

Minimize the Threat of Sanctioned Staff – Now and in the Future

By Steve Walls

For hospitals and health care facilities, the potential of employing sanctioned, excluded, debarred and disciplined individuals is an issue that keeps administrators awake at night. The risks are high for patients and the hospital. And there has been no sure-fire way to assure that such sanctioned individuals would not be hired. There is no, single centralized database for sanctioned medical staff, and sanction records are scattered across roughly 1,500 sources – many of which could be considered incomplete or unreliable. The problem has been seemingly insurmountable. But now there is a bright light at the end of that tunnel because screening providers are developing what are called compliance assurance solutions that eliminate much of the risk that comes with hiring the wrong personnel. And the risk is considerable.

The Risk of Noncompliance

While no reliable centralized databases have existed, federal and state agencies still hold health care organizations responsible for monitoring sanctions lists. Employing or contracting with individuals or entities on a sanction or exclusion list can place a health care organization in danger of noncompliance with the Office of Inspector General (OIG) and Centers for Medicare and Medicaid Services (CMS). Depending on the circumstances, some of the key risks of noncompliance could include:

- Exclusion from participating in federal programs like Medicare and Medicaid, which would be devastating for a health care organization
- Substantial fines beginning at \$10,000 for each item or service rendered by an excluded party
- Penalties of up to \$11,000 per claim plus damages for offenses that fall under the False Claims Act
- Possible placement in a Corporate Integrity Agreement (CIA), which subjects a health care organization to audits and scrutiny for five years to ensure that the organization takes measures to maintain compliance
- Criminal fines and jail time for certain violations
- Damage to an organization's brand reputation and loss of the trust of patients, employees, and the community.

To compound the problems for health care organizations, the requirements for monitoring sanction and exclusion lists are expected to become more stringent.

Existing Requirements

The OIG mandates that health care organizations not hire or do business with excluded or sanctioned individuals or vendors. Under the Affordable Care Act, an individual or vendor sanctioned and excluded in one state is not permitted to participate in federal programs in all other states. Current OIG requirements also stipulate that organizations check new and existing employees and vendors against the OIG List of Excluded Individuals/Entities (LEIE)¹ and General Services Administration (GSA) Excluded Parties List System (EPLS)² at least once a year.

Newer Requirements

Recently the New York State (NYS) Office of the Medical Inspector General (OMIG) announced its recommendation for organizations to check employees against sanction and exclusion lists monthly³. While this new requirement applies only in New York, industry experts expect other

states to follow their lead by introducing similar monthly monitoring requirements. It is also likely that the OIG will release a federal recommendation that mandate checks either quarterly or monthly, instead of annually.

Another new development is the OIG's recent push at the state level to enforce how organizations upload their sanction and exclusion data to the federal level. Currently there are large gaps in time and information from when a person or vendor is sanctioned at the state level and when that information appears on the OIG LEIE and GSA EPLS. The OIG is enforcing how states publish data to ensure it is done accurately and in a timely manner. The OIG is also making an effort to close any time delays in publishing this information in a larger effort to enforce compliance with its existing rule that a sanction or exclusion in one state is to be upheld nationwide. At least five states have also already created their own published exclusion lists and about 17 other states have additional sanction and exclusion data available. It looks like more states may follow this trend and introduce state-level sanction publishing requirements.

To prepare for the more stringent requirements to come, health care organizations need to:

- 1. Screen Existing Employees and Vendors**

Organizations need to run their existing roster of employees and vendors against the federal sanction lists and all available state sanction lists in order to catch any current gaps in monitoring.

- 2. Implement a pre-employment monitoring program**

Put a pre-employment screening process in place that has a tight filter for sanction and exclusion checks. Be sure this program applies across employees, contract or temporary workers, and vendors.

- 3. Plan for ongoing monitoring monthly or quarterly**

While the current federal regulations recommend screening for sanctions and exclusions no less than annually, that is expected to change to a recommendation for quarterly or monthly sanction checking.

These steps may be easily described but they can be challenging for an organization to implement. As mentioned, there are more than 1,500 sources of health care sanction data in the United States. These include state and federal agencies such as the OIG, the Office of Foreign Assets Control (OFAC), the U.S. General Services Administration (GSA), the U.S. Drug Enforcement Administration (DEA), the U.S. Food and Drug Administration (FDA), state medical boards, dental boards or boards of pharmacy and state Medicaid boards.

Each of these agency data sources provides unique information critical to health care sanctions. For example, ethical lapses in a clinical study are reported through a different agency than prescription drug abuse. To execute a thorough sanction screen, compliance officers must check all data sources. And now there is a methodology for doing this reliably.

Intelligent Compliance Assurance

In order to manage their sanctions screening programs today, health care organizations can rely upon an emerging type of solution called intelligent compliance assurance. These solutions are generally available from software-as-a-service providers and provide screening and near-real-time monitoring for health care sanctions. Intelligent compliance assurance combines sanctions data from federal, state, and local agencies into a single database. In addition, there are several components that an organization should look for in an intelligent compliance assurance solution:

- Rosters: Rosters enable compliance executives to upload their entire roster of employees. All roster members are screened against sanction data sources for matches. Intelligent compliance assurance solutions should support human resource information systems and traditional file types such as CSV.
- Data Sources: Intelligent compliance assurance solutions should utilize a centralized database that contains exclusion list information aggregated from multiple primary sources, e.g., federal, state, and local sanctioning agencies, so as to provide maximum coverage of potential sanctions.
- Verification: Verification ensures the identities of those who appear on the sanctions list match the professionals in question. Verification is completed using a combination of name and name variants, Social Security numbers, addresses and dates of birth.
- Monitoring: Monitoring ensures that compliance executives are notified when an employee appears on a sanction list. When monitoring is enabled, compliance officers can choose the screening frequency, e.g., monthly or quarterly.

For any health care professional that has been required to monitor sanctions through the maze of sources and data now available, the use of an intelligent compliance assurance solution brings simplicity and efficiency to their compliance efforts. Most importantly, these solutions can protect both the public and the health care institution. For example, consider the case of a doctor who had his license revoked by the Oregon Medical Board after multiple disciplinary actions for professional misconduct and gross negligence involving inappropriate touching of nurses and staff. This doctor had four sanctions on his record between 2002 and 2008, leading to revocation of his license in both Illinois and Oregon.

Due to states not effectively reporting these violations to OIG and GSA, this doctor did not appear as a sanctioned physician until December 2009 – nearly a year and eight months from the date his license was revoked. By utilizing solely OIG and GSA sanctions databases, compliance executives would have unknowingly allowed this doctor to perform his duties, which could have potentially exposed the hospital to large financial penalties and harm to its reputation. A properly implemented compliance assurance solution could have helped the hospital to identify these violations and take appropriate action based on this information.

The sanctions screening challenge promises only to become more challenging. For health care organizations, intelligent compliance assurance can be a solution that provides a good night's sleep.

Steve Walls is Director of Health Care Solutions at HireRight.

1 OIG List of Excluded Individuals/Entities (LEIE): <http://www.hireright.com/Office-Of-Inspector-General-LEIE.aspx>

2 General Services Administration (GSA) Excluded Parties List System (EPLS): <http://www.hireright.com/GSA-EPLS-Sanctions-Check.aspx>

3 New York State Medicaid Update, April 2010, Volume 26, Number 6
(http://www.health.state.ny.us/health_care/medicaid/program/update/2010/2010-04.htm#rem)