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Topic: Exclusion Checks Date Effective: 7/1/2019

☒ Revised ☐ New Section: Corporate Compliance Number: 10.04

Date: 8/31/2023 Approved by:   
John McHugh Chief Executive Officer

### **PURPOSE**

This policy and procedure provide information on The Arc Mid-Hudson's ("Arc Mid-Hudson") process of identifying any parties that may be excluded from participation in federally funded programs, including Medicare and Medicaid.

### **POLICY**

It is the policy of Arc Mid-Hudson, not to employ, contract with or otherwise do business with any individual or entity that has been excluded from participation in federally sponsored health care programs, such as Medicare and Medicaid. To avoid affiliation with any such person or entity Arc Mid-Hudson has established the procedures described below. Conducting exclusions checks is also one aspect of Arc Mid-Hudson's system for routine monitoring and identification of compliance risks.

### **SCOPE**

This policy and procedure are applicable and made available/accessible to all affected individuals unless a specific exemption is noted within this policy. For the purposes of this Policy, all references to "employees" includes temporary, part-time and full-time employees.

### **REFERENCES**

Arc Mid-Hudson is governed by several federal, state, and local statutes, rules, and regulations; however, the focus of this policy is on those pertaining to participation in and compliance with the Medical Assistance Program (Medicaid and Medicare). Applicable statutes, rules and regulations used to design this policy include, New York State Title 18 regulations, specifically those under Part 521 that establishes requirements to adopt and implement programs designed to detect and prevent fraud, waste, and abuse in the Medical Assistance program. Social Services Law Part 363-d which establishes expectations for provider compliance programs was also used to design this policy and procedure. The Arc New York Chapter Manual also requires that all operating Chapters shall have in effect a plan for corporate compliance that contains all the elements of a corporate compliance plan required by the OMIG (Section III-15.0: Corporate Compliance, Arc New York Chapter Manual) as well as a Compliance Committee that is a committee of the Chapter Board. (Section II-5.1: Model Chapter By-Laws, Article XI, Sections 1 &2).

Provider sanctions such as exclusion are governed by Title 18, Social Services Law, New York Codes, Rules, and Regulations at Part 515.5, 521-1.4(3)(i), and sections 1128 and 1156 of the Social Security Act.

## **DEFINITIONS**

**Ineligible Person:** an individual or entity currently excluded, suspended, debarred, or otherwise ineligible to participate in federally funded health care programs or in federal procurement or non-procurement programs. For the purposes of this policy, this includes employees, members of the Board of Directors, contracted agents, and vendors.

**Exclusion Check:** An Exclusion Check is a search of (1) the U.S. Department of Health and Human Services, Office of Inspector General (“OIG”)’s List of Excluded Individuals/Entities (<https://exclusions.oig.hhs.gov/>); (2) the General Service Administration (“GSA”)’s System for Awards Management’s (“SAM”) Advanced Search – Exclusion (<https://www.sam.gov/SAM/>) and (3) the New York State Office of the Medicaid Inspector General List of Restricted and Excluded Providers on their website (<https://omig.ny.gov/medicaid-fraud/medicaid-exclusions>) to determine if an individual or entity’s name appears on either list.

**Affected Individuals:** all persons who are affected by the required provider's risk areas including the required provider's employees, the Chief Executive Officer and other senior administrators, managers, contractors, agents, subcontractors, independent contractors, and governing body and corporate officers. (N.Y. Comp. Codes R. & Regs. tit. 18, § 521-1.2)

## **RESPONSIBILITIES**

This policy and procedure are overseen by the Arc Mid-Hudson’s designated Compliance Officer (CO) and Compliance Committee (CC). The CO and CC are responsible for monitoring implementation of this policy and procedure, reviewing and revising as necessary; but no less frequent than annually.

## **PROCEDURE**

### **A. Employee Exclusion Check Procedures**

1. Exclusion Checks are performed for all applicants for employment at Arc Mid-Hudson as part of the pre-employment background check as set forth in Arc Mid-Hudson’s policy on background checks for employees and others.
2. If the Exclusion Checks indicate that any individual is an Ineligible Person, the individual cannot be hired by Arc Mid-Hudson.

3. To protect Arc Mid-Hudson against individuals excluded after beginning their employment, an Exclusion Check is performed on all employees at least every thirty (30) days. (N.Y. Comp. Codes R. & Regs. tit. 18, § 521-1.4 (3)(i)).
4. Documentation of these exclusion checks are maintained by Human Resources and Corporate Compliance. The Human Resources department will perform Exclusion Checks and supply the Corporate Compliance department with the Exclusion Checks which will be reviewed and verified by the Corporate Compliance Officer. If a current employee appears on one of the lists, an assessment is conducted to determine the employee's eligibility to maintain employment status with Arc Mid-Hudson. Arc Mid-Hudson will consult with The Arc New York State Office. Legal Counsel will be included as necessary

### **Other Individual and Entity Exclusion Checks**

1. Exclusion Checks are conducted prior to appointment of any volunteer to the Board of Directors. They are also conducted prior to execution of any contract with a contractor or vendor.
2. If the Exclusion Checks indicate that any volunteer for the Board of Directors is an Ineligible Person, the individual cannot be appointed to the Chapter Board.
3. If the Exclusion Checks indicate that any contracted agent/vendor that will be entering into a contract with the Chapter is an Ineligible Person then the contract cannot be executed.
4. To protect Arc Mid-Hudson against Board members, contracted agents, and vendors who are excluded after beginning their appointment to the Board or contract with the Chapter, an Exclusion Check is performed on all Board members, contractors, and vendors at least every thirty (30) days. (N.Y. Comp. Codes R. & Regs. tit. 18, § 521-1.4 (3)(i)).

In all cases, the Compliance Program investigates the circumstances surrounding an individual or entities inclusion on an exclusion list and determines if any overpayment exists.

### **B. Individual/Entity Contract Certification Procedures**

1. Any individual/entity wishing to execute a contract with Arc Mid-Hudson is required to certify in its contract that neither it nor any of its employees is an Ineligible Person. Such affected individual certification is made on at least an annual basis.
2. In addition, each individual/entity contract contains a provision requiring the individual/entity to maintain supporting documentation for its own Exclusion Checks and to produce copies of such documentation to Arc Mid-Hudson upon Arc Mid-Hudson's request

### **C. DUTY TO REPORT**

All individuals/entities have a duty to report any action that would render that individual or entity an Ineligible Person.

### **D. PENDING ACTIONS**

1. If any individual/entity is charged with a criminal offense related to healthcare or is proposed to be subject to debarment or exclusion from federal or state programs, the individual or entity must be removed from direct responsibility or involvement in any federally/state funded health care program while the matter is pending.
2. If resolution of the matter results in conviction, debarment or exclusion, Arc Mid-Hudson, immediately terminates its employment or other contractual arrangement with the individual or entity.