Introductions

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Compliance ... It's All About the Details

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Overview

- What are the various exclusion lists?
- What are the effects of exclusion?
- Who is placed on the exclusion lists?
- How are the lists searched?
- What are some tools and best practices for searching?

The Exclusion Lists

1) U.S. Department of Health and Human Services (HHS) Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE)

2) General Services Administration (GSA) Excluded Parties Listing Service (EPLS)

3) State-Level Excluded Parties – Commonly found under Office of Inspector General, Office of Provider Integrity or Medicaid Fraud Department
### A Little About OIG

- OIG authority dates back to 1977 Medicare-Medicaid Anti-Fraud Laws
- Ability to exclude individuals and entities from involvement in activities receiving funds from federal healthcare programs
- Involvement is broadly defined to basically prohibit almost any type of relationship – employees, contractors, vendors
- Penalties if you “know or should have known” party was excluded
- $10,000 per occurrence and treble damages amount claimed

### How to Make the List

- 5 mandatory exclusions - “The Secretary shall exclude ...”
  - Program-related conviction
  - Patient abuse conviction
  - Felony healthcare fraud
  - Felony drug conviction
  - Failure to repay Health Education Assistance Loan (HEAL)
- 16 permissive exclusions - “The Secretary may exclude ...”
  - Misdemeanors, other fraud, other specific scenarios
A Man of Many Convictions

- Generally, “conviction” means found or adjudicated guilty
- Most employment law specifically excludes expunged records and first-time offender programs – and prohibits you from asking about them
- The OIG has a different take on it
- “Conviction,” in world of exclusions, includes expunged records, first-time offender programs and deferred or withheld judgments
- Lesson: Make sure you ask if they’ve been excluded on employment application – Criminal records question won’t necessarily catch it

A Brief Word on CIAs

- If you are under CIA, be sure to read it carefully
- Most define “ineligible persons” – different from “excluded parties”
- Include excluded parties, but also parties “convicted of a criminal offense (which would exclude them) but has not yet been excluded...”
- Creates affirmative duty to search not just excluded parties, but also for criminal records that would make the person an excluded party
- CIAs also often define schedule for re-screening of parties
June 2009 – Inspector General appears before Congress to talk about successes in OIG fraud-fighting efforts
- He specifically highlights the October 2008 indictment (and eventual conviction) of Medcore owner Juan (a.k.a Tony) Marrero
- Marrero committed millions of dollars in Medicare fraud by running fake HIV Infusion Treatment Centers in South Florida
- As of April 2010, Tony Marrero is still not on OIG, GSA or FL excluded lists

On September 11, 2009, in Amarillo, TX, a Registered Nurse was convicted of stealing from Medicaid
- Worked for home health agency and submitted forged documents for services never provided
- As of today, she is not on OIG list, not on EPLS
- She is on the State of Texas Excluded Parties List

Each year, there are thousands of convictions that should lead to mandatory exclusions
Rip Off Medicare/Medicaid, Get Excluded – Not Necessarily

- Lesson One: Be sure you are searching state exclusion lists
- Lesson Two: Just because an individual is not on the excluded lists doesn’t mean they haven’t committed a crime that could exclude them
- Lesson Three: All Medicare/Medicaid fraud cases are prosecuted at the federal level – Make sure your background check covers federal criminal records
- Interesting aside - How does OIG learn about the cases?
  - No formal system in place - state licensing agencies, newspaper articles and word of mouth

A Little About OIG

- OIG contains names of 46,898 individuals and entities
- In 2008, OIG excluded 3,129 individuals and entities:
  - 1,575 = State license suspensions, etc..
  - 692 = Medicare/Medicaid fraud
  - 257 = Other healthcare fraud
  - 234 = Patient abuse or neglect
- According to the U.S. Department of Justice, there were more than 20,000 felony drug convictions in 2004 alone
### A Little About EPLS

- **Certiphi.**
- **EPLS**

| Broad contributory database across federal government |
| Founded under Federal Acquisition Regulation – Mainly for feds |
| More than 100 different federal bureaus report into EPLS, including HHS - OIG |
| Other notable sources include: |
| - Department of Homeland Security |
| - Department of Defense |
| - Departments of Education and Agriculture |

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| A Little About EPLS |

| EPLS contains 72,268 current and 41,116 archived actions |
| GAO blasts EPLS in 2009 - “Suspended and Debarred Businesses and Individuals Improperly Receive Federal Funds” |
| - Excluded parties received funding in part because agency officials failed to search EPLS ... |
| - ... or because their searches did not reveal the exclusions as a result of system deficiencies |
| - “Our work shows that EPLS entries may contain incomplete information and the database has insufficient search capabilities” |
A Little About State Exclusion Lists

- 16 states have their own exclusion lists, separate from OIG
  - AL, CA, FL, ID, IL, KY, ME, MD, MI, MS, NJ, NY, OH, PA, SC, TX
- The other states defer to the OIG or link directly to OIG site
- Some state exclusion lists are available as data downloads, while others can only be searched through state website

The Anatomy of a Search

- Available web-based systems (OIG & EPLS) are name-based searches
- Largely dependent on spelling of last name – i.e., Smith vs. Smyth
- We’ve been spoiled by search engines like Google and Bing
- OIG suggests searching on as little as possible – not full name
  - But a search of just “sm” for Smith
    = 438 results on OIG
Search results on hyphenated and compound last names depend on how they are indexed.

