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|  | <p>Date Approved: 02/20/2018</p> <p>By  Carol Burton Interim Behavioral Health Director</p> |
| <p>POLICY TITLE</p> <p>OIG and Other Exclusion List Background Checks - Monitoring, Oversight, and Reporting</p> | <p>Policy No: 1703-2-1</p> <p>Date of Original Approval: 4/25/2016</p> <p>Date(s) of Revision(s): 02/20/2018</p> |

PURPOSE

The purpose of this policy is:

- To comply with state and federal law and regulation, the Mental Health Plan (MHP) Contract with the State of California Department of Health Care Services (DHCS), and other applicable law and regulation that prohibit “excluded persons” from participation in, and submitting claims for service reimbursement from Federal Health Care programs including Medicare, Medicaid, and all other health care programs that receive Federal Funds.
- To outline the Alameda County Behavioral Health Care Services (BHCS) background check procedures for monitoring the Office of the Inspector General’s (OIG), List of Excluded Individuals & Entities (LEIE), as well as other applicable exclusion lists and databases, to determine whether employees, contractors, agents, and volunteers shall be excluded/prohibited from participation in Federal funded programs.
- To inform employees, contractors, agents, and volunteers of their mandatory responsibility to ensure that their actions and activities do not result in their exclusion from participation in Federal programs.

AUTHORITY

42 CFR, Section 455.436; 42 CFR, Section 438.214; DHCS Contract/Agreement No.:12-89353, FY2013-2018 with Alameda County; and, DMH LETTER NO.: 10-05, September 10, 2010.

SCOPE

This policy applies to all employees, contractors, agents and volunteers of BHCS as well as to all employees, volunteers, contractors, agents, Board members, and owners (with five percent or more ownership interest) of entities, individuals and programs providing services and/or goods in Federally-funded programs under a contract, or subcontract with BHCS.

POLICY

It shall be the policy of BHCS to comply with state and Federal Law. BHCS shall not contract with or employ persons/entities who are included on the OIG LEIE, the Medi-Cal exclusion list or any other applicable list or database as listed herein or should be required by State and Federal regulation in the

future. Therefore, BHCS shall conduct monthly monitoring of the OIG LEIE database and all other applicable lists or databases to ensure that all employees, contracted staff/entities, agents and volunteers are not on any of the exclusion lists. Contracted providers shall comply with the requirements under this policy in order to support BHCS's monitoring, oversight and reporting requirements under State and Federal law.

Background of OIG LEIE:

- The U.S. Department of Health and Human Services (HHS), OIG is mandated to protect and preserve the integrity of HHS programs; including, but not limited to, the health and welfare of the beneficiaries of those programs. The OIG's mandates, duties, and responsibilities are implemented and enforced through a nationwide network of audits, investigations, and inspections resulting in civil/criminal penalties, sanctions, and fines.
- The OIG is authorized by Federal Law and Regulation to exclude health care providers, individuals, contractors, and entities who commit acts resulting in "questionable and improper" reimbursements/payments for Medicare and Medicaid services and, all other federal health care programs.
- The OIG maintains a national database entitled: "**List of Excluded Individuals/Entities**" (LEIE). This database is updated on a monthly schedule.
- Persons/entities on the list shall not be permitted to provide any type of item and/or service that result in reimbursement/payment from any/all Federal health care programs.
- Hospitals and other health providers billing Federal health care for services/items shall monitor this LEIE list on a regular basis to ensure that they are not employing, have on their staff or contracting with any individual/entity included in the LEIE. Any individual/entity, who hires, continues the employment of, and/or contracts with an individual or entity on the LEIE may be subject to Civil Monetary Penalties (CMP).

PROCEDURE

The following procedures shall be implemented and followed to ensure compliance with State and Federal Law and Regulation:

- A. In order to conduct monthly monitoring, all of the following are required to have a BHCS INSYST Staff Number:
 - i. All clinical and non-clinical employees, volunteers, and agents of BHCS who provide services and/or goods in Federally-funded programs.
 1. The appropriate BHCS departmental supervisor shall submit a *Staff Number Request E-Form* for all BHCS employees.
 2. The appropriate BHCS departmental supervisor shall submit a *Staff Number Request E-Form* for any volunteer providing goods or services to BHCS.
 3. The BHCS Finance Office shall submit a *Staff Number Request E-Form* for all BHCS contracted consultants.

