



## Weekly Auditing and Compliance Tip

National Alliance of Medical Auditing Specialists | 877-418-5564 | [namas.co](http://namas.co) | [namas@namas.co](mailto:namas@namas.co)

April 21, 2017

### Sanction Screening and Evaluating Employee Suitability the New "Seventh Element" of Compliance!

The recently issued *Resource Guide for Measuring Compliance Program Effectiveness*, the product of roundtable discussions by Office of Inspector General staff and compliance professionals, emphasizes the importance that the OIG places critical role of exclusion screening and background checks in compliance. Issued in March, the Resource Guide re configures the traditional formulation of the "Seven Elements of an Effective Compliance Program" to include Screening and Evaluation of Employees, Physicians, Vendors and other Agents an element unto itself- or as the new seventh element.

The Importance of the Hiring Process in Healthcare  
Employee suitability is critically important in healthcare because most of a provider's operational costs, and almost all of his risks, are directly related to his/her employees. Whereas most industries are trying to respond to a wide range of risks over which they have little or no forewarning or control (for example: the impact of the weather, the availability of supplies or critical equipment, or the failure of equipment they neither own nor operate), the majority of risks to health care providers are mostly known and directly related to employee conduct or misconduct (medical malpractice, patient safety,



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financial fraud, drug diversion, regulatory violations, data and record security, etc.).

Another reason why the hiring process is so important is that employees can provide great value for an organization. Good employees try to make an organization better; they perceive potential risk and report or fix it, they provide important modeling for new employees, they care for patients in a way that engenders loyalty, they pitch-in, they are honest and show up for work and so on. Thus, employees can be a source of loss and cost- or they may represent a sustainable resource for providers and provide them with a competitive advantage. Viewed in this context, the importance of the hiring process and determining the sustainability of employees to a provider's compliance program is very clear.

### Sanction and Exclusion Screening and Background Checks

An important aspect of determining an applicant's overall suitability is screening them with Federal and State Exclusion and Sanction lists. Indeed, the importance of thorough screening cannot be overstated because most exclusions are imposed as a result of either patient abuse, the sale or abuse of drugs or fraud. Further, regardless of why an OIG exclusion is imposed, it is a final administrative action and persons or entities excluded from Federal health care programs are deemed as a matter of administrative law to "pose unacceptable risks to patient safety and/or to the financial integrity of government programs".

### Exclusion Violation Enforcement

Federal health care programs will not pay for *any* items or services furnished or provided, *directly or indirectly*, by an excluded individual or entity. This broad "payment prohibition", which can extend even to volunteers, renders anyone who is excluded radioactive when it comes to health care. Any claim connected to an excluded person is a *potential over payment, employing or contracting with an excluded person can result in the imposition of civil monetary penalties, and there have even been False Claims Act cases against providers that have used excluded persons.*

The OIG signaled that enforcement of exclusion violation was going to be an agency priority in 2013 when it issued its Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs and revised the Self-Disclosure Protocol. Since that time, it has created a



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special unit tasked with exclusion enforcement as a priority and sought to expand its exclusion

In conclusion, the risks and benefits associated with the hiring process or significant; a fact emphasized all the more by the adding of Screening and Evaluation of Employees, Physicians, Vendors and other Agents as the new seventh element for Evaluating the Effectiveness of Compliance Plans. Providers are urged to do thorough screening as part of their hiring process and to take all possible actions toward ensuring a positive work force, and to avail themselves of the assistance of reputable vendors to assist them in this process.

### This Week's Tip Written by:

#### Paul Weidenfeld, JD

Paul Weidenfeld is a health care lawyer with a practice that focuses primarily on litigation arising out of or relating to civil and criminal healthcare fraud investigations and the Federal



False Claims Act. A former federal prosecutor and National Health Care Fraud Coordinator for the Department of Justice, Paul currently represents providers and individuals in health care matters. A frequent speaker who has earned recognition both as a Federal Prosecutor and as a member of the private Bar, Paul is also a co-founder of Exclusion Screening, LLC, a company that offers providers a simple, cost effective way to meet their exclusion screening obligations.

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Exclusion Screening LLC offers services to screen employees, contractors and vendors against Federal and State exclusions databases

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NAMAS is proud to offer the following webinars in April and May

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Speaker: Deb Santos  
April 25, 2017  
2pm EST

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Speaker: J. Paul Spencer  
May 2, 2017  
2pm EST

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May 9, 2016  
2pm EST

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May 16, 2017

2pm EST

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May 23, 2017

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