



ELDER ABUSE PROSECUTIONS

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Office of the Attorney General

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MFCU Jurisdiction

- Investigate and prosecute healthcare provider fraud in the Medicaid program
- Review complaints of resident abuse or neglect in healthcare facilities receiving Medicaid funding
- May review complaints of the misappropriation of resident's private funds in facilities

Common Medicaid Provider Fraud Schemes

- Up-coding
- Billing for services not rendered
- Unbundling codes
- Billing under the wrong provider number
- Charging cash for covered services
- Overutilization of services
- Kickbacks
- Medically unnecessary services and prescriptions

Provider Exclusion

42 USC 1320a-7 and 42 CFR 1001 et. seq.

- **Mandatory:** Criminal conviction related to health care delivery . . . or . . . Conviction related to the neglect or abuse of a patient in connection with the delivery of health care services
 - Minimum of 5 years
- **Permissive:** Derivative or non-derivative results from actions by a court, licensing board or agency. Non-derivative exclusions include excessive charges, unnecessary services, kickbacks, failure to disclose or supply information

Federal False Claims Act

- FCA / qui tam filings
- Relator acts on behalf of the government
- Relator must be original source of information
- May collect up to 30% of recovery but is guaranteed at least 15%
- Case may initially be filed under seal

MFCU Jurisdiction

- I. Provider Fraud
 - ❖ Prosecuted under KRS 194A.505 “Prohibited Activities”
 - ❖ Prosecuted under KRS 205.8463 “Fraudulent Acts”
 - ❖ MFCU has original jurisdiction to prosecute

- II. Patient Abuse and Neglect
 - ❖ Medicaid patients and/or Medicaid facilities
 - ❖ Commonwealth Attorneys have original jurisdiction to prosecute

- III. Civil Cases

2016

- Indictments: 21
- Subpoenas/Inspection Letters/Demand Letters: 241
- Search Warrants: 10
- Convictions: 18
- Total Obligations – Civil Settlements/Criminal Restitution:

\$20,164,261.21

Federal Regulations

42 C.F.R. 1007.1 – 1007.21

- Staffed by investigators, auditors, and prosecutors (Task Force approach)

209.010 Purpose and application of chapter.

- (1) The purpose of this chapter is:
 - (a) To provide for the protection of adults who may be suffering from abuse, neglect, or exploitation, and to bring said cases under the purview of the Circuit or District Court;
 - (b) To provide that any person who becomes aware of such cases shall report them to a representative of the cabinet, thereby causing the protective services of the state to be brought to bear in an effort to protect the health and welfare of these adults in need of protective services and to prevent abuse, neglect, or exploitation; and
 - (c) To promote coordination and efficiency among agencies and entities that have a responsibility to respond to the abuse, neglect, or exploitation of adults.
- (2) This chapter shall apply to the protection of adults who are the victims of abuse, neglect, or exploitation inflicted by a person or caretaker. It shall not apply to victims of domestic violence unless the victim is also an adult as defined in KRS 209.020(4).

209.020(5) Protective Services:

Means:

- agency services undertaken with or on behalf of an adult in need of protective services who is being abused, neglected, or exploited.
- These services may include but are not limited to conducting investigations of complaints of possible abuse, neglect, or exploitation to ascertain whether or not the situation and condition of the adult in need of protective services warrants further action;
- social services aimed at preventing and remedying abuse, neglect, and exploitation; and
- services directed toward seeking legal determination of whether or not the adult in need of protective services has been abused, neglected, or exploited and
- to ensure that he or she obtains suitable care in or out of his or her home

Elder Abuse Case Sources

- Police: “Theft” or “Assault”
- Adult Protective Services
- Type A Citation from Inspector General
- Attorney General’s Office: Consumer Protection, Medicaid Fraud
- Concerned Family Member, Friend, or Neighbor of the Victim
- Bank Teller
- Care provider
- Nursing Facility Personnel
- EMS / EMTs
- Other entity where bills start to go unpaid
- Ombudsman
- CONSIDER EDUCATING YOUR POTENTIAL SOURCES

Office of the Attorney General Elder Abuse Hotline

- Answered 24/7
- 1-877-ABUSE-TIP

209.150 Who may make criminal complaint

- Any representative of the cabinet acting officially in that capacity,
- any person with personal knowledge of the abuse or neglect, or exploitation of an adult by a caretaker, or
- an adult who has been abused or neglected or exploited shall have standing to make a criminal complaint.

