

Financial Operations Track

Protecting Your Organization's Federal Reimbursements (And Your Job)

Through Ongoing Fraud Investigation Programs

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FACULTY DISCLOSURE

The faculty reported the following financial relationships or relationships to products or devices they or their spouse/life partner have with commercial interests related to the content of this CE activity:

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Tia Lee Allen – VP Operations, OIG COMPLIANCE NOW, LLC,

– No financial interest/relationship relating to the topic of this activity



PRESENTATION TOPICS

- Part I: Regulations Review
- Break
- Part II: Exclusion Checks Strategy



GROUND RULES

- *What's said here, stays here (Las Vegas)*
- Be respectful
- Cell phones off
- Ask questions



PART I:

REGULATIONS REVIEW



*How many of you have managed
an “exclusion” situation
at your company?*



*What impact will an “exclusion”
have on your business?*



*How many of you think that your
current screening procedures
are operating at OIG standards?*

*Are you willing to sign an affidavit
TODAY with that pledge?*



EXCLUSION CONSEQUENCES



EXCLUSION CONSEQUENCES

- Mandatory restitution (within 60 days) of all monies paid to the excluded party
- \$10,000 fine for EACH item/service claimed or “caused to be” claimed
- Treble damages sustained by the government
- New exclusion imposed by OIG
 - Possible criminal false claim situation
 - Possible loss of Medicaid funding
 - Possible firing of your management team



EXCLUSION CONSEQUENCES

“The OIG, for example, will consider the existence of an effective compliance program that pre-dated any governmental investigation when addressing the appropriateness of administrative penalties. Further, the False Claims Act, 31 U.S.C. 3729–3733, provides that a person who has violated the Act, but who voluntarily discloses the violation to the Government, in certain circumstances will be subject to not less than double, as opposed to treble, damages.”

Office of Inspector General, Publication of the OIG Compliance Program Guidance for Hospitals - Federal Register Vol. 63, No. 35 February 23, 1998



SELF DISCLOSURE

“Once the investigation is completed, the compliance officer should be required to notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the operation of the applicable health care programs or their beneficiaries. If the investigation ultimately indicates that criminal or civil violations may have occurred, the appropriate Federal and State officials will be notified immediately.”

“Reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (e.g., penalties, assessments, and exclusion), if the reporting provider becomes the target of an OIG investigation.”



REGULATIONS & GUIDANCE



FEDERAL/STATE DIRECTIVES

- CMS SMDL 2008/2009 & Final Rule 2011
 - ✓ *Recommends that states consider requiring Providers to screen employees and contractors monthly*
- PPACA 2011
 - ✓ *Repayment for false claims in 60 calendar days*
 - ✓ *One-state/all-state termination from Medicaid (1/1/2010)*



FEDERAL/STATE DIRECTIVES

- State-level Mandates for Screening
 - ✓ Monthly required: AL, AK, CT, FL, KS, LA, MA PA, TX, WY
 - ✓ Most others follow CMS/OIG guidance for monthly screening
 - ✓ State-level Exclusion lists (35)



OIG BULLETIN HIGHLIGHTS

- **OIG Special Advisory Bulletin – May 2013**
 - ✓ Frequency of screening
 - ✓ Clarification on vendor screening
 - ☐ All methods of program payment
 - ☐ Items/services related to direct patient care **and beyond**



OIG BULLETIN HIGHLIGHTS

- *Rules for screening are the same regardless of the “status” of the person: employee, subcontractor, employee of the contractor, or volunteer*
- Provider subject to CMP liability if Provider **does not ensure** that appropriate exclusion screening was performed



OIG BULLETIN HIGHLIGHTS

- Liability exists if the Excluded Party **participates in any way in the furnishing** of items/services
- Excluded Party may not serve in an executive/ leadership role at a Provider that furnishes items/ services payable by Federal Health Care Programs
- Includes administrative & management services that are payable by Federal HCP, even if they are not billed separately
- Excluded Party may not provide other services such as health IT services/support, strategic planning, billing & accounting, staff training, and Human Resources *unless wholly unrelated to Federal HCP*



OIG BULLETIN HIGHLIGHTS

- Relying on a vendor/contractor to perform exclusion screening does not absolve providers from liability for overpayment or civil monetary penalties (CMPs)
- Providers that rely on outside vendors **must ensure** that screening performed by the vendor/contractor is indeed occurring
 - Require contracts to include exclusion checks verbiage
 - Request/maintain screening documentation from the vendor as **proof of compliance**



WHO NEEDS TO BE SCREENED?

