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How a Higher Standard of Screening Can Keep Your Healtcare Business in Compliance

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How a Higher Standard of Screening Can Keep Your Healthcare Business in Compliance

As the COVID-19 pandemic has demonstrated, the service that healthcare professionals offer to United States citizens is crucial to a thriving American society. Data from the Bureau of Labor Statistics concerning occupational employment indicates that there were more than 20 million people working in healthcare and social assistance in 2019. As one of the fastest-growing industries in the U.S., BLS predictions indicate that more than 23 million people will be working in healthcare by 2029 – significantly out-pacing other large employment sectors. The volume of individuals working in the healthcare industry is growing at a rapid rate.[1]

Organizations that employ workers in this sector should perform their due diligence to ensure that each of their providers/practitioners are properly licensed, have a clean history with their licensing board, and are not excluded from any state or federal programs. By following best practices for compliance – such as checking relevant databases at least monthly, checking all names related to an individual (such as maiden name and previous married name), and screening an individual's Social Security Number – organizations can protect themselves and the patients under their care.

Screening providers through the various healthcare-related databases is a complex process, and navigating the exclusion lists maintained by different government agencies can be challenging. An overview of the exclusions lists and reporting processes most relevant to CRAs will provide a framework for understanding why it is important for employers to perform initial screens of providers and practitioners.

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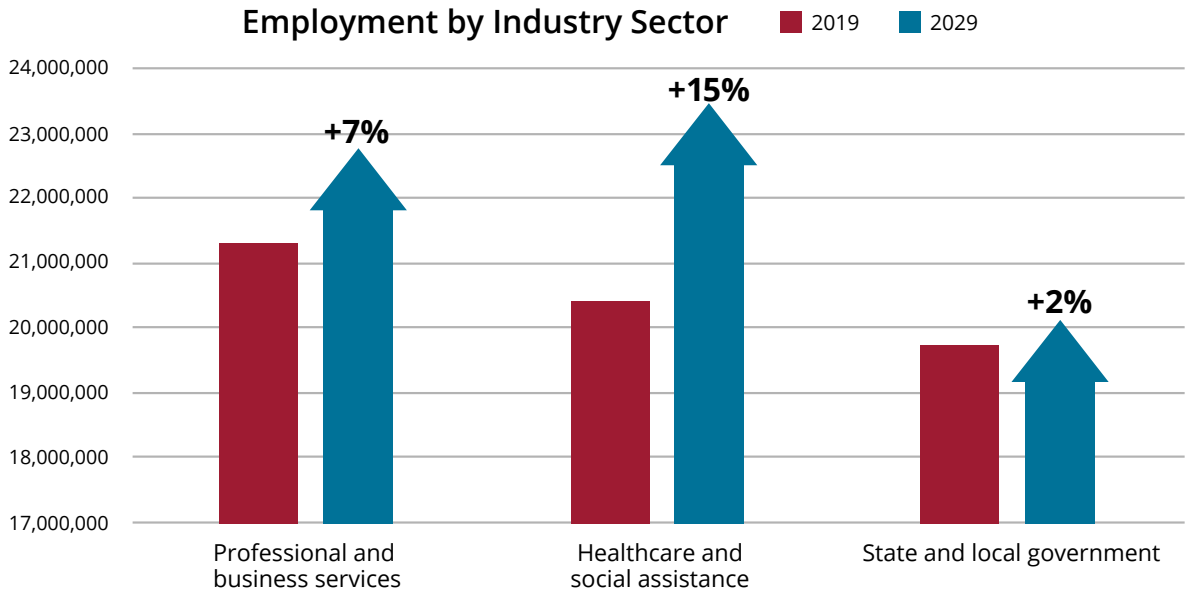
How Providers and Practitioners Are 'Excluded,' and What That Means

There are two federal databases relevant to healthcare sanction and exclusion information. The Office of the Inspector General (OIG), an agency within the U.S. Department of Health and Human Services (DHHS), is responsible for preventing and detecting fraud, waste, and abuse. The OIG not only oversees the Medicare and Medicaid programs, but more than 100 other HHS institutions, including the Centers for Disease Control and Prevention (CDC), the National Institutes of Health (NIH), and the Food and Drug Administration (FDA). The OIG maintains a healthcare exclusions database call the "List of Excluded Individuals and Entities" (LEIE).[2]

The Systems for Award Management (SAM) is an official government website, managed by the General Services Administration (GSA). The SAM database inherited its exclusionary database from the GSA's "Excluded Parties List System" (EPLS), which was folded into SAM in 2012. The SAM database receives and maintains exclusionary data from all federal agencies, including the OIG exclusion list. The SAM database is an "umbrella" of various federal agency exclusion data – it includes any data reported on the OIG's exclusions list, but also maintains its own database for exclusions outside the healthcare industry.



