

***THE CRITICAL ROLE OF EXCLUSION SCREENING AND  
BACKGROUND CHECKS IN COMPLIANCE PLANS  
AND RISK MANAGEMENT PROGRAMS***



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***HEALTHCARE COMPLIANCE  
SYMPOSIUM***

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# Outline

- I. Exclusions**
- II. Background Checks**
- III. Compliance Plans and Enterprise Risk Management Programs**
- IV. Costs and Risks Associated with “Human Capital”**
- V. Guidance**
- VI. Questions**

# The OIG's Longstanding Concern about Exclusions

- **1977** Medicare-Medicaid Anti-Fraud and Abuse Amendments: Mandates exclusion of physicians and others convicted of program related crimes.
- **1981** Civil Money Penalties (CMP) Law: Department Secretaries given authority to deny participation in program (exclusions) and impose CMP's.
- **1987** Medicare and Medicaid Patient and Program Protection Act: Added mandatory exclusions and added category of permissive exclusions.
- **1996** HIPAA and 1997 Balanced Budget Act: Expanded sanction authority; to "all Federal health care programs." Authorized CMP authority for providers or entities that employ or enter into contracts with excluded persons or entities.
- **1999** OIG Special Advisory Bulletin of Effect of Exclusion
- **2010** Affordable Care Act: Expands exclusion authority; adds CMP liability if the person orders or prescribes while excluded and knowing of the exclusion.
- **2013** OIG Revised Special Bulletin on Effect of Exclusion.

**Example:** Dr. X hired Physician Assistant P to provide services to Medicare and Medicaid beneficiaries without conducting a background check on P. Had Dr. X performed a background check by reviewing the HHS– OIG List of Excluded Individuals/Entities, Dr. X would have discovered that he should not hire P because P is excluded from participation in Federal health care programs for a period of 5 years.

*OIG Compliance Program for Individual and Small Physician Groups, October, 2000*

# The Role of Exclusions in Pre - Employment Screening: What is an Exclusion?

**Exclusion:** **A final administrative action** taken by the Secretary of Health and Human Services (HHS), and/or by a State's Medicaid authority, barring **any** participation in **all** Federal and/or State health care programs. (E.g., Medicare, Medicaid, TRICARE).

- Excluded persons deemed to pose **unacceptable risks to patient safety and/or to the financial integrity of government programs**
- Authority to exclude delegated to HHS/OIG
- Re-admittance is not automatic!



# Excluded Providers are Listed on the OIG's "LEIE;" States Have Exclusion Authority and their own Lists

**Exclusions are Posted:** Excluded parties are listed by the OIG on its List of Excluded Individuals and Entities (LEIE). This constitutes public notice and employees, vendors and contractors who provide items or services payable by Federal Health Care Programs must be screened prior to employment and monthly thereafter.

**State Exclusion Requirements and Lists:** All States also have screening requirements for providers that participate in State programs, and most also have Exclusion lists. State screening requirements are typically at least the same as those of the OIG, but many have additional screening requirements in their provider agreements and/or in administrative regulations that are far more onerous than those of the OIG.

**Providers need to be aware of both State and Federal Requirements.**

# The Effect of an Exclusion

## PAYMENT PROHIBITION

There is a prohibition on payment for any items or services furnished or provided, directly or indirectly, by an excluded person or entity that is paid, in whole or in part, by a Federal Health Care Program.



The “payment prohibition” renders any such person or entity “radioactive” when it comes health care because every service he is connected to is an overpayment!

“Regardless of whether and by whom it is being performed . . . the provider is subject to overpayment liability for any items or services furnished by an excluded person for which the provider received federal health care program reimbursement.”

# A Focus on Protecting Patients and Protecting Federal Programs

The “Payment Prohibition” extends to any item or service furnished by an excluded person that is paid, in whole or in part, by a Federal Health Care Program. All terms are broadly defined such that:

- ⦿ **“Items or services”** include any item, device, drug, biological, supply, or service—including management or administrative services;
- ⦿ **“Furnished”** items are provided or supplied, directly or indirectly,
- ⦿ **“Indirect claims”** are “furnished” even if a non-excluded provider submits the claim if an excluded entity actually provided the service in the first place
- ⦿ **A complete payment ban** applicable to “all methods of Federal program reimbursement” regardless of whether it is from an itemized claim, cost report, capitated payment, or other bundled payment.

# The Payment Prohibition's Broad Reach

## The payment ban extends beyond direct care and includes:

- Services performed by excluded individuals who work for or under an arrangement with a hospital, nursing home, home health agency, etc.
- Management, Administrative and/or leadership positions
- Claims processing and information technology;
- Providing transportation services with excluded ambulance drivers or even excluded dispatchers.

**Even unpaid volunteers** can trigger overpayment and CMP liability if the items or services they furnish are not "wholly unrelated to Federal Health Care Programs" and the provider "does not ensure that an appropriate exclusion screening was performed!"



# Who gets Excluded? And why?

## Mandatory and Permissive Exclusions

### Mandatory Exclusions:

- 55% of all OIG exclusions from 2013-2017 were mandatory
- 35% based on Federal Health Care Fraud Convictions
- 20% based on patient abuse, drugs or non-federal health care fraud
- 5 Year Minimum Exclusion

### Permissive Exclusions:

- Discretionary; generally 3 years but can be for less time
- 90% based on Licensing Board disciplinary proceedings

Regardless of type, the underlying conduct in almost all exclusions were:

- Fraud**
- Sale, Use or Abuse of Drugs**
- Patient Abuse**

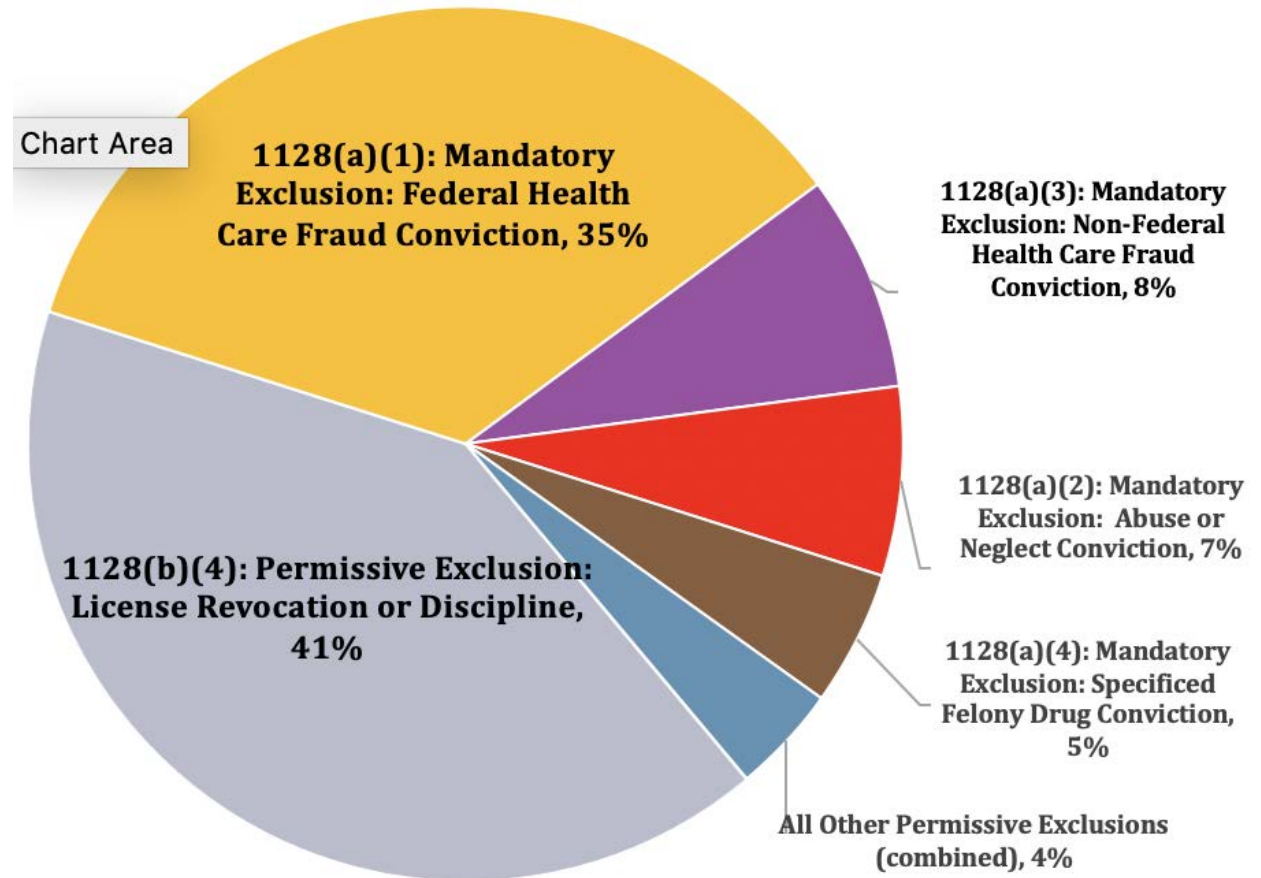
# Reasons for Imposing Exclusions: 2013-2017

