

# Exclusions and Terminations Part 2

*Lead-in music, then standard opening*

**Canned:** This is a Medicaid program integrity podcast. The Centers for Medicare & Medicaid Services developed and produced these podcasts to keep you informed about Medicaid program integrity topics.

**Narrator:** Welcome to the “Exclusions and Terminations Part 2” podcast. This podcast provides information on the effect of exclusions and terminations on a provider’s ability to participate in Federal health care programs such as Medicaid and Medicare. By being more aware of the consequences of exclusions and terminations, providers can continue to serve their Medicaid patients. Let’s join Dr. Schmidt, the managing partner of a large clinic, discussing exclusions and terminations with his partner, Dr. Wilhelm.

*Scene – Dr. Schmidt’s private office:*

**Dr. Wilhelm:** Good morning. I need to talk to you about the nurse practitioner we wanted to hire. It turns out he’s on the OIG’s LEIE exclusion list ... you know, the List of Excluded Individuals and Entities?[1] We check all of our employees against the LEIE monthly and all prospective employees before hiring them.

**Dr. Schmidt:** I’m shocked to hear he’s excluded. I thought he had a great reference from the insurance company he worked for and I remember he had a State Medicaid enrollment number issued to him, too. How could he work there and be excluded?

**Dr. Wilhelm:** Because his last employer didn’t bill any Federal health care programs. Many of our patients are covered by Medicaid, CHIP, or Medicare. And, according to the OIG, just having a Medicaid or Medicare billing number doesn’t mean anything in terms of exclusion or reinstatement.[2] If he’s hired we could never bill for any care he provides for our patients in a Federal health care program.[3] We’d risk being excluded ourselves if we did.[4]

**Dr. Schmidt:** Why’d they exclude him?

**Dr. Wilhelm:** He had a substance abuse issue that resulted in a misdemeanor conviction. He went through a successful rehab and got his license back last year. He even had the criminal conviction expunged after rehab.[5] He was completely upfront with us on all this, but he never mentioned the exclusion. It’s not like substance abuse in the medical field is exactly a rare situation anymore, I don’t understand why he didn’t just tell us.[6]

**Dr. Schmidt:** How much longer is he excluded?

**Dr. Wilhelm:** Well, that’s the strange thing. His exclusion expired two years ago but he never asked for reinstatement. The OIG is very clear that no matter when the exclusion ends, you have to ask to be reinstated before the exclusion is lifted.[7] He was eligible to apply for reinstatement 90 days prior to the ending date of his exclusion!

**Dr. Schmidt:** What did he say when you talked to him about the exclusion?

- Dr. Wilhelm:** Well, he just thought he was good to go because the exclusion expired and he got his license back. He told me he's applying for reinstatement. He said he will go to the OIG's website and follow their guidance.[8]
- Dr. Schmidt:** I'm glad we check the LEIE on everyone. It keeps our practice safe. By the way, I did review the OIG's frequently asked questions on exclusions like you suggested. That was a good idea. I learned a lot.[9] I also recently heard we can hire a commercial service to do exclusion checks for us,[10] so our office managers won't have to do it. Do you think we should explore that?
- Dr. Wilhelm:** We may want to consider it since our practice has grown over the last couple of years. We check all the medical professionals as well as the board of directors and our administrative staff.
- Dr. Schmidt:** Wait, what? You check our board of directors?!
- Dr. Wilhelm:** Absolutely. Some of our directors are also on the boards of other health care businesses. If one of those entities was excluded, anyone with an ownership or controlling interest might also be excluded by OIG.[11] If that happened, then we could be at risk of exclusion and civil monetary penalties.[12]
- Dr. Schmidt:** It doesn't seem likely to me that anyone associated with our practice would be excluded.
- Dr. Wilhelm:** Probably not. But we still need to check. I read that the OIG excluded more than 4,000 individuals and entities during 2014.[13]
- Did you know we also check the General Services Administration's (GSA) debarment list, too? It's called the System for Award Management or SAM.[14] It used to be called the Excluded Parties List System or EPLS.
- Dr. Schmidt:** Actually, I did know that; and it's smart to check it. The GSA has the OIG exclusions and sanctions from other agencies, too, but I know the OIG recommends using the LEIE as our primary source for exclusions because it has more identifying information. As an FYI, the OIG's staff is available to address any questions that come up if we identify an excluded person.[15]
- Dr. Wilhelm:** Obviously it's important to understand the implications of employing an excluded individual. Now I see why the Medicaid program asks us for information on ownership, criminal offenses, and business transactions as part of their enrollment and re-enrollment process.[16] Without that information, they might allow an excluded person or business into the program.
- Dr. Schmidt:** Being excluded certainly has serious consequences. But do they ever make an exception once someone is excluded?
- Dr. Wilhelm:** Yeah, occasionally they do. A State Medicaid agency or CMS can request a waiver of the exclusion under limited circumstances. The OIG has the discretion to grant one for providers who are the sole physician or the sole source of essential specialized services in a community. But the excluded party can't request the waiver. Only a State or Federal administrator can do that.[17]
- Dr. Schmidt:** The OIG website really does have a lot of information on its exclusion efforts. Besides frequently asked questions, did you know we can request an advisory opinion if we have a sticky situation with, say, a person with ownership or control interests? They have a set of frequently asked questions on that, too.[18]

- Dr. Wilhelm:** Remember, it's not just the OIG that excludes people. Every State Medicaid and Medicare program can terminate an individual's or entity's participation in their respective programs. When they do that with cause, every other State Medicaid program is required to terminate that individual or entity. And the OIG has the authority to exclude based solely on the State or Medicare action. Terminations have the same effect as an exclusion: no payments from a Federal health care program can be made to anyone on a Medicaid or Medicare termination list.[19]
- Dr. Schmidt:** Thanks to your suggestion about looking at the OIG website, I also learned that the OIG can exclude an entity if an excluded person tries to circumvent things by transferring his or her ownership interest to an immediate family member or a member of that other person's household.[20] That might be an extreme example but it shows how serious the OIG is about keeping excluded people from exercising any control over health care businesses.
- Dr. Wilhelm:** Did you know the Affordable Care Act requires every State Medicaid program to check every provider and owner, managing employee, and agent every month through both the LEIE and the SAM?[21] It's not like an excluded individual can escape their attention. We are much better off if we find an excluded person ourselves before the State does.
- Dr. Schmidt:** All of this information on exclusions might sound complicated. But from my perspective, in terms of running a quality practice, it's really simple if you think about it. Check every prospective employee before hiring them in the first place. Then, once a month, check everyone who works here if their services may be compensated by payments from any Federal health care program, either directly or indirectly.[22]
- Dr. Wilhelm:** It is definitely in our best interests to be aware of the effects of exclusions and how we can simply avoid them.
- Dr. Schmidt:** Well, let's wait and see if our nurse practitioner candidate gets reinstated soon.

*(Standard closing)*

**Canned:** More questions? For additional information about exclusions and terminations, contact your State Medicaid agency, or the Office of Inspector General at [www \[dot\] oig \[dot\] hhs \[dot\] gov](http://www.oig.hhs.gov).

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*(Closing music)*

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