209.020(4) Adult:

- a person eighteen (**18**) years of age or older who:
 - because of **mental or physical dysfunctioning**,
 - is unable to manage his or her own resources,
 - carry out the activity of daily living, or
 - protect himself or herself from neglect, exploitation, or a hazardous or abusive situation without assistance from others,
- and who may be in need of protective services.

209.020(6) Caretaker:

Means:

- an individual or institution
- who has been entrusted with or who has the responsibility for the care of the adult
- as a result of family relationship,
- or who has assumed the responsibility for the care of the adult person voluntarily or by contract, employment, legal duty, or agreement

209.020(8) Abuse:

Means:

- the infliction of injury,
- sexual abuse,
- unreasonable confinement,
- intimidation, or
- punishment
- **that results in:**
 - physical pain or injury, including mental injury;

209.020(16) Neglect:

Means:

- a situation in which an adult is:
 - unable to perform or obtain for himself or herself the goods or services that are necessary to maintain his or her health or welfare, **or**
 - the deprivation of services by a caretaker that are necessary to maintain the health and welfare of an adult

209.990(2) Penalty – Knowingly

(2) Any person who knowingly abuses or neglects an adult is guilty of a Class C felony.

209.990(2) Penalty – Wantonly

(3) Any person who wantonly abuses or neglects an adult is guilty of a Class D felony.

209.990(2) Penalty – Recklessly

- (4) Any person who recklessly abuses or neglects an adult is guilty of a Class A misdemeanor.

209.020(9) Exploitation:

Means:

- obtaining or using another person's resources, including but not limited to:
 - funds, assets, or property,
- by deception, intimidation, or similar means,
- with the intent to deprive the person of those resources

209.020(7) Deception:

Means but is not limited to:

- (a) Creating or reinforcing a false impression, including a false impression as to law, value, intention, or other state of mind;
- (b) Preventing another from acquiring information that would affect his or her judgment of a transaction; or
- (c) Failing to correct a false impression that the deceiver previously created or reinforced, or that the deceiver knows to be influencing another to whom the person stands in a fiduciary or confidential relationship

The Door Store of Louisville, LLC

125 Shelbyville Road
Louisville, KY 40207

Invoice

Date	Invoice #
11/21/2007	2475

Bill To



P.O. No.	Terms	Rep	Ship	Via	F.O.B.	Project
		AEG	11/21/2007			
Quantity	Item Code	Description			Price Each	Amount
2	MAR CASE	Marvin Clad/Wood Window: Casement: Office window LH			706.86	1,413.72
2	MAR CASE	Marvin Clad/Wood Window: Casement: Office Window RH			706.86	1,413.72
1	MAR AWN	Marvin Clad/Wood Window: Awning: Rectangle			808.86	808.86
2	MAR CASE	Marvin Clad/Wood Window: Casement: Drew's Room LH			604.86	1,209.72
2	MAR CASE	Marvin Clad/Wood Window: Casement: Drew's Room RH			604.86	1,209.72
1	MAR AWN	Marvin Clad/Wood Window: Awning: Rectangle Drew's Room			717.36	717.36
1	ULT DH	Marvin Wood Window: Ultimate Double Hung			1,575.36	1,575.36
1	MAR CASE	Marvin Clad/Wood Window: Casement: Kitchen LH			803.04	803.04
1	HRSP44X22	Half Round Spoked Pediment			209.00	209.00
	Customer Deposit	Customer Deposit			-8,313.00	-8,313.00
	Sls Disc	Sales Discount			-1,047.50	-1,047.50
		Sales Tax			6.00%	0.00

000179

11/19	11/19	2424651A461AYG2BAV	VANCES TRUE VALUE HDWE PROSPECT KY	37.00
11/21	11/21	2444500A61ZJP2ZE7V	WHOLEFDS LOU 10186 SWH LOUISVILLE KY	26.55
11/21	11/21	2444500A620MFWYREV	MEIJER INC #160 Q01 LOUISVILLE KY	39.22
11/21	11/21	7444500A822PWVWZHLV	TJMAXX #0212 LOUISVILLE KY CREDIT	62.21
11/21	11/21	2449280A53DWMNYKBV	WOODCRAFT 502-6710900 KY	9.52
11/21	11/21	2461043A603RGPV2V	GAMESTOP #5854 LOUISVILLE KY	8.47
11/21	11/21	2461043A609FA0Y85V	THE HOME DEPOT 2301 JEFFERSONTOWN KY	34.91

