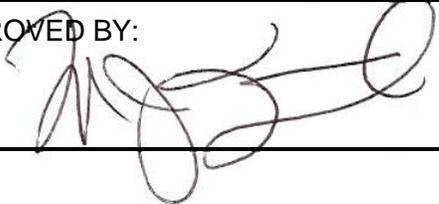




**DEPARTMENT OF MENTAL HEALTH
POLICY/PROCEDURE**

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APPROVED BY:  Director	SUPERSEDES 112.5 1/15/06	ORIGINAL ISSUE DATE 1/15/06	DISTRIBUTION LEVEL(S) 2

BACKGROUND STATEMENT REGARDING MONTHLY SANCTION SCREENING

Federal and State agencies have established increasingly stronger requirements for providers to ensure that no reimbursement claims are submitted to federally funded health care programs by agencies or individuals who are debarred, excluded, suspended, or are otherwise ineligible to participate in federally funded health care programs like Medicare and Medi-Cal.

Typical statutory language includes: No provider shall bill or submit a claim for or on behalf of any provider who has been excluded or suspended from participation in federally funded health care programs for any services rendered in whole or in part by any such provider during the term of such exclusion or suspension.

On January 16, 2009, the Centers for Medicare and Medicaid Services (CMS) released a letter (See Reference 1) establishing their guidance on this matter:

The CMS policy states that it is “the State’s responsibility to communicate to providers their obligations to screen employees and contractors for excluded individuals and entities both prior to hiring or contracting and on a periodic basis, and the manner in which overpayment calculations should be made;” (Page 1)

CMS further recommends a frequency for screening: “States should require providers to search the (Health and Human Service – Office of the Inspector General) HHS-OIG website *monthly* to capture exclusions and reinstatements that have occurred since the last search.” (Page 4, emphasis added)

Further, the Los Angeles County – Department of Mental Health (LAC-DMH) was audited by the State Department of Health Care Services (DHCS) for excluded and suspended agencies and individuals. A resulting corrective action requires the LAC-DMH and its contractors to screen exclusion and suspension sanction lists on a monthly basis.



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PURPOSE

- 1.1 To establish Los Angeles County – Department of Mental Health (LAC-DMH) policy that prohibits contracting with individuals or entities that are debarred, excluded, suspended, ineligible, or voluntarily suspended from receiving funds from federally funded health care programs, or who are prevented from securing federally funded contracts.
- 1.2 To establish guidelines designed to avoid the imposition of civil monetary penalties.
- 1.3 To ensure compliance with federal, state, and county statutes, rules, regulations, and policies and procedures regarding contracting with excluded and/or suspended individuals or entities. (See Background Statement Regarding Monthly Sanction Screening, above)

DEFINITIONS

- 2.1 **Contract:** The term “contract” refers to a written agreement between the County of Los Angeles and another party (contractor and/or vendor) to provide goods or services to LAC-DMH including, but not limited to, purchase orders, memoranda of understanding and Board approved contracts.
- 2.2 **Entities:** For the purpose of this policy, “entities” refers to any individual, group, hospital, organizational provider/agency, or to any staffing agency providing temporary staff to the LAC-DMH, including Locum Tenens agencies, that provide mental health services on behalf of LAC-DMH.
- 2.3 **Excluded:** Excluded means that a determination has been made by the Office of Inspector General or another federal agency that an entity or individual is not eligible to render services or be paid under a federally funded health care program. Excluded entities and individuals are listed on the Office of Inspector General’s List of Excluded Individuals and Entities (LEIE) and other applicable lists. Additionally, excluded individuals and entities are prohibited from furnishing, ordering, or prescribing activities and cannot provide administrative and management services.
 - 2.3.1 This exclusion status continues to apply to an individual even if he or she changes from one health care profession to another, or from one employer to another while excluded.
 - 2.3.2 An excluded entity or individual remains ineligible until such time as the entity or individual has been formally reinstated for participation in federally funded health care programs. The entity or individual must take specific actions to request reinstatement. The exclusion continues to apply regardless of whether the period of exclusion has been completed; it remains in effect until the sanctioning agency(ies) formally reinstates the entity or individual in writing.



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2.4 **Suspended:** Suspended means that a determination has been made by California’s Department of Health Care Services (DHCS) that an entity or individual is not eligible to render services or be paid under the Medi-Cal program. Additionally, suspended individuals and entities are prohibited from furnishing, ordering, or prescribing activities and cannot provide administrative and management services. Such entities and individuals are listed on the DHCS Suspended and Ineligible Providers List (S&I List).

2.4.1 This suspended status continues to apply to an individual even if he or she changes from one health care profession to another or from one employer to another while suspended.