## ALL EXCLUSIONS

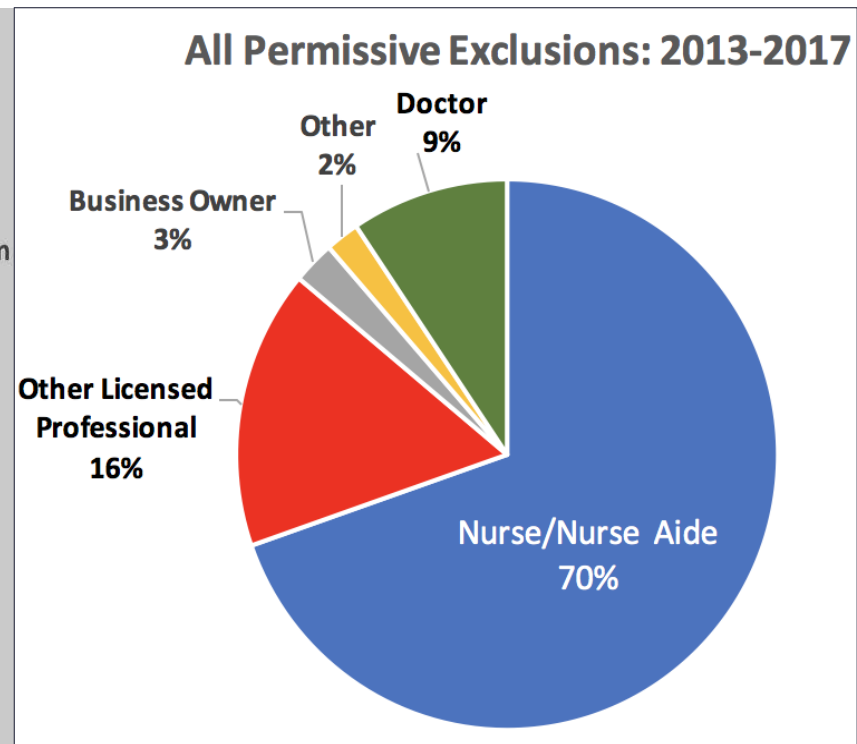
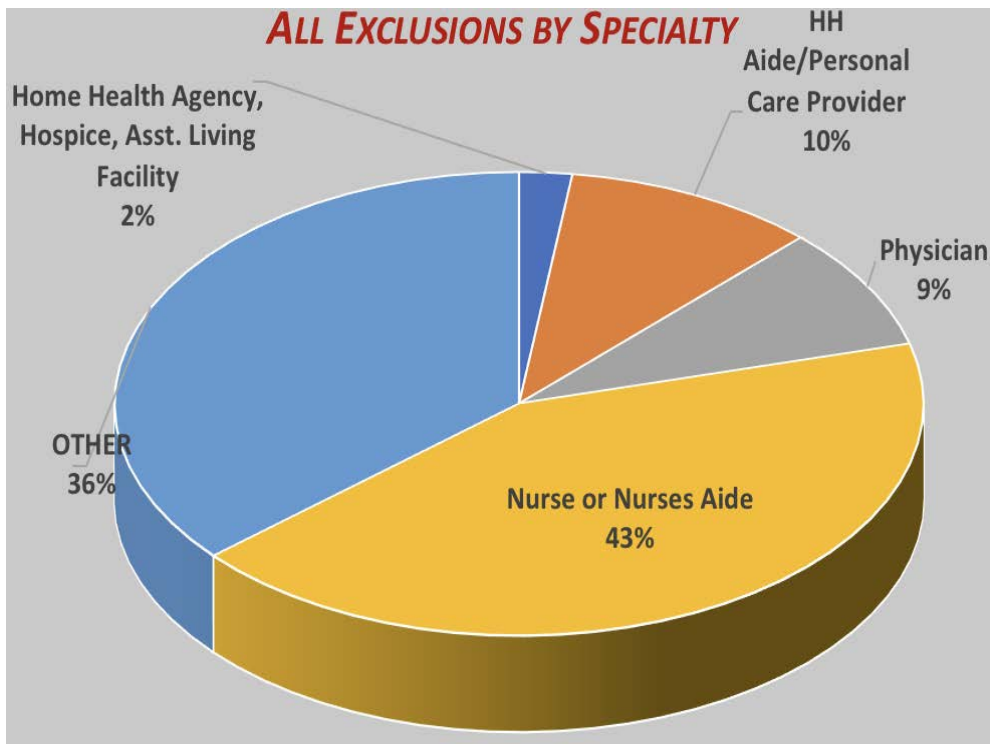
**55% Mandatory**  
**45% Permissive**

**41% of All Exclusions**  
**Permissive Exclusions**  
**Based on Licensing**  
**Disciplinary Actions**

**35% of All Exclusions**  
**Mandatory Exclusions**  
**Based on Federal Health**  
**Care Fraud**



# Direct Care Workers Were the Subject of Most Exclusions: 2013-2017



Over 50 % of All Exclusions

**Direct Care Providers**

Only 9% of Exclusions

**Physicians**

70% of Permissive Exclusions

**Nurses/Nurse Aides**

3% of Permissive Exclusions

**Business Owners**

# Legal Consequences of Hiring or Contracting With an Excluded Individual

## Civil Money Penalties:

- **Principle Enforcement Tool of the OIG**
- Providers are subject to CMP liability up to \$10K for the knowing submission of each claim for an item or service furnished by an excluded person plus 3 times the amount claimed!
- Providers that fail to screen are said to meet the “knowing” standard
- The OIG has a “special litigation unit” focusing on exclusions and CMPs

## Overpayment Liability

- All Claims submitted by an excluded direct biller is an overpayment
- All Claims supported by an excluded individual or entity is “tainted” and will result in an overpayment (to some extent – it can be a complicated calculation)

## False Claims Act Liability:

- In the past year that has been an increasing number of FCA cas  
exclusions and the lack of proper credentials.



