Can the Entire Sanction Screening Process Be Outsourced?

Increasing Obligations Have Led Many Compliance Officers to Outsource This Routine Operation

Over the last 20 years there has been a very strong trend to outsource functions that are not part of the core business of the organization. This certainly has reached the health care sector. The continued increases in the duties and obligations of compliance officers have led many to outsource some of their routine operations.

The trend to do this began with hotline services; currently, most organizations use vendors for this function. Vendors are often used to provide compliance education and training programs, and many also turn to vendors for compliance-related policy development. Without question, however, the fastest growing outsourcing activity by compliance offices is using a vendor search engine to reduce the increasing burden of sanction screening.1

Sanction Screening Obligations

During my term as U.S. Department of Health and Human Services (HHS) Inspector General, I caused to be created what is now referred to as the List of Excluded Individuals and Entities (LEIE), which was followed by various Office of Inspector General (OIG) compliance guidance documents that call for screening employees, physicians, vendors, and contractors against the LEIE.2 Subsequently, the OIG encouraged screening against the General Service Administration’s (GSA’s) Excluded Parties List System (EPLS), which is now part of the System for Award Management (SAM).

Further complicating matters has been the addition of other federal sanction databases maintained by the Drug Enforcement Administration and Food and Drug Administration. There are also those that feel the need to screen against the terrorist watch list, formally referred to as the Specially Designated Nationals List maintained by the Department of the Treasury Office of Foreign Assets Control.
Federal regulations now state that, to obtain and maintain active enrollment status, providers may not employ or contract with individuals or entities that are excluded from participation in any federal health care program or debarred by the GSA from any other executive branch program or activity. In addition, the Centers for Medicare & Medicaid Services (CMS) sent letters to state Medicaid directors calling on them to screen their enrolled providers for exclusions against state Medicaid exclusion databases on a monthly basis.

A majority of states have moved to establish their own Medicaid sanction lists with a number of other states in the process of doing the same. Many states now mandate monthly screening against their own Medicaid exclusion list, as well as the LEIE. This has increased the sanction screening burden exponentially, not only for the compliance office but other departments within the health care organization.

Human Resource Management takes on the responsibility of screening new hires and periodically screening current employees. The Procurement Department is also affected because it handles the screening of vendors and contractors and whose numbers are a multiple of the other parties that need to be screened. Lastly, the Medical Credentialing Office must be involved in order to screen physicians who have been granted staff privileges.

Failing to screen individuals or entities for exclusions could result in all claims and costs associated with that excluded party being viewed as false and fraudulent and, potentially, leading to significant financial penalties and more. Therefore, it is very important to maintain files of all sanction screenings to evidence that it was conducted properly to avoid penalties.

**Using Vendor Sanction Screening Search Engines**

Today, thousands of health care providers rely on vendors' sanction screening tools to carry out their sanction screening in house. It saves them time and money spent on developing their own search engine tool as well as the cost of maintaining, collecting, and updating the sanction data monthly. In addition to the federal databases mentioned earlier, a growing number of states are developing their own Medicaid sanction databases and requiring monthly screening against them. Keeping up with all this is a full-time job for one or more employees. It only stands to reason to find a vendor who can afford to do this by amortizing the costs over many clients, and most compliance officers have come to that conclusion.

Vendors price their services in many ways, but the two most common are charging based upon size of the population to be screened (i.e., fixed rate) or based on per name screened (i.e., per click or variable rate). If seeking a vendor who offers sanction screening tools, it is advisable to establish a fixed fee for the service rather than based on the total number of the names screened each time. It is interesting to note that the cost to fully outsource the sanction screening process may actually cost less than what organizations may already be paying to simply access a vendor's sanction screening tools.

When considering using a vendor's sanction screening tool to conduct sanction screening, it is advisable to:

- seek a fixed rate for the service, not volume based upon per-click searches that can be very costly;
- ensure the contract permits canceling without cause at any time so that you continue the service because the service is good and not due to contracts that bind you;
- ensure the vendor has liability insurance ($1 to 3 million preferably) in case of negligence in its work;
- determine if the vendor provides any other services or support to the process (e.g., policy templates, regulatory updates, advisory notifications, help desk); and
Outsourcing

establish how much “help desk” assistance is available to resolve potential hits as part of the agreement.

OUTSOURCING THE ENTIRE SANCTION SCREENING PROCESS

Using a vendor’s sanction screening tool to conduct screenings is only a small part to easing the burden. The bulk of the sanction screening effort remains for the organization to handle, which includes conducting the actual screening, resolving potential “hits,” and preparing a report for the record to evidence it was all done correctly. For many organizations the answer to saving time and effort is to “outsource” the entire process to a vendor who will:

- keep up-to-date all sanctioned data;
- continue servicing and improving their search engine technology and capabilities;
- perform the screening as often as needed (preferably monthly);
- use their own professionally trained staff to resolve potential hits; and
- provide a certified report of all screening for the record.

The right vendor can not only provide an organization with sanction screening tools but conduct the screening on behalf of the organization. For this option, it is important to have not only the vendor perform the sanction screening and resolve potential hits but also make available its tool for ad hoc and individual screening as needed. The “eating the cake and having it too” approach may be the best possible approach. The vendor also should be prepared to provide certified reports on the results of each round of screening that can be made part of the organization’s permanent record to evidence it was done — and be available should the OIG or other government agency challenge them on meeting this compliance obligation. For this option, all the foregoing tips should be considered in making a selection.

Surprisingly, the additional cost of going beyond just using a vendor’s sanction screening tool to having the vendor actually perform the searching and resolving the potential hit is surprisingly inexpensive, when compared against the time and cost of doing the work in-house. In many cases, it may actually be less than what some vendors would charge for only using their screening tools.

Endnotes:

1. For examples of all these services, see www.complianceresource.com.
3. 42 C.F.R. §424.516.
4. SMDA #09-001 and 42 C.F.R. §455.436
5. OIG “Special Advisory Bulletin on the Effects of Exclusion from Participation in Federal Health Care Programs.” See also 42 CFR 1001.1901.
6. For more information on this, visit www.complianceresource.com/products/sanction-screening-services.