

VNS HEALTH CORPORATE POLICY & PROCEDURE

TITLE: Sanction Checks

APPLIES TO: VNS Health Home Care, VNS Health Hospice Care, VNS Health Personal Care, VNS Health Behavioral Health, Inc., Medical Care at Home, P.C., VNSNY Care Management IPA, Inc., VNS Health Health Plans, and VNS Health MSO (collectively, “VNS Health”)

POLICY OWNER: Corporate Compliance Department

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1. PURPOSE

As mandated by federal and state laws, and under the VNS Health Compliance Program (the “Program”), VNS Health will perform or require the performance of all required exclusion screenings on employees, Board members, referral sources, and contractors. This policy and procedure outlines the respective processes for ensuring that all required screening occurs, that the screenings are tracked and monitored, and that any potential exclusions are investigated and immediately acted upon.

2. DEFINITIONS

Sanctioned Entity. A sanctioned entity is defined as an entity that has been convicted of any of the following: program-related crimes; patient abuse; any felony related to health care fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct; felony controlled substance violation; or, after August 21, 1996, was convicted of a misdemeanor relating to fraud, a conviction relating to obstruction of an investigation or audit, or a misdemeanor conviction relating to a controlled substance, as described in 42 U.S.C. § 1320a-(7)(b)(1)-(3); or that has been excluded from participation in a Medicare program or under a state health care program. The OIG is authorized to exclude an individual owner, officer, or managing employee of a sanctioned entity from participation in any federal health care program. 42 U.S.C. § 1320a-7(b).

Exclusion. Exclusion means the temporary or permanent barring of compensation or reimbursement for any services furnished, ordered or prescribed by that person or entity under Medicare, Medicaid, or any other Federal health care program.

Ineligible Person. An Individual or entity who (i) is currently excluded, debarred, or suspended from participation in the Federal health care programs or Federal procurement or non-procurement programs; or (ii) has been convicted of a criminal offense that falls within the

scope of 42 U.S.C. § 1320a-7(a) but has not yet been excluded, debarred, or suspended.

Federal Health Care Program. A “Federal Health Care Program” is any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or any state health care program, excluding the Federal Employees Health Benefit Program but including, without limitation, Medicare, Medicaid, Tricare, and programs receiving federal or state grants.

State Health Care Program. A “State Health Care Program” is any state plan approved and funded under Medicaid, or any program receiving grant funding under Title V (the Maternal and Child Health Services Block Grant Program), Title XX Subtitle A (Social Services Block Grants), or Title XXI (the Children’s Health Insurance Program) of the Social Security Act.

Furnish. To “furnish” an item or service is to provide or supply it, directly or indirectly. A “furnisher” is anyone who furnishes items or services that are reimbursed by or funded by, directly or indirectly, a Federal Health Care Program.

Exclusion Lists. “Exclusion Lists” means the following lists, which are checked following the Procedures detailed in this document:

- a. The United States Department of Health and Human Services, Office of Inspector General’s (“OIG”) List of Excluded Individuals/Entities (“LEIE”) (currently available on-line at: http://www.oig.hhs.gov/fraud/exclusions/exclusions_list.asp);
- b. The General Service Administration’s (“GSA”) Excluded Parties List System (“EPLS”) (currently available on-line at: <http://www.usgovxml.com/dataservice.aspx?ds=EPLS>);
- c. The New York State Office of the Medicaid Inspector General’s (“OMIG”) List of Restricted, Terminated or Excluded Individuals or Entities (currently available on-line at: <https://omig.ny.gov/medicaid-fraud/medicaid-exclusions>);
- d. The National Plan Provider Enumeration System (NPPES) (currently available on-line at: <https://nppes.cms.hhs.gov/NPPES#/https://nppes.cms.hhs.gov/NPPES/Welcome.do>) (used to validate National Provider Identifier (“NPI”) information);
- e. The Social Security Administration Death Master File. Access to the Death Master File is restricted and requires all users to complete a certification form (currently available on-line at: <https://www.ntis.gov/index.xhtml>);
- f. The OIG Most Wanted Fugitives (currently available on-line at: <http://oig.hhs.gov/fraud/fugitives/index.asp>); and
- g. The Office of Foreign Assets Control – Specially Designated Nationals (currently available online at: <https://home.treasury.gov/policy-issues/office-of-foreign-assets-control-sanctions-programs-and-information>).