2.4.2 A suspended entity or individual remains ineligible until such time as the entity or individual has been formally reinstated for participation in Medi-Cal. The entity or individual must take specific actions to request reinstatement. The suspension continues to apply regardless of whether the period of suspension has been completed; it remains in effect until DHCS formally reinstates the entity or individual in writing.

2.5 **Civil Monetary Penalties:** The Social Security Act authorizes the Secretary of Health and Human Services (HHS) to seek civil monetary penalties and assessments for many types of conduct. The Office of Inspector General is authorized to seek different amounts of civil monetary penalties and assessments based on the type of violation at issue. See 42 Code of Federal Regulations (CFR) §1003.103 for a full discussion of the topic. In summary, there is a wide variety of penalties that may be assessed in addition to the restitution of the original amount paid.

In addition to Office of Inspector General and other federal agencies having sanctioning authority, State Letter 10-05 dated September 23, 2010, provides official notification to the Mental Health Plans (counties) and their contractors that DHCS is authorized to impose administrative sanctions. (See Reference 2).

Additionally, LAC-DMH will be held harmless for the non-compliant actions of a contractor. Identifiable costs incurred by LAC-DMH as a result of unauthorized claims, and all corrective actions related to those unauthorized claims, will be paid by the contractor to LAC-DMH.

2.6 **Withhold Claims:** LAC-DMH managers who become aware of claims being submitted by agencies or individuals who are potentially excluded or suspended are authorized to place a hold on those claims. This action allows the claims to be submitted to the LAC-DMH information and billing system but requires that the claims to be withheld from any actions that forward the claims to the State for approval and payment.

2.6.1 A withhold action will often require immediate action. Notification of a withhold action must be provided after the fact to the respective Deputy Director, Chief Deputy Director, Chief Information Officer, Revenue Management Division, and the Compliance Officer, or designees.



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2.6.2 In the event of a confirmed exclusion or suspension, the LAC-DMH Chief Information Office Bureau (CIOB) will modify the information and billing system to prohibit subsequent submittals of new claims by the excluded or suspended entity/individual.

POLICY

- 3.1 LAC-DMH will not knowingly enter into or maintain contracts with:
 - 3.1.1 Individuals, or entities, or owners, officers, partners, directors, or other principals of entities, who have been recently convicted of a criminal offense related to health care; or
 - 3.1.2 Individuals, or entities, or owners, officers, partners, directors, or other principals of entities, who are excluded, suspended or otherwise ineligible to provide services under federally funded health care programs, including but not limited to Medicare and Medi-Cal.

- 3.2 LAC-DMH will not knowingly reimburse or make payments to an entity or individual who is excluded, suspended or otherwise ineligible to provide services under federally funded health care programs.

- 3.3 LAC-DMH will stop claiming activity, or place a hold on claims from being forwarded to the State, to prevent those claims being submitted by entities or individuals who are potentially excluded, suspended, or are otherwise ineligible to claim to federally funded health care programs.
 - 3.3.1 LAC-DMH will diligently coordinate with contractors to resolve the identification of individuals who are potentially excluded, suspended or otherwise ineligible to claim in an attempt to release withheld claims for processing in a reasonable time frame.

- 3.4 If an entity or individual fails to cooperate with LAC-DMH in resolving the identity of a potentially excluded, suspended or otherwise ineligible individual, LAC-DMH may sanction the contractor, consistent with DMH Policy No. 112.10, Graded Sanctions. Note that Policy No. 112.10 does not require a progression of disciplinary actions as egregious actions may lead to a contract termination without intermediate steps.

- 3.5 LAC-DMH will immediately terminate any contract when it is determined that an entity/contractor is controlled by a sanctioned individual.
 - 3.5.1 For control of an organization, the individual owns 5% or more of the entity, or
 - 3.5.2 The individual is an officer, director, agent, or managing employee of that entity.

- 3.6 On a monthly basis, contractors will review the LEIE and S&I List databases to ensure that none of their staff are sanctioned.



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- 3.7 Contractors are responsible for repayment to LAC-DMH for claims submitted to and paid by LAC-DMH for services rendered by an excluded and/or suspended individual/employee.
- 3.8 Contractors and vendors are responsible for payment to LAC-DMH for Civil Monetary Penalties resulting from claims submitted for excluded and/or suspended individuals and subsequently paid by LAC-DMH.