- Screen all vendor **names** (entities or individual contractors) on a monthly basis
 - ✓ Highest level of risk if entire entity is excluded
 - ✓ Good vendors sometimes do bad things after contracting
 - ✓ Use Provider vendor system to pull names/TINs or conduct outreach campaign to gather data directly from vendors



WHAT ABOUT VENDOR EMPLOYEES?

- According to OIG Bulletin, Provider must do the **same level of analysis** for vendor employees
- Vendor employee screening is a “risk mgmt” issue:
 - ✓ Govt. rarely excludes a vendor “entity”
 - ✓ Owners/Board Members are high risk but are only screened if vendor is engaged at that level of screening
 - ✓ *Many vendors are NOT screening their owners/employees, regardless of contract language*
 - ✓ Issue of vendor compliance and validity of screening data (including updates)



DUAL LIABILITY

- Excluded vendor owners/officers/managing employees present liability risk to BOTH the Provider and the Vendor

“If an excluded owner does, for example, participate in billing activities or management of the business, both the owner and the provider will risk CMP liability.”

- OIG Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs – 8 May 2013, p10



CASE SCENARIOS



CASE SCENARIO - VENDOR OWNER

- Vendor transportation organization was found through the sanction screening process to be an “excluded entity”
- Discovered during investigation that the owner of the vendor was individually excluded
- Vendor owner opened a new “clean” transportation company down the street and began working again for the same hospital
- Provider required to conduct investigation to verify ownership and determine restitution



CASE SCENARIO – MANAGED CARE

Excluded Individuals Employed by Service Providers in Medicaid Managed Care Networks

- Study by HHS/OIG in Sept 2012
- Identified reasons for the hiring of excluded parties:
 - ✓ Incorrect names used during exclusion checks
 - ✓ Using DOB mismatch to clear a false positive name
 - ✓ Excluded individual hired prior to exclusion date and discovered during later routine check
 - ✓ **Contracted staffing agencies** not identifying employees' exclusion status correctly
 - ✓ **Contracted background check vendors** not identifying employees' exclusion status correctly



CASE SCENARIO -- HALT PAYMENT

- Examples of payment suspension due to fraud allegations/investigations (“suspected” fraud)
 - ✓ *New Mexico Halts Payment to 15 Mental Health Provider Organizations Based on Public Consulting Group Audit (6/2013)*
 - ✓ *California Halts Medicaid Payments to 46 Addiction Treatment Clinics During Fraud Investigation (7/2013)*
 - ✓ *Iowa Non-Profit Community Care **Fires Management Team to Regain Medicaid Funding** During Fraud Investigation (10/2013)*



CASE SCENARIO -- HALT PAYMENT

- *Iowa Non-Profit Community Care Fires Management Team to Regain Medicaid Funding During Fraud Investigation (10/2013)*
 - ✓ Accept temporary 35% suspension of Medicaid reimbursements
 - ✓ Fire the CEO, COO, CFO and HR Director
 - ✓ Hire a third party management company to oversee operations
- Federal regulations require that all Medicaid payments be temporarily suspended during an investigation of a **credible allegation of fraud**
- States are not required to suspend payments under the CMS Payment Suspension Rule; States can find “good cause” not to suspend or not to continue a previous suspension



HEALTH PLAN ATTESTATIONS



HEALTH PLAN ATTESTATIONS

- Health Plans/Insurers are now requiring Providers to sign affidavits confirming exclusion screening (upon contract and annually)(OIG and GSA lists)
- Because they contract with affiliates and entities to provide administrative and healthcare services to enrollees, they are “ultimately responsible for fulfilling the terms and conditions of their contract with CMS and meeting the Medicare and Medicaid program requirements”
- Providers must check Medicaid providers and FDRs (CMS defines as “First Tier, Downstream and Related Entities”)
 - FDRs and Affiliates must maintain supporting documentation for 10 years (logs or other records that each employee and contractor has been screened) and furnish evidence upon request

