



COMMISSIONER
Chris Traylor

August 25, 2011

To: All Contracted Community Services Providers
All Contracted Consumer Directed Service Agencies
All Contracted Nursing Facility Providers
All Contracted ICF/MR Providers
All Contracted Local MR Authorities
All Contracted Area Agencies on Aging
All Contracted Guardianship Services Providers

Subject: Information Letter 11-102
Clarification of Information Letter No. 11-07, Regarding the Obligation to Identify
Individuals or Entities Excluded from Participation in Federal Health Care Programs

This letter provides clarification related to the Department of Aging and Disability Services (DADS) contracted providers' obligation to screen employees of individuals and entities with whom they contract.

In response to inquiries from providers, DADS acknowledges that IL 11-07 does not specifically address DADS contracted providers' obligation to screen:

- All of their own employees, even those who do not perform Medicaid or health-related functions; or
- Employees of those individuals and entities with whom they contract.

In response to the first item, guidance from the Centers for Medicare & Medicaid Services (CMS) is clear that DADS contractors must screen all their own employees, both prior to hiring and monthly thereafter. This includes any employees who do not provide a clear Medicaid or health-related service, as long as Medicaid funds are co-mingled in the contractor's budget from which these employees are paid.

As to the second item, DADS contractors are not required to screen the employees of individuals and entities with whom they contract. However, in order to minimize financial exposure and potential recoupment of Medicaid funds, DADS contracted providers may opt to require their own contractors to screen their staff for excluded individuals.

IL 11-07 provides important details on how a DADS contracted provider must comply with the List of Excluded Individuals/Entities requirements including documentation to verify compliance and reporting responsibilities when a DADS contracted provider discovers exclusion information. Please refer to IL 11-07 for guidance in these and other areas including directions for searching State and Federal online databases contained in Attachment A of the letter. A copy of IL 11-07 is attached for your convenience.

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If you have questions regarding the process for conducting a search using the Texas Health and Human Services Commission – Office of Inspector General List of Excluded Individuals/Entities online searchable database, please contact the Office of Inspector General at:

By Phone: 512-491-2000

By E-Mail: oiq.generalinquiries@hhsc.state.tx.us

By Mail: Texas Health and Human Services Commission
Office of Inspector General
P.O. Box 85200
Austin, TX 78708-5200

If you have questions regarding this letter, please contact David Latimer at david.latimer@dads.state.tx.us .

Sincerely,

[signature on file]

Teresa Richard
Director
Center for Policy and Innovation

TR:cp



COMMISSIONER
Chris Traylor

May 2, 2011

To: All Contracted Community Services Providers
All Contracted Consumer Directed Service Agencies
All Contracted Nursing Facility Providers
All Contracted ICF/MR Providers
All Contracted Local MR Authorities
All Contracted Area Agencies on Aging
All Contracted Guardianship Services Providers

Subject: Information Letter 11-07
Updated Information Regarding the Obligation to Identify Individuals or Entities
Excluded from Participation in Federal Health Care Programs

This information letter provides an overview and update of activities conducted by the Department of Aging and Disability Services (DADS) regarding a provider's obligation to screen employees and contractors, both individuals and entities, to determine if they have been excluded from participation in federal health care programs.

Background

Various laws provide that individuals and entities may be excluded from participation in federal health care programs because such individuals and entities have engaged in certain activities or have been convicted of certain crimes. The Centers for Medicare & Medicaid Services (CMS) provided guidance regarding this matter on January 16, 2009, in a State Medicaid Director Letter (SMDL) #09-001.

DADS issued [Information Letter No. 09-33, Provider Screening of Employees, Subcontractors for Excluded Persons](#), on March 13, 2009. Local MR Authorities, Area Agencies on Aging, and Guardianship Services Providers were notified of the requirements in separate communication. Previous communication reminded all community services providers to screen employees and subcontractors in order to determine if those individuals and entities are excluded from participation in federal health care programs. Thereafter, DADS issued additional information letters to its contracted providers reminding them to:

- screen all employees and contractors for exclusion prior to hiring or contracting and on an ongoing monthly basis by searching both the state and federal lists of excluded individuals and entities (LEIE); and
- immediately report to DADS any exclusion information discovered.

In response to inquiries regarding exclusion, DADS is issuing this information letter to provide: (a) additional guidance to providers with respect to screening employees and contractors and reporting exclusion information; (b) new requirements for documenting monthly searches and reporting exclusion information; and (c) an update on implementation activities to comply with CMS guidance.

Additional Guidance for Screening Employees/Contractors and Reporting Exclusion Information

For the purpose of implementing the policies and procedures outlined in this information letter, DADS is using the term “contractor” to refer to an individual or entity performing a function for which the provider has contracted with DADS. In addition, if the contractor is part of a larger chain, DADS contracted providers are only required to check individuals and entities affiliated with the local agency that is actually providing or delivering the contracted services.

All DADS contracted providers must use the following state and federal online databases to search for excluded employees and contractors, both individuals and entities, prior to hiring or contracting and on an ongoing monthly basis:

- Texas Health and Human Services Commission (HHSC) – Office of Inspector General (OIG) List of Excluded Individuals/Entities online searchable database:
<https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>
- United States Department of Health and Human Services (HHS) – OIG Excluded Individuals/Entities Search database:
<http://www.oig.hhs.gov/fraud/exclusions.asp>

Please refer to Attachment A for instructions on how to search the state and federal online databases.

In previous information letters, DADS instructed all contracted providers to immediately report any discovered exclusion information to their DADS assigned contract staff. **HHSC and DADS have modified that instruction.** Effective immediately, all DADS contracted providers must report any discovered exclusion information to HHSC-OIG using the self-reporting mechanism located on the HHSC-OIG website at: https://oig.hhsc.state.tx.us/ProviderSelfReporting/Self_Reporting.aspx.