- ii. All clinical and non-clinical employees, volunteers, agents, Board members, and owners (with five percent or more ownership interest) of BHCS-contracted organizational providers that bill through INSYST and that provide services and/or goods in Federally-funded programs under a BHCS contract.
 - 1. These organizational providers shall submit requests for INSYST Staff Numbers to the BHCS IS Office using the *Staff Number Request E-Form*.
 - iii. All clinical and non-clinical employees, volunteers, agents, Board members, and owners (with five percent or more ownership interest) of contracted Level 3 organizational providers that provide services and/or goods in Federally-funded programs under a BHCS contract.
 - 1. These organizational providers shall submit requests for INSYST Staff Numbers to the BHCS IS Office using the *Staff Number Request E-Form*.
 - iv. All contracted Level 3 individual and group Mental Health Plan Fee-For-Service Providers
 - 1. The Network Office will obtain the INSYST Staff Number during the credentialing process for these providers.
- B. INSYST Staff Numbers (for individual staff, volunteers, entities, Board members, and owners with five percent or more ownership interest) may be requested and updated using the *Staff Number Request E-Form*.
- C. All BHCS contracted organizational providers who bill through INSYST or eCURA shall do the following:
- i. Update their BHCS Staff Roster with staff additions, departures, and staff information changes at least monthly using the Staff Number Request E-Form. "Staff" used in this context includes clinical and non-clinical employees, volunteers, agents, Board members, and owners (with five percent or more ownership interest) of contracted organization that provides services and/or goods in Federally-funded programs under a BHCS contract. For clarification, this would not include organization's staff who do not provide goods and/or services under a BHCS contract.
 - ii. Attest monthly that they have updated their Staff Roster using the Monthly Staff Change Attestation E-Form.
 - 1. Out-of-county Services As Needed (SAN) contractors are required to attest only in the months when receiving Federal funding through BHCS for a client of BHCS.
 - iii. Perform background checks including, but not limited to, checks of all exclusion lists and databases listed under Section E below for all potential employees, volunteers, agents, Board members, and owners (who will have five percent or more ownership interest) **prior** to employment, contracting, or appointment.

- iv. Financial penalties may be applied to a contractor's monthly claim for any month that the contractor does not comply with the requirements listed above.

D. BHCS shall do the following:

- i. Monitor the OIG LEIE and any other applicable list or databases on a monthly basis to verify that those listed under A above are not included on any exclusion list. BHCS has the right to contract out these monitoring activities.
- ii. Document its monthly monitoring activities and make them available for review when requested by State or Federal governmental agencies.
- iii. Generate screen prints as needed to provide evidence of its search performance and results.
- iv. Monitor the monthly attestation process for those contractors who are out of compliance with this policy.
- v. Monitor that contractors are performing pre-hiring, pre-contracting, or pre-appointment (for Board members) background checks of all applicable exclusion lists. BHCS may do this during monitoring visits such as the site certification or re-certification onsite visit by reviewing files of recent new hires, recently contracted agents, or recently appointed Board members.
- vi. Periodically request and audit a contractor's current staff roster against the contractor's INSYST-generated Staff Roster.

1. Contractor will provide staff roster in an electronic Excel spreadsheet.

- vii. Monitor the OIG LEIE and any other applicable databases for BHCS staff, volunteers, contractors agents at the following frequency:

1. Prior to Employment, Contracting, or Volunteering

- a. Exclusion list checks for potential contractors will take place during the procurement process and added as a minimum requirement in the Request for Proposal (RFP). Any bidder who has a confirmed match on an applicable exclusion list will not proceed further in the procurement process.
- b. Background checks for potential BHCS staff and volunteers shall include, but not be limited to, checks of all exclusion lists and databases listed in Section E below.