These two databases receive reported state-level data from Medicaid programs in each state (plus the District of Columbia) and state medical boards. Actions taken by state medical boards are reported to state Medicaid, who in turn report these actions to the OIG. The OIG can then choose to exclude these individuals or entities on its database, the LEIE.

The OIG and SAM databases are the closest thing to national data sources for sanctions and exclusions that exist in the healthcare industry, but they are far from comprehensive. The OIG excludes individuals and entities based on reports from State Medicaid programs regarding actions taken by medical boards for each state, and not everything pertaining to a board action or State Medicaid exclusion is reported to the OIG and SAM. This makes it critical to use a more comprehensive search that includes State Medicaid and state board actions.

For its part, the OIG performs exclusions under the authority of the DHHS, which is in turn added to the larger SAM/GSA database, and has the authority to exclude individuals and entities from federally funded healthcare programs. Excluded individuals or entities can receive no payment from federal healthcare programs for their services, opening up anyone who continues to employ them to punitive action from the Department of Health and Human Services.

OIG exclusions include both mandatory and permissive exclusions. Mandatory exclusions are placed on individuals or entities who are convicted of fraud related to Medicare, Medicaid, State Children's Health Insurance Program (CHIP), or other state healthcare program, while permissive exclusions are placed on individuals or entities who are guilty of a variety of other unacceptable actions occurring outside Medicare or State health programs.[3]

Mandatory Exclusions

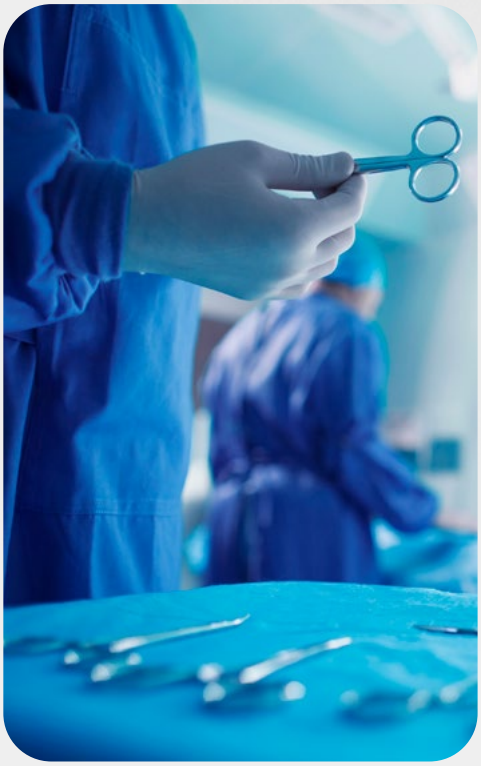
The OIG is required to exclude individuals and entities from all federal health care programs for convictions related to:

- Medicare or Medicaid fraud
- Patient abuse or neglect
- Felony convictions for other healthcare-related fraud

Permissive Exclusions

The OIG has discretion to exclude individuals and entities for offenses such as:

- Provision of unnecessary or substandard care
- Misdemeanor convictions for other healthcare-related fraud not involving Medicare or a state health program



Crucially, both kinds of exclusions result in being listed on the LEIE maintained by the OIG, meaning their employers can be held liable for their continued employment and penalized by the Department of Health and Human Services (DHHS).

In some cases, state board actions are taken against the licenses of practitioners that do not result in being listed on exclusions lists maintained by the OIG or SAM, meaning that a hiring organization that wants to thoroughly reference all available datasets must check board actions state-by-state.

Thoroughly screening prospective hires, current providers/practitioners, and contracted businesses for any existing healthcare sanctions or exclusions on the state or federal level is an urgent step employers need to take to guard their reputations and keep patients safe. Any healthcare organization that hires or continues to employ an individual or entity listed on the OIG or SAM exclusion lists can face penalties from the DHHS, including civil monetary penalties.

