

# Exclusions and Terminations

*Lead-in music, then standard opening*

**Canned:** This is a Medicaid program integrity podcast. The Centers for Medicare & Medicaid Services developed and produced these podcasts to keep you informed about Medicaid program integrity topics.

**Narrator:** Welcome to the “Exclusions and Terminations” podcast. This podcast provides information on the effect of exclusions and terminations on a provider’s ability to participate in Federal health care programs such as Medicaid and Medicare. By being more aware of the consequences of exclusions and terminations, providers continue to serve their Medicaid patients. Let’s join Dr. Williams, the managing partner of a large family practice clinic, and Carolyn, his office manager, as they discuss exclusions and terminations.

*Scene – Dr. Williams’ private office:*

**Carolyn:** Good morning, Dr. Williams. I need to talk to you. I was conducting the monthly exclusion checks on our staff through the LEIE. You know, the List of Excluded Individuals and Entities?[1] That’s where the U.S. Department of Health and Human Services’ Office of Inspector General keeps the names of all excluded parties. Well, I found a problem with Dr. Johnson.

**Dr. Williams:** Problem? How so?

**Carolyn:** Well, last month she was excluded and placed on the LEIE for the next three years.

**Dr. Williams:** What? Has she been involved in some sort of fraud or abuse? I can’t believe that.

**Carolyn:** Oh, no. If she had been convicted of health care fraud or patient abuse, the mandatory exclusion period would have been at least five years.[2] Dr. Johnson apparently defaulted on a Federal health education loan that triggered what the OIG calls a permissive exclusion that is only for three years.[3] But, during that time, she is banned from serving patients in any Federal health care program. That includes Medicaid, Medicare, CHIP and any other federally sponsored program except Federal employee health care benefits.[4] And, as you know, the vast majority of her patients are covered by either Medicaid or Medicare.

**Dr. Williams:** But she is such a great doctor and her patients love her. Is there any way we can legally work around this? For example, could we have her work under one of the other practitioners so we don’t bill under her NPI?

**Carolyn:** I went to the OIG’s website to refresh my knowledge on this topic. By the way, there’s a lot of great information about exclusions on that website.

But unfortunately, the answer is no. No other provider can bill for Dr. Johnson’s work, or for ancillary services such as labs or prescriptions she ordered.[5] I don’t think she will be able to work for us until she is reinstated by the OIG.

- Dr. Williams:** But some of her patients do have private health insurance.
- Carolyn:** Just to be clear, being excluded does not prohibit Dr. Johnson from serving patients with private health insurance. But she is barred from billing for any services for any of her Medicaid or Medicare patients.
- Dr. Williams:** I understand we can't bill for any services she directly provides to Medicaid and Medicare patients. But why can't we at least submit claims for the lab work she ordered before we knew about her exclusion?
- Carolyn:** I found a recent OIG Special Advisory Bulletin on the effect of exclusion. We cannot bill for those labs. In fact, she may have put herself at risk of civil monetary penalties just for ordering them after she knew she was excluded.[6] They typically can be assessed at \$10,000.00 for each service that is improperly billed on top of reimbursing the government for the original service. In the most serious cases, the excluded party could also be required to return three times the value of each claim submitted.[7]
- Dr Williams:** How do you think she found out about this?
- Carolyn:** The OIG issues a Notice of Intent to Exclude to anyone they are considering for exclusions.[8] So I am pretty sure she has known about this for a while.
- Dr. Williams:** Carolyn, the last thing I want to do is to break any of these rules. Dr. Johnson has become such an important part of our practice I'm wondering if there is any way she could serve our patients who have a managed care plan? We don't bill the Federal government for those services.
- Carolyn:** She certainly can continue to serve our private pay patients. And that would include her managed care patients as long as the plan is not sponsored by either Medicaid or Medicare. We don't bill those programs directly, but the Federal government is paying for those managed care services indirectly.
- Dr. Williams:** Well, that makes sense. Maybe there's another option. You remember our discussion last month about having someone manage the implementation of our electronic health information system? Could she take on that role?
- Carolyn:** Unfortunately, our administrative payroll is heavily underwritten by our reimbursements from Medicaid and Medicare. The OIG's special advisory bulletin specifically stated, "Excluded persons are prohibited from furnishing administrative and management services that are payable by Federal health care programs." [9]
- Dr. Williams:** I am disappointed Dr. Johnson didn't tell us about this before, but I still feel badly for her. I know she's been thinking about moving back to her home State. But I don't suppose she could work there either.
- Carolyn:** Probably not. OIG exclusions are national in scope. But even if it had only been our own State Medicaid agency terminating her, that is the State equivalent of an OIG exclusion—and the effect is still national.
- Dr. Williams:** How is that?

