



NEWS & VIEWS

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Staying on Top of Employee Checks Is a Front-line Defense Strategy

By:
Louise Lindsey, Editor

Wouldn't it be nice if a prospective healthcare employer could just take an applicant's word regarding their education, license, certification, experience and criminal background? What a saving in time and expense! Unfortunately, that utopian idea no longer exists-if it ever did. Although most people are honest and forthcoming about their qualifications for a job, not all people feel that constraint. Virtually every day across this country stories are read in some newspaper, heard on the radio or seen on the evening television news about people who use deceptive methods to get what they want or to appear to be something they are not.

Watch Out for Imposters!

For healthcare providers, hiring people who can provide the quality of care the organization not only wants to provide, but is required by Federal and State laws to provide, cannot be left up to chance and a believable demeanor. For example, here is just one example of the numerous imposter alerts published in the monthly edition of the Texas Board of Nursing Bulletin-

The unauthorized vocational nursing practice by Juan Manuel Perez in Harlingen, Texas, was originally published in the July 2016 Texas Board of Nursing Bulletin. On November 3, 2016, Juan Manuel Perez pled guilty to Aggravated Identity Theft for having secured employment in December 2014 with a home health agency in McAllen, Texas, by providing the employer with a license belonging to a different individual of the same name; and, for approximately 19 months, through July 11, 2016, having provided care to numerous homebound beneficiaries wherein Juan Manuel Perez completed, dated, and signed Medicare-required documentation using the misappropriated LVN license. On January 31, 2017, Juan Manuel Perez was sentenced to serve 24 months in the custody of the United States Bureau of Prisons to be followed by one year of supervised release.

The Kentucky Board of Nursing (KBN) website provides an alphabetical list it describes as "individuals that have either applied for a nursing position, been employed as a nurse in Kentucky, or used the title of nurse. KBN records indicate that these individuals have never been licensed in the Commonwealth of Kentucky." The

current list has 34 names.

Here are some ways for an employer to safeguard against imposters that was developed by an associate director with the state of Arizona's Board of Nurses-

- Insist upon seeing the original document of the employee's license or certification, not a copy.
- If your facility/center requires that a copy of the nursing license or certification be kept on file, make the copy from the original license or certification. Do not accept a copy that the applicant or employee has made.
- Do not allow an individual to work in a capacity requiring licensure or certification without having visualized the license/certification and verifying the status of the license/certification with the issuing Board of Nursing.
- If an individual presents a multistate license, their primary state of residence must be the state in which they have obtained the multistate license.
- Maintain the security of files that contain copies of nursing staff's licenses and certifications.
- Report all cases of suspected fraudulent representation or practice of nursing to your state's Board of Nursing.

According to Labor and Employment Law, Ch 270, §270.03, an employer may be vulnerable to a claim of negligent hiring- "based on the principle that an employer is liable for the harm resulting from its employee's negligent acts 'in the employment of improper persons or instrumentalities in work involving risk of harm to others.' Similarly, claims for negligent retention are based upon the premise that an employer should be liable when it places an employee, who it knows or should have known is predisposed to committing a wrong against a third party."

This principle may be applied to a healthcare provider who along with initial pre-employment checks does not continue to perform regular checks on public records that can change such as license verification, criminal record verifications and exclusion records at the Office of Inspector General (OIG) and/or state Medicaid agencies. This also is applicable to third-party contractors and referring physicians.

Although State licensing boards regulate the requirements for being licensed or certified, employees bear the responsibility of making sure that their licensure is up-to-date and unrestricted. Employees are also obligated to provide such proof to their employer. Should an employee become aware of a license or certification violation, whether his own or that of another employee, it is their duty to report it to their employer. This report may be made to the employee's direct supervisor, the Administrator or via the Compliance Hotline.

An employer should have a program in place that demonstrates documented proof of an employee's licensure and certification. The status of a potential new employee's certification or licensure should be verified through the State Board's Licensing database. The Human Resource Department is responsible for carrying out regular reviews of the OIG's Exclusion Database and Government Services Agency (GSA) databases.

OIG Exclusion Program

OIG exclusions first started in 1977 after Congress passed Public Law 95-142. This required physicians and other healthcare practitioners that had been convicted of "program-related crimes to be excluded from participation in Medicare and Medicaid." In 1981, the Civil Money Penalties Law (CMPL) was passed to give the OIG the ability to tackle healthcare fraud and abuse. This law empowered the OIG to impose "assessments and program exclusions against individuals and entities" who submitted false, fraudulent or improper claims for reimbursement from Medicare or Medicaid. "Improper claims" includes claims submitted by an entity or individual who has been excluded by the OIG from providing items or services.

