

PUBLICATION

Excluded Individual Not Precluded from Payment for Pre-exclusion Services [Ober|Kaler]

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In Advisory Opinion 15-02, issued February 9, 2015, the U.S. Department of Health & Human Services, Office of Inspector General (OIG) looked favorably on the Requestor's inquiry as to whether receipt of Federal health care program payments for services performed before the effective date of the Requestor's exclusion would violate the terms of his exclusion.

Prior to submitting the request for an Advisory Opinion, and pursuant to a criminal plea and civil False Claims Act settlement, the Requestor was excluded from participation in Federal health care programs, effective October 25, 2013. He also agreed to divest his ownership in his medical practice. Leading up to the exclusion effective date, the Requestor and his practice submitted claims for services performed to Federal health care programs. The buyer of the medical practice controlled the practice's bank accounts and remitted payments for the services to the Requestor.

In its Advisory Opinion, the OIG made clear that the prohibition against payments by Federal health care programs for items or services furnished at the medical direction or on the prescription of an excluded physician applies only on or after the effective date of the exclusion. Therefore, receipt of payment from Federal health care programs, or from the practice's buyer, for services provided before the effective date of the Requestor's exclusion would not violate the exclusion terms and would not serve as a basis for the imposition of administrative sanctions under the civil monetary penalty.