§ 1001.101

(3) Is the only source of specialized services in a reasonably defined service area where services by a non-specialist could not be substituted for the source without jeopardizing the health or safety of beneficiaries.

State health care program means:
(a) A State plan approved under title XIX of the Act (Medicaid),
(b) Any program receiving funds under title V of the Act or from any allotment to a State under such title (Maternal and Child Health Services Block Grant program), or
(c) Any program receiving funds under title XX of the Act or from any allotment to a State under such title (Block Grants to States for Social Services).

State Medicaid Fraud Control Unit means a unit certified by the Secretary as meeting the criteria of 42 U.S.C. 1396b(q) and § 1002.305 of this chapter.

Subpart B—Mandatory Exclusions

§ 1001.102 Length of exclusion.

(a) No exclusion imposed in accordance with §1001.101 will be for less than 5 years.
(b) Any of the following factors may be considered to be aggravating and a basis for lengthening the period of exclusion—
(1) The acts resulting in the conviction, or similar acts, that caused, or were intended to cause, a financial loss to a Government program or to one or more entities of $5,000 or more. (The entire amount of financial loss to such programs or entities, including any amounts resulting from similar acts not adjudicated, will be considered regardless of whether full or partial restitution has been made);
(2) The acts that resulted in the conviction, or similar acts, were committed over a period of one year or more;
(3) The acts that resulted in the conviction, or similar acts, had a significant adverse physical, mental or financial impact on one or more program beneficiaries or other individuals;
(4) In convictions involving patient abuse or neglect, the action that resulted in the conviction was premeditated, was part of a continuing pattern of behavior, or consisted of non-consensual sexual acts;
(5) The sentence imposed by the court included incarceration;
(6) The convicted individual or entity has a prior criminal, civil or administrative sanction record;
(7) The individual or entity has at any time been overpaid a total of $1,500 or more by Medicare, Medicaid or any other Federal health care programs as a result of intentional improper billings;
(8) The individual or entity has previously been convicted of a criminal offense involving the same or similar circumstances; or
(9) Whether the individual or entity was convicted of 3 or fewer misdemeanor offenses, and the entire amount of financial loss (both actual loss and intended loss) to Medicare or any other Federal, State or local government health care program due to the acts that resulted in the conviction, and similar acts, is less than $1,500.

(c) Only if any of the aggravating factors set forth in paragraph (b) of this section justifies an exclusion longer than 5 years, may mitigating factors be considered as a basis for imposing a period of exclusion greater than 5 years. Only the following factors may be considered mitigating—
(1) The individual or entity was convicted of 3 or fewer misdemeanor offenses, and the entire amount of financial loss (both actual loss and intended loss) to Medicare or any other Federal, State or local governmental health care program due to the acts that resulted in the conviction, and similar acts, is less than $1,500.

Subpart C—Permissive Exclusions
§ 1001.201 Conviction relating to program or health care fraud.
(a) Circumstance for exclusion. The OIG may exclude an individual or entity convicted under Federal or State law of—
(1) A misdemeanor relating to fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct—
(2) The record in the criminal proceedings, including sentencing documents, demonstrates that the court determined that the individual had a mental, emotional or physical condition before or during the commission of the offense that reduced the individual’s culpability; or
(3) The individual’s or entity’s cooperation with Federal or State officials resulted in—
(i) Others being convicted or excluded from Medicare, Medicaid and all other Federal health care programs,
(ii) Additional cases being investigated or reports being issued by the appropriate law enforcement agency identifying program vulnerabilities or weaknesses, or
(iii) The imposition against anyone of a civil money penalty or assessment under part 1003 of this chapter.

(d) In the case of an exclusion under this subpart, based on a conviction occurring on or after August 5, 1997, an exclusion will be—
(1) For not less than 10 years if the individual has been convicted on one other occasion of one or more offenses for which an exclusion may be effected under section 1128(a) of the Act (The aggravating and mitigating factors in paragraphs (b) and (c) of this section can be used to impose a period of time in excess of the 10-year mandatory exclusion); or
(2) Permanent if the individual has been convicted on two or more other occasions of one or more offenses for which an exclusion may be effected under section 1128(a) of the Act.