans under paragraphs (26), (31), and (33) of section [1902\(a\)](#) and under section [1903\(g\)](#).

(C) To the Inspector General of the Department of Health and Human Services, for the purpose of reviewing records, documents, and other data necessary to the performance of the statutory functions of the Inspector General.

(D) To a State medicaid fraud control unit (as defined in section [1903\(q\)](#)), for the purpose of conducting activities described in that section.

(13) Failure to take corrective action.—Any hospital that fails to comply substantially with a corrective action required under section [1886\(f\)\(2\)\(B\)](#).

(14) Default on health education loan or scholarship obligations.—Any individual who the Secretary determines is in default on repayments of scholarship obligations or loans in connection with health professions education made or secured, in whole or in part, by the Secretary and with respect to whom the Secretary has taken all reasonable steps available to the Secretary to secure repayment of such obligations or loans, except that (A) the Secretary shall not exclude pursuant to this paragraph a physician who is the sole community physician or sole source of essential specialized services in a community if a State requests that the physician not be excluded, and (B) the Secretary shall take into account, in determining whether to exclude any other physician pursuant to this paragraph, access of beneficiaries to physician services for which payment may be made under title XVIII or XIX.

(15) Individuals Controlling a Sanctioned Entity.—

(A) Any individual—

(i) who has a direct or indirect ownership or control interest in a sanctioned entity and who knows or should know (as defined in section [1128A\(i\)\(6\)](#)) of the action constituting the basis for the conviction or exclusion described in subparagraph (B); or

(ii) who is an officer or managing employee (as defined in section [1126\(b\)](#)) of such an entity.

(B) For purposes of subparagraph (A), the term “sanctioned entity” means an entity—

(i) that has been convicted of any offense described in subsection (a) or in paragraph (1), (2), or (3) of this subsection; or

(ii) that has been excluded from participation under a program under title XVIII or under a State health care program.

(c) Notice, Effective Date, and Period of Exclusion.—

(1) An exclusion under this section or under section [1128A](#) shall be effective at such time and upon such reasonable notice to the public and to the individual or entity excluded as may be specified in regulations consistent with paragraph (2).

(2)(A) Except as provided in subparagraph (B), such an exclusion shall be effective with respect to services furnished to an individual on or after the effective date of the exclusion.

(B) Unless the Secretary determines that the health and safety of individuals receiving services warrants the exclusion taking effect earlier, an exclusion shall not apply to payments made under title XVIII or under a State health care program for—

(i) inpatient institutional services furnished to an individual who was admitted to such institution before the date of the exclusion, or

(ii) home health services and hospice care furnished to an individual under a plan of care established before the date of the exclusion,

until the passage of 30 days after the effective date of the exclusion.

(3)(A) The Secretary shall specify, in the notice of exclusion under paragraph (1) and the written notice under section [1128A](#), the minimum period (or, in the case of an exclusion of an individual under subsection (b)(12) or in the case described in subparagraph (G), the period) of the exclusion.

(B) Subject to subparagraph (G), in the case of an exclusion under subsection (a), the minimum period of exclusion shall be not less than five years, except that, upon the request of the administrator of a Federal health care program (as defined in section [1128B\(f\)](#)) who determines that the exclusion would impose a hardship on individuals entitled to benefits under part A of title XVIII or enrolled under part B of such title, or both, the Secretary may, after consulting with the Inspector General of the Department of Health and Human Services, waive the exclusion under subsection (a)(1), (a)(3), or (a)(4) with respect to that program in the case of an individual or entity that is the sole community physician or sole source of essential specialized services in a community. The Secretary's decision whether to waive the exclusion shall not be reviewable.

(C) In the case of an exclusion of an individual under subsection (b)(12), the period of the exclusion shall be equal to the sum of—

(i) the length of the period in which the individual failed to grant the immediate access described in that subsection, and

(ii) an additional period, not to exceed 90 days, set by the Secretary.

(D) Subject to subparagraph (G), in the case of an exclusion of an individual or entity under paragraph (1), (2), or (3) of subsection (b), the period of the exclusion shall be 3 years, unless the Secretary determines in accordance with published regulations that a shorter period is

appropriate because of mitigating circumstances or that a longer period is appropriate because of aggravating circumstances.

(E) In the case of an exclusion of an individual or entity under subsection (b)(4) or (b)(5), the period of the exclusion shall not be less than the period during which the individual's or entity's license to provide health care is revoked, suspended, or surrendered, or the individual or the entity is excluded or suspended from a Federal or State health care program.

(F) In the case of an exclusion of an individual or entity under subsection (b)(6)(B), the period of the exclusion shall be not less than 1 year.