Other sources and lists may also be checked as VNS Health deems necessary and appropriate. For example, if a potential employee's application for employment indicates that they worked in any other state(s), or if a contractor has worked, or works, in any other state(s), the equivalent state- specific lists, if available, may also be checked.

Primary Exclusion Lists. The "Primary Exclusion Lists" include databases a-d of the "Exclusion Lists".

3. POLICY

VNS Health is committed to using good faith, commercially reasonable efforts to not employ, allow to serve on its Board, contract with, or otherwise accept referrals from individuals or entities that are currently excluded, debarred or suspended from, or otherwise ineligible to participate in any Federal Health Care Program or, any federal procurement or non-procurement program.

This Policy applies to all candidates for employment with VNS Health and employees and certain volunteers; members of the Board of Directors of VNS Health and the Boards of Directors of each of the VNS Health subsidiaries and affiliates (collectively, the "VNS Health Board Members"); all physicians, practitioners, and other providers who order or prescribe health care services provided by VNS Health (collectively referred to as "referral sources"); any individuals or entities in the VNS Health Health Plans networks, and all other vendors and contractors who/which do business with VNS Health (collectively referred to as "contractors").

4. PROCEDURES

To ensure compliance with the above Policy, VNS Health will, at minimum, take the following actions:

A. PROCEDURES FOR DETERMINING INELIGIBILITY

1. EMPLOYEES

- a. **Candidates for Employment.** Each candidate for employment is required to disclose on their employment application whether they are an Ineligible Person. Any applicant who is an Ineligible Person will not be hired or otherwise become affiliated with VNS Health.
- b. **New Employees.** Before hiring any new employee and for certain volunteers, VNS Health or its designee will, at minimum, check the individual's name against the Exclusion Lists. If the individual's name appears on any of the Exclusion Lists, any offer of employment must be withdrawn and the individual may not be hired unless clear evidence is presented showing that the matters leading to the appearance on the Exclusion Lists(s) have been finally resolved, making that individual no longer an Ineligible Person.
- c. **Monthly Checks of Current Employees.** On a monthly basis, VNS Health or its designees will check the names of all current VNS Health employees and certain volunteers against each of the Exclusion Lists. If an individual's name appears on any of the Exclusion Lists, the Procedures outlined in Section B, below, will be followed.

2. REFERRAL SOURCES

- a. **New Referral Sources.** Before accepting orders or prescriptions for health care services from any new referral source, VNS Health or its designee will, at minimum, check the individual or entity's name against the Primary Exclusion Lists. If the individual or entity's name appears on any of the Primary Exclusion Lists, the individual or entity may not serve as a referral source to VNS Health unless clear evidence is presented showing that the matters leading to their appearance on the Primary Exclusion Lists(s) have been finally resolved, making that individual/entity no longer an Ineligible Person.
- b. **Monthly Checks of Referral Sources.** On a monthly basis, VNS Health or its designee will check the names of all current health care referral sources against each of the Exclusion Lists. If an individual or entity's name appears on any of the Exclusion Lists, the procedures outlined in Section B, below, will be followed.

3. VNS HEALTH HEALTH PLANS NETWORK PROVIDERS AND SUPPLIERS

- a. **Credentialing.** At the time of credentialing, VNS Health Health Plans checks all new providers, suppliers, and any other person or entity that directly or indirectly furnishes any items or services for VNS Health Health Plans members, against Primary Exclusion Lists. If the individual or entity's name appears on any of the Primary Exclusion Lists, the provider or supplier will be denied credentialing and will be placed on a "HOLD payment," which will prohibit payment from being made to the provider, supplier, or furnisher.
- b. **Monthly Network Checks.** On a monthly basis, VNS Health or its designee will check the names of the entire VNS Health Health Plans network all against each of the Exclusion Lists. If an individual or entity's name appears on any of the Exclusion Lists, and the provider, supplier, or furnisher will be placed on a "HOLD payment," which will prohibit payment from being made to the provider, supplier, or furnisher, the provider, supplier or furnisher will receive a written termination letter, and the contract with that person/entity will be terminated.