TARGET #0001180 LOUISVILLE KY
 APPLE STORE #R284 LOUISVILLE KY

37.00
 26.55
 39.22
 62.21
 9.52
 8.47
 34.91
 80.03
 119.00

11/25	11/25	2469216AA005N3VJ5V	WILLIAMS-SONOMA 0681 LOUISVILLE KY	144.41
11/26	11/26	2442363AB26BHSR9DV	MURPHY8983@WAL-MART089 LOUISVILLE KY	44.57
11/26	11/26	2442513AB3KN1DVL8V	HEROS NEW YORK PIZZA LOUISVILLE KY	30.71
11/26	11/26	2445501AB42QTXZMHV	WAL-MART #5183 JEFFERSONTOW KY	35.78
11/27	11/27	2469216AB009KJD5KV	WEST ELM E-COMMERCE 866-937-8358 CA	53.60

BURDORFS FURNISHINGS AND LOUISVILLE KY

11/28	11/28	2443565AD5SLBJ8GKV	YANG-KEE NOODLE Q82 LOUISVILLE KY	9.00
11/28	11/28	2444573AD28QJYDAVV	MACY'S SOUTH #0008 LOUISVILLE KY	139.48
11/28	11/28	2444573AD28QJYDD4V	MACY'S SOUTH #0008 LOUISVILLE KY	195.85
11/28	11/28	2444573AD28QJYDFRV	MACY'S SOUTH #0008 LOUISVILLE KY	275.60
11/28	11/28	2444573AD28QJYD2SV	MACY'S SOUTH #0008 LOUISVILLE KY	117.87
11/28	11/28	2444573AD28QJYD5DV	MACY'S SOUTH #0008 LOUISVILLE KY	127.19
11/28	11/28	2461043AQ03TKA3FPV	E BAUER 65077214 800-428-6253 WA	187.13
11/29	11/29	2429916AESAE46YVJV	JCPENNEY CATLG 9812 800-221-0827 OH	318.00
11/29	11/29	2444571AE2AMAJ3R3V	KROGER FUEL #8743 Q88 LOUISVILLE KY	35.96

MACY'S NORTH #0055 CHICAGO IL
 HILTON HOTEL THE DRAKE CHICAGO IL

13.73
 980.92

209.990(5) Penalty – Knowingly: Over \$300

(5) Any person who knowingly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class C felony.

209.990(6) Penalty – Wantonly or Recklessly: Over \$300

(6) Any person who wantonly or recklessly exploits an adult, resulting in a total loss to the adult of more than three hundred dollars (\$300) in financial or other resources, or both, is guilty of a Class D felony.

209.990(7) Penalty – Knowingly, wantonly, or recklessly: Under \$300

(7) Any person who knowingly, wantonly, or recklessly exploits an adult, resulting in a total loss to the adult of three hundred dollars (\$300) or less in financial or other resources, or both, is guilty of a Class A misdemeanor.

209.990(8) Treble Damages

(8) If a defendant is sentenced under subsection (5), (6), or (7) of this section and fails to return the victim's property as defined in KRS 218A.405:

- within thirty (30) days of an order by the sentencing court to do so, or
- is thirty (30) days or more delinquent in a court-ordered payment schedule,
- then the defendant shall be civilly liable to the victim of the offense or the victim's estate for treble damages,
- plus reasonable attorney fees and court costs.
- Any interested person or entity, as defined in KRS 387.510, shall have standing to bring a civil action on the victim's behalf to enforce this section.
- The sentencing judge shall inform the defendant of the provisions of this subsection at sentencing.

Local Coordinating Councils:

- In every are a development district
- The councils' goals are to:
 - develop and build an effective communitywide system of prevention and intervention that is responsive to the need of victims, perpetrators, family members and formal or informal caretakers.
 - identify and coordinate the roles and services of local agencies that work with elder abused, neglected or exploited victims and to investigate or prosecute elder abuse cases.
 - monitor, evaluate, and promote the quality and effectiveness of services and protection in the community.
 - promote a clear understanding of elder abuse, current laws, elder rights and resources available in the community.
 - serve as a clearinghouse for information on elder issues.

