

**COUNTY OF YORK, COMMONWEALTH OF PENNSYLVANIA
ORDINANCE NO. 2013-02**

**AN ORDINANCE ADOPTING AN EXCLUSION SCREENING POLICY TO COMPLY
WITH FEDERAL AND STATE REQUIREMENTS FOR FEDERAL HEALTHCARE
PROGRAMS**

BE IT AND IT IS HEREBY ORDAINED AS FOLLOWS:

The York County Code, Part I, Chapter 204, is amended as follows:

ARTICLE I:

§204. Exclusion Screening Policy:

A. Background:

The Department of Health and Human Services Office of Inspector General (HHS-OIG) excludes individuals and entities from participation in Medicare, Medicaid, the State Children's Health Insurance Program (SCHIP), and all Federal health care programs (as defined in Section 1128B(f) of the Social Security Act (the Act) based on the authority contained in various sections of the Act, including Sections 1128, 1128A, and 1156.

When the HHS-OIG excludes a provider, Federal health care programs (including Medicaid and SCHIP programs) are generally prohibited from paying for any items or services furnished, ordered, or prescribed by excluded individuals or entities. Section 1903(i)(2)(A),(B) of the Act (42 U.S.C.A. §1396b(i)(2)(A),(B); and 42 Code of Federal Regulation (CFR) Section 1001.1901(b). This payment ban applies to any items or services payable under a Medicaid program that are furnished by an excluded individual or entity, and extends to:

- all methods of reimbursement, whether payment results from itemized claims, cost reports, fee schedules, or a prospective payment system;
- payment for administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to Medicaid recipients, when those payments are reported on a cost report or are otherwise payable by the Medicaid program; and

- payment to cover an excluded individual's salary, expenses or fringe benefits, regardless of whether they provide direct patient care, when those payments are reported on a cost report or are otherwise payable by the Medicaid program.

In addition, no Medicaid payments can be made for any items or services directed or prescribed by an excluded physician or other authorized person when the individual or entity furnishing the services either knew or should have known of the exclusion. This prohibition applies even when the Medicaid payment itself is made to another provider, practitioner or supplier that is not excluded. 42 CFR §1001.1901(b).

Similarly, Pennsylvania law provides that the Department of Public Welfare does not pay for services or items rendered, prescribed or ordered on and after the effective date of a provider's termination from the MA Program. 55 Pa. Code §§1101.66(e). See also 55 Pa. Code §1101.77(c): (i) a provider is not paid for services or items rendered on and after the effective date of his termination from the program; (ii) a participating provider is not paid for services, including inpatient hospital care and nursing home care, or items prescribed or ordered by a provider who has been terminated from the program; (iii) a participating provider is paid for services or items prescribed or ordered by a provider who voluntarily withdraws from the program. Furthermore, a provider whose enrollment in the program has been terminated may not, during the period of termination: (i) own, render, order or arrange for a service for a recipient, or (ii) receive direct or indirect payments from the Department in the form of salary, equity, dividends, shared fees, contracts, kickbacks or rebates from or through a participating provider or related entity. 55 Pa. Code §1101.77(c). See also 55 Pa. Code §1101.42(c) (excerpts: Pa. Medical Assistance Bulletin 99-11-05)

§204.1 INTRODUCTION:

The purpose of this Ordinance is to comply with Federal and State mandates to screen employees, independent contractors, business vendors, key providers and governing board members to verify that they have not been involved in adverse governmental actions related to fraud, patient abuse, licensing board sanctions, license revocation/suspension/surrender, or have defaulted on Health Education Assistance Loans.

York County government and its related entities are committed to maintaining high quality service and integrity in its financial and business operations. Therefore, all necessary steps will be taken to insure that

healthcare-related employees, providers, contractors, prescribing/authorizing physicians, etc., that provide and/or perform services for or on behalf of the County have not been the subject of adverse governmental actions and/or excluded from the federal healthcare programs.

§204.2 DEFINITIONS:

Exclusion Screening – An inspection process for minimizing risk in continuing the employment of or hiring individuals or contracting with business entities that have been involved in adverse governmental actions related to fraud, patient abuse, licensing board sanctions, license revocation/ suspension/surrender, or have who have been excluded from federal healthcare programs.

204.3 COMPLIANCE COMMITTEE

- A. A County Compliance Committee, consisting of the County Administrator, as chairman and Compliance Officer, the Director of Human Resources, the Director of Human Services, the Administrator of the County Nursing Home, Warden of the York County Prison, the York County Court Administrator, the York County Controller and the York County Treasurer is hereby established.
- B. The purpose of the Compliance Officer and Committee is to assure that the County of York is in full compliance with the Federal and State Law concerning the screening requirement for the lawful receipt and use, by the County, of Federal and State revenue funds that require screening under Federal or State law.
- C. The Committee is authorized to and shall promulgate policies and procedures that it determines are required to efficiently carry out the intent and purpose of this ordinance.

