



# The Office of Inspector General Exclusion Program





# Agenda

- Introduction (Organization Overview)
- Overview and Effect
- Authorities
- Processing Exclusions and Reinstatements
- Submitting Convictions for Exclusion





# EB Management

Kenny Kraft  
Branch Chief

Joann Francis  
Reviewing  
Official  
Team 1

Tamara  
Johnson  
Reviewing  
Official  
Team 2

Todd Echols  
Reviewing  
Official  
Team 3

Geoff Hymans  
Deputy  
Branch Chief  
Special  
Exclusions  
Team





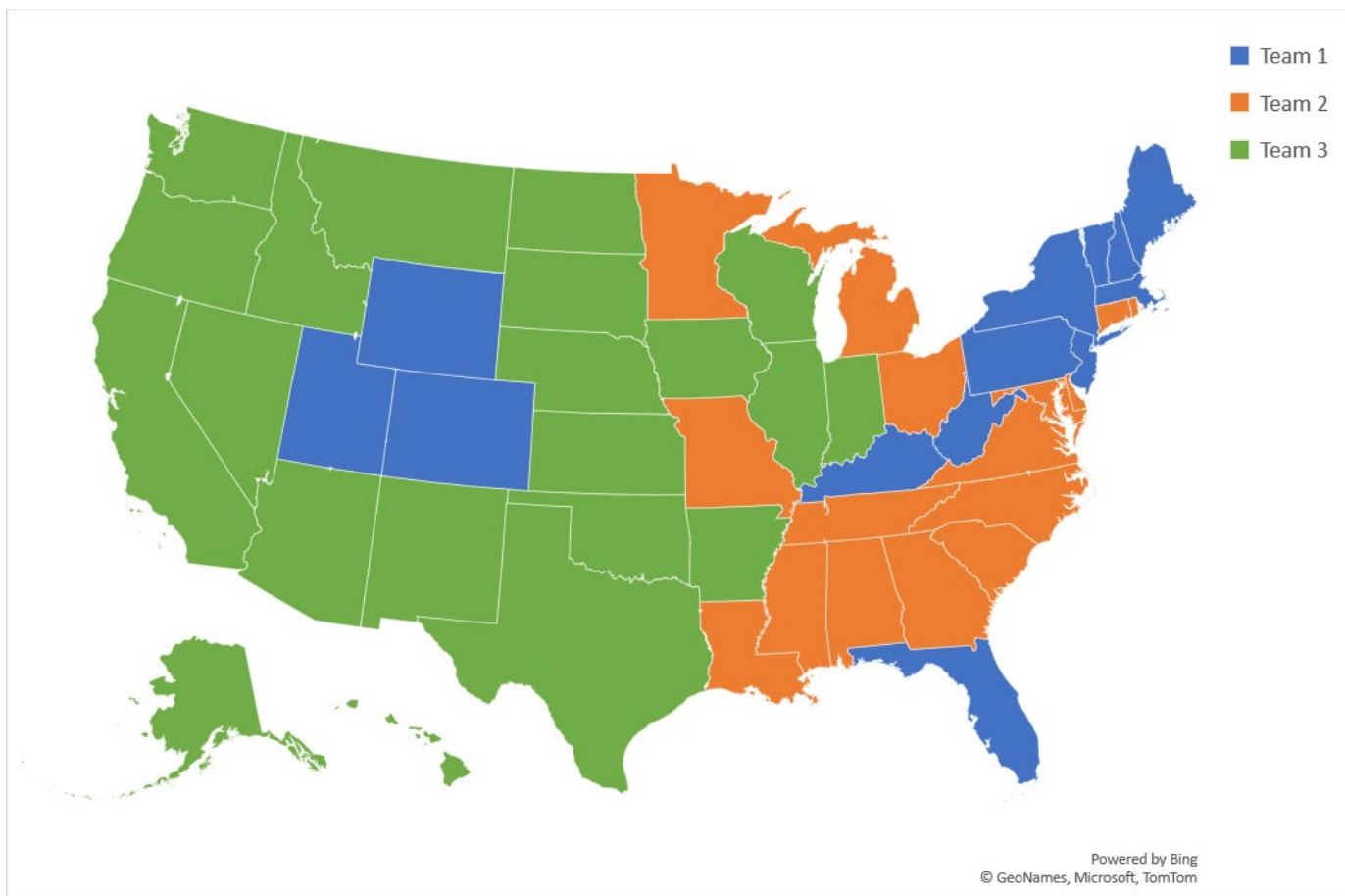
# Geographic Teams

- Three Teams, each headed by a Reviewing Official;
- Geographically-based, but non-contiguous regions;
- Most active states are typically with different Reviewing Officials;
- All EB analysts work with every state in their region.





