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I. BACKGROUND

The Federal government, through the Office of Inspector General of the Department of Health and Human Services (“OIG”), has the authority to exclude individuals and entities who have engaged in fraud or abuse from participation in Medicare, Medicaid and certain other Federal health care programs. In addition, under Federal procurement rules, the Federal government’s General Services administration has the authority to debar, suspend, exclude, disqualify or otherwise declared ineligible individuals or entities from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits.


Exclusion from participation means that no Federally funded program payment may be made for any items or services (1) furnished by an excluded individual or entity, or (2) directed or prescribed by an excluded physician. This payment prohibition applies to all methods of Federal program reimbursement, whether payment results from itemized claims, cost reports, fee schedules or a prospective payment system (“PPS”). In addition, any items and services furnished at the medical direction or prescription of an excluded physician are not reimbursable when the individual or entity furnishing the services either knows or should know of the exclusion. The payment prohibition applies regardless of who submits the claim and regardless even when the Federal payment itself is made to another provider, practitioner or supplier that is not excluded, such as a hospital under the Inpatient Prospective Payment System for inpatient services prescribed by an excluded physician.

The prohibition against Federally funded program payment for items or services furnished by excluded individuals or entities also extends to payment for administrative and management services not directly related to patient care, but that are a necessary component of providing items and services to Federal program beneficiaries. For example, this would include payment of the salary for a billing employee who had been excluded.

An excluded individual or entity violates the law if it provides items or services to Federally funded healthcare program beneficiaries and a Federal payment is sought for those items or services. Furthermore, no payment can be made from a Federally funded health care program payment to cover an excluded individual’s salary, expenses or fringe benefits, regardless of whether they provide direct patient care.

II. SCOPE:

This policy applies to (1) Tenet Healthcare Corporation and its wholly-owned subsidiaries and affiliates; (2) any other entity or organization in which Tenet Healthcare Corporation or affiliate owns a direct or indirect equity interest of 50% or more; and (3) any hospital or healthcare

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facility in which Tenet Healthcare Corporation or an affiliate either manages or controls the day-to-day operations of the facility (a “Tenet Facility”) (collectively “Tenet”).

III. PURPOSE:


To ensure that all Screened Persons are not Ineligible Persons, in compliance with the Ineligible Persons terms of the of the Corporate Integrity Agreement (“CIA”) dated September 27, 2006 between Tenet Healthcare Corporation and the Office of Inspector General of the Department of Health and Human Services.

IV. DEFINITIONS

- A. “Screened Person” means all officers, directors, shareholders who own 5% or greater of Tenet’s outstanding shares, prospective and current employees, contractors, agents, practicing medical staff (credentialed, consulting or referring), allied health professionals, students, or volunteers of Tenet.
- B. “Ineligible Person” means an individual or entity (a) currently excluded, suspended, debarred, or otherwise ineligible to participate in Federally funded health care programs or in federal procurement or non-procurement programs or (b) that has been convicted of a criminal offense that falls within the ambit of 42 USC § 1320a-7(a) (see References, below) but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

Ineligible Persons may include nurses, credentialed physicians or allied health practitioners, coders, other staff (whether employed, contract or temporary), or vendors. Examples of some types of Ineligible Persons and prohibited payments are attached.

- C. “Federally funded health care programs” means Medicare, Medicaid/MediCal, managed Medicare/Medicaid/MediCal, TriCare/VA/ CHAMPUS, SCHIP, Federal Employees Health Benefit Plan, Indian Health Services, Health Services for Peace Corp Volunteers, Railroad Retirement Benefits, Black Lung Program and Services Provided to Federal Prisoners.
- D. “Exclusion Lists” means Office of Inspector General (OIG) List of Excluded Individuals/Entities (LEIE), the General Services Administration (GSA) Excluded Parties List System (EPLS), any applicable state healthcare exclusion list, and, as applicable, the National Practitioner Databank (NPDB).


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- E. “Potential Compliance Issue” means a potential Reportable Event as defined in the CIA, other suspected violations of Tenet’s Standards of Conduct, Tenet’s policies and procedures, the requirements of Tenet’s CIA and applicable laws and regulations relating to federal and state health care programs including but not limited to the Anti-kickback statute and Stark law, believed by the individual to be a potential violation of criminal, civil, or administrative law.

A Potential Compliance Issue may be the result of an isolated event or a series of occurrences. Potential Compliance Issues are handled under policies RCC-COMP 4.21 Internal Reporting of Potential Compliance Issues.

