

## **Rolf & Goffman Practice Alert:** **Beware of Exclusion!**

All nursing facilities that accept reimbursement from Federal healthcare programs, e.g., Medicare and Medicaid, and do not currently have a program in place to verify that their employees and contractors are not “excluded” persons or entities risk very large penalties.

We have found in assisting our clients with their corporate compliance efforts, and in our practice in general, that many facilities are not aware of this significant risk. Nor are they aware of the very simple manner in which to avoid liability.

Approximately five (5) years ago, Congress made it a necessity for almost all employers involved in health care to closely scrutinize their employees and those with whom they contract. As a penalty for various kinds of activities, a person or entity can be “excluded” from a Federal health care program. An exclusion can be for numerous, varied reasons, such as fraud, abuse of resident, loss or suspension of a license, or not paying back medical school loans. The effect of an exclusion is that no Federal health care program payment may be made for any items or services furnished by an excluded person or entity.

The 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. Also, no Federal program payment may be made to cover an excluded person’s salary, expenses, or fringe benefits. Moreover, contrary to popular belief, the payment ban does not just apply to persons who provide direct patient care. It also extends to administrative and management services not directly related to patient care, but that are necessary for providing items and services to Federal program beneficiaries.

In addition to not being paid, nursing facilities that submit claims to a Federal health care program for items or services provided by an excluded person or entity risk severe monetary penalties, and potential exclusion themselves. The government has the authority to impose fines of up to \$10,000 for each item or service furnished by the excluded party, in addition to an assessment of up to three (3) times the amount claimed. Even worse, the government can exclude the nursing facility itself from Federal government programs, which for most facilities would effectively mean the end of their business.

Thus, in most instances, the practical effect of an exclusion is to preclude employment of, or contracting with, an excluded party in any capacity by a nursing facility. In order to avoid the large potential liability, facilities should always verify that a person or entity is not excluded prior to hiring or contracting with them. Also, they should periodically check to make sure that their current employees and contractors are not excluded. (Note that unlike the criminal background check law in Ohio, there is no grandfathering clause for exclusion – it applies to all employees and contractors, not just new hires).

Facilities may check for exclusion on the internet. Rolf & Goffman’s website ([www.LTClawyers.com](http://www.LTClawyers.com)) has a link directly to the exclusion checking sites. We suggest that facilities print out the results of their exclusion checks and keep that record in the appropriate employee file or with the vendor contract.

If you have any questions regarding the exclusion requirement and how to comply, or about corporate compliance issues in general, please contact Carol Rolf or Aric Martin at the number and address noted below.

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