PROCEDURES

Contracts Development and Administration Division (CDAD)

- 4.1 CDAD shall ensure that all contracts contain provisions clearly stating that all contractors, their staff members, officers, partners, directors, or principals, or their subcontractors must remain, during the term of the contract, eligible to provide goods or services under federally funded health care programs or federally funded contracts.
- 4.2 CDAD shall ensure that all contracts using Department of Health and Human Services funding contain provisions requiring each contractor to certify that no staff member, officer, director, partner, or principal, or sub-contractor is excluded or suspended from any federal health care program, or federally funded contract. This certification shall be documented by completing the Attestation Regarding Federally Funded Program forms at time of the initial contract execution and upon renewal, or supersession of a contract (See Attachment 1).
- 4.3 CDAD shall complete a query process of the governmental sanction lists identified on Attachment 2 maintained by Federal, State, and County agencies prior to 1) contract execution, 2) contract supersession, or 3) at least yearly for contracts that are within their contract terms and not superseded, at the beginning of the fiscal year.
- 4.4 The queries will be conducted as follows:
 - 4.4.1 Sole Proprietorships: the name of the principal, owner, and/or entity, and any known “doing business as” (DBAs), shall be reviewed against the sanction lists identified in Attachment 2.
 - 4.4.2 Legal Entity, corporation, partnership, or Limited Liability Corporation (LLC): the name of owners, officers, partners, directors, board members, and principals, and any known DBAs, shall be reviewed against the sanction lists identified in Attachment 2.
- 4.5 Upon completion of the above queries, the query results will be entered on CDAD documentation checklist and initialed and dated by the Contract Administrator completing the query and placed in the contractor’s appropriate contract file in CDAD.
- 4.6 All query results will be retained by CDAD in accordance with its document retention procedures.



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Administrative Support Bureau (ASB)

- 5.1 Consistent with County procurement requirements, ASB will use master agreement contractors as the primary sources for services and supplies. Those agreements are managed by the Los Angeles County - Internal Service Department (LAC-ISD) and each one includes an attestation entitled: Contractor’s Attestation That It Nor Any Of Its Staff Members Is Restricted, Excluded, Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program. (See Attachment 3).
 - 5.1.1 All master agreement contractors certify to the LAC-ISD that neither the entity or its staff members are excluded, suspended or restricted from providing services under any health care program funded by the federal or State Government, either directly or indirectly, or in whole or in part.
 - 5.1.2 Further, the contractor must notify LAC-ISD (the Buyer) within 30 calendar days in writing of 1) any mandatory exclusion from participation in a federally funded health care program; and 2) any exclusionary and or suspension action taken by any agency of the Federal or State Government against the contractor or one or more staff members barring it or the staff members from participation in a federally funded health care program.
 - 5.1.2.1 ASB shall notify CPAS in the event that LAC-ISD notifies them of a change in status for any contractor that requires a stop notice to any supply or service order due to a sanction related action. CPAS will notify involved LAC-DMH units as needed to complete a corrective action.
 - 5.1.3 Contractor shall indemnify and hold County harmless against any and all loss or damage Contractor may suffer arising from any federal, State, or County exclusion, suspension or restriction of Contractor or its staff members from participation in a Federally funded health care program.
- 5.2 ASB will ensure that all ASB-managed procurements contain provisions requiring each contractor to certify, **prior to the procurement being executed**; neither the entity itself nor any staff member has been excluded and/or suspended from any federal or State health care program, or federal or State funded contract. This certification shall be documented by requiring all non-master agreement vendors to sign a copy of Contractor’s Attestation (see Attachment 3) and submitting it to the ASB procurement office.
 - 5.2.1 Each ASB-managed procurement will include an attestation that neither the entity itself nor any staff member is excluded, suspended, or restricted from providing services under any health care program funded by the federal or State government, either directly or indirectly, or in whole or in part.



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5.2.2 Further, the contractor must notify ASB within 30 calendar days in writing of 1) any mandatory exclusion or restriction from participation in a federal or State funded health care program; and 2) any exclusionary or restricting action taken by any agency of the federal or State government against the contractor or one or more staff members barring it or the staff members from participation in a federal or State funded health care program.

5.2.2.1 ASB shall notify CPAS in the event that a contractor notifies them of a change in status that requires a stop to any supply or service order due to a sanction related action. CPAS will notify involved LAC-DMH units as needed to complete a corrective action.

5.2.3 ASB shall coordinate with CPAS or other units to ensure that special procurement projects including, but not limited to, 1) training services provided by professionally licensed clinical staff, 2) Locum Tenens agreements or 3) specialized client assessments, are subject to sanction screening prior to implementation.

Mental Health Services Contractors

6.1 At the time of contract execution, each contractor must certify that neither it nor any of its staff members, officers, directors, partners, or principals, are excluded and/or suspended from 1) providing services under any health care program funded by the Federal government or 2) participation in federally funded contracts.

6.2 It is the responsibility of all contractors to ensure eligibility of all their staff and sub-contractors to provide goods or services under federal health care programs. This eligibility shall be reported on the Attestation Regarding Federally Funded Program forms (Attachment 1) at time of the initial contract execution and each superseding contract transaction.

6.2.1 Each contractor shall review their staff members' eligibility against Federal and State sanction lists on a monthly basis and shall maintain records of such activity.

