



OIG Road Show

Provider Education and Outreach
 U.S. Department of Health and Human Services
 Office of Inspector General





Who is the OIG

- Main goal is to promote the integrity of HHS programs
- It's the largest OIG – with over 1600 employees across the country



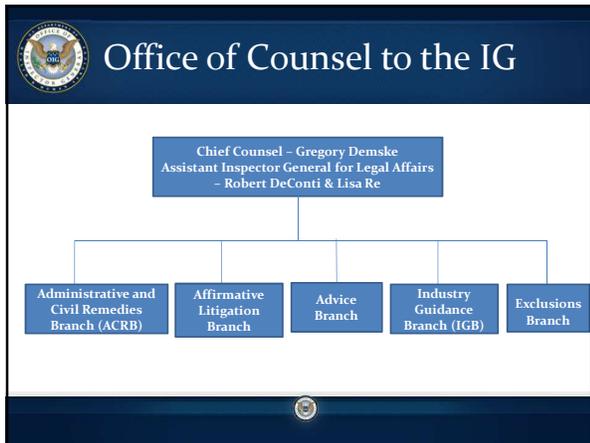





OIG Organization

- Office of Audit Services (OAS)
- Office of Evaluation and Inspections (OEI)
- Office of Investigations (OI)
- Office of Counsel to the Inspector General (OCIG)
- Office of Management & Policy (OMP)



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- OIG Administrative Sanctions**
- Civil Monetary Penalties Law (CMP)
 - § 1128A of the Social Security Act
 - 42 U.S.C. § 1320a-7a
 - OIG Exclusion Authority
 - § 1128 of the Social Security Act
 - 42 U.S.C. § 1320a-7

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- What is the CMP Law?**
42 U.S.C. § 1320a-7a
- Administrative fraud remedy
 - Affirmative cases initiated by OIG
 - Can recover money damages + penalties + exclusion
 - Alternative or companion case to a civil action
 - Physicians, owners, or executives
 - Burden of Proof
 - Preponderance of the evidence (same as civil)
 - Statute of Limitation
 - 6 years (same as civil)
 - Intent: generally "knows or should know"
 - Actual knowledge
 - Deliberate ignorance or reckless disregard



Factors Favoring CMP Cases

- No explicit civil remedy
 - Kickbacks
 - Billing while excluded
 - Violation of an assignment agreement
 - Failure to properly report required drug pricing information
- Opportunity to hold individuals accountable
- Exclusion sought
- Jury appeal issues
- Good evidence of fraud, but civil declined because of small dollar amount





Ten Ways to Catch the Interest of the OIG

1. Bill for debriding 10 toes for patients with one foot
2. Charge the BMW your son drove in college on your Medicare cost report
3. Bill for having personally provided 37 one hour psychotherapy services in a day
4. Provide speech therapy to comatose patients
5. Falsely diagnose a patient as terminal and enroll them in a hospice you have a financial interest in





Ten Ways to Catch the Interest of the OIG (cont.)

6. Provide office consultations and follow-up visits to deceased patients
7. Deliver cans of Ensure and bill for enteral feeding supplies & infusion pump
8. Insert dental fillings without anesthesia on nursing home patients with no cavities
9. Remove experimental pacemakers from animals, clean and repackage them, and sell them to Medicare beneficiaries
10. Convince patients to have unnecessary surgery in exchange for cash, and pay the person making the referrals (patient broker) a commission





What is Exclusion?

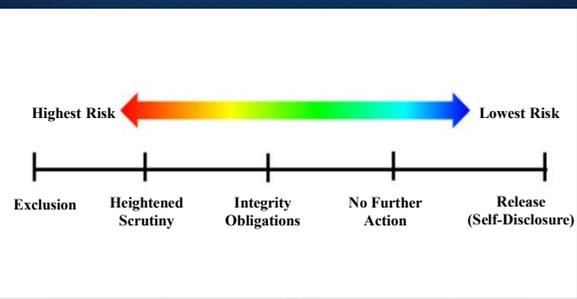
42 U.S.C. § 1320a-7

- Protects Federal health care programs from untrustworthy providers
- Payment prohibition- no payment may be made for items or services:
 - Furnished by an excluded person or entity
 - Directed or prescribed by an excluded individual, where the person furnishing the item or service knew or had reason to know of the exclusion
- Exclusion applies to:
 - individuals and entities
 - direct providers (e.g., doctors, hospitals)
 - indirect providers (e.g., drug manufacturers, device manufacturers)
- OIG has sole authority for Federal exclusion





Risk Spectrum





Mandatory Exclusions

- Based on convictions for:
 - 1128(a)(1) Program-Related Crimes
 - 1128(a)(2) Patient Abuse/Neglect
 - 1128(a)(3) Felony Health Care Fraud
 - 1128(a)(4) Felony Relating to Controlled Substances
- Conviction is broadly defined in § 1128(i) of the SSA
- Minimum 5-year exclusion term
 - Aggravating and mitigating circumstances





Case Examples

- Christopher George Collins
- Authority: Section 1128(a)(1)
- Facts:
 - Licensed nurse turned “beneficiary recruiter” turned clinic owner
 - Provided cash and drugs to destitute individuals
- Charged in Federal Court
 - Pleaded guilty to conspiracy to commit health care fraud
 - Ordered to serve 63 months in prison and pay \$6.96 million in restitution
- Result: 50-Year Exclusion