# EB Geographic Teams





# Special Exclusions Team (SET)

- Three attorneys;
- Find exclusions not otherwise referred to OIG Exclusions Branch;
- Data review and analysis;
- Other roles as internally assigned;
- Primary contact points for MFCUs for portal access issues and user management (contact info at end)







# SET Outreach

- SET is conducting outreach to Local Prosecutors' offices;
- Want to reach excludable convictions by State and Local Prosecutors that aren't associated with MFCUs;
- Can your MFCU serve as a point of contact or facilitate our office's approach to large local prosecutor's offices?
- Please reach out to me if your office can help...





# Overview

- HHS OIG statutory authority to exclude individuals and entities from Federal Health Care Programs
  - Medicare
  - Medicaid
  - Any other healthcare program funded directly or indirectly by the United States government.
- Does not affect a person's rights to receive program benefits
- Remedial, not punitive
- About 79,000 individuals currently excluded







# Effect of Exclusions

- No payment will be made by any Federal health care program for any –
  - Item or service –
  - Furnished, ordered, or prescribed –
  - By an excluded individual or entity.
- Applies to:
  - The excluded person,
  - Anyone who employs/contracts,
  - Anywhere the excluded party could provide services.
- Reinstatement is NOT automatic





# Legal basis

- **Social Security Act:**
  - Section 1128 (42 U.S.C. § 1320a-7)
  - Section 1156 (42 U.S.C. § 1320c-5)
- **Code of Federal Regulations:**
  - 42 C.F.R. Part 1001





# Sources

- HHS Office of Investigations
- MFCUs
- CMS - CPI
- Federal Agencies (DEA, USPS, VA-OIG)
- State Licensing Board and Medicaid Agencies
- Internet discovery (DoJ Press releases / local articles)





# Authorities





# Mandatory Exclusions

- 4 Mandatory Exclusion Authorities (Convictions Only).
- 1128(a) SSA/ 42 CFR § 1001.101 *et. seq.*
  - 1) Conviction of Program-related Crimes
  - 2) Conviction Relating to Patient Abuse
  - 3) Felony conviction relating to health care fraud
  - 4) Felony conviction relating to controlled substances





# Mandatory Exclusions – length

- Statutory minimum is 5 years
- Final length based on aggravating and mitigating factors. Most common:
  - AF - Restitution, incarceration, length of scheme, administrative sanctions, beneficiary impact
  - MF –
    - misdemeanor with <\$5000 loss
    - Mental, emotional, or physical condition that court determined reduced culpability
    - Cooperation
      - Burden on respondent to prove
      - Must result in conviction or exclusion, additional cases or reports, or imposition of civil money penalty or assessment;







# Permissive Exclusions

- 16 permissive exclusion authorities.
- 1128(b) SSA
- 42 CFR § 1001.201 *et. seq.*
- OIG has discretion to impose these sanctions (Convictions and administrative sanctions).
- Varied basis for actions / periods of exclusion.





# Examples of Permissive Exclusions

- b(1)(A):
  - Misdemeanor version of a(3)
- b(1)(B):
  - Fraud in nonhealthcare government programs
- b(3):
  - Misdemeanor version of a(4)
- b(4):
  - Suspension, revocation, or surrender while under investigation of health care license
- b(5):
  - Exclusion or suspension from other Federal programs or from a State health care program (usually Medicaid)





# Permissive Exclusions

- Failure to grant immediate access - 1128(b)(12)SSA/42 CFR 1001.1301.
  - Available to OIG, state agencies, and MFCUs.
  - Not the same as a search warrant
    - Only grants access to view/copy records
    - Used when there is a sense that records will be altered/destroyed
    - 2 definitions of “immediate”
  - Denial period + 90 days
  - Requires advance coordination – call early...





# Reinstatement Process

- Not automatic
- Written Request to obtain an application
- Investigation of history since exclusion
  - Potential for CMP / referrals
  - Up to 120 days to complete
- Reinstatement effective date of signed letter
- Notifications sent to MFCU, Title V/XIII/XIX agency and administrative contractors
- Removed from the LEIE on the next monthly update





# Submitting Convictions for Exclusion





# State Fraud Policy Transmittal No. 2020-1/42 C.F.R. § 1007.11(g)

- 2019—expand on the performance standard. They require the following from MFCUs:
- The Unit will transmit to OIG pertinent information on all convictions, including charging documents, plea agreements, and sentencing orders, for purposes of program exclusion under section 1128 of the Act.
- Convictions include those obtained either by Unit prosecutors or non-Unit prosecutors in any case investigated by the Unit.
- Such information will be transmitted to OIG within 30 days of sentencing, or as soon as practicable if the Unit encounters delays in receiving the necessary information from the court.