Healthcare organizations should also have a process in place to mitigate compliance risk and ensure quality of care. The right technology and comprehensive information from publicly published primary source data can provide employers the key information they need to help prevent hiring, employing, and doing business with a sanctioned or excluded individual or entity.

Toward a Higher Standard of Healthcare Screening

Healthcare providers and practitioners must be licensed in a state in order to practice their specialty in that state. This license is up for regular review by a state board related to their field (e.g., the State Nursing Board of Ohio), which receives reports of potential misconduct from a number of different sources, including hospital administration, a patient under a provider's care, or a colleague of the provider. At this point, the process functions similarly to the BAR Association in law – the state board evaluates whether it will take a formal action against this provider's license. If so, this action can be reported to the OIG, which can then enforce sanctions and, by extension, exclusions against that provider.

The most common kind of exclusion enforced by the OIG is license revocation or suspension, which is initiated by any state licensing authority and reported to the OIG. When this occurs in a single state, any excluded provider in one state should also be excluded in all states, according to the Centers for Medicare and Medicaid Services[4]. With no national database that tracks license revocations specifically, it is possible for providers and practitioners who have had their licenses revoke in one state to move elsewhere (or "state hop") and continue practicing.

If the practitioner also has a pending action on their license, they will often state hop to another state while their license is still valid. Any employer in a second state should know about other actions taken by state boards in other states in order to reduce organizational risk and maintain patient safety. Employers in these second states can be held liable by the DHHS if they employ providers/practitioners who are excluded, but they should also be aware of providers who have had their licenses revoked or suspended in one state or multiple states.

Because of this, healthcare organizations should conduct license verification, or a process by which an organization verifies that a medical practitioner has a valid, unexpired license. By leveraging a data provider with a deep understanding of disciplinary sources from across the United States, organizations can quickly find whether an individual has had actions taken against their license in other states.

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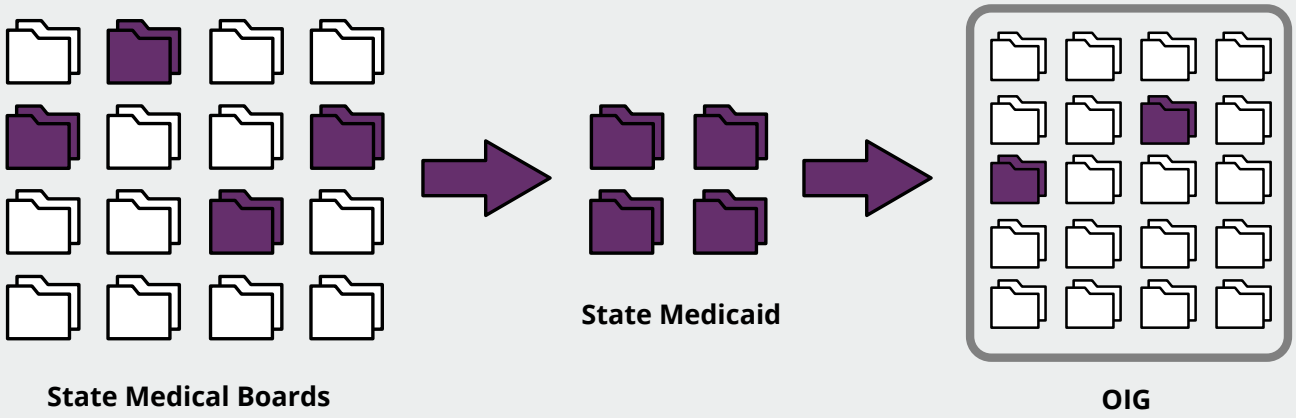

Some actions taken against individuals or entities by a state medical board (but not all) are reported to the state's Medicaid agency, and some state Medicaid exclusions (but not all) are reported to the OIG. The OIG has the authority to perform exclusions, but not all state-level healthcare exclusions also result in exclusions performed by the OIG. This makes it imperative for healthcare organizations to check primary source data at both the federal and state level.

