NELSON HARDIMAN
HEALTHCARE LAWYERS

Failure To Discover Employee's Excluded Status Costs Provider $170,000

The Office of the Inspector General ("OIG") reports that it has a reached a settlement with Long Term Care Inc., a North Carolina Medicare provider, regarding allegations that Long Term Care employed an individual that it knew or should have known was excluded from participation in the Federal health care programs. According to the OIG, Long Term Care agreed to pay a $170,000 settlement for allegedly violating the Civil Monetary Penalties Law, which authorizes the imposition of civil monetary penalties against healthcare providers and entities that employ or enter into contracts with excluded individuals or entities to provide items or services to Medicare or **Medicaid** beneficiaries.

This case demonstrates the inherent danger providers face when they do not perform a diligent background check and inadvertently hire an excluded individual. As a practical matter, although a job candidate may seem ideal for a position, that individual may be excluded from participating in health care programs that receive federal dollars, e.g. Medicare and Medicaid. Providers, whether group practices, hospitals, home health agencies, or hospices, may become subject to hefty civil monetary penalties if they submit claims to a federal health care program for items or services provided, directly or indirectly, by an excluded individual or entity. The OIG actively scrutinizes claims for this type of violation. The Civil Monetary Penalties Law imposes a penalty of $10,000 on the provider for each wrongful act, i.e. each claim submitted.

In order to protect providers from these penalties, the OIG maintains a searchable database that providers can utilize to verify whether an individual has been excluded from participating in federal health care programs. When hiring a new employee, providers should always check whether a candidate is an excluded individual before extending to them a job offer. Similarly, as a matter of caution, Providers should also check whether any of their current employees are excluded individuals if this check has not been done before. Once it has been verified that an individual is not excluded, providers should review this information annually, e.g. during a performance evaluation or similar review.

Providers who discover they have contracted with or have submitted claims for services rendered by an excluded individual should retain an **attorney** immediately. Ignorance of an employee's excluded status is not a defense.