<http://chfs.ky.gov/dcbs/dpp/eaa/talkAboutIt.htm>

2016 Local Coordinating Councils on Elder Abuse

1 Barren River Elder Abuse Council
Kristin Knight Stephens
270-783-3333

2 Big Sandy Elder Abuse Council
Steve Jones
606-985-2374

3 Buffalo Trace Elder Abuse Council
Beth C. Love
606-564-6894

4 Casey County Elder Abuse Council
Todd Bryant
606-783-6889

5 Clark County Mental Health and Aging Coalition
Susan Jones
859-585-7377

6 Estill County Council on Aging
606-723-4787

7 Daviess County
Debra Jacob
270-683-7491

8 Blount Elder Abuse Prevention Council
Bill Hughes
859-313-5167

9 Fenton Elder Abuse Council
Shazana Carter
606-329-1321

10 Gateway Elder Abuse Council
Melinda Mycock
606-780-0990

11 Green/Taylor Elder Abuse Council
Sacy Amatt
270-932-7483

12 Kentucky River Council against Maltreatment of Elders
Suzie Noble
606-436-3158

13 KIPVA Rural Elder Abuse Council
Ben Kennedy
502-633-1892

14 Lake Cumberland Elder Abuse Council
Patricia Harper
270-384-6411

15 Louisville Metro Elder Abuse Council
Honorable Jennifer Leibson
502-591-0833

16 Madison County Council for Elder Maltreatment Prevention
Tanda Doreilly
859-586-8411

17 Northern Kentucky
Elder Maltreatment Alliance
David Barker
859-334-0810

18 Pennyrile Elder Abuse Council (Hopkins,
Muhlenberg, Trigg, Christian, Todd, Livingston,
Crittenden, Lyon and Caldwell counties)
Cindy Hancock
931-256-4441

19 Pulaski County Elder Abuse Council
Brian Jagers
606-679-7421

20 Purchase Elder Abuse Council
Sherie Langston
270-575-7110

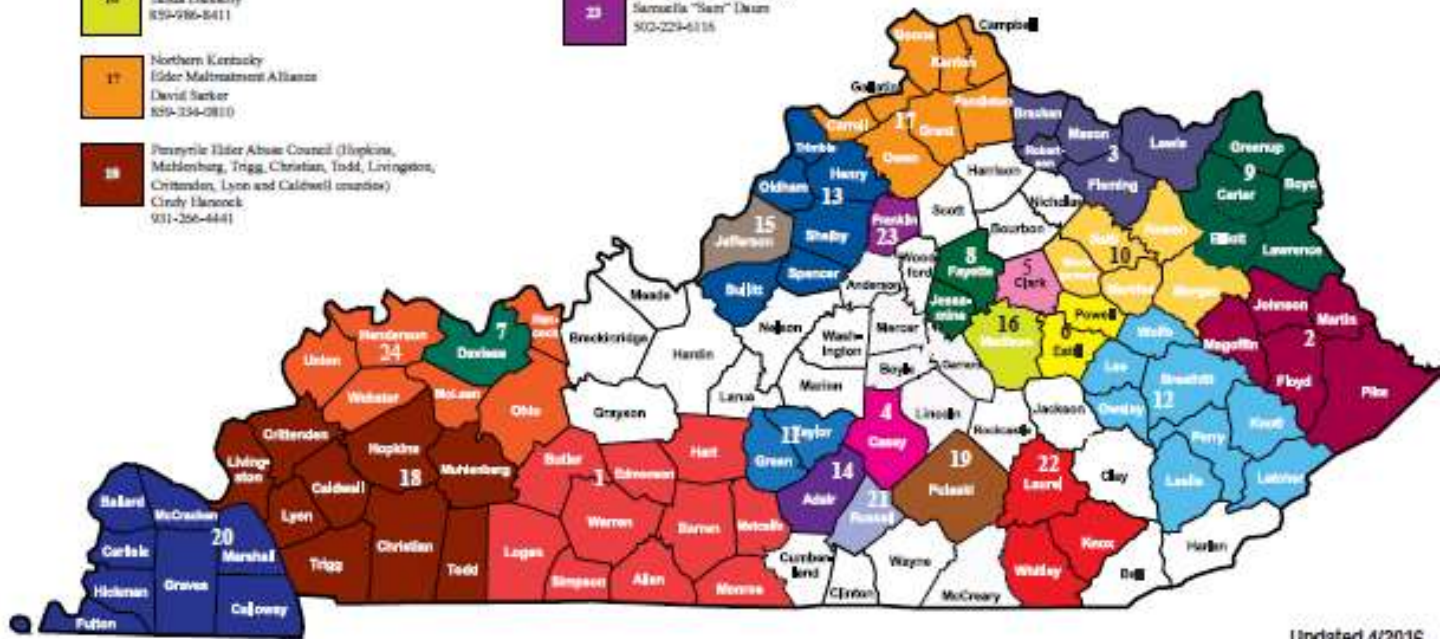
21 Russell County Elder Abuse Council
Christy Candiff
270-866-2899

