



STATE OF MARYLAND

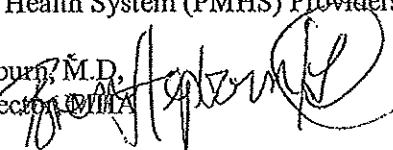
# DHMH

Maryland Department of Health and Mental Hygiene  
Mental Hygiene Administration  
Spring Grove Hospital Center – Dix Building  
55 Wade Avenue – Catonsville, Maryland 21228

Martin O'Malley, Governor – Anthony G. Brown, Lt. Governor – John M. Colmers, Secretary  
Brian M. Hepburn, M.D., Executive Director

## MEMORANDUM

TO: Public Mental Health System (PMHS) Providers

FROM: Brian M. Hepburn, M.D.,  
Executive Director 

RE: Compliance with Federal Requirements: Excluded Providers

DATE: October 6, 2010

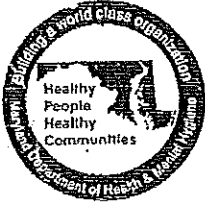
.....

This is a reminder that all providers who participate in Maryland's PMHS and receive Medicaid payments are responsible for checking the Department of Health and Human Services' Office of Inspector General's (DHHS-OIG) website to assure that they are not wrongfully contracting with or employing an excluded individual. The attached legal background from the DHHS-OIG website explains that the prohibitions being described apply to items and services provided, directly or indirectly, to Federal program beneficiaries (Medicaid and Medicare recipients). As set forth, the Medicaid Program, which includes the PMHS, cannot reimburse a provider who employs or contracts with an individual to perform certain functions whom DHHS-OIG has excluded. Additionally, if an agency has employed/contracted with such an individual, the state may recoup monies wrongfully paid. Failure to screen employees and contractors, documenting same, can result in disciplinary actions.

It is every individual's and agency's responsibility to assure that all staff working in programs, either through direct service or administrative support, are eligible to participate in programs receiving federal reimbursement. Providers can find guidance at <http://oig.hhs.gov/fraud/exclusions.asp> where they can click on LEIE (Lists of Excluded Individuals and Entities). Additionally, please note information on DHMH-OIG web site, and the April 17, 2009 transmittal from Maryland Medicaid, attached. Thank you.

### Attachments:

- 1- April 17, 2009 Transmittal from Maryland Medicaid, Susan Tucker
- 2- Excerpt Legal Background



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](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.

## 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.<sup>3</sup> 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.