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Moving Excluded Nurse Didn't Prevent CMP; OIG: Scope of Exclusion Is Misunderstood

By Nina Youngstrom

In a case that's a reminder there are few safe places for excluded people in health care organizations, Baptist Village of Owasso in Oklahoma agreed to settle allegations that one of its employees was excluded from federal health care programs in violation of the Civil Monetary Penalties Law, the HHS Office of Inspector General said. The excluded employee had been a nurse but was switched to an admissions specialist position after she lost her license. Baptist Village, which offers a range of senior living options, including assisted living and skilled nursing services, will pay \$96,020 in the Jan. 4 settlement.

Moving her away from patient care did not get Baptist off the hook. "What comes up frequently is people will misunderstand the scope of exclusion," says Nicole Caucci, deputy branch chief in OIG's Administrative and Civil Remedies Branch. Some organizations think they can employ excluded people as long as they aren't in direct patient care roles. "It is not correct," Caucci tells *RMC*. "Even administrative positions paid for by federal health care programs are prohibited."

That's spelled out in OIG's 2013 special advisory bulletin on exclusions, which explains that no federal health care program payment will be made for goods or services provided by an excluded person, whether it's direct care, such as physicians' services, or indirect care, such as reviewing treatment plans. And "excluded persons are prohibited from furnishing administrative and management services that are payable by the Federal health care programs. This prohibition applies even if the administrative and management services are not separately billable," the bulletin states. "For example, an excluded individual may not serve in an executive or leadership role (e.g., chief executive officer, chief financial officer, general counsel, director of health information management, director of human resources, physician practice office manager) at a provider that furnishes items or services payable by Federal health care programs. Also, an excluded individual may not provide other types of administrative and management services, such as health information technology services and support, strategic planning, billing and accounting, staff training, and human resources, unless wholly unrelated to Federal health care programs" (*RMC* 5/13/13, p. 1; 6/24/13, p. 1).

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