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T R A C K

HEALTH PLAN ATTESTATIONS

- “First Tier Entity” is any party that enters into a written arrangement, acceptable to CMS, with a Medicare Advantage Organization or Part D plan sponsor or applicant to provide administrative services or healthcare services to a Medicare eligible individual under the Medicare Advantage program or Part D program

- “Downstream Entity” is any party that enters into a written arrangement, acceptable to CMS, with persons or entities involved with the Medicare Advantage benefit or Part D benefit, below the level of the arrangement between a Medicare Advantage Organization or applicant or a Part D plan sponsor or applicant and a first tier entity. These written arrangements continue down to the level of the ultimate provider of both health and administrative services.



HEALTH PLAN ATTESTATIONS

- “Related Entity” means any entity that is related to a Medicare Advantage Organization or Part D sponsor by common ownership or control and :
 - (1) Performs some of the Medicare Advantage Organization or Part D plan Sponsor’s management functions under contract or delegation;
 - (2) Furnishes services to Medicare enrollees under an oral or written agreement; or
 - (3) Leases real property or sells materials to the Medicare Advantage Organization or Part D plan Sponsor at a cost of more than \$2,500 during a contract period.



CHANGING LANDSCAPE

Attestation clauses:

1. We perform exclusion screenings against the HHS OIG and GSA SAM lists prior to the hiring or contracting of any new employee, temporary worker, volunteer, consultant, governing body member or downstream entity, and on a monthly basis thereafter, and require our downstream entities to do the same.

1. Excluded employees, , temporary workers, volunteers, consultants, governing body members or downstream entities are removed from any work directly or indirectly related to _____'s federal health care programs.

a. Attached are the policies that reflect our exclusion screening processes.



CHANGING LANDSCAPE

Attestation clauses:

3. We will inform _____ of confirmed exclusions of any employee, temporary worker, volunteer, consultant, governing body member or downstream entity working directly or indirectly on _____'s federal health care programs within 15 days of such confirmation.



Part I Review:

What have we learned?



Regulations Review

- Unidentified exclusions can have serious consequences – they can jeopardize Medicaid funding & overall business operations
- All Providers must protect against false claims; OIG considers “known or SHOULD have known” about exclusions
 - Some states require monthly sanction screening – does yours?
 - Provider is always responsible for restitution, but OIG will have mercy if you have a program in place!



Regulations Review

- Providers must ensure that institution vendors are actually screening
 - ✓ Need to request/maintain screening documentation from the vendor as proof
 - ✓ Need to require contracts to include exclusion checks verbiage
- Providers must ensure that vendor credentialing companies are conducting robust exclusion checks (more later)



BREAK



PART II:

VENDOR SCREENING STRATEGY



INTERNAL ASSESSMENT



INTERNAL ASSESSMENT

- What is required by law?
- What is our risk tolerance?
 - ✓ *Set cut-off limit for vendor payments?*
- Who is the program champion?
 - ✓ *Compliance, HR, Medical, Purchasing*
- What are cost/resource limitations?
- What lists do we want to screen/investigate?
 - ✓ *Federal/State exclusions, disciplinary actions*
 - ✓ *Need for more comprehensive BGC?*



INTERNAL ASSESSMENT

- What can/will we do ourselves vs. what will we outsource? (Investigations)
- What is being done under vendor credentialing?
 - ✓ *Has it been validated as meeting OIG exclusion screening regulations?*
- What are data/database limitations?
 - ✓ *Can our system separate name fields for businesses & contractor names?*



SOURCES AVAILABLE

- OIG LEIE
- GSA SAM (formerly EPLS)
- State Exclusion Lists (35)
- Federal: OFAC SDN, DEA, ORI PHS, FDA, FCPA, BIS, Wanted Terrorists/Fugitives, HRSA/HEAL
- State-level Disciplinary Lists
- State-level Medicare Opt-Out Lists
- Death Master File



OIG SCREENING GUIDANCE

- **OIG Special Bulletin:** Providers are not required by federal statute or regulation to check the LEIE...the LEIE is a tool that OIG has made available to providers to identify parties that are excluded by OIG.
- **Providers have to decide how often to screen...it's a risk management issue!**
 - **Some states now require monthly screening, and those regulations supersede OIG guidance**



WHO IS USING THESE?

