

U.S. Department of Labor

Office of Workers' Compensation Programs
Division of Energy Employees Occupational
Illness Compensation
Washington, DC 20210



EEOICPA CIRCULAR NO. 21-01

DATE: JANUARY 4, 2021

This Circular provides notice to affected parties that the Department of Labor (DOL) has instituted nonprocurement suspension and debarment procedures, which the Division of Energy Employees Occupational Illness Compensation (DEEOIC) has determined will apply to entities providing medical services and supplies (medical providers) to Energy Employees Occupational Illness Compensation Program Act (EEOICPA) beneficiaries. This DOL-wide nonprocurement suspension/debarment process is separate and distinct from the EEOICPA regulatory provider exclusion process found at 20 C.F.R §§ 30.715 through 30.726.

Under DOL's nonprocurement suspension and debarment procedures, the Department's Office of the Inspector General (OIG) can refer a medical provider to DOL's Suspension and Debarment Official (SDO) when: (1) there is reasonable belief that the provider has engaged in fraudulent billing practices; (2) a provider has been criminally indicted with defrauding the EEOICPA program (a "suspension" referral); and/or (3) a provider has been criminally convicted of defrauding the EEOICPA program (a "debarment" referral).

If the SDO issues a Notice of Suspension, the provider has an opportunity to respond to the SDO, but the payments will cease immediately upon issuance of the notice. If the SDO issues a Proposed Notice of Debarment, the provider also has an opportunity to respond to the SDO, but if the SDO ultimately issues a Final Notice of Debarment, payments will cease during the period of the debarment.

The SDO is the ultimate decision-making authority as to whether DOL will take nonprocurement suspension and/or debarment actions against a medical provider; DEEOIC does not make these decisions. Additionally, other government agencies conduct investigations into medical provider billing practices and make suspension/debarment determinations based on their own investigations. The Department of Health and Human Services (HHS) publishes provider suspension/debarment actions on their website, under "List of Excluded Individuals and Entities (LEIE) - Public and Restricted," which is a list of individuals and

entities currently excluded from participating in federal health care programs.

A nonprocurement suspension or debarment applies to "covered transactions," which are defined in the nonprocurement rules common to all federal agencies (called the "common rule") and further defined in agency-specific regulations or policies. See 2 C.F.R. 180.210, 180.215, 180.970; see also Executive Order 12549, 51 Fed. Reg. 6370 (Feb. 18, 1986); Executive Order 12689, 54 Fed. Reg. 34131 (Aug. 15, 1989). Under the nonprocurement common rule, a covered transaction is any transaction, regardless of type (except procurement contracts). 2 C.F.R. 180.970. However, covered transactions do not include "benefit[s] to an individual as a personal entitlement" but do include "benefits received in an individual's business capacity." 2 C.F.R. 180.215(b).

DOL considers payments to providers of medical services and supplies to be covered transactions under the nonprocurement common rule framework. Typically, DEEOIC's bill processing agent (BPA) makes medical benefit payments directly to the provider, who is acting in a business capacity as a doctor, pharmacy, etc. Providers are not personally entitled to receive payment under EEOICPA, and therefore, the exception in the common rule for "personal entitlement" does not apply.

DEEOIC concludes that DOL's nonprocurement suspension and debarment regulations apply to medical providers providing medical services and supplies to beneficiaries under the EEOICPA.

Upon receipt of an actionable notification of a final determination of suspension from a credible source (e.g., notification from DOL's SDO or other governmental agency determinations posted on HHS's LEIE), DEEOIC will issue its own notice to the provider advising that payment for services, provided on and after the final determination date, are suspended and will remain suspended for the duration of the suspension period described in the Notice of Suspension. DEEOIC will not make payments during the period of suspension. Suspensions generally are for a period of 12 months, but may extend to 18 months.

To stop payments to a medical provider, DEEOIC will notify its BPA to place the provider "on review." This action will stop payments to that provider and the BPA will route bills to a suspense queue. DEEOIC's Branch of Medical Benefits will

monitor that provider's bill queue and authorize bill payment for dates of service prior to the effective date of the period of suspension, if otherwise payable for the accepted, work-related conditions in that case.

Upon receipt of an actionable notification of a final determination of debarment from a credible source (e.g., notification from DOL's SDO or other governmental agency determinations posted on HHS's LEIE), DEEOIC will issue its own notice to the provider, advising the provider that payment for further services provided on and after the date of the SDO's Final Notice of Debarment will not be made. DEEOIC will not make payments during the period of the debarment. The period of debarment is generally for a period of three years, but may extend to five years based on the seriousness of the causes upon which debarment was based.

Since suspension and debarment determinations apply only to payment for services provided on and after the effective date of the determination, DEEOIC's Branch of Medical Benefits will authorize bill payment for dates of service prior to that effective date, even if the request for payment is received by the BPA after the effective date of the suspension or debarment determination.

If the SDO issues a determination that rescinds or alters an earlier determination, the SDO will provide notice to DEEOIC of any such action. DEEOIC will then notify the provider accordingly, and process any unpaid, appropriate bills.

DEEOIC will publish, on its website, a listing of suspended or debarred providers, along with the effective dates and applicable periods. If an EEOICPA beneficiary is currently receiving treatment from any such provider, DEEOIC will authorize a change of providers, if requested by the beneficiary.

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