

DENTAL LEGAL UPDATE

Federal Regulatory Pitfalls:

Excluded Individuals and HIPAA Sham Mailers

by Jeanine Lehman, Attorney



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In order to avoid potential liability, health care providers should check and recheck the List of Excluded Individuals and Entities (LEIE).

Employment of “Excluded” Individual.

On April 12, 2021, the United States Department of Justice announced that a home health company paid \$28K as a settlement for employing an “excluded” individual. That individual was employed in a management position, and prior to being employed by the home health company, was excluded from all federal health care programs. The same or much worse could happen to a dental practice, which accepts federal government health program payments, for example, Medicaid, Tricare, or Medicare, and employs or contracts with an excluded individual or entity.

In the home health company case, the Acting U.S. Attorney explained that when the U.S. Department of Health and Human Services, Office of the Inspector General (HHS-OIG) excludes an individual or entity from federal health care programs, no program payments may be made for items or services furnished by that excluded individual or entity. There are also significant penalties that can be imposed for violation (in addition to

the health care provider not being paid for its billings to federal health programs).

In September 1999, HHS-OIG issued a Special Advisory Bulletin to provide guidance to health care providers who might employ or contract with an excluded individual or entity. In May 2013, HHS-OIG issued an Updated Special Advisory Bulletin containing additional guidance. Both the original and updated Special Advisory Bulletins advised that, in order to avoid potential liability, health care providers should check the List of Excluded Individuals and Entities (LEIE) on the HHS-OIG web site (<http://oig.hhs.gov/exclusions>). Then, periodically, the LEIE should be rechecked to see if the status of the individual or entity has changed.

Dental practices, which accept federal government health program payments, should check to see that they are in compliance with the prohibition against employing or contracting with excluded individuals or entities, now, and update their

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Speaking Requests

For **Jeanine Lehman** and her colleagues to speak to professional and business groups on legal and practice management topics, please contact Jeanine Lehman at **(512) 918-3435** or jeanine@jeanine.com

**Website Favorites**

Law Offices of
Jeanine Lehman P.C.
www.jeanine.com

Capital Area Dental Society
www.capitalareadental.org

Texas State Board of
Dental Examiners
tsbde.texas.gov

Texas Dental Association
www.tda.org

Texas Academy of
General Dentistry
www.tagd.org

American Dental
Association
www.ada.org

LEIE
oig.hhs.gov/exclusions

Federal Regulatory Pitfalls (cont.) --

compliance by regularly checking the LEIE before employing or contracting with an individual or entity, and periodically rechecking the LEIE. If they are not in compliance, they should immediately contact a health law attorney. Since exclusion from federal health programs is a red flag, it is also prudent for dental practices, which do not accept governmental program payments, to check the LEIE.

HIPAA Sham Mailers.

In 2021, the Office of Civil Rights of the U.S. Department of Health and Human Services, which administers HIPAA, issued an alert entitled “Alert: Postcard Disguised as Official OCR Communication”.

The alert states that “OCR has been made aware of postcards being sent to health care organizations informing the recipients that they are required to participate in a Required Security Risk Assessment and they are directed to send their risk assessment to *[a private company whose website link is redacted from this article]*. The link directs individuals to a non-governmental website marketing consulting services.

Please be advised that this postcard notification did not come from OCR or the U.S. Department of Health and Human Services. This communication is from a private

entity. It is NOT an HHS/OCR communication. HIPAA covered entities and business associates should alert their workforce members to this misleading communication. Covered entities and business associates can verify that a communication is from OCR by looking for the OCR address or email address, which will end in @hhs.gov, on any communication that purports to be from OCR, and asking for a confirming email from the OCR investigator’s hhs.gov email address. The addresses for OCR’s HQ and Regional Offices are available on the OCR website at <https://www.hhs.gov/ocr/about-us/contact-us/index.html>, and all OCR email addresses will end in @hhs.gov. If organizations have additional questions or concerns, please send an email to: OCRMail@hhs.gov<<mailto:OCRMail@hhs.gov>>.

Suspected incidents of individuals posing as federal law enforcement should be reported to the Federal Bureau of Investigation.”

The takeaway is to train all your staff and doctors be very careful about giving out information solicited by mail, email or phone and to verify the legitimacy of the source of the request independently. Having procedures in place to handle such requests is prudent – including a chain of command for who can authorize release of information.

REAL ESTATE TAX TIPS

With rapidly increasing real estate valuations and government budgets, expect real estate taxes to continue increasing in Texas. There are some exemptions applicable to principal residences that are critical to obtain, if you are eligible.