- VENDORMATE
- VCS
- REPTRAX
- CSOAMERICA



OUTSOURCING GUIDANCE

- “Alternatively, the provider could choose to rely on screening conducted by the contractor (e.g., staffing agency, physician group, or third-party billing or coding company), but OIG recommends that the provider validate that the contractor is conducting such screening on behalf of the provider (e.g., by requesting and maintaining screening documentation from the contractor).” [OIG Special Bulletin, p16]



OUTSOURCING GUIDANCE

- “Regardless of whether and by whom screening is performed and the status of the person (e.g., employee, subcontractor, employee of contractor, or volunteer), the provider is subject to overpayment liability for any items or services furnished by any excluded person for which the provider received Federal health care program reimbursement and may be subject to CMP liability if the provider does not ensure that an appropriate exclusion screening was performed.” [OIG Special Bulletin, p16]



VENDOR ASSESSMENT



VENDOR ASSESSMENT QUESTIONS

- Screening AND investigations?
- What sources are screened
- How are names submitted for screening
- What are the name/list upload options
- What data file formatting is required
- How are name matches cleared
- How are repeat matches handled monthly
- How are results retrieved
- How are vendor owners/employees screened
- Cost structure



VENDOR OWNER/EE SCREENING

- Some companies must screen vendors for facility access, e.g. operating rooms
- Online resources (D&B, LexisNexis) are not complete and data are not verified (member-provided)
- Accurate data for vendor owner and Board Member names **MUST** be provided by the vendor
 - Vendors must work directly with the screening company to provide SSN/DOB data for investigations; these **CANNOT** be provided through you
 - Screening vendor should inform you of any situations where exclusions are discovered



VENDOR OWNER/EE SCREENING

Case Scenario

- Client is required to screen DME company employees for client facility access
- Screening vendor discovered DME employee exclusion, and client confronted DME leadership
- DME leadership argued that the employee was screened prior to hire and had no exclusions
 - Employee's name found on 2011 OIG LEIE list as excluded party (prior to DME hire in 2012)
 - Conclusion: all companies are NOT conducting employee exclusion screening! You must have a robust program to keep your facilities safe.