6.2.2 Sanction list review records shall be made available upon request by LAC-DMH or its authorized auditors and/or reviewers.

6.2.3 Failure to immediately (within three [3] business days) provide sanction list review records upon request will be cause for contract termination.

6.3 It is the responsibility of the contractor to notify LAC-DMH within 30 calendar days in writing of:

6.3.1 Any event that would require the contractor or its staff member's mandatory exclusion or suspension under a federally funded health care program, or federally funded contract, (examples may include a loss or revocation of professional license(s), revoked facility license, conviction of a health care related crime, etc.), or



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- 6.3.2 Any exclusionary or suspension action taken by an agency of the federal or State government against the contractor, or one or more of its staff members, barring the staff members, or officers, directors, partners, or principals, from providing goods or services under a federally funded health care program, or federally funded contract, regardless of whether such bar is direct or indirect, or whether such bar is in whole or in part.
- 6.4 It is the responsibility of the contractor to notify LAC-DMH immediately if at any time the contractor learns that its certification is not valid, or has become invalid because of changed circumstances.
- 6.5 Should a contractor notify CDAD of the events discussed in Section 6.3 above, CDAD will review the circumstances and notify the responsible Deputy Director, responsible District Chief, and the Compliance Officer.
- 6.6 In the event that direct or indirect services are discovered to have been submitted for an excluded or ineligible individual, all associated costs are subject to repayment to LAC-DMH and all such direct services must be removed from the LAC-DMH data system in accordance with the applicable system requirements and procedure. Consistent with Paragraph 3.7 and 3.8 above, such repayment includes the original amount paid to a contractor plus any associated civil monetary penalties specified by federal or State agencies.

Compliance Program and Audit Services (CPAS)

- 7.1 CPAS will sanction screen all contract agencies' rendering providers listed in the IS each month as a secondary measure to verify that none are included on the LEIE or S&I List. Consistent with section 6.2.1 of this policy, contractors are responsible for screening their entire staff each month.
 - 7.1.1 Contract agencies have primary responsibility to sanction screen their entire staff each month and the contractor agencies must not rely on the outcomes of the CPAS sanction screening project.
- 7.2 If a search of sanction lists discovers a closely matching name with an excluded and/or suspended person and LAC-DMH has insufficient information to clear the person or verify the match, CPAS will send an email requesting essential personnel data to the chief executive of the impacted entity.
 - 7.2.1 In such a case, CPAS will request identification data to be provided by the entity that may include the full legal name (first, middle and last), clinical license number, California Drivers License number, Social Security Number (all 9 digits), date of birth, or other data as needed to 1) identify a distinguishing element that will result in clearing the closely matching name or 2) confirm the identity is the same as the sanctioned person.



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- 7.2.2 The contract agency is required to provide requested identification detail to CPAS within three (3) business days with the full assurance that the data will be treated as confidential and will be secured. Moreover, this data will be used exclusively for the clearance or verification process noted herein.
- 7.2.3 Entities who refuse to provide specified identification detail in a timely manner will be subject to disciplinary action up to, and including, termination of the contract.
- 7.3 CPAS will coordinate collection processes with the Financial Services Bureau in the event that any reimbursements are discovered to have been made for an excluded or suspended individual. Such collection process will be for the entire amount paid plus any associated civil monetary penalties specified by federal or State agencies.

ATTACHMENTS (Hyperlinked)

1. Attestation Regarding Federally Funded Programs (*for Mental Health Contractors*)
2. List of Federal, State, and County Sanction Lists
3. Contractor's Attestation That It Nor Any Of Its Staff Members Is Restricted, Excluded, Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program (*for non-master agreement vendors and suppliers*)

REFERENCE (Hyperlinked)

1. CMS, Center for Medicaid and State Operations letter SMDL #09-001, Dated January 16, 2009 discussing need to screen employees and contractors for excluded persons.
2. State Letter 10-05, September 3, 2010, notifies MHPs and contractors that DHCS is authorized to impose administrative sanctions to MHPs and contractors.

AUTHORITY

1. United States Code, Title 42, Section 1320a-7
2. United States Code, Title 45, Part 76
3. Code of Federal Regulations, Title 42, Section 1001.1901
4. Code of Federal Regulations, Title 42, Section 1003.103
5. California Welfare and Institutions Code, Section 14043.61
6. County of Los Angeles Code 2.202
7. LAC-DMH Legal Entity Agreement
8. DMH Policy 112.10, Graded Sanctions
9. Section 1128 of the Social Security Act [42 U.S.C. 1320a-7] with reference to paragraph (8) addressing entities controlled by a sanctioned individual. Specifically, entities controlled or owned by a sanctioned individual who has a direct or indirect ownership or control interest of 5 percent or more.

RESPONSIBLE PARTY

LAC-DMH-Compliance Program and Audit Services Bureau