22 Tri County Abuse Council for Elders
Cathy Willie
606-326-1900

23 Family Abuse Services, Inc.
Saraella "Sam" Deam
502-229-6116

24 Green River Triad Elder Justice Coalition
Vivian McNetten, Ursula Mabrey, Sheila Howard
800-828-9094

None



Department of Justice Elder Abuse Task Force

- DOJ launched 10 regional Elder Justice Task Forces
- Kentucky was selected as one of the ten
- Teams bring together federal, state and local prosecutors, law enforcement, and agencies that provide services to elderly, to coordinate and enhance efforts to pursue nursing homes that provide grossly substandard care to their residents

Office of the Inspector General

900KAR 2:040(10) Type A Violation

- Means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal laws and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type A" violation pursuant to this administrative regulation.
- Said violation **presents an imminent danger** to any resident of a long-term care facility
and
- **creates substantial risk that death or serious mental or physical harm will occur.**

900KAR 2:040(11) Type B Violation

- Means a violation by a long-term care facility of the administrative regulations, standards and requirements as set forth by the cabinet pursuant to KRS 216.550 and 216.563 or the provisions of KRS 216.510 to 216.525, or applicable federal law and regulations governing the certification of a long-term care facility under Title 18 or 19 of the Social Security Act which has been classified a "Type B" violation pursuant to this administrative regulation.
- Such violation presents a **direct or immediate relationship to the health, safety or security of any resident,**
but
- which **does not create an imminent danger** and which is categorized a "Type B" violation in this administrative regulation.

Who has to report potential
abuse, neglect, exploitation?

Everyone!

Kentucky is a mandatory reporting state

209.030(2) Reports of adult abuse, neglect, or exploitation

- Any person, including but not limited to physician, law enforcement officer, nurse, social worker, cabinet personnel, coroner, medical examiner, alternate care facility employee, or caretaker,
 - having reasonable cause to suspect that an adult has suffered abuse, neglect, or exploitation,
 - shall report or cause reports to be made in accordance with the provisions of this chapter.
-
- Death of the adult does not relieve one of the responsibility for reporting the circumstances surrounding the death.

209.990(1) Penalty for failing to report abuse, neglect and exploitation

- (1) Anyone knowingly or wantonly violating the provisions of KRS 209.030(2) shall be guilty of a Class B misdemeanor as designated in KRS 532.090. Each violation shall constitute a separate offense.

Where can I obtain more information:



- The following divisions of the KY Office of the Attorney General:
 - Office of Medicaid Fraud and Abuse
 - Consumer Protection
 - Office of Senior Protection
 - Office of Victims Advocacy
- Kentucky Office of the Attorney General Prosecution Manual

209.115 Disqualification from serving in fiduciary capacity for felony conviction under KRS Chapter 209.

(1) Any person convicted of a felony under this chapter shall be disqualified from being appointed or serving as a:

- guardian,
- limited guardian,
- conservator,
- limited conservator,
- executor,
- administrator,
- fiduciary,
- personal representative,
- attorney-in-fact, or
- health care surrogate

as to the victim of the offense or the victim's estate.

The sentencing judge shall inform the defendant of the provisions of this section at sentencing.


Reporting convictions


- Licensing boards
- Caregiver's Misconduct Registry
- Office of the Inspector General Nurse Aide Registry
- OIG Exclusion

Kentucky Adult Caregiver Misconduct Registry

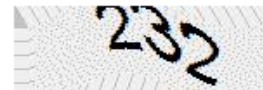
Home

Kentucky Adult Caregiver Misconduct Registry

 The Cabinet for Health and Family Services administers the Adult Caregiver Misconduct Registry, enacted by the 2014 Kentucky legislative session. In accordance with KRS 209.032, information on file in the Adult Caregiver Misconduct Registry includes the listing of a person's name on the Registry based on a cabinet finding of substantiated adult abuse, neglect, or exploitation which has been "validated" meaning that the listing has been finalized after an appeal, or that no appeal was requested within the time permitted. It is not a criminal finding.

