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Academic Medical Center Settles Case Over Excluded Person Who Was Both Employee, Vendor

By Nina Youngstrom

Thomas Jefferson University Hospitals Inc., an academic medical center in Philadelphia, Pennsylvania, has entered into a settlement with the HHS Office of Inspector General (OIG) in a case that underscores the risks of contracting with or employing someone who is excluded from federal health care programs—in this instance, the same person. Although the settlement amount is small—\$19,958—the case is a reminder of the risks that hospitals and other health care organizations face if their exclusion screening doesn't encompass vendors and their employees, experts say. Sometimes people fall through the cracks anyway, which is why vendors are often asked to accept responsibility in their contracts for penalties stemming from excluded employees.

“With vendors, you need to arm yourself in two ways: check them for exclusions every month and include in your contracts a clause that requires them to check their employees for exclusions and notify you as soon as they know if they have an excluded person employed,” said Kim Danehower, corporate compliance officer at Baptist Memorial Health Care Corp. in Nashville, Tennessee. She added that contracts with vendors should include indemnification clauses, which shift liability to the vendor for penalties the government imposes on providers in connection with the services provided by the vendor's excluded employee. Not all vendors are champing at the bit to agree to indemnification, however, so sometimes there are hard choices to make.

Exclusion Case Settled Over Vendor Employee

According to the settlement with Thomas Jefferson University Hospitals, which was obtained through the Freedom of Information Act, OIG contends that Debra Stallings provided consulting services to Thomas Jefferson University Hospitals from Oct. 25, 2018, to March 17, 2019, under a contract with a vendor. From March 18, 2019, to May 17, 2019, Stallings was employed by the academic medical center “for the provision of items or services for which payment may be made under a Federal health care program,” the settlement stated. Stallings didn't perform patient care services, according to a statement from Deana Gamble, assistant vice president of national media strategy at Thomas Jefferson University and Jefferson Health.

When Thomas Jefferson University Hospitals learned she was excluded and told OIG in July 2020, it was accepted into the Self-Disclosure Protocol in October 2020. “The OIG contends that Respondent knew or should have known, prior to May 17, 2019, that Ms. Stallings was excluded from participation in all Federal health care programs and that no Federal health care program payments could be made for items or services furnished by Ms. Stallings,” the settlement states. OIG contends the conduct subjects Thomas Jefferson University to civil monetary penalties. The academic medical center didn't admit liability in the settlement.

Gamble added in her statement that “upon learning that a vendor failed to perform contractually required exclusion screening activities for an individual it provided to TJUH [Thomas Jefferson University Hospital] to perform certain non-patient care services, who later failed to disclose her excluded person status when she accepted a permanent position with the hospital, TJUH immediately took steps to investigate, remediate, and voluntarily disclose the issue through the Office of Inspector General's ('OIG') Voluntary Disclosure Protocol

Program. As a result of TJUH's transparency and commitment to cooperating with the OIG, the parties entered into a settlement agreement in which TJUH agreed, without admitting liability, to pay to OIG \$19,958.56 to resolve this matter and avoid any further litigation."

OIG Guidance Refers to Contractual Relationships

According to the OIG's List of Excluded Individuals/Entities (LEIE), a person named Debra Stallings was thrown out of federal health care programs in 2012 for a program-related conviction (1128(a)(1)) for five years. Her expertise is durable medical equipment (DME). That type of conviction is a felony, triggering a mandatory exclusion, said Michael Rosen, co-founder of ProviderTrust in Nashville, Tennessee. A news release from the U.S. Attorney's Office for the Eastern District of Pennsylvania states that a woman named Debra Stallings was charged with health care fraud in 2009 in connection with a DME scheme.^[1] Stallings was sentenced to two years of probation in 2011 in connection with a conviction for health care fraud and ordered to pay \$7,000 in restitution, according to a court document.

Stallings' five-year exclusion would have ended before Thomas Jefferson University hired her. But the termination of an exclusion doesn't mean automatic reinstatement to Medicare, a fact that's often misunderstood, Rosen said. People and companies that have been excluded from federal health care programs must apply for reinstatement when the terms of their exclusion expire. They can't bill Medicare, and their services can't be billed directly or indirectly, until they are back in the government's good graces, he noted.

Health care organizations should keep in mind that in addition to their own employees, their vendors must be screened for exclusion, as well as the vendor's employees, Rosen said. "The firm itself may not be excluded, but a lot of people try to hide behind the corporate veil," Rosen said. "OIG made it clear excluded persons can't hide behind the company." That came through in OIG's 2013 *Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs*.^[2] "If a health care provider arranges or contracts (by employment or otherwise) with a person that the provider knows or should know is excluded by OIG, the provider may be subject to CMP liability if the excluded person provides services payable, directly or indirectly, by a Federal health care program," the bulletin says. It also notes that "OIG recommends that to determine which persons should be screened against the LEIE, the provider review each job category or contractual relationship to determine whether the item or service being provided is directly or indirectly, in whole or in part, payable by a Federal health care program. If the answer is yes, then the best mechanism for limiting CMP liability is to screen all persons that perform under that contract or that are in that job category."

'It's Not Difficult if You Have Good Software'

Danehower said Baptist Memorial Health Care Corp. runs all its vendors through the LEIE—and it has 30,000 vendors. That may sound mind-blowing, but it's an automated process. "It's not difficult if you have good software," she said. It provides potential matches to follow up on. "The problem that keeps me up at night is people hiding in a corporate structure," Danehower said. "That's why the contract is so important." Some vendors balk at indemnification, and you have to decide if it's nonnegotiable, Danehower said. For example, if it's a small specialty group that provides services unavailable elsewhere, perhaps the hospital will take on the risk of an excluded employee popping up. Also, sometimes "peripheral" vendors (e.g., companies that wash the linens) may not take exclusion screening seriously, Danehower said. "You will hold them accountable, but they will gamble it will never happen."

Her health system requires vendors to take responsibility for screening their own employees. While hospitals have the tax identification number of the vendor, they lack access to the Social Security numbers of their employees. "It would take a lot of due diligence to find that," Danehower said.

Also, people have been known to disguise their identities. For example, someone who is excluded may cross state lines, change their name and get a job. “People can be extremely devious,” Danehower noted. That’s why vendor employees are better left in the hands of the vendors, with the hammer of indemnification. And physicians can be excluded for failure to repay student loans, and again, physicians and prospective employers may be unaware they can’t bill Medicare for services provided by the physician when the exclusion is over. “You have to apply for reinstatement,” she emphasized.

Gamble noted in her statement that “Jefferson continues to maintain the highest standards of integrity and is committed to identifying effective means through which to enhance its compliance controls and programming. TJUH took prompt and effective action to evaluate the exclusion screening matter identified through industry-accepted monitoring activities and candidly and completely disclosed identified issues to the OIG. TJUH will continue to devote resources and attention to its efforts to do the right thing in all aspects of its business and patient care operations and remains committed to maintaining an effective compliance program to support its important work.”

Contact Gamble at deana.gamble@jefferson.edu, Danehower at kim.danehower@bmhcc.org and Rosen at mrosen@providertrust.com.

1 U.S. Attorney’s Office for the Eastern District of Pennsylvania, “Durable Medical Equipment Company, Six Others Charged in Medicare Fraud and Kickback Scheme,” news release, Federal Bureau of Investigation, December 10, 2009, <https://bit.ly/3tokGag>.

2 HHS OIG, *Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs*, May 8, 2013, <https://bit.ly/315u9DJ>.

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