2. At least monthly until termination of employment/contract

- E. At the time of this policy writing the links to the applicable exclusion lists which shall be monitored by BHCS are as follows:

- i. Office of Inspector General List of Excluded Individuals and Entities (LEIE):

<https://exclusions.oig.hhs.gov>

- ii. General Services Agency's System for Award Management (SAM) (previously known as EPLS – Exclude Parties List System): <https://www.sam.gov>
- iii. California DHCS Medi-Cal Suspended and Ineligible Provider List: <http://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp>
- iv. Social Security Administration Death Master File: <https://www.ssdmf.com>
- v. National Plan and Provider Enumeration System (NPPES): <https://npiregistry.cms.hhs.gov/>

F. Hits and Matches

- i. The BHCS Quality Assurance (QA) Office shall be notified if any BHCS employee, contractor, agent, volunteer, Board member, or owner (with five percent or more ownership interest) is found and matched on the OIG LEIE or any other exclusion list database; the QA Office will initiate a hold to be placed on any claiming by the identified individual or entity.
- ii. Upon discovery of any match (name appears on any of the exclusion lists) the BHCS Network Office shall contact the individual, contractor, or entity in writing and inquire/investigate the hit/match.
- iii. If the individual is a BHCS employee, the QA Office shall notify his/her primary supervisor and their respective Division Program Directors.
- iv. Upon notification of the match, the QA and Network Offices shall conduct a complete investigation. During the investigative process, the individual, contractor, agent, volunteer, board member, or owner (with five percent or more ownership interest) shall not be allowed to bill any services to Medi-Cal, Medicare or any other Federal Health Program until the matter is fully remedied and a final decision has been rendered.
- v. Upon completion of the investigative process, a report shall be prepared within thirty (30) days from the date of the completion of the investigation. The QA Office shall submit the report and recommendations to the BHCS Executive Team and the Alameda County Health Care Services Agency Human Resources Department (HCSA HR), as applicable, for further action when necessary.

G. Remediation/Corrective Actions for Hits/Matches

- i. The individuals/legal entities that have a positive hit/match shall be given fourteen (14) calendar days to respond in writing to the designated BHCS office on reasons for being included in the exclusion list.
- ii. After the designated BHCS office receives the response in writing from the impacted

individual/legal entity, the individuals/legal entities shall be allowed sixty (60) calendar days to clear their names from the said exclusion lists.

a. If the individual is a BHCS employee or volunteer:

1. They must check-in with Alameda County Health Care Services Agency Human Resources Department (HCSA HR) within the first thirty (30) calendar days of the 60-calendar day period to provide a status of their effort to clear their name from said exclusion list.
2. In the event that the 60-day period has been exhausted but the impacted individual is able to provide written verification from the Office of Inspector General or other applicable governmental agency that they are still in the process of clearing their name from said exclusion list(s), the HCSA HR, in consultation with the BHCS QA Office, may grant authorized leave without pay for a reasonable amount of time for the employee to complete the process of clearing their name from said exclusion list.
3. If after the 60-day period the matched employee remains on the excluded list, HCSA HR shall be notified by the BHCS QA Office regarding the employee's current excluded status to determine the next steps of the investigatory process. Proper notifications shall be provided to all parties prior to the inception of any administrative/legal action.

iii. If after the 60-day period the matched contractor/legal entity remains on the excluded list, BHCS shall notify County Counsel regarding the procedures for initiating contract termination of the said contractor/legal entity. The BHCS Executive Team shall make any determination as to recoupment of funds from contractor/legal entity for claims paid during the period of time that they were on the exclusion list.

iv. If after the 60-day period a matched individual/entity who is an employee, volunteer, agent, contractor, Board member, or owner (with five percent or more ownership interest) of a BHCS contractor remains on the excluded list, contractor shall ensure that the individual/entity no longer provides any items or services to a Federally funded program. The BHCS Executive Team shall make any determination as to recoupment of funds from the BHCS contractor for claims paid during the period of time that the individual/entity was on the exclusion list.

v. A transfer of care plan shall be established for all affected clients within thirty (30) days of the BHCS's Director and HR decision regarding the employees/contractor's status or sooner as appropriate for continuity of care for all affected clients.

H. Retention of Records

- i. Background checks including, but not limited to, checks of all exclusion lists and databases listed under Section E above shall be maintained for a minimum of three (3)

years in the employee's, volunteer's, contractor's, agent's, Board member's, or owner's file or other accessible record in case of audit by BHCS or a State or Federal agency.