§204.4 POLICY:

- A. Unless prohibited by law or a legally enforceable labor contract, York County government does not employ or retain any employee, consultant, volunteer, contractor or vendor who is listed by any Federal or State agency as excluded, debarred, suspended or otherwise ineligible to participate in Federal and/or State programs, e.g. Medicaid and Medicare, and whose

retention or employment or service would violate the Federal or State law.

- B. The County will conduct monthly exclusion screening of all County employees, contractors, and providers, and screening of all elected and appointed officials that have authority to grant appropriations or that contribute to the development or execution of policy as these actions relate to the use of Medicaid, Medicare, Title XX and any Federal funds that require screening. In addition, for employees that require specific medical/healthcare license/certification in order to perform their duties, these credentials will be verified with appropriate licensing and disciplining authorities.
- C. Individuals and entities excluded from federal healthcare programs will be prohibited from holding a position, or conducting business with the County in any area that is directly or indirectly funded by a state or federal program that bars participation by such excluded individuals and entities.
- D. If an exclusion check indicates that a potential elected or appointed official has been excluded from federal or state healthcare programs, the individual must abstain from any vote on any measure before the board that relates to programs or activities that are directly or indirectly funded by a state or federal program that bars participation by such excluded individuals.
- E. If a determination is required regarding whether an activity is directly or indirectly funded by a state or federal program that bars participation by excluded individuals, the determination shall be made by the Compliance Committee in consultation with the County Solicitor. If an employee or business seeks an appeal of that determination, that appeal shall be heard and decided by the County Administrator and reported to the County Commissioners.
- F. Any disciplinary action for employees must follow the removal and other disciplinary action policies established by applicable law and provisions of collective bargaining agreements. Subject to the foregoing, any applicant or employee, or elected or appointed official, who is determined to be excluded from Federal healthcare programs shall not be eligible for employment with the York County Government if the employment involves any area that is directly or indirectly funded by a State or Federal program that bars participation by

such excluded individuals and entities. In the event an employee is found listed with a positive exclusion record, the employee will be immediately placed on administrative leave, pending investigation, and the findings will be reviewed by the Human Resources Department. Any employee having found to have a positive exclusion record is subject to termination.

- G. The County Compliance Committee will conduct an annual audit to verify that the County's screening exclusion policy is being enforced.

§204.5 PROCEDURE:

- A. The County will conduct exclusion checks of the following sources to determine if the individual or entity's name appears on the lists:

- a. ***Pennsylvania Medichcek List:*** a data base maintained by the Department that identifies providers, individuals, and other entities that are precluded from participation in Pennsylvania's MA Program:

http://www.dpw.state.pa.us/learnaboutdpw/fraudandabuse/medicheckprecludedproviderslist/S_001152

If an individual's resume indicates that he/she has worked in another state, providers should also check that state's individual list.

- b. ***List of Excluded Individuals/Entities (LEIE):*** date base maintained by HHS-OIG that identifies individuals or entities that have been excluded nationwide from participation in any federal health care program. An individual or entity included on the LEIE is ineligible to participate, either directly or indirectly, in the MA Program. Although the Department makes best efforts to include on the Medichcek List all federally excluded individuals/ entities that practice in Pennsylvania, providers must also use the LEIE to ensure that the individual/entity is eligible to participate in the MA Program:

<http://oig.hhs.gov/fraud/exclusions.asp>

- c. ***Excluded Parties List System (EPSL):*** World wide data base maintained by the General Services Administration (GSA) that provides information about parties that are excluded from receiving Federal contracts, certain subcontracts, and

certain Federal financial and nonfinancial assistance and benefits:

<https://www.sam.gov/portal/public/SAM/>

- B. Immediately self report any discovered exclusion of an employee or contractor, either an individual or entity, to the Bureau of Program Integrity;
- Via e-mail through the MA Provider Compliance form at the following link:
<http://www.dpw.state.pa.us/learnaboutdpw/fraudandabuse/maprovidercomplianceshotlinerresponseform/index.htm>.
 - by U.S. mail at the following address:
Bureau of Program Integrity
Commonwealth of Pennsylvania
P.O. Box 2675
Harrisburg, PA 17105-2675
Or
 - by fax at 1-717-772-4655 or 1-717-772-4638
- C. The County Human Resources Director will ensure that exclusion checks are performed on candidates for employment at the point of offer of employment and for elected and appointed County officials that have authority to grant appropriations or that contribute to the development or execution of policies as these actions relate to the use of Medicaid, Medicare or other federal funds. The County Human Resources Director will maintain the results of all exclusion checks for employees, governing board members, including all elected and appointed officials, and will report this information to the County Compliance Committee at the time of the annual compliance report.
- D. The first line responsibility for screening contractors shall be the County Administrator (Compliance Officer) and all department heads. These individuals will ensure that exclusion checks are conducted prior to recommending, approving or entering into an agreement with contractors providing healthcare-related services. If the exclusion check indicates that a contractor has been excluded from federal or state healthcare programs, the contract will not be executed until a determination is made by the County Administrator (Compliance Officer) as to whether the contract pertains to activities subject to the prohibition on participation by excluded entities.

1. The County Administrator and department heads will ensure that all contracts entered into by the county will contain a certification that the Federal or State government does not exclude the contractor, its employees, or subcontractors.
2. Each department head is responsible for conducting the screening and attaching of a Certification Form of Compliance. This form shall be attached to the contract and become part of the contract documents when placed on the agenda for approval by the Commissioners. It is understood that the Certification shall become a permanent part of the contract and be affixed as one of the contract documents, which will be included for permanent retention. The language of the Certification document shall be in the following form:
 - () a. This contract does not require the screening of individuals or entities as excluded individuals or entities under Federal law.
 - () b. This contract involves the use of Federal or State funds that require screening for excluded individuals and such screening has been done.

I certify the above is true and this certification is made under penalties of law and the provisions of 18 PA CSA §4904.
3. The County Controller, who is the custodian of all contracts, shall check all contracts that require screening and verify that such screening was done as required in paragraph 2, above, and shall maintain the results of all exclusion checks as part of the contract documents. The Controller will report this information to the County Compliance Committee at the time of the annual compliance report. Should the County Controller find that the contract documents do not contain a Certification, which excludes the need for a screening check, the Controller shall contact the Compliance officer and the department head to obtain such Certificate so that it may be maintained as a permanent part of the contract documents.
- E. The County Administrator or the appropriate department heads assigned by the County Administrator shall ensure that an exclusion check of all existing healthcare contractors is conducted monthly through to the end of the contract performance period. If the exclusion check indicates that a contractor has been excluded from federal or state healthcare

programs, the contract will be terminated. The County Administrator shall maintain the results of all exclusion checks and will report this information to the County Compliance Committee at the time of the annual compliance report.

- F. Any County departments working directly with physicians and healthcare practitioners will ensure that an initial exclusion check is conducted on each practitioner who prescribes or orders Medicaid or Medicare funded goods or services, and then monthly thereafter. If the exclusion check indicates that a practitioner has been excluded from federal or state healthcare programs, the services or goods will not be billed to Medicaid or Medicare. The results of all exclusion checks for physicians and healthcare practitioners and will be reported to the County Compliance Officer at the time of the annual compliance report.
- G. All contracts that require screening checks shall contain the following certification by the contractor:

1. Certification:

Contractor certifies that any statement made herein is known to be punishable under law and hereby states and verifies, under all penalties of law provided for official statements, (18 PA CSA §4904) that exclusion screening, as defined and required by Federal law in Part I chapter 204 of the York County Code, has been complied with and that the contractor and no employee of the contractor is an excluded person under Federal law. Contractors shall, in addition, to this certification, also provide a monthly certification during the term of this contract, certifying that exclusion screening has been done and the contractor, and no employee of the contractor, has been identified as an excluded person under Federal or State law.

Contractor certifies understanding that the failure to comply with the screening requirements mentioned above is a ground for termination of this contract.

If a screening check reveals an excluded entity or employee, this fact shall immediately be reported to the County's Compliance Officer.

Should a contractor fail to comply with this provision, the contractor shall hold County harmless from all claims by any Federal or State agency arising from the failure of contractor to either screen or report the result of screening to the County.

This Ordinance shall become effective immediately.

Dully enacted and ordained this 13th day of March, 2013, by the Board of Commissioners of York County, Pennsylvania in lawful session dully assembled.

Attest: 
Charles R. Noll
Chief Clerk, County of York

By: 
Steve Chronister
President Commissioner, County of York

The above Ordinance was ordained, enacted and adopted this 13th day of March, 2013, at a regular meeting of the Board of Commissioners of the County of York, Pennsylvania upon motion of Commissioner Hoke, seconded by Commissioner Reilly, and passed with a vote of 3 yes and 0 no.