- Carolyn:** I've learned that when any State Medicaid agency terminates a provider, all other states are expected to terminate that provider as well.[10] States are also required to terminate any provider terminated by Medicare. Medicare also has the discretion to terminate that provider's participation based on a State termination. So, the effect is generally far reaching.
- Dr. Williams:** You say she is excluded for three years? Can she restore her participation sooner? Maybe by re-paying the educational loan?
- Carolyn:** For most exclusions, the excluded party has to wait until 90 days before the exclusion period ends to submit a written request for reinstatement.[11] But even if the period of exclusion has expired, excluded individuals or entities continue to be excluded until the OIG reinstates them. But for educational loans, Dr. Johnson can be reinstated when she resolves the default on her loan.[12] But she first needs to work with the U.S. Public Health Service to resolve it.
- Dr. Williams:** All right. Please talk to her about this as soon as you can. We don't want to lose her permanently. In the meantime, do we have any issues related to the work she's done since the exclusion went into effect?
- Carolyn:** According to the OIG, we have to reimburse the government for all of those services we billed for since the first day of her exclusion. I found an overpayment self-disclosure protocol on the OIG's website.[13] Our State Medicaid agency's website probably has one, too.
- Dr. Williams:** Okay. I know we should also check the National Practitioner's Data Bank for sanctions against our providers. Would that have caught this exclusion?
- Carolyn:** I don't think so. The OIG's special advisory bulletin recommends we use the LEIE as our primary source for exclusion verifications.[14] For example, I check the name and social security number for any prospective hire through the LEIE's online search engine. For our monthly checks, I download the LEIE and its monthly updates to my PC.[15] If there is a match, then I use the online search to confirm whether it is really that person or not. Luckily, this is the first time we've had an actual match.
- Dr. Williams:** Well, I really appreciate you staying on top of this. I am glad our compliance program is clear on the need to do pre-employment exclusions checks on any new hire and to do them monthly thereafter on all of our staff. That's truly an ounce of prevention.
- Carolyn:** Yeah, I agree prevention is key to avoiding these types of problems. As I said, I always do pre-employment and monthly exclusions checks and Dr. Johnson is the first person working for us placed on the LEIE. We will prevent any further billing of Federal health care programs by Dr. Johnson. And we will identify any claims submitted on her behalf or for services she ordered and return that reimbursement to the government within the next 60 days.

*(Standard closing with music)*

- Canned:** More questions? For additional information about exclusions and terminations, contact your State Medicaid agency, or the Office of Inspector General at [www \[dot\] oig \[dot\] hhs \[dot\] gov](http://www.oig.hhs.gov).

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## References

- 1 U.S. Department of Health and Human Services. Office of Inspector General. List of Excluded Individuals and Entities. (n.d.). [Online searchable database.] Retrieved April 28, 2015, from <http://exclusions.oig.hhs.gov>
- 2 Social Security Act § 1128(c)(3)(B). Retrieved April 30, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title11/1128.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128.htm)
- 3 Social Security Act § 1128(c)(3)(D). Retrieved April 30, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title11/1128.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128.htm)
- 4 U.S. Department of Health and Human Services. Office of Inspector General. (2013, May 8). Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Retrieved April 28, 2015, from <http://oig.hhs.gov/exclusions/files/sab-05092013.pdf>
- 5 42 CFR 1001.1901(b). Retrieved May 14, 2015, from [http://www.ecfr.gov/cgi-bin/text-idx?SID=b1bd4e4295cab099ba80439e3b84edc9&mc=true&node=se42.5.1001\\_11901&rgn=div8](http://www.ecfr.gov/cgi-bin/text-idx?SID=b1bd4e4295cab099ba80439e3b84edc9&mc=true&node=se42.5.1001_11901&rgn=div8)
- 6 Social Security Act § 1128A(a)(8). Retrieved May 4, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title11/1128A.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128A.htm)
- 7 Social Security Act § 1128A(a)(10). Retrieved May 4, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title11/1128A.htm](http://www.ssa.gov/OP_Home/ssact/title11/1128A.htm)
- 8 42 CFR 1001.2001. Retrieved April 28, 2015, from <http://www.gpo.gov/fdsys/pkg/CFR-2002-title42-vol3/pdf/CFR-2002-title42-vol3-chapV.pdf>
- 9 U.S. Department of Health and Human Services. Office of Inspector General. (2013, May 8). Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Retrieved April 28, 2015, from <http://oig.hhs.gov/exclusions/files/sab-05092013.pdf>
- 10 Social Security Act § 1902(a)(39). Retrieved May 5, 2015, from [http://www.ssa.gov/OP\\_Home/ssact/title19/1902.htm](http://www.ssa.gov/OP_Home/ssact/title19/1902.htm)
- 11 42 CFR 1001.3001(a)(1). Retrieved May 14, 2015, from <http://www.gpo.gov/fdsys/pkg/CFR-2010-title42-vol5/pdf/CFR-2010-title42-vol5-sec1001-3001.pdf>
- 12 42 CFR 1001.3001(a)(1). Retrieved May 14, 2015, from <http://www.gpo.gov/fdsys/pkg/CFR-2010-title42-vol5/pdf/CFR-2010-title42-vol5-sec1001-3001.pdf>
- 13 U.S. Department of Health and Human Services. Office of Inspector General. (2013, April 17). Updated OIG's Self-Disclosure Protocol. Retrieved April 30, 2015, from <http://oig.hhs.gov/compliance/self-disclosure-info/files/Provider-Self-Disclosure-Protocol.pdf>
- 14 U.S. Department of Health and Human Services. Office of Inspector General. (2013, May 8). Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs. Retrieved April 28, 2015, from <http://oig.hhs.gov/exclusions/files/sab-05092013.pdf>
- 15 U.S. Department of Health and Human Services. Office of Inspector General. List of Excluded Individuals and Entities. (n.d.). [Downloadable database.] Retrieved April 28, 2015, from [http://oig.hhs.gov/exclusions/exclusions\\_list.asp](http://oig.hhs.gov/exclusions/exclusions_list.asp)