# Basis for Imposing Civil Money Penalties

<b>Basis for Civil Money Penalty</b>	<b>Authority for Penalty Amount</b>	<b>Potential Civil Money Penalty</b>
<b>Presentation of claim for item or service by excluded party. §1003.200(a)(3)</b>	<b>§1003.210(a)(1)</b>	<b>Up to \$10,000 for each individual violation</b>
<b>Excluded party retaining ownership or control. §1003.200(b)(3)</b>	<b>§1003.210(a)(3)</b>	<b>Up to \$10,000 per day for each day that the prohibited relationship occurs</b>
<b>Arranges or contracts with an excluded party. §1003.200(b)(4)</b>	<b>§1003.210(a)(4)</b>	<b>Up to \$10,000 for each item or service provided or furnished ((separately or non-separately billable)</b>
<b>Orders or prescribes medicine from excluded person. §1003.200(b)(6)</b>	<b>§1003.210(a)(1)</b>	<b>Up to \$10,000 for each individual violation</b>
<b>MCO employs or contracts with an excluded party. §1003.400(b)(2)</b>	<b>§1003.410(a)(1)</b>	<b>Up to \$25,000 for each individual violation</b>
<b>MA and Part D contracting org. employs or contract with excluded party §1003.400(c)(5)</b>	<b>§1003.410(a)(1)</b>	<b>\$25,000 for each individual violation</b>

# JOB DESCRIPTIONS OF EXCLUDED EMPLOYEES IN RECENT SETTLEMENTS

## Management and Support Positions

- Office Manager (\$408,000)
- Eligibility Clerk (\$257,000)
- Medical Biller (\$274,000)
- Housekeeper/ Health Information Specialist (\$180,000)

## Direct Service Providers

- Nursing Supervisors (\$242,000)
- Registered Nurse (\$317,000)
- Licensed Practical Nurse (\$205,000)
- Nurse Aide (\$293,000)
- Certified Nursing Assistant (\$207,000)
- Home Health Nurse (\$189,000)
- Social Worker (\$232,000)

Social Services Assistant (\$214,000)

## Other (Supply and Pharmacies)

- Pharmacists in Chain (\$21,000,000)
- Pharmacists (\$442,000)
- Ambulance Service (\$390,000)



# MEDICAL ORGANIZATIONS THAT HAVE PAID SETTLEMENTS FOR EXCLUDED EMPLOYEES

**Pharmacy** (\$1.2 million, \$440,000, etc.)

**Hospitals** (\$807,000; \$545,000; \$514,000, etc.)

**Dental** (\$1,1 million, \$279,000, etc.)

**Physician Practices** (\$262,000, \$435,000

**Nursing Home, SNFs** (\$253,000), (\$242,000)

**Ambulance Service** (\$399,000)

**Behavioral Health** (400,000)

**Medical Supply Company** (\$340,000)

**Home Care Services** (\$334,000)

**Independent Living Center** (\$208,000)

**Subacute Rehab Center** (\$214,000) 408,000

**Community Provider** (\$250,000), \$200,000) list (\$180,000)



# What is a Background Check?

## A Review of Information to Determine if an Individual:

- Is who the applicant is who she she says she is
- Has provided accurate information on their application
- Is qualified for the advertised position or task
- Is someone who legally can be hired
- *Is this someone you want to hire? Will this person be an asset to the organization? A placeholder? A risk?*

## The information can include:

- Public and confidential information
- Reference checks
- Criminal background checks (including arrests)
- Financial records
- Licensing verification
- Verification of work history



# Types of Background Checks

## Common Background Checks:

- **Basic**: HR calls some references; tries to verify work history
- **Limited or Special Purpose**: Specific requirement of provider's industry to perform criminal background checks, or check a special database (elder abuse , etc.)
- **3rd Party Background Checks**
  - ✓ Must comply with Fair Credit Reporting Act (FCRA)
  - ✓ Employer must obtain permission
  - ✓ Must give notice prior to taking adverse action and after
  - ✓ Gives contact information of the preparer, advice of rights to dispute report, information on how to obtain a free report.
  - ✓ Used primarily by larger corporations; C-Level and above.

# Use of Arrests, Convictions and Exclusions in Background Checks

**Convictions:** “Reliable evidence” that the underlying criminal conduct occurred, but employers may not use them alone as the basis of employment decisions because they have a “disparate impact” based on race and national origin.

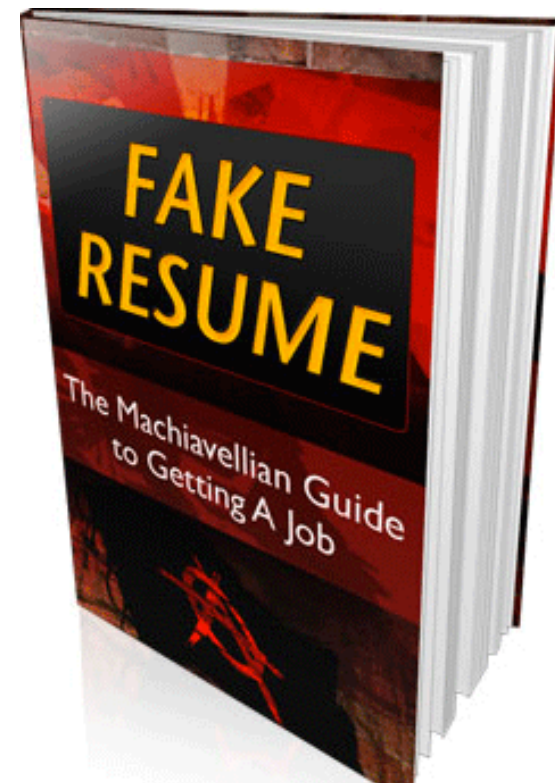
**Arrests:** Do not establish that criminal conduct has occurred and not legally probative of criminal conduct; however, an employer may act based on evidence of conduct that disqualifies an individual for a particular position.

**Exclusions:** As a final action that prohibits participation in all health care programs, it not only may be used to deny employ – it must be used to deny employment.

# Reliability of Background Checks

**It is estimated that 50% of all employment applications contain false information.**

Many services will provide false resumes, false job references, false recommendations, false Degrees ... whatever an applicant Needs -- or is willing to pay for!



# A Career Can be Started at CareerCreator.Com\*

## YOU PROVIDE:

- AREA CODE FOR COMPANY NUMBER
- INDUSTRY YOU ARE LOOKING TO WORK IN
- NUMBER OF REFERENCES NEEDED
- DATES OF EMPLOYMENT TO BE COVERED
- DESIRED COMPANY TYPE
- TYPE OF JOB YOU ARE APPLYING FOR.

## CAREERCREATOR.COM PROVIDES:

Fake Job References
Instant Degrees
Resume Service
Recommendation Letter
Landlord References
Check Past Employer References
24/7 Call Monitoring

*"I gave bogus names and phone numbers for all 3 of my references...The hiring manager wasn't able to contact any of them ... [and] if he couldn't contact them by the end of the week I would be disqualified ...*

*I found CareerCreator and they custom made my references for me the same day...*

*The next day my hiring manager offered me the job!!*

*"Career Creator is a company of Lazy Thieves! They stole my website and tried to use it as their own ... I felt so violated! ...*

*Why can't they create their own material instead of STEALING what isn't theirs!"*

*\* CareerCreator.com exists but operates under a different name to protect the ... guilty?*

# But if That Doesn't Work For You, Try FakeYourResume.com\*

*When your employer contacts your previous employer and/or professional references, they'll hear all the wonderful things you did for the company. Thus, your potential employer now hears you can do just about everything they're looking for, and have the professional experience to back it up...*

*Our Service is very authentic. Unless you tell someone, the party calling will never know your reference was given by us!"*

*FakeYourResume.com*\*

*\* "FakeYourResume.com" is "real" but operates under a different name*

# Reliability of Third Party Background Checks?

**FEDERAL INVESTIGATIVE SERVICES** (FIS) is *Responsible for ensuring the suitability and security of the Federal workforce.*