4. CONTRACTORS/VENDORS

a. **Checks of Current Contractors**

- i. VNS Health or its designee will check the names of all current contractors against each of the Exclusion Lists. If a contractor's name appears on any of the Exclusion Lists, the procedures outlined in Section B, below, will be followed.
- ii. In addition, VNS Health will require contractors who directly or indirectly provide or furnish health-related services (to (i) perform checks of each of the Exclusion Lists for all of the contractor's employees and subcontractors; (ii) maintain evidence of these monthly checks for 10 years; and (iii) make such evidence

available to VNS Health promptly upon its request.

- iii. If the contractor or any of its employees or subcontractors becomes an Ineligible Person at any time, the contractor will be required to immediately disclose such information to VNS Health's Chief Compliance & Privacy Officer or the VNS Health Health Plans/s VP of Compliance and Regulatory Affairs , or designee, and the procedures outlined in Section B, below, will be followed. If a contractor providing health-related services to VNS Health becomes an Ineligible Person, then the contract shall be terminated immediately.
- b. **Contract Provisions.** VNS Health will make commercially reasonable efforts include the following provisions in its legal agreements with contractors:
 - i. For contractors providing health care services that are reimbursed by any Federal Health Care Program, VNS Health will make commercially reasonable efforts include a representation and warranty from such contractors that neither the contractor nor its employees, subcontractors, and/or agents are Ineligible Persons.
 - ii. For other (i.e., non-health care services) contractors, a representation and warranty from its contractors that neither the contractor nor its employees are Ineligible Persons. If a contractor provides.:
 - iii. A requirement that the health care services contractors perform monthly checks of each of the Exclusion Lists for all of its employees and subcontractors, and maintain documentation thereof for 10 years, and that the documentation will be made available to VNS Health promptly upon its request;
 - iv. A requirement that the contractor immediately notify VNS Health if the contractor or any of its employees (or as applicable, its subcontractors or agents) becomes an Ineligible Person at any time during the term of the agreement or at any time relating to its performance of services for or on behalf of VNS Health; and
 - v. A provision that gives VNS Health the right to immediately terminate the agreement in the event the contractor (or as applicable, any of its employees or subcontractors) becomes an Ineligible Person at any time during the term of the agreement or at any time relating to its performance of services for or on behalf of VNS Health.

Notwithstanding the forgoing, legal counsel representing VNS Health in the contract negotiation shall have discretion to draft terms and conditions that: (i) meet VNS Health's legal obligations with respect to sanctions and exclusions; (ii) limit risk to VNS Health; and (iii) are mutually agreeable to VNS Health and the contractor.

B. RESPONSE TO A DETERMINATION OF INELIGIBILITY

Should any of the processes set forth above result in the determination that any individual or entity is, or has been, an Ineligible Person, then the following procedures will be followed:

1. NOTIFICATION OF THE CHIEF COMPLIANCE & PRIVACY OFFICER

The Chief Compliance & Privacy Officer or designee will be immediately notified in writing. The Chief Compliance & Privacy Officer or designee will then promptly notify the affected VNS Health entity or entities and all other individuals and departments within VNS Health that are necessary and appropriate.

2. SUSPENSION OF BILLING OR PAYMENT

If an ineligibility determination relates to an individual or entity who directly or indirectly provides, supplies, or furnishes any items or services for which claims for reimbursement are being submitted by or on behalf of VNS Health to a Federal Healthcare Program, any such billing or payment that is related (whether directly or indirectly) to the Ineligible Person will be immediately suspended.

3. INTERNAL INVESTIGATION AND CORRECTIVE ACTION

The Chief Compliance & Privacy Officer or designee will promptly undertake an appropriate investigation of the matter, consulting, as necessary, with counsel, and appropriate corrective and/or disciplinary action will be implemented promptly.

For example, such action may include, but is not necessarily limited to suspension without pay, or termination of an individual's employment or contract; termination of a contractor's agreement; not accepting orders, prescriptions, or referrals from such individual or entity; the return of monies or reimbursement improperly received, under applicable law; and/or disclosure or reporting to the appropriate government agency or agencies, under applicable law.