ALL MFCUs	2018	%	2019	%	2020	%	2021	
Less than 31 days	686	71%	1117	70%	681	70%	534	83%
From 31 to 60 days	164	17%	208	13%	132	8%	47	7%
From 61 to 90 days	40	4%	60	4%	61	4%	15	2%
Greater than 90 days	71	7%	222	14%	99	6%	45	7%
Grand Total	961		1607		973		641	







# Convicted means that—

A judgment of conviction has been entered against an individual or entity by a Federal, State or local court, regardless of whether:

- There is a post-trial motion or an appeal pending, or
- The judgment of conviction or other record relating to the criminal conduct has been expunged or otherwise removed;
- A Federal, State or local court has made a finding of guilt against an individual or entity;
- A Federal, State or local court has accepted a plea of guilty or nolo contendere by an individual or entity; or
- An individual or entity has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction has been withheld.





# Other Considerations

- “Deferred prosecutions”—in which defendants, as part of plea negotiations, have the charges against them dropped before a plea has been accepted in court **typically do not meet the definition of conviction** under Section 1128 of the Act.
- When the defendant is allowed to return to court and withdraw his or her plea or have the plea vacated, after which charges are dismissed, the State court’s action to remove the conviction from the individual’s record will be treated the same by OIG as an expungement. **The individual will still be considered convicted for purposes of the Federal exclusion statute.**
- Before negotiating any voluntary term of exclusion with a defendant, prosecutors should contact OIG’s Office of Counsel to the Inspector General at [OCIGExclusions@oig.hhs.gov](mailto:OCIGExclusions@oig.hhs.gov) or (202) 619-2078.
- Similarly, prosecutors should contact the Office of Counsel to the Inspector General if a State court judge is contemplating the imposition of a term of Federal exclusion as a part of the judge’s resolution of the criminal case.





# Exclusions MFCU Referrals

- What we REALLY need to exclude:
  - Charging documents: Indictment or equivalent, amendments, probable cause statements, etc.
  - Plea agreement: Anything that documents a plea
  - Sentencing: Judgement and Conviction document
  - Additional Information: Investigation Summary, full name, current address, DOB, SSN, NPI
- New in 2018: OIG Submit Convictions service (the “Exclusions Portal”):
  - 5000+ MFCU submissions since roll out in 2018
    - Approximately 15% of referrals are joint cases with HHS OI
    - For Support: [Exclusion-Submission@oig.hhs.gov](mailto:Exclusion-Submission@oig.hhs.gov)





# Exclusions Portal

Working with Federal and State Partners

Send Referrals for Exclusion Investigation

https://oig.hhs.gov/exclusions/partners.asp

HHS AMS | View All Tools | OIG... | IRIS Logon | PACER: Case Location... | Exclusion Referrals... | NPPES NPI Registry | kiteworks | Bloomberg Law | Other favorites

An official website of the United States government [Here's how you know](#)

U.S. Department of Health and Human Services  
**Office of Inspector General**

**Search** **Submit a Complaint**

About OIG | Reports | Fraud | Compliance | Exclusions | Newsroom | Careers | COVID-19 Portal

Exclusions Program

Online Searchable Database

LEIE Downloadable Databases

Monthly Supplement Archive

Quick Tips

Waivers

Background Information

Applying for Reinstatement

Contact the Exclusions

## Working with Federal and State Partners

HHS-OIG has the [authority to exclude individuals and entities](#) from Federally funded health care programs for a variety of reasons, including a conviction for Medicare or Medicaid fraud. Those that are excluded can receive no payment from Federal healthcare programs for any items or services they furnish, order, or prescribe.


Federal agencies, [MFCUs](#), and other state partners use the [Exclusion Referrals portal](#) to submit the necessary documentation on individuals or entities who should be considered for exclusion.

**Visit the Exclusion Referrals Portal**





# Exclusions Portal

**HHS OIG**  
Send Referrals for Exclusion Investigation

## Send referrals for exclusion investigation

This service is for registered partners of our Exclusions Program. Employees of partners can use it to send information about convictions and administrative actions made or discovered by their organization.

To use this service you need:

- An invitation email from HHS OIG
- A login.gov account registered under the email address we invited

If you have received an invitation, but don't have a login.gov account [start here to create an account](#).

**Log in**

### About this service

[Get help logging in](#)

[HHS OIG Exclusions Program](#)

[Become a partner](#)







# New or Changed Users

- New users should contact the OIG (link on page) to request preauthorization
- Please contact us if a current user has left your team, so we can remove their access.
- Any issues? Contact OCIG SET Team!







# Contact Info

- Public Phone Number: 202-691-2311
- Public email account:
  - [exclusions@oig.hhs.gov](mailto:exclusions@oig.hhs.gov)
- For Portal Support:
  - [Exclusion-Submission@oig.hhs.gov](mailto:Exclusion-Submission@oig.hhs.gov)
- Website: <https://oig.hhs.gov/exclusions/index.asp>





# Questions?

Thank you for your time.

