

## Engaging Excluded Individual For Work Not Paid By Federal Healthcare Programs Would Not Be Grounds For Sanctioning

**Robbi-Lynn Watnik | June 2, 2022**

The Department of Health and Human Services Office of Inspector General (OIG) issued a new [Advisory Opinion](#) 22-11 in response to a provider who sought to hire an individual who had been excluded by the OIG in 2021. The Requestor desired to engage the excluded individual to perform certain administrative tasks relating to its workers' compensation (WC) program. These tasks included meeting with payors and attorneys to, among other things, "market Requestor's ability to provide medical services to their clients." The tasks would not be reimbursed by a federal payor and the individual's salary would not be paid from funds derived from services provided to or reimbursed by a federal payor. As such, the Requestor asserted that there should be no problem using this person for those tasks.

Referring to its 2013 *Updated Special [Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs](#)*, the OIG stated that "if Federal healthcare programs do not pay, directly or indirectly, for the items or services being provided by the excluded individual, then a provider that participates in Federal healthcare programs may employ or contract with an excluded person to provide such items of services." In light of this bulletin and the facts submitted by the Requestor, the OIG opined that the Requestor's proposed arrangement to hire the excluded individual "would not constitute grounds for the imposition of sanctions."

The OIG cautioned that "the Proposed Arrangement raises concerns from a compliance perspective." The excluded individual pleaded guilty to conspiracy for receiving kickbacks for referring WC patients to a specific hospital. Yet, the requestor is seeking to hire this individual in a similar marketing role. "Given the Excluded Individual's history for participating in kickback schemes ... his employment presents a meaningful compliance risk." It will therefore be important that the Requestor's compliance department institute monitors to ensure that the

excluded individual is not engaging in any activities that may invoke the federal Anti-kickback Statute (AKS). All marketing materials produced or used by the excluded individual should also be reviewed to ensure compliance with the AKS.

For more information on this topic, contact Robbi Watnik, JD, CHPC ([rwatnik@strategiccm.com](mailto:rwatnik@strategiccm.com)).



## **About the Author**

Robbi-Lynn Watnik is an attorney, Certified in Healthcare Privacy Compliance (CHPC). She has over 35 years of experience in health care policy, with a special focus on health care compliance and privacy over the last 25 years. Ms. Watnik conducts research and analysis of, and provides guidance on federal regulations around privacy, security, and government health care programs.