When Bad Actors Slip Through the Cracks of the Healthcare System

Healthcare entities and employers can be held liable for any individual on their employee roster who is excluded or sanctioned by the OIG, including individuals excluded for a low-level offense such as defaulting on student loans. Keeping close watch for excluded individuals who are excluded for any reason is of utmost importance. But the most severe damage to company brand and reputation comes when well-educated and ostensibly experienced doctors, nurses, and surgeons abuse the system and their patients. This sort of abuse falls well within the bounds of exclusionary action from the OIG, meaning practitioners who abuse patients through malpractice or negligence should have their licenses suspended or revoked.

These situations can be costly and damaging for an employer and can leave an organization vulnerable to penalties from the U.S. Department of Health and Human Services. Checking the OIG database on at least a monthly basis – which cross references practitioners not only by various names but also, in many cases, by social security number – can help prevent tragic situations like this. But sometimes, that is not enough.

Organizations must not only check their enrollment roster against the LEIE, which is maintained by the OIG, but they must also check SAM/GSA exclusions (a larger dataset than the LEIE because it goes beyond exclusions in the healthcare industry) and state Medicaid exclusions, along with monitoring the licensure of current employees in all states and screening all incoming employees for any sanctions or exclusions. But in many cases, even this may not be enough, either. Organizations can regularly take all these steps and still miss actions that are taken on the state board level and, for various reasons, not reported to the OIG and therefore not included in the SAM database, either.

A Case Study in Slipping Through the Cracks

One particular case illustrates why it is important to check all available data sources. Steven Svabek was an orthopedic surgeon in Indiana who lost his surgical privileges in the state of Indiana after two surgeries that "fell below the standard of care" and left two individuals with severe nerve damage, according to state and court records. Svabek lost his surgical privileges at two different Indianapolis hospitals but did not reveal this to the Indiana Medical Board. He was fined by the board, but did not see his license suspended or revoked by his fellow physicians on the state board[5]. Media attention focused on the state board's responsibility in allowing Svabek to continue practicing, but a look on ProviderSafe, proprietary healthcare sanctions and exclusions solution provided by Typhoon Data, tells a larger story.

After initial board actions were taken in Indiana in 2008, Svabek had 11 other state board actions taken against him in three different states (Illinois, Indiana, and Florida) over the next 20 years. This state board actions were not included on the LEIE or the SAM exclusionary database, so only a more comprehensive look at the available data would have enabled an employer to find them. Svabek continued practicing and accruing state board actions for two decades because healthcare organizations did not check the full range of available datasets to ensure he had no actions taken against his license by any state boards.

Getting the Full Picture of Existing Sanctions Protects Both Employers and Patients

It is crucial for all organizations to develop processes to ensure corporate compliance, but it is doubly urgent for healthcare entities. Healthcare organizations can incur significant civil monetary penalties from the federal government, damage their reputations, and erode public confidence in patient care. This danger is not limited only to highly trained practitioners, but any employee working under the healthcare umbrella – including janitors, receptionists, cafeteria workers, and any other individual on the payroll at a hospital, clinic, or imaging center.

Healthcare organizations should have strong corporate compliance programs that minimize risk within their workforce. They should also proactively utilize the technology and comprehensive information from primary source data at both the federal and state level – including the exclusion lists maintained by the OIG and SAM along with state Medicaid and state board actions against providers. This extensive screening process will go a long way to keep organizations from hiring, employing, and doing business with a sanctioned or excluded individual or entity, and keeping more people safe in the process.

Footnotes

1 "Employment by major industry sector," Bureau of Labor Statistics, https://www.bls.gov/emp/tables/employment-by-major-industry-sector.htm

2 "About OIG," Office of the Inspector General, https://oig.hhs.gov/about-oig/.

3 "Background Information," Office of the Inspector General, https://oig.hhs.gov/exclusions/background.asp.

4 CMCS Informational Bulletin, https://downloads.cms. gov/cmsgov/archived-downloads/CMCSBulletins/downloads/6501-Term.pdf

5 Axelrod, Jim, "'An inherent conflict of interest': State medical boards often fail to discipline doctors who hurt their patients," CBS News, https://www.cbsnews.com/news/state-medical-boards-doctor-discipline/.

About Lorinda Walters

Lorinda Walters is Director of Healthcare Screening Solutions at Equifax. She has more than 20 years of experience in the healthcare screening industry.