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Michigan Hospital Settles Case Over Excluded Nurse Who Was Employed There for 13 Years

By Nina Youngstrom

A Michigan hospital has settled a case with the HHS Office of Inspector General (OIG) over a nurse it employed for 13 years who was excluded from Medicare and other federal health care programs all that time.

Ascension Providence Rochester Hospital agreed to pay $545,834 in a civil monetary penalty settlement that stems from its self-disclosure.

According to its settlement and a related memo, the hospital employed the nurse from Feb. 4, 2008, to Oct. 2, 2021, for the provision of items and services reimbursed by federal health care programs. The nurse had been excluded in 2000, and OIG alleged the hospital knew or should have known the nurse was excluded. As OIG noted in its 2013 special advisory bulletin on exclusions, "no Federal health care program payment may be made for any items or services furnished (1) by an excluded person or (2) at the medical direction or on the prescription of an excluded person."[1] That includes payments to a hospital for services provided by an excluded nurse "even if the nurse's services are not separately billed and are paid for as part of a Medicare diagnosis-related group payment received by the hospital," the bulletin stated.

The hospital didn't admit liability in the settlement, which was obtained through the Freedom of Information Act. Because the nurse wasn't identified, there's no way to know the reason for the exclusion. Ascension didn't respond to a request for more information.

Settlements over excluded employees continue to appear regularly on OIG's website, an indication they still fall through the cracks for various reasons. But the employment of an excluded person for an extended time is unusual, three experts said, and caused a fairly high-dollar settlement for one employee.

"It seems like a long time for a nurse to have worked in a hospital and not been flagged," said attorney Holley Thames Lutz, with Dentons US LLP in Washington, D.C. She wonders how the nurse's name finally "popped" on the OIG's List of Excluded Individuals and Entities (LEIE), if that's how the hospital found out about the exclusion.

Medicaid exclusions may be driving more undetected exclusions. Compliance programs and screening vendors have been focused on people who were excluded in a state other than where the hospital is located, Lutz said. "Some health systems have started paying third-party vendors to run employees' names through all state Medicaid exclusions lists. Maybe that's how it came up. I'm guessing."

Michael Rosen, co-founder of ProviderTrust, said, "We have onboarded a large health system with 100,000 employees and we found 700 excluded parties." The majority were Medicaid exclusions. "You could argue there shouldn't be that many," he said.

Rosen said 42 states have their own Medicaid exclusion databases. But as Lutz noted, "There's no central repository" for Medicaid exclusions in all states. If a person or entity is excluded by one state Medicaid program,

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they're ineligible to enroll in another state Medicaid program, "but states don't talk to each other," Rosen explained. Sometimes people or entities excluded by a state wind up on the LEIE, he said. State Medicaid Fraud Control Units that accept federal funds are required to report Medicaid exclusions to OIG within 30 days, and if the people or entities were excluded for certain felonies (e.g., patient abuse, fraud), they will also be excluded from federal health care programs and added to the LEIE. But compliance with the reporting requirement isn't perfect, Rosen noted.

Medicaid aside, there are the usual glitches. For example, people may change their names when they get married or divorced and if there isn't a perfect match on the LEIE, they may not show up as excluded. Or excluded people may not realize that when the term of their exclusion ends, they aren't automatically back in Medicare's good graces. They have to apply to OIG for reinstatement.

Some People Don't Realize They've Been Excluded

Attorney Gabriel Imperato said he's had cases where the person didn't realize they were excluded. For example, one physician who worked in the IT department of a health system had been excluded after pleading guilty in state court to a controlled substances violation. After he was convicted, the physician left the state, and by the time OIG sent the notice of exclusion to his last known address, the physician had left the jurisdiction. When the health system discovered his exclusion, which had expired by then, "We helped him petition for reinstatement and they reinstated him right away," said Imperato, with Nelson Mullins in Fort Lauderdale, Florida.

Organizations also seem to be screening more frequently. They used to check the LEIE every three months, but because exclusion is "an obvious source of liability," they can manage by checking it, and monthly screening has become more common, Imperato said.

"I find clients are very conscientious and a lot of them pay third-party vendors to check everywhere it's possible to check," Lutz noted. "But not everybody does that. They check the LEIE and Medicaid in their own state."

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1 U.S. Department of Health and Human Services, Office of Inspector General, *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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