The Medicare and Medicaid Patient and Program Protection Act of 1987 expanded the scope of the OIG sanctioning capability. It created "certain mandatory and discretionary exclusions for various balanced types of misconduct." This expansion was followed in 1996 by the enactment of HIPAA and the Balanced Budget Act (BBA) of 1997 continuing the expansion of the OIG's authority. These expansions allow Civil Money Penalties (CMP) to be levied against healthcare providers if they hire or enter into contracts with excluded individuals to provide services, items or equipment to the beneficiaries of a Federal program either directly or indirectly.

In 2013, the OIG issued its "Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs." It is a good resource for compliance officers, human resource personnel, and managers who are responsible for ensuring that the healthcare provider they work for does not employ or enter into contracts with individuals or organizations that have been excluded from a Federal Healthcare program. It can be found at: <https://oig.hhs.gov/exclusions/files/sab-05092013.pdf>.

The OIG provides what it calls the List of Excluded of Individuals/Entities (LEIE) and it can be found at: <http://oig.hhs.gov/exclusions>. This list provides information for the healthcare sector about individuals and entities that are prohibited from participation in Medicare, Medicaid and all other Federal healthcare programs. The effect of being excluded means that no payment will be made for any services or items provided, ordered or prescribed. The exclusion applies regardless of who submits the claims and it applies to all administrative and

management services furnished by the excluded individual or entity. Here are some of the types of services that are normally reimbursed by Medicare and Medicaid or other Federal healthcare programs but are disallowed if provided by excluded individuals or entities-

- Excluded nurses, technicians or others working in hospitals, nursing homes, home health agencies or physician practices;
- Excluded pharmacies or anyone involved in filling prescriptions for drugs;
- Excluded ambulance drivers, dispatchers or anyone involved in providing transportation;
- Excluded providers selling, delivering or refilling orders for medical devices or equipment;
- Excluded social workers employed by healthcare providers;
- Administrative services performed by an excluded individual for a Medicare intermediary or carrier or Medicaid fiscal agent;
- Excluded administrator, billing agent, accountant, claims processor or utilization reviewer related to or reimbursed by a Federal healthcare program directly or indirectly;
- Excluded individuals who work for and are paid by a company with a contract with a Federal healthcare program; and
- Items or equipment sold by an excluded manufacture or supplier that are used to care for or treat beneficiaries and are reimbursed directly or indirectly.

Background Screening

Federal healthcare laws require background screening in all 50 states even though some states do not require it. The Centers for Medicare & Medicaid Services (CMS) supports the Federal Bureau of Investigation's fingerprint checks as part of the criminal background checks for employment. It has launched what it calls the CMS National Background Check Program to address "long-term care (LTC) patient abuse and the misappropriation of funds that have been identified as a widespread problem for millions of Americans receiving LTC services."

CMS describes the purpose of the program as being able to "identify efficient, effective, and economical procedures for conducting background checks." CMS in conjunction with the Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) will administer the program when it becomes effective. Providing better background checks will help to ensure safer nursing homes. This is important because of the vulnerability of nursing home residents, especially those that are immobile, have serious illnesses and those with dementia and other cognitive impairments.

To ensure that a background check is thorough, experts suggest it should involve checking both state and national databases for crimes involving:

- Homicide and assault
- Sex Offenses
- Theft and Fraud
- Domestic Violence
- Conspiracy and weapons
- Drugs
- Contamination of Food

Finally, regarding staying on top of employee checks, it should be noted that any specialized skills that an employee is expected or believed to have-like performing CPR or the Heimlich Maneuver-should be reviewed on a regular basis by the healthcare provider to ensure training is up-to-date.

Administrators: Note Med-Net Compliance Now Offers NAB Approved CE Courses

Med-Net Compliance, LLC through its educational arm, Med-Net Academy, now offers a certificate program to long term care nursing home administrators that provides education on fraud, waste, and abuse prevention, with NAB/NCERS approved continuing education credits for successful completion. All courses were developed and produced by Betty Frandsen, our Director of Healthcare Education Development and her staff. Please feel free to visit our site to learn more about these courses:

<https://www.mednetcompliance.com/med-net-academy/nab-ce-course>

Human Resources Directors: HR Specific E-Learning Courses

Offered by Med-Net Compliance

Med-Net Compliance, LLC. is pleased to share of many HR specific e-learning courses on our website. We hope you will take advantage of these free for client educational programs produced by Betty Frandsen, our Director of Healthcare Education Development and her staff. Please use the password administered to your Administrator from Med-Net to access all courses located on this page:

<https://www.mednetcompliance.com/med-net-academy/healthcare-compliance-e-learning-courses/>

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