(G) In the case of an exclusion of an individual under subsection (a) based on a conviction occurring on or after the date of the enactment of this subparagraph, if the individual has (before, on, or after such date) been convicted—

(i) on one previous occasion of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be not less than 10 years, or

(ii) on 2 or more previous occasions of one or more offenses for which an exclusion may be effected under such subsection, the period of the exclusion shall be permanent.

(d) Notice to State Agencies and Exclusion Under State Health Care Programs.—

(1) Subject to paragraph (3), the Secretary shall exercise the authority under this section and section [1128A](#) in a manner that results in an individual's or entity's exclusion from all the programs under title XVIII and all the State health care programs in which the individual or entity may otherwise participate.

(2) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) and to which section [304\(a\)\(5\)](#) of the Controlled Substances Act^[42] may apply, the Attorney General)—

(A) of the fact and circumstances of each exclusion effected against an individual or entity under this section or section [1128A](#), and

(B) of the period (described in paragraph (3)) for which the State agency is directed to exclude the individual or entity from participation in the State health care program.

(3)(A) Except as provided in subparagraph (B), the period of the exclusion under a State health care program under paragraph (2) shall be the same as any period of exclusion under title XVIII.

(B)(i) The Secretary may waive an individual's or entity's exclusion under a State health care program under paragraph (2) if the Secretary receives and approves a request for the waiver with respect to the individual or entity from the State agency administering or supervising the administration of the program.

(ii) A State health care program may provide for a period of exclusion which is longer than the period of exclusion under title XVIII.

(e) Notice to State Licensing Agencies.—The Secretary shall—

(1) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of an individual or entity excluded (or directed to be excluded) from participation under this section or section [1128A](#), of the fact and circumstances of the exclusion,

(2) request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and

(3) request that the State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to the request.

(f) Notice, Hearing, and Judicial Review.—

(1) Subject to paragraph (2), any individual or entity that is excluded (or directed to be excluded) from participation under this section is entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section [205\(b\)](#), and to judicial review of the Secretary's final decision after such hearing as is provided in section [205\(g\)](#), except that, in so applying such sections and section [205\(l\)](#), any reference therein to the Commissioner of Social Security or the Social Security Administration shall be considered a reference to the Secretary or the Department of Health and Human Services, respectively.

(2) Unless the Secretary determines that the health or safety of individuals receiving services warrants the exclusion taking effect earlier, any individual or entity that is the subject of an adverse determination under subsection (b)(7) shall be entitled to a hearing by an administrative law judge (as provided under section [205\(b\)](#)) on the determination under subsection (b)(7) before any exclusion based upon the determination takes effect.

(3) The provisions of section [205\(h\)](#) shall apply with respect to this section and sections [1128A](#), [1129](#), and [1156](#) to the same extent as it is applicable with respect to title II, except that, in so applying such section and section [205\(l\)](#), any reference therein to the Commissioner of Social Security shall be considered a reference to the Secretary.

(g) Application for Termination of Exclusion.—

(1) An individual or entity excluded (or directed to be excluded) from participation under this section or section [1128A](#) may apply to the Secretary, in the manner specified by the Secretary in regulations and at the end of the minimum period of exclusion provided under subsection (c)(3) and at such other times as the Secretary may provide, for termination of the exclusion effected under this section or section [1128A](#).

(2) The Secretary may terminate the exclusion if the Secretary determines, on the basis of the conduct of the applicant which occurred after the date of the notice of exclusion or which was unknown to the Secretary at the time of the exclusion, that—

(A) there is no basis under subsection (a) or (b) or section [1128A\(a\)](#) for a continuation of the exclusion, and

(B) there are reasonable assurances that the types of actions which formed the basis for the original exclusion have not recurred and will not recur.

(3) The Secretary shall promptly notify each appropriate State agency administering or supervising the administration of each State health care program (and, in the case of an exclusion effected pursuant to subsection (a) and to which section [304\(a\)\(5\)](#) of the Controlled Substances Act^[43] may apply, the Attorney General) of the fact and circumstances of each termination of exclusion made under this subsection.

(h) Definition of State Health Care Program.—For purposes of this section and sections [1128A](#) and [1128B](#), the term “State health care program” means—

(1) a State plan approved under title XIX,

(2) any program receiving funds under title V or from an allotment to a State under such title,

(3) any program receiving funds under title XX or from an allotment to a State under such title,
or

(4) a State child health plan approved under title XXI.

(i) Convicted Defined.—For purposes of subsections (a) and (b), an individual or entity is considered to have been “convicted” of a criminal offense—

(1) when a judgment of conviction has been entered against the individual or entity by a Federal, State, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged;

(2) when there has been a finding of guilt against the individual or entity by a Federal, State, or local court;

(3) when a plea of guilty or nolo contendere by the individual or entity has been accepted by a Federal, State, or local court; or

(4) when the individual or entity has entered into participation in a first offender, deferred adjudication, or other arrangement or program where judgment of conviction has been withheld.