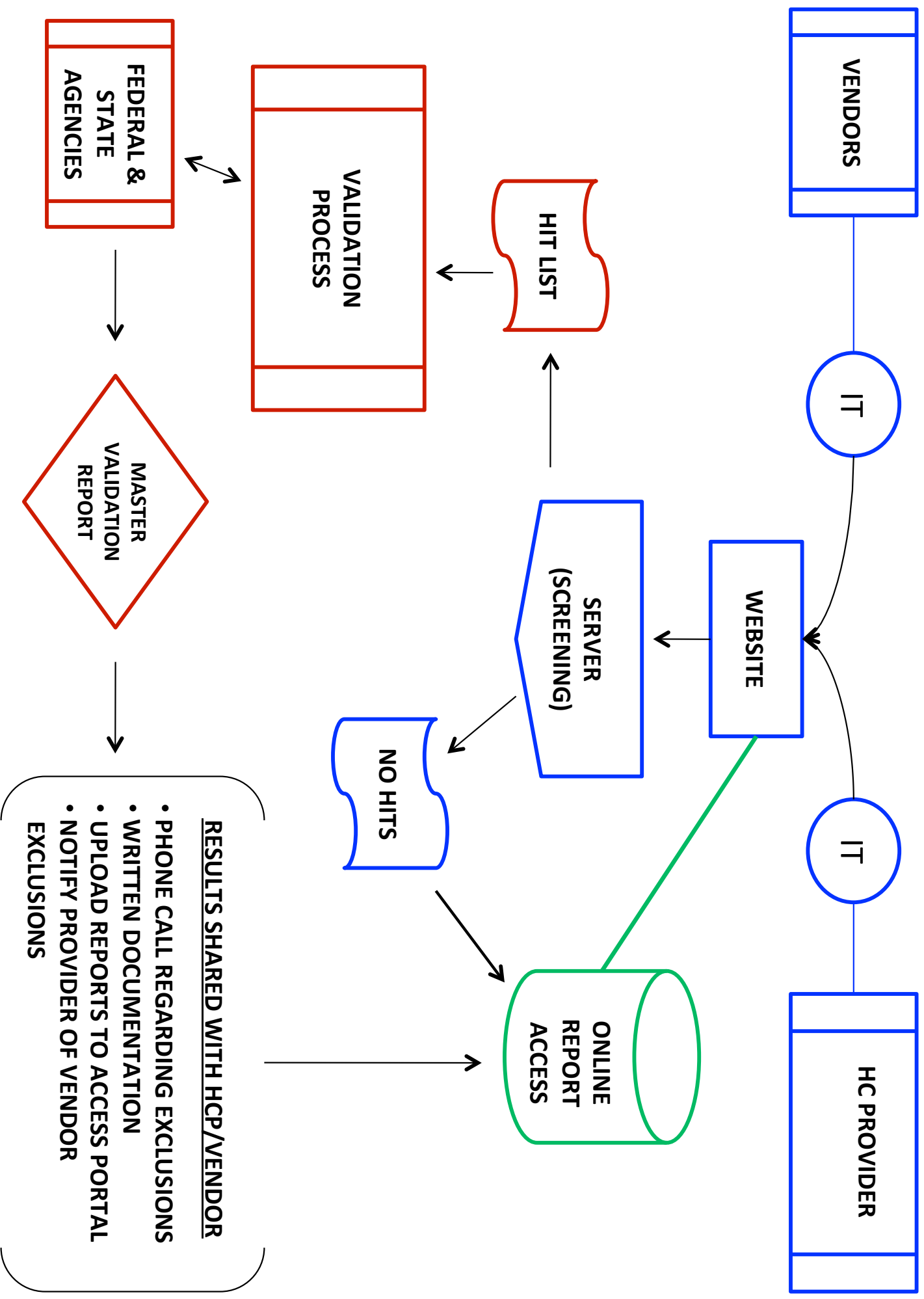
- Notify vendors of their need to comply with exclusion screening requirements
- Conduct a mailing to relevant vendors that outlines Provider policies, screening purpose and expectations
- Identify preferred third-party vendor, fee to participate, and how to get started
- Indicate consequences for non-participation



SCREENING PROGRAM



BASIC SCREENING PROCESS



SCREENING PROCESS

Information Required

- Vendor names, addresses, TIN/SSN info
- Separate fields for business name and contractor first and last names for proper screening
- Provide monthly data batch files
- Provide additional details for investigation
- Need points of contact for various functional groups



SCREENING PROCESS

Investigation & Clearing

- Provider defines “rules” for clearing
- Un-cleared hits are emailed to client to obtain additional information, where possible
- Remaining hits are cleared and stored to avoid repeats in subsequent months
- Affidavit letters required in some cases



SCREENING PROCESS

Reporting & Results

- Summary reports showing names screened and results
- Exclusions reports with supporting documentation, including notes from agency conversations
- Guidance on managing exclusions; form an internal team and procedures for taking action
- Be prepared for audits from OIG & Joint Commission



VENDOR APPLICANT SCREENING

- Screen vendors ad hoc for exclusions prior to contracting
 - ✓ Create internal flag as “approved for use”
 - ✓ Add approved vendors to monthly batches
- Expand to background checks, if desired
 - ✓ Criminal history, SSN trace & exclusion check
 - ✓ Requires signed consent form



Part II Review:

What have we learned?



Screening Strategy Review

- Create an internal strategy for exclusion screening that best suits your business (and meets regulatory requirements).
- You must validate screening programs of contracted vendors! Hold them accountable for results in order to protect yourselves from OIG sanctions.
- Engage your vendors to directly participate in the process
 - Have a robust program in place to protect the flow of federal money (and your jobs 😊)



QUESTIONS?



OIG COMPLIANCE NOW LLC

Protecting Your Organization's

Federal Reimbursements (And Your Job)

Through Ongoing Fraud Investigation Programs

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