I. Breaches of BHCS Information System

- i. In the case of any breach of BHCS's information system that compromises the integrity of contractor staff or BHCS staff Personal Information (PI), BHCS shall notify contracted providers and BHCS employees within five (5) working days and shall notify the appropriate State and Federal agencies per BHCS's HIPAA Breach Reporting Policy.

CONTACT

| BHCS Office | Current as of | Email |
|--------------------------|---------------|--------------------|
| Quality Assurance Office | February 2018 | qaoffice@acgov.org |

DISTRIBUTION

This policy will be distributed to the following:

- ACBHCS Staff
- ACBHCS County and Contract Providers
- Public

ISSUANCE AND REVISION HISTORY

Original Authors: Rudy Arrieta, MA, BHCS Quality Management Program Director and Donna Fone, LMFT, LPCC, BHCS Quality Assurance Administrator

Original Date of Approval: 04/25/2016 by Karyn Tribble, PsyD, LCSW, Acting BHCS Director

Date of Revision: 02/20/2018

| Revise Author | Reason for Revise | Date of Approval by (Name) |
|---|-------------------|---|
| Donna Fone, LMFT, LPCC, Quality Assurance Administrator | Update policy | 02/20/2018 by Carol Burton, Interim BHCS Director |

DEFINITIONS

| Term | Definition |
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| Background Check | <p>The act of reviewing both confidential and public information to investigate a person or entity's history. Commonly performed by employers to ensure that: (1) an employee or entity is who they say they are, (2) to determine that the individual or entity does not have a damaging history (such as criminal history), and (3) to confirm information that an applicant or entity included on their application for employment or contracting.</p> <p>What comprises a background check varies depending on the position being applied for or job to be performed and the hiring entity. For BHCS and its contractors, background checks may include, but is not limited to, finger printing, Federal and State exclusion list checks, and licensing checks.</p> |

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| Contractor's Staff Roster | A list of current clinical and non-clinical employees, volunteers, agents, Board members, and owners (with five percent or more ownership interest) of a BHCS-contracted organization that is providing services and/or goods in Federally-funded programs under a BHCS contract(s). |
| Excluded Persons | An excluded person can be an individual, contractor, or entity who has been identified by the Federal and/or State government as committing an act that excludes the individual/entity from participating in Federal health care programs, State Health Care Programs, Federal/State procurement, or non-Federal procurement whenever Federal funds are used. This exclusion applies regardless of who submits the claims; it applies to all administrative and management services furnished by the excluded person. A detailed description of what constitutes excluded persons can be accessed at the following address: http://www.ssa.gov/OP_Home/ssact/title11/1128.htm |
| Expired Staff | Staff/volunteers/agents who are no longer providing goods and/or services under the contract with BHCS and/or no longer employed or contracted with BHCS or a BHCS contractor as well as ex-Board members and ex-owners (with five percent or more ownership interest). |
| Federal Health Care Program | A Federal Health Care Program is defined as any plan or program that provides health benefits, whether directly, through insurance, or otherwise, and that is funded directly, in whole or in part, by the U.S. Government or a State Health Care Program. Among the most significant programs are Medicare, Medicaid (Medi-Cal in CA), TRICARE, and The Veterans Administration. |
| INSYST Staff Roster | A roster of Contractor's staff/agents who are providing goods and/or services under the contract with BHCS per information that Contractor submitted to the BHCS IS Office. |
| Monthly Staff Change Attestation E-Form | An electronic form used by contracted providers to attest monthly that they have updated their staff roster with BHCS. The link to the page where the form can be accessed: http://achcsa.org/behavioral-health/eforms.aspx |
| Providers | The term "provider" is used broadly to include direct service providers and their administrative, fiscal, and support staff, contractors, volunteers, suppliers, manufacturers, and other individual or entity, including a drug plan sponsor or managed care entity that directly or indirectly furnishes, arranges, or pays for items/services. |
| | An electronic form used by both BHCS and contracted providers to update their staff roster with staff additions, departures, and staff information changes. For CBO's |

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| Staff Number Request (e-Form) | logging into the BHCS Network via the webportal, the Staff Number Request e-Form can be found on the Provider e-Forms page: http://achcsa.org/behavioral-health/eforms.aspx For BHCS employees, the Staff Number Request Form can be found on the BHCS Intranet Forms Page: http://achcsa.org/behavioral-health/forms.aspx |
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