The same is true with foreign names.

First name variations – William is Bill; John is Jack; Annmarie is Mary.

Phonetics – 163 distinct sounds make up spoken language
  – Allows searches to find Smith vs. Smyth or White vs. Wight.

When Things Get Complicated, Think of ... Elizabeth Taylor
When Things Get Complicated, Think of ... Elizabeth Taylor

- She’s been married 8 times – twice to the same guy
- That’s a lot of past married names – 14, to be exact
- Her first name also has many variations: Elizabeth = Liz Betty Betsy Bess Libby Lillian Bea Eliza Bette Beth Alisa Lilly Liza Bessy Betts Bethlynn Lisbeth Beatrix Beatrice Lilibeth Lisa Elish Lila Besse Elisha Lilibet Bethany

- There are, in fact, more than 30 commonly used variations of the name Elizabeth
- Do the math - Including “Elizabeth Taylor,” there are 465 potential name combinations
- If you search EPLS, you will find Bette Taylor is an excluded party
- But she lives in West Virginia, not Hollywood
What’s in a Search - OIG

- Website provides name-based search, results list only shows state; must click into record to see address and DOB (if available)
- Verification available by SSN or EIN (if available)
- Linda Lee Jones-Walker is on the OIG List – Let’s try to find her!
  - DOB: xx/xx/xxxx; Address: 7060 N. Gemstone Rd., Tucson, AZ
  - “Jones” = 249 possible records, 5 Lindas and 1 Lee
  - “Jones-Walker” = Only Linda Jones-Walker
  - “Jones Walker” with no hyphen = Nothing
  - “Walker” = Does not return “Jones-Walker”
  - “Jonz” = Nothing

What’s in a Search - EPLS

- EPLS website provides more - but not necessarily better - search options than OIG
- Still just name-based, especially doing Exact Name Match Search
  - Friendly pop-up disclaimer says exact name is “not recommended”
- Linda Lee Jones-Walker
  - “Jones” = 367 possible records, 3 Lindas and 1 Lee
  - “Jones-Walker” = 2 for Linda Jones-Walker (HHS and OPM)
  - “Jones Walker” with no hyphen = 474 possible records
  - “Walker” = 111, including Linda Lee Jones-Walker
  - “Jonz” = Nothing
**What is a “Smart Search”?**

- OIG LEIE, EPLS and most states offer downloads of database
- Downloading data enables expanded search capabilities based on other data fields, including DOB, address, city and state
- Enables “smart search” strategy using all data and stacking searches
- Enables single search of all exclusion sources using consistent set of logical search tools
- Ability to keep track of previous searches, helping to eliminate repetition when running periodic searches

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**What is a “Smart Search”?**

- Let’s go back to Linda Lee Jones-Walker
- Smart search string
  - Last name “Jones-Walker” with phonetic variations on Jones, Walker and combined Jones-Walker
  - Add matching city and state
- What does this search do?
  - Catch person who switches or changes first and middle names
  - Catches person who varies spelling of last name
  - Limits possible matches to manageable number
What is a “Smart Search”?

- Smart search string results for Linda Lee Jones-Walker
  - 5 possible records
  - 3 for Linda Lee Jones-Walker (OIG, EPLS and OPM)
  - 2 for Ilona L. Jones, also from Tucson, but with different DOB and street address

- What if city doesn’t match?
  - Limiting above just by state (instead of city and state)
  - = 59 possible matches

What if person moves or lies about where they live?

- Stacking the searches adds layers of protection
  - For example, add to smart search on Linda Lee Jones-Walker a separate search for match on DOB
    = 32 possible records found

- Addition of match on DOB provides match regardless of the person’s name or address
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What is a “Smart Search”?*

- I’m not an Excluded Party – but let’s try my name - Stefan Keller
- Smart search includes first name with name variations and last name with phonetics
- Results
  - = 2 possible matches
    - Stephen W. Cullers
    - Stephen E. Collier
- First names are variations on Stefan and last names sound like Keller

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What About Companies?*

- Wish they would be a little more creative with their names
  - 74 different Med... (Medi..., Meda...) companies on OIG list
- Can only search by name or address
  - Tax Identification Number (TIN), National Provider Identifier (NPI), are limited and not always available
- OIG says: “If it’s not the same location, it’s not the same company”
- Using smart search to limit by city and state dramatically simplifies searching and narrows list of possible matches
A Few Parting Words of Advice from the OIG

- “Less is more” – Use as little to search on as possible
- Be careful with the spelling of names and hyphenated names
- Search every name possible, including maiden names
- Document each check – Pre-employment/contract and then ongoing
- No definition on frequency, but “yearly is too long” – CMS letter provides some guidance - monthly
- Search EPLS first - If you find OIG hit, you can then verify with OIG

Questions and Answers