 The information in the registry is available to entities that provide care services to vulnerable adults to query as to whether a prospective or current employee contractor or volunteer has been subject to a validated substantiated finding. This Adult Caregiver Misconduct Registry is also available for a self-query to determine whether a validated substantiated finding of adult abuse, neglect or exploitation has been entered against him or her. Fraudulent use of this system for any other reason is restricted and controlled by Criminal Penal Code.

*Enter text from the image (case sensitive):





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[Nurse Aides](#)

Kentucky Nurse Aide Registry

The Kentucky Nurse Aide Registry lists the status of State Registered Nurse Aides and the names of home health aides who, as determined by the Office of the Inspector General of the Commonwealth of Kentucky, have a final finding of abuse.

Although nurse aides in Kentucky are often referred to as certified nurse aides, the correct title for a nurse aide listed on the Kentucky Nurse Aide Registry is State Registered Nurse Aide (SRNA).

This website will NOT provide information on criminal background, child abuse, sex offenders, or professional licenses (other than KBN nursing licensure status).



 U.S. Department of Health & Human Services

Office of Inspector General

U.S. Department of Health & Human Services

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Exclusion Authorities

Scope of exclusions imposed by the OIG expanded from Medicare and State health care programs to all Federal health care programs, as defined in section 1128B(f)(1).

Mandatory Exclusions

Social Security Act	42 USC §	Amendment
1128(a)(1)	1320a-7(a)(1)	Conviction of program-related crimes. Minimum Period: 5 years
1128(a)(2)	1320a-7(a)(2)	Conviction relating to patient abuse or neglect. Minimum Period: 5 years

Conviction relating to patient abuse or neglect. Minimum Period: 5 years

1128(c)(3)(G)(i)	1320a-7(c)(3)(G)(i)	Conviction of two mandatory exclusion offenses. Minimum Period: 10 years
1128(c)(3)(G)(ii)	1320a-7(c)(3)(G)(ii)	Conviction on 3 or more occasions of mandatory exclusion offenses. Permanent Exclusion

Permissive Exclusions

Social Security Act	42 USC §	Amendment
1128(b)(1)(A)	1320a-7(b)(1)(A)	Misdemeanor conviction relating to health care fraud. Baseline Period: 3 years
1128(b)(1)(B)	1320a-7(b)(1)(B)	Conviction relating to fraud in non- health care programs. Baseline Period: 3
1128(b)(2)	1320a-7(b)(2)	Conviction relating to obstruction of an investigation. Baseline Period: 3 years
1128(b)(3)	1320a-7(b)(3)	Misdemeanor conviction relating to controlled substance. Baseline Period: 3 years
1128(b)(4)	1320a-7(b)(4)	License revocation or suspension. Minimum Period: No less than the period imposed by the state licensing authority.
1128(b)(5)	1320a-7(b)(5)	Exclusion or suspension under federal or state health care program. Minimum Period: No less than the period imposed by federal or state health care program.
1128(b)(6)	1320a-7(b)(6)	Claims for excessive charges, unnecessary services or services which fail to meet professionally recognized standards of health care, or failure of an HMO to furnish medically necessary services. Minimum Period: 1 year
1128(b)(7)	1320a-7(b)(7)	Fraud, kickbacks, and other prohibited activities. Minimum Period: None
1128(b)(8)	1320a-7(b)(8)	Entities controlled by a sanctioned individual. Minimum Period: Same as length of individual's exclusion.
1128(b)(8)(A)	1320a-7(b)(8)(A)	Entities controlled by a family or household member of an excluded individual and where there has been a transfer of ownership/ control. Minimum Period: Same as length of individual's exclusion.
1128(b)(9), (10), and (11)	1320a-7(b)(9), (10), and (11)	Failure to disclose required information, supply requested information on subcontractors and suppliers; or supply payment information. Minimum Period: None
1128(b)(12)	1320a-7(b)(12)	Failure to grant immediate access. Minimum Period: None
1128(b)(13)	1320a-7(b)(13)	Failure to take corrective action. Minimum Period: None
1128(b)(14)	1320a-7(b)(14)	Default on health education loan or scholarship obligations. Minimum Period: Until default has been cured or obligations have been resolved to Public Health Service's (PHS) satisfaction.
1128(b)(15)	1320a-7(b)(15)	Individuals controlling a sanctioned entity. Minimum Period: Same period as entity.

QUESTIONS?

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