Case Examples

- Hsiu Ying Lisa Tseng
- Authority: 1128(a)(2); 1128(b)(4)
- Facts
 - Tseng was a doctor of osteopathy who was sentenced to 30 years in prison based on her conviction of 2nd degree murder, unlawful controlled substance prescription, and obtaining a controlled substance by fraud. According to court documents, Tseng prescribed massive quantities of controlled substances to patients with no legitimate need. In addition, her license to practice as a doctor was suspended by the Osteopathic Medical Board of California.
- Results: 50-Year Exclusion





Permissive Exclusions

- 16 bases, most are derivative and include:
 - Misdemeanor health care (non-Medicare/Medicaid) fraud conviction;
 - Obstruction of investigation/audit;
 - Misdemeanor controlled substances conviction;
 - License revocation or suspension;
 - Individuals controlling a sanctioned entity;
 - Failure to supply payment information or grant immediate access;
 - Knowing false statements or misrepresentations on enrollment applications
- Term of exclusion varies based on grounds for permissive exclusion
 - Adjustments to term based on aggravating and mitigating factors





OIG's Affirmative Litigation Goals

- Deter Fraud, Waste and Abuse in the Federal Health Care Programs
- Support Work of OIG Components
 - Build off of the work of OAS, OEI, and OI
 - Use data analysis as a tool to identify potential cases
- Complement of DOJ Enforcement Activities
 - Focus on individual accountability
 - Filling the “enforcement gap”





Case Examples

- Kristen Lynn Khanna
- Authority: 1128(b)(7), 1128(a)(1) and 1128(a)(4)
- Facts
 - Kristen Lynn Khanna, a Nurse Practitioner, was the only licensed provider at Total Pain Care, but had an employee who was not a medical provider. Khanna was often not present at Total Pain Care and allowed office visits to be conducted by the employee. On numerous occasions, Khanna would then bill Medicare for those office visits as if she had conducted them herself, causing Medicare to reimburse Total Pain Care for services not rendered by a licensed provider.
 - Khanna also often left the employee with a pad of pre-signed, but otherwise blank, prescription forms for the employee to fill out and issue to patients in what the two often referred to as “drive-by” visits. Patients would then take those prescriptions and fill them at local pharmacies, causing Medicare to pay for the prescriptions through the Part D prescription drug program. The government determined that more than 200 prescriptions for controlled substances were filled by more than a dozen Medicare patients in this manner.
- Result: 5-Year Exclusion



Case Examples

- Labib Riachi, M.D.
 - Authority: 1128(b)(7)
 - Facts
 - Submitted false or fraudulent claims to Medicare for Pelvic Floor Therapy services that he (1) failed to personally perform or directly supervise; (2) failed to personally supervise the performance of anorectal manometry (CPT Code 91122) procedures performed by his medical assistants; (3) sought reimbursement for services never provided; (4) sought reimbursement for physical therapy services provided by unlicensed and unqualified individuals; (5) failed to document services; and (6) sought reimbursement for diagnostic services that were not reasonable and necessary.
 - Result: \$5.25M FCA settlement & 20-Year Exclusion
- Susan Toy
 - Facts
 - Billing company owner who submitted false claims to Medicare on behalf of Dr. Riachi for diagnostic tests she knew were not performed.
 - Result: \$100K CMP and 5-Year Exclusion





Case Examples

- Roben Brookhim, D.D.S.
- Authority: 1128(a)(3); 1128(b)(4); 1128(b)(7)
- Facts
 - Previously barred from practicing dentistry and excluded from participating in the Federal health care programs, he acquired ownership interest in a dental practice where he assumed the identity of J.K., a licensed New Jersey dentist, and provided dental services and billed Medicaid in J.K.'s name (including after J.K.'s death).
- Result: \$1.13M CMP and 50-Year Exclusion





Case Examples

- Jeffrey Friedlander, M.D.
- Strike Force initiative
- Facts
 - Friedlander, an internal medicine physician pled guilty to Medicare fraud and to conspiring to dispense oxycodone, morphine, hydrocodone, and alprazolam. He allowed unauthorized and non-medical employees at his pain center to prescribe drugs using his pre-signed blank prescription forms. Prescriptions were issued in his name without adequate physical exams, proper diagnoses, or consideration of alternative treatment options.
- Result: He paid \$317,000 in restitution to the Government.





Case Examples

- Chang Goo Yoon
- Authority: Section 1128(b)(4)
- Facts
 - Colorado licensing board investigation
 - Six allegations of misconduct
 - Licensed PT agreed to permanent license suspension through stipulation
- Elements for Exclusion:
 1. Did the individual surrender his license during a formal disciplinary proceeding
 2. Did the proceeding involve his professional competence, professional performance, or financial integrity?
- Result: Exclusion was upheld





Useful Resources

- **OIG's Roadmap for New Physicians**
 - <https://oig.hhs.gov/compliance/physician-education/index.asp>
- **False Claims Act [31 U.S.C. §§ 3729-3733]**
- **Anti-Kickback Statute [42 U.S.C. § 1320a-7b(b)]**
- **Physician Self-Referral Law [42 U.S.C. § 1395nn]**
- **Exclusion Statute [42 U.S.C. § 1320a-7a]**
- **Civil Monetary Penalties Law [42 U.S.C. § 1320a-7a]**