The OIG provides the following guidance on ownership of an entity by en excluded individual:

[https://oig.hhs.gov/exclusions/files/sab-05092013.pdf](https://oig.hhs.gov/exclusions/files/sab-05092013.pdf" \t "_blank)

Excluded persons are prohibited from furnishing administrative and

management services that are payable by the Federal health care programs.

This prohibition applies even if the administrative and management services

are not separately billable.

For example, an excluded individual may not

serve in an executive or leadership role (e.g., chief executive officer, chief

financial officer, general counsel, director of health information

management, director of human resources, physician practice office

manager, etc.) at a provider that furnishes items or services payable by

Federal health care programs.

Also, an excluded individual may not provide

other types of administrative and management services, such as health

information technology services and support, strategic planning, billing and

accounting, staff training, and human resources, unless wholly unrelated to

Federal health care programs.

Although an exclusion does not directly prohibit the excluded person from

owning a provider that participates in Federal health care programs, there

are several risks to such ownership. OIG may exclude the provider if certain

circumstances regarding the ownership are present.

Although this authority to exclude is not mandatory and OIG exercises it at its discretion,

any provider owned in part (5 percent or more) by an excluded person is

potentially subject to exclusion. In addition, an excluded individual may be

subject to CMPL liability if he or she has an ownership or control interest in a

provider participating in Medicare or State health care programs or if he or

she is an officer or a managing employee of such an entity.

Further, the provider may not seek Federal health care program payment for any

services, including the administrative and management services described

above, furnished by the excluded owner.***As a practical matter, this means***

***that an excluded person may own a provider, but may not provide any items***

***or services, including administrative and management services, that are***

***payable by Federal health care programs.*** (emphasis added). If an excluded owner does, for

example, participate in billing activities or management of the business, both

the owner and the provider will risk CMPL liability.

See section 1128(b)(8) of the Act.

See section 1128A(a)(4) of the Act; 42 CFR § 1003.102(a)(12)

Summary:

Ownership by an excluded person of an entity conducting business with Sutter can result in discretionary CMPL. In the event that HP will not agree to let the provision apply to its employees, you would be wise to add a section that says that in the event an adminsitrative or managerial service is provided by HP employee that is excluded, that HP will indemnify Sutter for such CMPL IF imposed on Sutter.

Use the analogy provided in the above Advisory Bulletin with regard to Staffing companies.  The OIG recommended that companies audit the staffing company to ensure they are conducting monthly monitoring of nurses or staff placed at the third party. Sutter cannot rely on the fact that the staffing company said it conducts these searches.

At the very least, you should require spot check audits to ensure HP is conducting exclusion monitoring on its employees involved in Sutter work, including management.