## **Summary of findings by Office of Personnel Management, Office of Inspector General for 2015:**

- 12 background investigators **debarred** for falsifying background investigations
- 33 background investigators **referred for debarment** to OPM for falsifying reports
- 9 background investigators issued **notices of debarment** for falsifying reports
- 3 background investigators **referred for prosecution** for falsifying reports

**\$30 million FCA Settlement** paid to OPM to resolve allegations that contractor providing background check services routinely released cases to OPM that were not completed (“dumping” or “flushing”)

## **June, 2014 audit conducted by the OPM/OIG Office of Audit found:**

- The contract required *pre-submission quality review by a qualified reviewer*; one of the reviewers completed **15,152 background investigations reviews during a one month** timeframe, with most of these occurring within minutes of each other on multiple days
- The same contractor could not provide the required training documentation for 24 of the 50 employees reviewed as part of the audit

# March, 2011 OIG Study: 35,286 Employees in 256 Nursing Homes

- **4,400 Employees:** Criminal history records;
- **92% of homes:** At least one employee with a criminal conviction;
- **Almost 50% of homes:** Five or more employees with a criminal conviction
  - 16 % were drug related crimes;
  - 13 % were crimes against persons;
  - 20.3% were DUI

# What Does This Tell Us About the Background Checks?

- The Process should not be taken for granted
- Finding out whether a person is who they say, and has accomplished that which they assert is NOT an easy process!
- The process can be seen as an opportunity to obtain information about a candidate with an eye toward building, managing and retaining a committed and talented work force
- Considering whether the applicant should be hired because he or she might be a long term asset and add value to our organization versus can we hire him or her because they meet the specific minimum standards for the particular job available



# Risk Management Programs and Compliance Plans

## Risk management Program:

“A strategic business discipline that supports the achievement of an organization’s objectives by addressing the full spectrum of its risks and managing the combined impact of those risks as an interrelated risk portfolio.”

- Compliance as an organizational benefit

## Compliance Plan:

A formal program specifying the policies, procedures, and actions of an organization to help ensure quality care in a safe environment, and prevent and detect violations of laws and regulations

- Compliance as a commitment to act legally and ethically.

# Guiding Principles and Assessment Tools of ERM as Applied to Healthcare

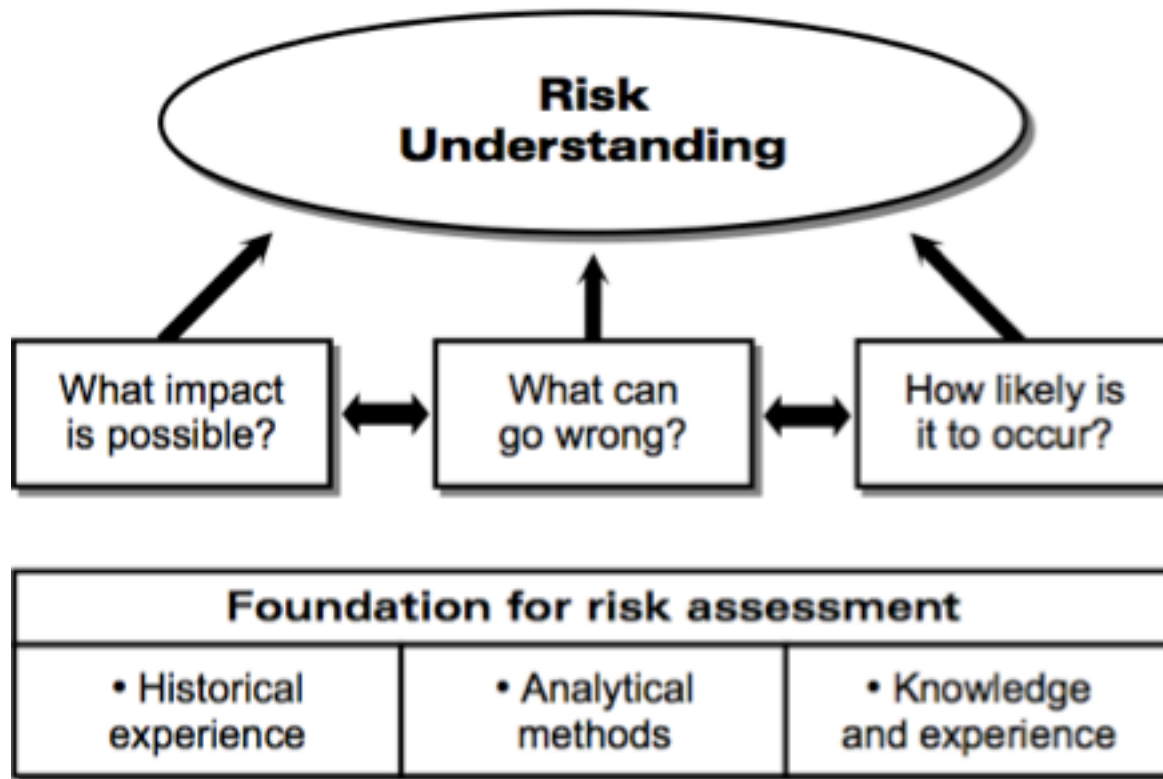
## Guiding Principles of ERM

- Advance Safe Health Care
- Manage Uncertainty
- Encourage Multidisciplinary Accountability
- Optimize Organizational Readiness
- Promote Positive Organizational Culture
- Maximize Value Protection and Creation
- Advance ERM Practices—continuous and comprehensive
- Utilize data/metrics to prioritize risks
- Align Risk Appetite and Strategy

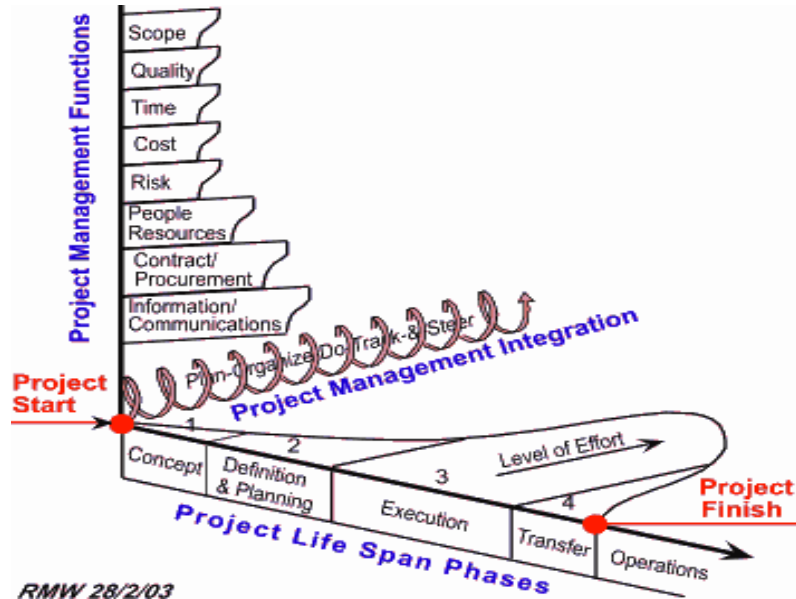
## Assessment and Measurement Tools

- Incident/Occurrence Reports
- Adverse Event Measurement tools
- Surveys, questionnaires, focus groups, brainstorming, etc
- FMECA – Failure Mode Effects and Criticality Analysis
- Quantitative risk modeling
- Risk/heat maps
- Predictive analysis, simulations, etc.
- Risk Assessment Scales
- Forced Ranking, Risk Mapping