New Documentation Requirements Instructions

In previous information letters, DADS did not prescribe documentation requirements related to completing monthly searches of the federal and state online databases and reporting exclusion information. Effective immediately, all DADS contracted providers must maintain documentation to verify compliance with the search and reporting requirements outlined in this information letter. At a minimum, documentation elements must include:

- date of the federal and state database searches;
- first and last names and date of birth of all employees and contractors subject to LEIE search requirements;
- whether or not the employee/contractor appeared in the federal/state LEIE databases;
- date any excluded employee/contractor was self-reported to HHSC-OIG;
- copy of the self-report; and
- printed name(s) and signatures of staff responsible for completing the monthly searches.

DADS requires all contracted providers to maintain documentation to verify completion of the monthly searches and reporting of any exclusion information to HHSC-OIG. Providers must maintain this documentation for a minimum of six years after the end of the federal fiscal year in which the searches were completed and any exclusion information was reported to HHSC-OIG. Providers are not required to maintain documentation of the search results for individuals who do not appear in the federal or state LEIE databases.

Update on Implementation Activities

To comply with CMS guidance in SMDL# 09-001, DADS is in the process of completing the following implementation activities as applicable for the specific DADS organizational area(s):

- revisions to contract application and enrollment processes;
- revisions to Medicaid Provider Agreements (contracts) to:
 - add language requiring providers to (a) screen their employees and any contractors they may utilize prior to hiring or contracting, and on an ongoing monthly basis, and (b) maintain documentation to support the checks were performed; and
 - inform providers DADS will recoup for services provided by excluded parties;
- amendments to existing contracts to include the exclusion search requirement, only when an amendment is required for any other reason; and
- revisions to contract monitoring protocols to:
 - include verification the provider has a written procedure for:
 - screening employees and contractors prior to hiring or contracting, and on a monthly basis;
 - searching both the federal and Texas LEIE websites; and
 - reporting exclusion information to HHSC-OIG if a positive result occurs from the screening search.
 - review of providers' documentation supporting monthly screenings.

To ensure all DADS contracted providers are aware of all correspondence related to searching the state and federal LEIE databases, please refer to the following information letters posted on the DADS website:

- [Information Letter No. 09-33, Provider Screening of Employees, Subcontractors for Excluded Persons](#)
- [Information Letter No. 09-41, Provider Screening of Employees, Subcontractors for Excluded Persons](#)

- [Information Letter 10-20, Obligation to Identify Individuals or Entities Excluded from Participation in Federal Health Care Programs](#)
- [Information Letter 10-32, Obligation to Screen Individuals or Entities Excluded from Participation in Federal Health Care Programs Prior to Hire by Employers under the Consumer Directed Services Option](#)

If you have questions regarding this letter, please contact DADS as follows:

- For Community Service providers and Consumer Directed Service Agencies, please contact the Policy Development and Oversight line at (512) 438-3015;
- For Nursing Facility providers, please e-mail questions to NF.Policy@dads.state.tx.us;
- For ICF/MR providers, please e-mail questions to icfmr.questions@dads.state.tx.us;
- For Area Agencies on Aging, please contact Toni Packard at (512) 438-4290 or toni.packard@dads.state.tx.us;
- For Local MR Authorities, please contact Mary Skillman at (512) 438-3511 or mary.skillman@dads.state.tx.us; and
- For Guardianship Services providers, please contact Cindy Kenneally at (512) 438-4151 or cindy.kenneally@dads.state.tx.us.

Sincerely,

[signature on file]

Teresa Richard
Director
Center for Policy and Innovation

[signature on file]

Gary Jessee
Assistant Commissioner
Access and Intake

[signature on file]

Veronda Durden
Assistant Commissioner
Regulatory Services

TR:WGJ:VR:cp

Attachment A

Directions for Searching the State and Federal Online Databases

All contracted providers identified in Information Letter 11-07 must search the state and federal online databases for excluded individuals and entities prior to hiring or contracting and on a monthly and ongoing basis.

Each website allows searches by entering names or by downloading databases.

- Texas Health and Human Services Commission–OIG List of Excluded Individuals/Entities online searchable database:
<https://oig.hhsc.state.tx.us/Exclusions/Search.aspx>
 1. To download the database, choose “Downloadable Exclusions File” from the left side menu under “Exclusions Program”. The database will show on the computer screen.
 2. Save the file to your preferred location (note that it has a .txt extension). Open Excel.
 3. To open the file, in the “OPEN” window, change “Files of Type” to “all files” in order to see the database file in the list. Open the file.

Excel will open a text import wizard that will convert the data to Excel. The wizard should recognize the database as a “delimited” file and make the appropriate selections to convert it to Excel. Click “next” for each step of the wizard and “finish” at the last step.

- HHS – OIG Excluded Individuals/Entities Search database:
<http://www.oig.hhs.gov/fraud/exclusions.asp>
 1. To search by specific name, choose “Online Searchable Database” from the Exclusions Program menu.
 2. To download the database, choose “LEIE Downloadable Databases” from the Exclusions Program menu. Then choose the file named under “LEIE Database”.
 3. A window will open to ask “Do you want to run or save this file?” Choose “Run”.
 4. A second window may open to say “The publisher could not be verified. Are you sure you want to run this software?” Choose “Run”.
 5. If you have previously downloaded this database, an additional window will open to notify you that the file already exists and ask if you want to overwrite (y/n). Enter “y”.
 6. The database will download to the computer desktop with the file name UPDATED.DBF. Open Excel. To open the file, in the “OPEN” window, change “Look in” to “Desktop” and change “Files of Type” to “all files” in order to see the database file in the list. Open the file.