



COMMISSIONER
Chris Traylor

May 10, 2010

To: Consumer Directed Services Agencies

Subject: Information Letter 10-32
Obligation to Screen Individuals or Entities Excluded from Participation in Federal Health Care Programs Prior to Hire by Employers under the Consumer Directed Services Option

As a result of Centers for Medicare and Medicaid Services (CMS) State Medicaid Director Letter (SMDL) 09-001 (attached), Department of Aging and Disability Services (DADS) issued Information Letter No. 09-33, Provider Screening of Employees, Subcontractors for Excluded Persons, on March 13, 2009, to remind all Community Services providers to screen employees and subcontractors in order to determine if those individuals and entities are excluded from participation in federal health care programs. DADS is issuing this information letter as a reminder that this requirement is applicable to employees hired by consumer/employers using the Consumer Directed Services (CDS) option. This letter includes links to federal and state websites that providers can use as a resource to screen for excluded individuals and entities. **Please note that State Medicaid Director Letter 09-001 is attached to Information Letter No. 09-33.**

Per Texas Administrative Code (TAC), Title 40, Part 1, Chapter 41, §41.327, Verification of Applicants for Employees, Contractors, and Vendors and §41.325, Required Registry Checks, Consumer Directed Services Agencies (CDSAs) are required to verify that the applicant or service provider meets eligibility requirements of the individual's program and government regulations to deliver an intended service and that the planned service meets those requirements.

To combat fraud and abuse, the United States Department of Health and Human Services Office of Inspector General (HHS-OIG), excludes individuals and entities from participation in Medicare, Medicaid, the State Children's Health Insurance Program and all federal health care programs. When the HHS-OIG has excluded a provider, federal health care programs are generally prohibited from paying for any items or services furnished, ordered or prescribed by excluded individuals or entities.

The following are examples of the types of items or services that are reimbursed by Medicaid which, when provided by excluded parties, are not reimbursable:

- Direct or indirect services performed by nurses, technicians, or other excluded individuals who work for a hospital, nursing home, home health agency or physician practice;
- Services performed for program recipients by excluded individuals who sell, deliver, or refill orders for medical devices or equipment;
- Services performed for program recipients by excluded social workers who are employed by health care entities to provide services to Medicaid recipients;

- Services performed directly or indirectly by an administrator, billing agent, accountant, claims processor, or utilization reviewer; and
- Items or services provided to a Medicaid recipient by an excluded individual who works for an entity that has a contractual agreement with, and is paid by, a Medicaid program.

CMS has emphasized that states must take all reasonable steps to prevent making payments for services provided by excluded persons.

CMS directs states to advise all current providers and providers applying to participate in the Medicaid program as follows:

- States should advise providers of their obligation to screen all employees and contractors for exclusion;
- States should explicitly require providers to agree to comply with this obligation as a condition of enrollment;
- States should inform providers of the website that must be searched and require the provider to search the HHS-OIG website *monthly*; and
- States should require that providers immediately report to them any exclusion information discovered.

To comply with CMS direction, all CDSAs must use the following state and federal online databases to search for excluded individuals and entities prior to approving the applicant for hire and on a monthly basis.

- Texas Health and Human Services Commission–OIG List of Excluded Individuals/Entities online searchable database:
 - <https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>
- HHS – OIG Excluded Individuals/Entities Search database:
 - <http://www.oig.hhs.gov/fraud/exclusions.asp>

Please refer to Attachment A for instructions on how to research the state and federal online databases. Consumer Directed Services Agencies must immediately report any exclusion information discovered to their assigned contract staff.

To further comply with CMS direction, DADS is:

- revising the contract application/enrollment process to set forth the requirements;
- revising the Form 3254, Community Services Contract, to:
 - add language requiring contractors to (a) screen their employees and any contractors they may utilize, prior to hiring and on a routine monthly basis and (b) maintain documentation that the checks were performed; and
 - inform providers that DADS will recoup for services provided by excluded parties;
- amending existing contracts to include the exclusion search requirement only when an amendment is required for any other reason; and,

- revising contract monitoring protocols for monitoring performed July 1, 2010 and thereafter to include verification that the CDSA has a written process for:
 - screening employees and contractors prior to hiring or contracting and on a monthly basis;
 - searching both the federal and Texas LEIE websites;
 - prohibiting payment for any items or services furnished, ordered, or prescribed by an excluded individual or entity; and
 - reporting exclusion information to DADS.

Revised CDS Forms

Specific to the CDS option, DADS has revised Form 1725, Criminal Conviction History and Registry Checks (<http://www.dads.state.tx.us/forms/1725/>) and Form 1729, Applicant Verification for Employees (<http://www.dads.state.tx.us/forms/1729/>) to add the OIG List of Excluded Individuals/entities to the required registry checks and verification by the CDSA before applicants can be hired by the CDS employer. Use of these revised forms is effective immediately.

If you have questions regarding this letter, please contact CDS program coordinator at (512) 438-4855.

Sincerely,

[signature on file]

Don Henderson
Director
Center for Policy and Innovation

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