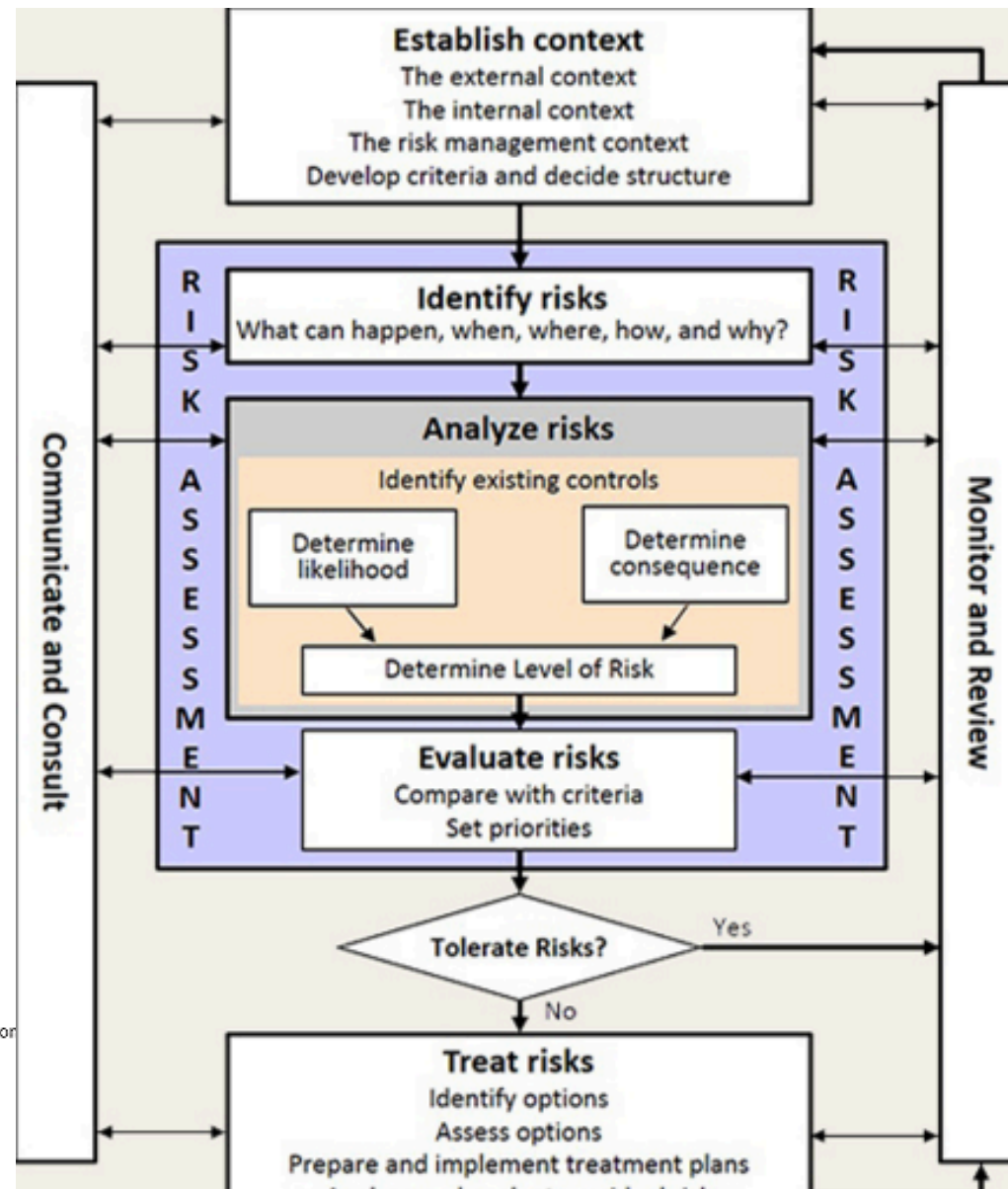
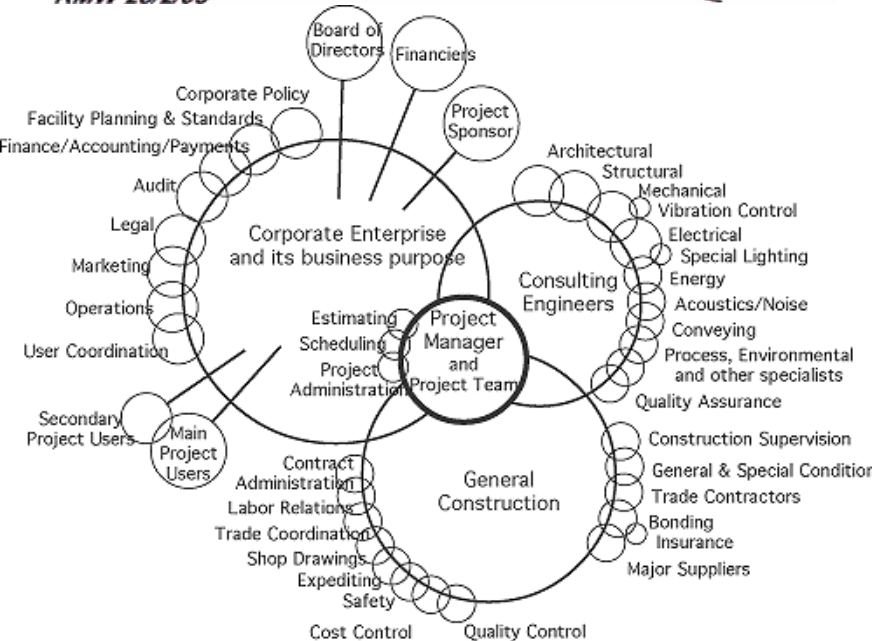
# Basic Risk Management Plans



# Complicated Risk Management Plans



RMW 28/2/03



# Shared Goals and Processes of Risk Management and Compliance

## **Goals:**

- Ensure Quality Care
- Maintain a Safe Environment
- Protect Financial Resources
- Ensure Legal and Regulatory Compliance

## **Processes:**

- Identify and evaluate risk
- Correct, reduce, and/or eliminate risk
- Investigate, manage and respond to accidents
- Identify and maintain compliance with applicable federal, state, and local statutes

# Shared Goals; Different Approaches

## Enterprise Risk Management

- Addresses full spectrum and combined impact of an organizations risks
- Manages exposures as an interrelated risk portfolio rather than in their individual “silos”
- Recognizes risks cut across the entire organization; combined exposure may exceed the sum of the individual risks
- Compliance issues may be viewed in context of risk
- Proactive vs. Reactive

## Compliance

- Formalized program established set of policies, procedures and actions
- Focus on care and compliance with legal and ethical requirements (fraud and abuse)
- Priority on training, education, auditing and communication
- Focus on programmatic responsibilities such as self reporting obligations
- Supposed to be proactive vs. reactive

# What is Human Capital?

- Human Capital is a measure of the skills, education, capacity and attributes of labor which influence their productive capacity and earning potential. It is the “*knowledge, skills, competencies* and other attributes embodied in individuals or groups of individuals acquired during their life and used to *produce goods, services or ideas in market circumstances*.”
- The management of Human Capital involves many varied aspects ranging from financial to legal, from compliance to employee well being. The most competitive companies will have the best strategies and methods for attracting, hiring, managing, developing and retaining top performing talent.
- An investment in Human Capital can yield results and generate positive ROI; Managed well, Human Capital can create tangible returns that result in a sustainable competitive advantage
- **In most business enterprises, particularly healthcare, employees represent their greatest costs and their most important resource.**

# Risks Associated with Employees are Ubiquitous and Permeant Every Risk

## Domain

### Legal/Regulatory

- Fraud and Abuse
- OIG Investigations
- AKS and Stark
- Compliance Mandates

### Clinical, Patient Safety

- Infection control, Serious safety events
- Medication errors
- Clinical Competency
- Delay in treatment
- Failure to follow physician orders
- Elopement