V. POLICY:

- A. Tenet prohibits the employment of, execution of contracts with, provision of items or services at the direction or prescription of, or use of services provided by Ineligible Persons.
- B. Tenet shall ensure that all Screened Persons are screened against the Exclusion Lists prior to engaging their services as part of the hiring, credentialing or contracting process. All Screened Persons shall be screened against the LEIE, EPLS and any applicable state healthcare exclusion list on an annual basis. The NPDB shall also be queried bi-annually for licensed physicians or allied healthcare practitioners. (Note: additional screenings are also conducted, when appropriate, in accordance with Human Resources Policy 216 Pre-Employment Background Screening.)
- C. In certain cases (such students or a contracted entity), Tenet may accept an affidavit or representations and warranties from an entity affirming that the entity has performed its own screening for status as an Ineligible Person against the Exclusion Lists and neither the entity, nor any individuals who are Screened Persons are ineligible. Such affirmation or representations and warranties must include a requirement that the entity will notify Tenet of any changes in the exclusion or ineligibility status of any Screened Persons.
- D. Tenet requires all Screened Persons to disclose whether they are an Ineligible Person. All Screened Persons shall disclose if he/she/it is an Ineligible Person at the time of the initial hiring, credentialing, or contracting process, or at any point in the future.
- E. If Tenet has actual notice that an employed or contracted Screened Person has become an Ineligible Person, Tenet will remove (e.g., terminate employment or contract with Ineligible Person) such Screened Person from responsibility for, or involvement in, the business operations related to any Federally funded health care
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programs or provision of items or services, directly or indirectly, to Federally funded health care program beneficiaries and shall remove such person from any position for which the Ineligible Person’s compensation, or the items or services furnished, ordered, or prescribed by the Ineligible Person, are paid in whole or part, directly or indirectly, by Federally funded health care programs or otherwise with Federal funds.

- F. If Tenet has actual notice that a Screened person who is a member of the credentialed medical staff or allied health practitioner of one of its hospitals or other facilities has become an Ineligible Person, Tenet shall refer that physician or other practitioner for review pursuant to the facility’s Medical Staff Bylaws. Tenet shall ensure that it does not submit claims for any services provided, ordered or referred by such Ineligible Person.


VI. PROCEDURE - CORPORATE/HOSPITAL IMPLEMENTATION

- A. Tenet shall ensure that all Screened Persons are screened against the Exclusion Lists prior to engaging their services and, as part of the hiring, credentialing, or contracting process, and on an annual basis. Documentation of initial screening results indicating that the Screened Person is not an Ineligible Person must be maintained in each employee or physician’s credentialing file, or in the contract file.
- B. Annual screenings of employees, credentialed physicians and allied health practitioners, contracted staff and entities, temporary staff, vendors, shareholders and corporate officers and directors shall be coordinated at the corporate level through Background Screening Services and the corporate Compliance Department. Periodic rescreenings of other categories of individuals or entities should be discussed and coordinated with the corporate Compliance Department.
- C. The hospital Medical Staff Department will query the National Practitioner Databank (NPDB) for credentialed and privileged medical staff members as part of the initial credentialing and re-credentialing processes.
- D. In consultation with the Compliance Department, hospitals shall develop a process for ensuring that noncredentialed physicians are screened against the Exclusion Lists prior to accepting a prescription or referral for items or services to be provided by the hospital and that no prescriptions or referrals are accepted from excluded physicians.
- E. All Screened Persons are required to disclose immediately to his or her supervisor, Facility Compliance Officer, Tenet Facility CEO, or other individual as designated in the relevant contract, any debarment, exclusion, suspension, or other event that makes that person or entity an Ineligible Person. Failure to do so may result in disciplinary

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action up to and including suspension or termination, termination of the contract, or other actions as authorized by other Tenet policies or Medical Staff Bylaws.

- F.** If Tenet has actual notice that a Screened Person has become an Ineligible Person, Tenet shall remove such Screened Person from responsibility for, or involvement in, the provision of services or business operations related to any Federally funded health care programs and shall remove such Screened Person from any position for which the Screened Person's compensation or the items or services furnished, ordered, or prescribed by the Screened Person are paid in whole or part, directly or indirectly, by Federally funded health care programs or otherwise with Federal funds, at least until such time as the Screened Person is reinstated into participation in the Federally funded health care programs.
- G.** If Tenet has actual notice that a Screened Person is charged with a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) or 42 U.S. §§ 1320a-7(b)(1)-(3) (see References, below), or is proposed for exclusion during his, her or its employment or contract term or, in the case of a physician, during the term of the physician's medical staff privileges, Tenet shall take all appropriate actions to ensure that the responsibilities of that Screened Person have not and shall not adversely affect the quality of care rendered to any beneficiary, patient, or resident, or the accuracy of any claims submitted retrospective or prospectively to any Federally funded health care program. This may include suspension, termination, termination of the contract, or other actions as authorized by other Tenet policies or Medical Staff Bylaws.
- H.** If the Screened Person denies any material findings contained in the background investigation results, further investigation shall be initiated. The subject of the investigation may provide documentation indicating that he/she/it is not excluded or that reinstatement has been granted. The subject may also submit a sworn affidavit that he/she/it is not the Ineligible Person that appears on the Exclusion Lists. The Human Resources Department, Medical Staff Office, or other responsible department shall forward the documentation to the Background Screening Services and corporate Compliance Department. Copies of the documentation must be provided to the Facility Compliance Officer and/or other designee of the Compliance Department for evaluation and input. After the additional investigation is complete, a response will be provided to the individual within a reasonable period of time.
- I.** The Facility Compliance Officer and/or the corporate Compliance Department must be notified immediately that a Screened Person has become an Ineligible Person either by the individual's supervisor or screening department (e.g., Human Resources or Medical Staff Office) or designated contact within Tenet. Any Potential