(j) Definition of Immediate Family Member and Member of Household.—For purposes of subsection (b)(8)(A)(iii):

- (1) The term “immediate family member” means, with respect to a person—
- (A) the husband or wife of the person;
 - (B) the natural or adoptive parent, child, or sibling of the person;
 - (C) the stepparent, stepchild, stepbrother, or stepsister of the person;
 - (D) the father–, mother–, daughter–, son–, brother–, or sister–in–law of the person;
 - (E) the grandparent or grandchild of the person; and
 - (F) the spouse of a grandparent or grandchild of the person.
- (2) The term “member of the household” means, with respect to any person, any individual sharing a common abode as part of a single family unit with the person, including domestic employees and others who live together as a family unit, but not including a roomer or boarder.
-

^[41] August 21, 1996 [P.L. 104-191; 110 Stat.1936].

^[42] See Vol. II, P.L. 91-513, 304(a)(5).

^[43] See Vol. II, P.L. 91-513, 304(a)(5).



STATE OF MARYLAND

DHMH

Office of Health Services
Medical Care Programs

Maryland Department of Health and Mental Hygiene
201 W. Preston Street • Baltimore, Maryland 21201

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary

**Maryland Medical Assistance Program
General Provider Transmittal No. 73
April 17, 2009**

TO: Medicaid Providers
Susan J. Tucker
FROM: Susan J. Tucker, Executive Director
Office of Health Services

NOTE: Please ensure that the appropriate staff members in your organization are informed of the contents of this transmittal.

SUBJECT: Providers' Responsibility to Screen for Excluded Parties

Background

When the Health and Human Services Office of the Inspector General (HHS-OIG) has excluded a provider, the Medicaid program is prohibited from paying for any items or services furnished, ordered, or prescribed by excluded individuals or entities. This payment ban applies to any items or services reimbursable under a Medicaid program that are furnished by an excluded individual or entity, and extends to:

- All methods of reimbursement, whether payment results from itemized claims, cost reports, fee schedules, or a prospective payment system;
- Payment for administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to Medicaid recipients, when those payments are reported on a cost report or are otherwise payable by the Medicaid program; and
- Payment to cover an excluded individual's salary, expenses or fringe benefits, regardless of whether they provide direct patient care, when those payments are reported on a cost report or are otherwise payable by the Medicaid program.

In addition, no Medicaid payments can be made for any items or services directed or prescribed by an excluded physician or other authorized person when the individual or entity furnishing the services either knew or should have known of the exclusion. This prohibition applies even when the Medicaid payment itself is made to another provider, practitioner or supplier that is not excluded.

Consequences of Payment to Excluded Providers

When Medicaid has reimbursed a provider for any service or item provided by an excluded provider as described above, this is considered an overpayment and the Department will recoup this money. Additionally, civil monetary penalties may be imposed against providers and managed care organizations that employ or enter into contracts with excluded individuals or entities to provide items or services to Medicaid recipients.

Medicaid Providers Must Screen for Exclusions

All Medicaid providers should take the following steps to determine whether their employees and contractors are excluded individuals or entities:

- Screen all employees and contractors to determine whether any of them have been excluded.
- Search the HHS-OIG website (<http://www.oig.hhs.gov/fraud/exclusions.asp>) monthly to capture exclusions and reinstatements that have occurred since the last search (see additional information below).
- Routinely search the Sanctioned Providers and Entities Excluded from Participation in Maryland Medicaid Program database located at http://www.dhmh.state.md.us/oig/pdf/2009/013009_exclusion.pdf.
- Immediately report any exclusion information discovered to the Department.

Where Providers Can Look for Excluded Parties

Providers can search the List of Excluded Individuals/Entities (LEIE) on the HHS-OIG website by the names of any individual or entity. The LEIE website is located at <http://www.oig.hhs.gov/fraud/exclusions.asp> and is available in two formats. The on-line search engine identifies currently excluded individuals or entities. When a match is identified, it is possible for the searcher to verify the accuracy of the match using a Social Security Number (SSN) or Employer Identification Number (EIN). The downloadable version of the database may be compared against an existing database maintained by a provider. However, unlike the on-line format, the downloadable database does not contain SSNs or EINs.

Conclusion

The Department appreciates your support to prevent fraud and abuse in the Medicaid program. If you have questions concerning this transmittal, please contact Pam Owens, Chief Compliance Officer, Office of the Inspector General, at 410-767-5784. To report exclusion information, please write to Dina Smoot, Administrator, Office of Health Services, Department of Health and Mental Hygiene, 201 W. Preston St., Baltimore, MD 21201.