General Residence Homestead Exemption.

Texas has a General Residence Homestead Exemption, which significantly reduces real estate taxes applicable to the owner's principal residence. The property must be your principal residence and you may not claim homestead on another property. To receive the homestead exemption, application needs to be made to the appraisal district where your principal residence is located. For example, the Travis Central Appraisal District is at www.traviscad.org and the Williamson Central Appraisal District is at www.wcad.org. If the prior owner already has a homestead exemption, generally that exemption continues until year-end and the new owner files for a homestead exemption in the period beginning January 1st and ending April 30th of the year following the purchase. Recently, the law has changed when the prior owner did not receive the homestead exemption for the year of purchase. In that case, provided that the home is the principal residence of the new owner, the new owner can file the application for the homestead exemption after the purchase in the year of purchase, rather than waiting until January 1st, and will receive the homestead exemption for the remainder of the year of purchase. This change in the law is helpful in circumstances where the home is a new home

or the prior owner was an investor. The homestead application requires submission of the applicant's driver's license or state-issued personal ID certificate with the address matching the home's address. If you have not filed for a homestead exemption on your home and are eligible, it is advisable to file now. You may file for late homestead exemption up to two years after the date on which the taxes become delinquent. In such case, you will want to contact the appraisal district for instructions for late filing of the homestead exemption. Another benefit of the General Residence Homestead exemption is that the increase of net appraised value of your home is limited to an increase of 10% over the prior year (known as the homestead cap).

Age 65 or Older Exemption. If you are age 65 or older, your residence homestead will qualify for an additional money saving exemption. You qualify for the Age 65 or Older Exemption the year you turn 65. You apply for the Age 65 or Older Exemption with your appraisal district.

Transferring School Tax Ceiling. When you obtain the Age 65 or Older Exemption, the school district's taxes on your home have a ceiling on the amount of those taxes, which ceiling applies to future years. If you move to another principal

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Real Estate Tax Tips (cont.) --

residence in Texas and obtain a general residence homestead and over 65 exemption, you may transfer your school tax ceiling from your old residence to your new residence. The ceiling on the new homestead will be calculated to give you the same percentage of tax paid as the ceiling on the original homestead. To transfer the school tax ceiling, you file a Request to Cancel Exemption/Port Exemption to New Residence form with your old appraisal district. The old tax appraisal district then provides you with a Tax Ceiling Certificate. You then apply for your homestead exemption and age 65 or older exemption with the new appraisal district, and also send the new appraisal district your Tax Ceiling Certificate from your old appraisal district. Since school district taxes are very significant, it is well worthwhile to transfer your tax ceiling to your new home.

Other Exemptions. There are various other exemptions including for disability, and death or disability (including partial disability) of a veteran, active duty military, or first responder, which benefit those persons or their surviving spouses.

Example. To give an example of the magnitude of the exemptions, a home in a desirable area in Northwest Austin was selected arbitrarily. The home had the general residence homestead exemption and another exemption, which was probably the 65 or older exemption. In 2021, the tax appraisal was a little over one million dollars. Since the appraised value increased over 10% from 2020, the increase was capped at 10% pursuant to the homestead cap, and the net appraised value was about \$986,000. The tax ceiling for school district taxes was in place probably for at least 10 years, due to the 65 or older exemption. For 2021, the estimated real estate taxes with the current exemptions were about **\$13,600**. By contrast, for 2021, the estimated real estate taxes without exemptions were about **\$21,500**. The exemptions made a significant difference.

Tax Website. See the [Texas.gov/PropertyTaxes](https://www.texas.gov/PropertyTaxes) website for updates on real estate taxes for your county.

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newsletter with
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About Our Firm ...

Law Offices of Jeanine Lehman P.C. is a Texas law firm headquartered in Round Rock with a state-wide health law practice, including representation of Texas dentists and physicians. Our health law practice is focused on business law, transactional aspects of individual and group practices, such as practice sales/purchases/buy-ins, contracts and incorporations, office/facility leases, building sales/purchases/condos, build-to-suits and real estate law, employment agreements, financing, and consultation concerning the day-to-day legal concerns of running a health care practice. The firm is owned by Texas Attorney **Jeanine Lehman**. Jeanine has over 25 years experience as a Texas attorney. She has had one book and over 70 articles published. She speaks to professional and business groups concerning legal topics. Jeanine is blessed to have one dentist and three dental hygienists in her family. Contact us at (512) 918-3435, jeanine@jeanine.com or PO Box 7965, Round Rock, TX 78683, and visit our website at www.jeanine.com