### Human Capital

- Hiring
- Selection
- Retention
- Turnover
- Absenteeism
- Disruptive behavior
- Productivity
- Compensation
- Sexual Harassment
- Diversity
- Staffing
- Ergonomics

- Credentialing
- Staffing
- Adverse event management
- Failure to follow chain of command
- Failure to implement policies and procedures

### Technology:

- EHR/EMR
- Security
- HIPAA Privacy



# Principle Health Care Risks That are Related to Employee Conduct/Misconduct

## Risks arising from employee action or inaction:

- ✓ Patient Care and Safety
- ✓ Professional liability/medical malpractice
- ✓ Regulatory Risks (CMPs, Investigations, Overpayments, etc. arising from employee misconduct or status)
- ✓ HR issues (reliability, performance, disruption, comp claims, etc.)
- ✓ Drug Diversion
- ✓ Financial Fraud: Risk to provider, patients and co-employees
- ✓ Data and Record Security (HIPAA and Cyber Liability)
- ✓ Patient Relations
- ✓ Security and Safety of the Organizations Environment

**All are addressed by Compliance Plans and Risk Management Programs**

# Healthcare Organizations are Evaluated and Measured by their Employee's Actions

***Physicians are the backbone of their practices, but...***

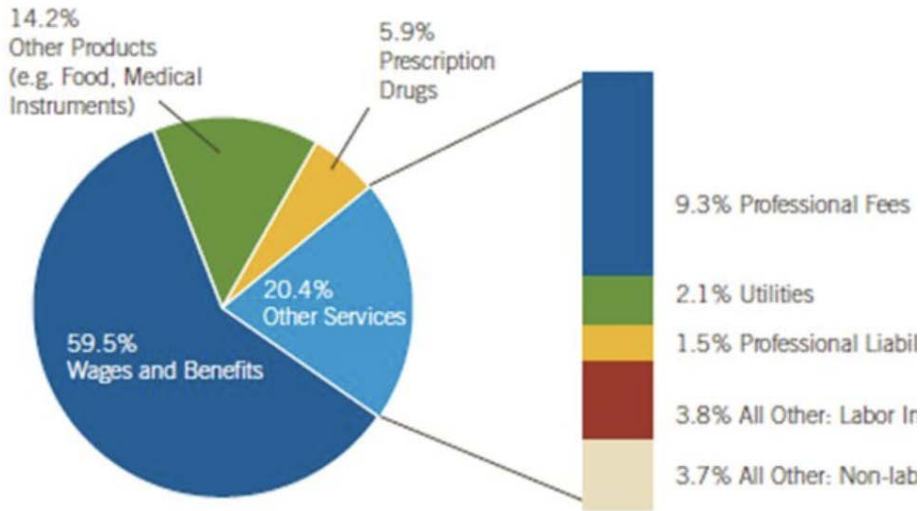
- Employees are often its face, voice and hands
- They are their largest cost and most significant risk.
- Results are dependant on employees and linked to their conduct and misconduct
  - Risk of Patient Abuse
  - Access to Prescription Medication
  - Access to Patient records
  - Access to other critical information (billing and financial)

OPERATING EXPENSES	PERCENTAGE OF TOTAL REVENUE
Support staff salaries	26.28
Support staff benefits	5.52
Information technology	1.85
Laboratory	3.26
Drug supply	3.42
Imaging	0.91
Medical/surgical supplies	1.70
Building and occupancy	6.81
Furniture and equipment	0.29
Furniture and equipment depreciation	0.77
Administrative supplies and services	1.71
Professional liability insurance	1.52
Other insurance premiums	0.23
Outside professional fees (legal, accounting, etc.)	0.86
Promotion and marketing	0.40
Other operating expenses	1.74
<b>Total</b>	<b>59.74*</b>

# Hospital Costs and Hospital Employees

Wages and benefits for caregivers and support staff represent 60 percent of spending on hospital care.

Chart 11: Percent of Hospital Costs<sup>(1)</sup> by Type of Expense, 4Q09

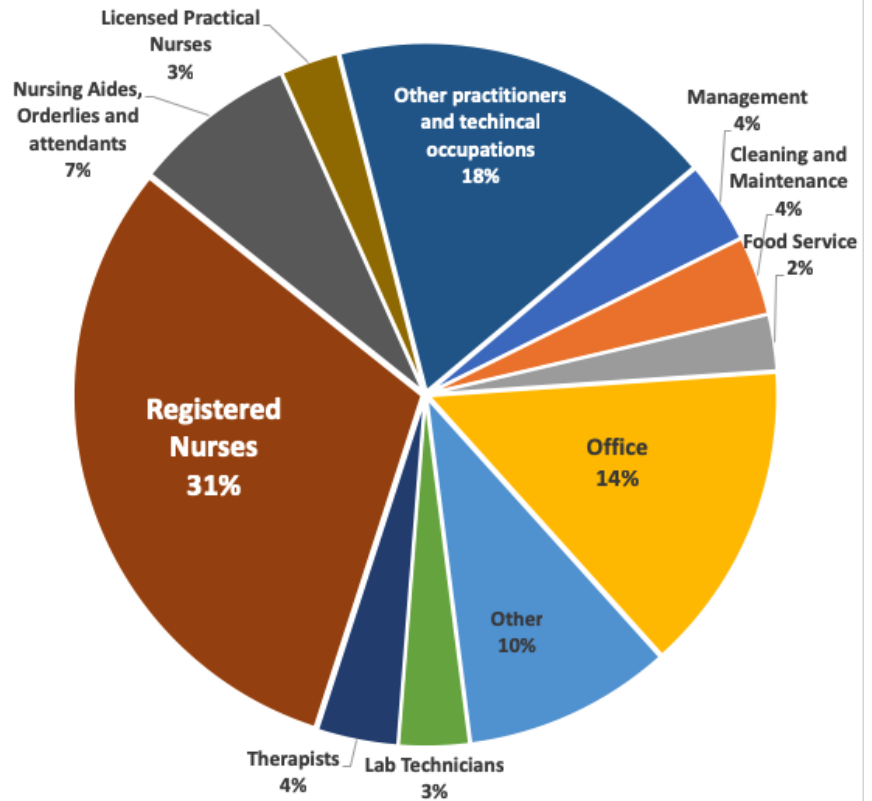


Source: AHA analysis of Centers for Medicare & Medicaid Services data, using base year 2006 weights.

(1) Does not include capital.

(2) Includes postage and telephone expenses.