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Compliance Issues associated with the Ineligible Person must be immediately reported to the Facility Compliance Officer and Chief Compliance Officer or designee, as per COMP-RCC Policy 4.21 Internal Reporting of Potential Compliance Issues. The Facility Compliance Officer shall coordinate with the Regional Compliance Director and the Chief Compliance Officer or designee to develop a corrective action plan, including any cost reporting or refunding obligations. Guidance may also be provided by other departments including, but not be limited to, Human Resources, Law, and Government Programs. The Chief Compliance Officer shall be responsible for making appropriate notifications to the OIG of any Reportable Events (as defined by the CIA) relating to Ineligible Persons.

- J.** Documentation of the annual screenings shall be maintained by the Background Screening Services and Compliance Departments.
- K.** All documents related to screening processes under this policy shall be maintained in the appropriate files by the hospital or corporate office as appropriate for a minimum of 10 years after the expiration or termination of employment, contract, or privileges, or 10 years after expiration of the CIA, whichever is later. All such documents are subject to audit by Audit Services or the corporate Compliance Department.

VII. REFERENCES

1. 42 U.S.C. § 1320a-7(a) – mandates exclusion for conviction of healthcare program-related crimes, conviction relating to patient abuse or neglect, felony conviction relating to healthcare fraud, or felony conviction relating to controlled substances
2. 42 U.S.C. §§ 1320a-7(b)(1)-(3) – permits exclusion for misdemeanor conviction relating to healthcare fraud, conviction relating to fraud in nonhealthcare programs, conviction relation to obstruction of an investigation, or misdemeanor conviction relating to controlled substances.
3. OIG Compliance Program Guidance For Hospitals, 63 FR 8987, at p. 8996 (February 23, 1998), <http://oig.hhs.gov/authorities/docs/cpghosp.pdf>
4. OIG Supplemental Compliance Program Guidance For Hospitals, 70 FR 4858, at 4876 (January 31, 2005), <http://oig.hhs.gov/fraud/docs/complianceguidance/012705HospSupplementalGuidance.pdf>
5. OIG Special Advisory Bulletin On The Effect Of Exclusion From Participation In Federal Health Care Programs, 64 FR 52791 (September 30, 1999), <http://oig.hhs.gov/fraud/docs/alertsandbulletins/effected.htm>
6. 42 CFR § 420.203

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7. 42 CFR Part 1001
 8. Joint Commission on Accreditation of Healthcare Organizations (2004) HR 1.20 and MS 4.20.
 9. OIG Exclusion Program website, <http://oig.hhs.gov/fraud/exclusions.html>
 10. GSA Excluded Parties List System website, <http://www.epls.gov/>
 11. Corporate Integrity Agreement between The Office of Inspector General of the Department of Health and Human Services and Tenet Healthcare Corporation, signed September 27, 2006, section III.F.
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ATTACHMENT

EXAMPLES OF INELIGIBLE PERSONS

- Transporter who was convicted of patient neglect or abuse related to former employment at a nursing home
- RN who surrendered her license to avoid charges and now works as a Unit Secretary
- Respiratory therapist whose license is on probationary status, due to a DUI charge
- Physical therapist who lost his license due to substance abuse issues
- Physician who defaulted on an HEAL student loan
- Biller who was convicted of embezzlement at another employer
- Patient Care Technician who was convicted of Medicaid fraud due to prior occupation as ambulance driver
- Technician who prepares sterile surgical trays who previously surrendered her nursing license
- Payroll clerk who was convicted of misdemeanor drug possession
- Pharmacist who surrendered his license in one state and moved to another state
- RN hired by a previous owner of the hospital who since became excluded due to involvement in Medicaid fraud occurring at her second job where she works PRN

EXAMPLES OF PROHIBITED TRANSACTIONS

- Payment of salary by hospital to excluded RN who reviews treatment plans
- Payment of wages to PRN patient care technician who was excluded for conduct on previous job
- Payment of salary to excluded individuals who input prescription information for pharmacy billing
- Payment of salary to clerical or billing staff who are excluded due to loss of license or conduct that occurred at previous job
- Payment of equipment leasing fees to excluded medical device provider
- Payment of medical directorship fees to excluded physician
- Payment of fees to nurse staffing agency for provision of contract nurse who is excluded
- Filing claim for laboratory services provided pursuant to prescription from excluded physician
- Filing claim for radiology services ordered by excluded physician
- Filing cost report containing salary costs for excluded transcriptionist