4. REMOVAL REQUIREMENT

If VNS Health has actual notice that any individual or entity has become an Ineligible Person, it will, at minimum, remove that individual/entity from responsibility for, or involvement with, VNS Health's business operations related to Federal Health Care Programs. VNS Health will also remove such individual or entity from any position for which their compensation, or the items or services furnished, ordered or prescribed by such individual/entity, are paid in whole or in part, directly or indirectly, by a Federal Health Care Program or otherwise with Federal funds, at least until the individual or entity is reinstated into the applicable Federal Health Care Program(s) and is no longer an Ineligible Person. Such action will be in addition to any other action deemed necessary and appropriate in connection with the investigation referenced above.

5. PROPOSED INELIGIBILITY

If VNS Health has actual notice that an individual or entity is the subject of an action that proposes to make the individual/entity an Ineligible Person, VNS Health will take all appropriate actions to ensure that the responsibilities of such individual or entity have not and will not adversely affect either the quality of care rendered to any Federal Health Care Program beneficiary or the integrity of any claim submitted to any Federal Health Care Program. Such action will be in addition to any other action deemed necessary and appropriate in connection with the investigation referenced above.

Any individual or entity who knows or should have known of their Ineligible Person status is required to report that immediately to the Chief Compliance & Privacy Officer or designee and the Human Resource Department.

6. NOTIFICATIONS TO FEDERAL OR STATE AGENCIES

If and to the extent required by any federal or state law, regulation, or contractual requirement, the Chief Compliance & Privacy Officer or designee will notify the relevant federal or state agency of the Ineligible Person per any required timeframe.

C. REPORTS

If checks of the Exclusions Lists performed under this Policy and Procedure reveal any Ineligible Persons and it is determined that the engagement of the Ineligible Persons required the return of monies or reimbursement from a Federal Health Care Program, then the related self-disclosure (made pursuant to the Self-Disclosure Policy) shall be reported the Board of Directors of VNS Health or its affiliates and/or the appropriate Board Committee.

D. DOCUMENTATION

The search results page of the Exclusion Lists, or other proof that the required checks of each of the Exclusion Lists have been performed, will be maintained by the Chief Compliance & Privacy Officer or designee (which may include, for example, a contractor retained to perform all or some of the required checks on VNS Health's behalf). Such documentation will be maintained for no less than 10 years.

Records of any investigations, corrective action, and/or disciplinary action taken under this policy and procedure will also be maintained by the Chief Compliance & Privacy Officer or their designee, and a copy will also be maintained in the individual's personnel file or other appropriate file. Such records will be maintained for 10 years or as otherwise required by applicable law, whichever is longer.

E. QUESTIONS/ENFORCEMENT

If you are aware of a situation that you believe may violate this policy, you must promptly contact an immediate supervisor, the SVP, Chief Compliance & Privacy Officer, Annie

Miyazaki-Grant via phone at (212) 609-7470 or email at Annie.Miyazaki-Grant@vnshealth.org, or a member of the VNS Health Compliance Department or VNS Health Health Plans Compliance Department. Reports may also be submitted anonymously via the VNS Health Health Plans Compliance Hotline at 1-888-634-1558, or the VNS Health Compliance Hotline at 1-888-634-1558, or the VNS Health Online Reporting Tool: www.vnshealth.ethicspoint.com. In addition, if you have any questions or concerns about this policy, you may raise them with any of the individuals identified above or via the Compliance Hotlines.

SEE ALSO: CHCD.2-PROVIDER SANCTIONS AND EXCLUSION CHECKS

REFERENCES:

Federal: 42 U.S.C. § 1320a-7(b); 42 U.S.C. § 1320a-7b; 42 C.F.R. § 1001.1901(b); 42 C.F.R. § 1001.2; 42 C.F.R. § 1001.10; 42 C.F.R. § 402.3.

Department of Health and Human Services Office of Inspector General: “Updated Special Advisory Bulletin on the Effect of Exclusion from Participation in Federal Health Care Programs,” Special Advisory Opinion (May 8, 2013); Department of Health and Human Services Office of Inspector General, “The Effect of Exclusion From Participation in Federal Health Care Programs,” Special Bulletin (September 1999); Centers for Medicare & Medicaid Services, State Medicaid Director Letters #09-001 (January 16, 2009) and #08-003 (June 12, 2008).

State: 18 NYCRR § 515.5; New York DOH Medicaid Updates (April 2010, Vol. 26, No. 6; June 2007, Vol. 23, No. 6; June 2005, Vol. 20, No. 7).

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