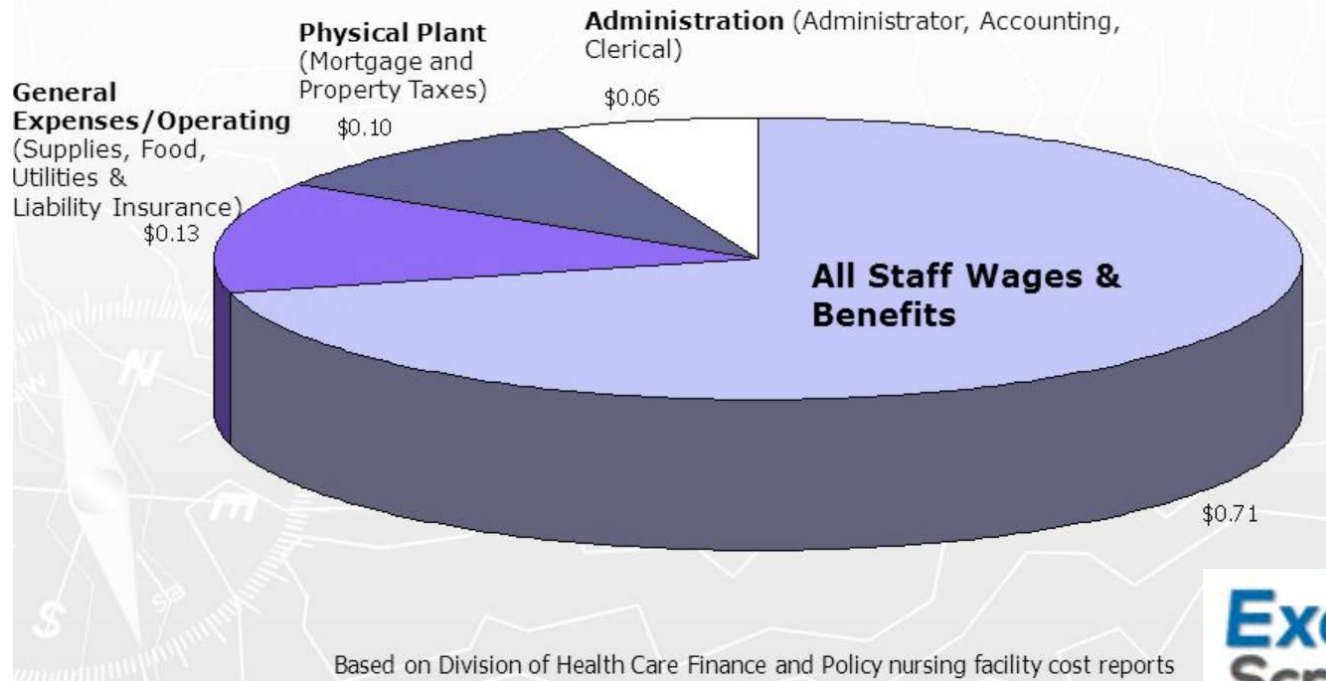
POSITIONS IN HOSPITALS



Prepared by Society for Health Systems based on AHA data;

# Employee Costs Associated with Nursing Facilities

**The Nursing Facility "Dollar":  
Breakdown of Nursing Home Spending**  
*Salaries and benefits represent 71 cents of every dollar spent by nursing facilities*



Based on Division of Health Care Finance and Policy nursing facility cost reports

## The Healthcare Sector Accounted for the Highest Percentage of Workplace Injuries: Almost Three Times Higher than Construction!

Sector	No. of Reports	%
Human health and social work activities	1490	19.2%
Manufacturing	1358	17.5%
Wholesale and retail trade; repair of motor vehicles and motorcycles	1084	13.9%
Public administration and defence; compulsory social security	902	11.6%
Transportation and storage	854	11.0%
Construction	603	7.8%
Administrative and support service activities	276	3.6%
Education	212	2.7%
Accommodation and food service activities	196	2.6%
Water supply; sewerage, waste management and remediation activities	184	2.4%
Other service activities	141	1.8%
Financial and insurance activities	112	1.4%
Agriculture, forestry and fishing	88	1.1%
Information and communication	68	0.9%
Professional, scientific and technical activities	61	0.8%
Arts, entertainment and recreation	53	0.7%
Mining and quarrying	41	0.5%
Electricity, gas, steam and air conditioning supply	30	0.4%
Real estate activities	17	0.2%
Missing	2	0.0%
<b>Total</b>	<b>7775</b>	<b>100.0%</b>

### Healthcare Sector (NACE Q) Illness and Injury Statistics 2015

The healthcare sector (NACE Q) accounted for 19.2% of all workplace injuries reported to the HSA in 2015.

### Injuries reported by economic sector 2015 (HSA)

Source: HSA Summary of Workplace Injury, Illness and Fatality Statistics 2014-2015

# Let's Not Forget Litigation

Specialty	Texas Avg. Premium	Texas Max. Premium	Florida Avg. Premium	Florida Max. Premium
OB/GYN (Major Surgery)	\$34,258	\$89,732	\$76,452	\$118,405
Orthopedic (No Spine)	\$24,660	\$71,109	\$42,087	\$70,341
Surgeon (Gen. Surgery)	\$24,069	\$58,798	\$61,379	\$107,860
Emergency Medicine	\$17,708	\$83,239	\$32,968	\$53,727
Cardiologist (Minor Surgery)	\$14,882	\$41,920	\$25,651	\$42,275
Ophthalmology (Major Surgery)	\$11,595	\$30,114	\$18,525	\$30,950
Radiology - Diagnostic	\$11,330	\$30,114	\$24,802	\$51,270
Pediatrics (No Surgery)	\$9,684	\$30,114	\$14,546	\$28,136
Internal Med (No Surgery)	\$9,428	\$30,114	16,761	\$28,136
Family Practice (No Surgery)	\$9,228	\$30,114	\$15,506	\$28,136

In addition to malpractice Insurance, providers also purchase business insurance which, among other things, insures the actions of employees, as well as workers compensation, HIPAA, and Cyber insurance – all of which can be impacted by an Excluded Employee

# Healthcare's Epic Three Headed Monster: The Head in the Middle Impacts the Other Two!

**HEAD #1**

**Patient Safety**

**HEAD #2**

**Human Capital**

**HEAD #3**

**Legal/Regulatory**



**HCCA-OIG Compliance Effectiveness Roundtable**  
**Roundtable Meeting: January 17, 2017**  
**Washington DC**

**Measuring Compliance  
 Program Effectiveness:  
 A Resource Guide**

ISSUE DATE: MARCH 27, 2017

*HCCA-OIG Compliance Effectiveness Roundtable  
 Roundtable Meeting: January 17, 2017 / Washington, DC*



1



STANDARDS  
 POLICIES &  
 PROCEDURES

2



COMPLIANCE  
 PROGRAM  
 ADMINISTRATION

3



SCREENING AND  
 EVALUATION OF  
 EMPLOYEES,  
 PHYSICIANS,  
 VENDORS, ETC

4



COMMUNICATION  
 EDUCATION AND  
 TRAINING

5



MONITORING,  
 AUDITING,  
 INTERNAL  
 REPORTING

6



DISCIPLINE  
 FOR NON-  
 COMPLIANCE

7



INVESTIGATION  
 S AND  
 REMEDIAL  
 MEASURES

**Exclusion**  
**Screening**



# Screening and Evaluation of Employees, Physicians, Vendors and other Agents

- Processes to identify and disclose conflicts of interest;
- Compliance obligations in job descriptions and accountability element of performance evaluation;
- Verify screening conducted in accordance with applicable federal and state rules and laws;
- Insure proper screening of government sanction lists;
- Verify third party screening;
- Insure proper corrective actions are taken based on background/sanction check findings.

# Screening and Evaluation of Employees, Physicians, Vendors and other Agents

- **Policy to identify type of screening**
  - Which employees, medical staff, and others will undergo criminal, financial and/or other background checks prior to hire.
  - Which databases must be screened against and the frequency of screening.
- **Established a policy regarding the frequency of screening**
  - All employees are screened prior to hire and monthly thereafter
  - Screening considers other names/aliases and States used by a prospective employee.
  - Review applications for each type of screening (criminal, OIG, SAM, State, SSN, etc.) and audit to determine if screening was completed against other names/states used by the prospective employee
  - Verify screening conducted in accordance with applicable Federal and State law
- **Vendors and other 3rd parties screening satisfies compliance obligations**
  - They must be screened or require vendors and other third parties to certify screening has been completed as required by the agreement.
  - The organization has established a policy outlining the compliance obligations of vendors and other third parties {including adherence to the Standards of Conduct}. Vendor agreements include the right to
  - audit the vendor to ensure compliance with their obligations.
- **Policy licensure and certification reviews in addition to credentialing**
- **Audit function as to each element**

# Criminal Convictions or Exclusions From a Legal Perspective

## **Exclusion**

Final Administrative Action by a Federal or State Agency that unequivocally bars participation by an individual or entity in health care programs because they pose **unacceptable risks to patient safety and/or program integrity.**

## **Exclusion List**

Public Notice of individuals and entities adjudicated to be **unfit to work in healthcare** because they pose unacceptable risks to patient safety and/or fiscal integrity.

# Breaking News: Western Pennsylvania Opioid Fraud and Abuse Detection Unit (OFADU): Arrest Suspended NP

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Wednesday, February 6, 2019

## Suspended Nurse Practitioner Indicted for Illegal Prescriptions

### OFADU Participants:

FBI

HHS/OIG

DEA

DOJ – Criminal Division

DOJ – Civil Division

IRS – Criminal Division

Postal Inspectors

Veterans Administration

OPM/OIG

PA. Attorney General

PA. MFCU

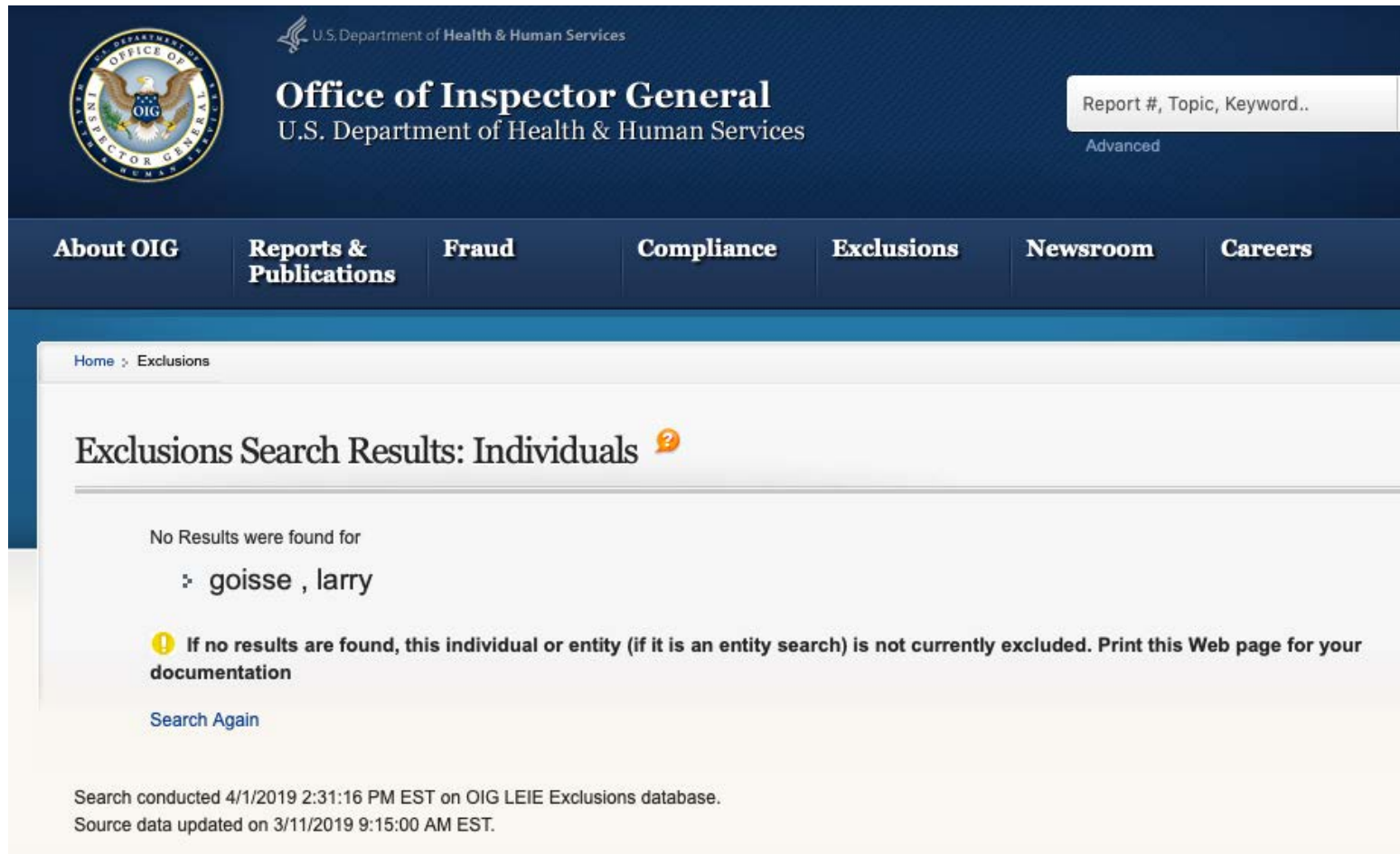
PA. Bureau of Narcotics

PA. Division of Licensing



# Suspended Certified Nurse Practitioner Does Not Appear on OIG Exclusion List

## *OIG Exclusion Search Results for Suspended Nurse Practitioner: April 1, 2019*



The screenshot shows the official website of the Office of Inspector General, U.S. Department of Health & Human Services. The page is titled "Exclusions Search Results: Individuals" and displays a search result for "goisse, larry". The search results indicate that no results were found for this individual, and a message states: "If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation." A "Search Again" link is provided below the message. The page also includes a search bar at the top right and a navigation menu at the top.

U.S. Department of Health & Human Services  
Office of Inspector General  
U.S. Department of Health & Human Services

Report #, Topic, Keyword..  
Advanced


About OIG Reports & Publications Fraud Compliance Exclusions Newsroom Careers

Home > Exclusions

### Exclusions Search Results: Individuals

No Results were found for

↳ goisse , larry

 If no results are found, this individual or entity (if it is an entity search) is not currently excluded. Print this Web page for your documentation

[Search Again](#)

Search conducted 4/1/2019 2:31:16 PM EST on OIG LEIE Exclusions database.  
Source data updated on 3/11/2019 9:15:00 AM EST.

# 294 Counts for Prescribing Illegal Prescriptions for Suspended Certified Nurse Practitioner

## Pennsylvania Medcheck List as of January 10, 2019

Provider Last Name	Provider First Name	Middle Name	Provider Business Name	License Number	Status	Begin Date	End Date	County	List Date	NPI Number
Goisse	Larry	J		SP014433 / RN577684	Precluded	09/11/2018	12/31/2299	Allegheny	01/10/2019	1437555109

### POLICIES

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# What is an Unacceptable Litigation Risk?

**IF** there were to be an accident or incident resulting in harm to a patient or financial loss to the practice, **and**

**IF** the harm or loss was caused by, or related to the person in the previous slide, **and**

**IF** you screened the OIG's List of Excluded Individual and Entities but you did not screen the MedCheck list ...

*Would a judge or jury be sympathetic to your explanation that you didn't screen the State Exclusion Lists because it was too difficult? Or too costly? Or that you didn't know the list existed?*

# This is How it Would Look to a Jury!





# Takeaway Points

- ✓ Pre-Employment Screening is a critical component of Risk Management and Compliance Programs as the risks associated with problem employees impact virtually every aspect of a provider's practice.
- ✓ Pre-Employment Screening serves its organization best when it takes a broader view of the prospective client and considers him or her in the context of their potential value to the organization as a whole
- ✓ When Criminal Background Checks are part of pre-employment screening, providers should make sure to identify the specific rules governing that their practice; they should also remember that there are limitations to their utility.
- ✓ Providers should be aware of the potential for applicants to create fake backgrounds, and should create policies and procedures to identify them.
- ✓ Employment decisions can be based on exclusions because excluded employees are deemed to pose unacceptable safety and financial risks. Robust screening is a recommended best practice because even though Exclusion Lists are the government's chosen form of **public notice**, information sharing among government agents is limited.

# Questions?



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