

Health Care Alert: OIG Revises Its Provider Self-Disclosure Protocol

Related Attorneys

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On April 17, 2013, the Office of Inspector General (OIG) of the United States Department of Health and Human Services (HHS) issued a notice completely revising its Provider Self-Disclosure Protocol (SDP). OIG originally published the SDP in 1998 to establish a process for providers to voluntarily identify, investigate, disclose and resolve potential fraud involving federal health care programs. Over the years, OIG issued additional guidance documents in the form of Open Letters to Health Care Providers. The April 17, 2013 notice supersedes and replaces the original 1998 protocol as well as the Open Letters.

Who May Use The SDP And For What Conduct?

The SDP is aimed at enforcing the health care industry's legal and ethical duty to take measures to detect, prevent and resolve fraudulent and abusive activities. All health care providers, suppliers or other individuals or entities who are subject to OIG's civil monetary penalty (CMP) authorities may utilize the SDP. Disclosing parties already subject to a government inquiry are not automatically precluded from using the SDP, but must do so in good faith and not attempt to circumvent an ongoing inquiry.

Disclosure is appropriate for matters that, in the disclosing party's reasonable assessment, potentially violate federal laws for which CMPs are authorized. Disclosing parties must explicitly describe the conduct leading to the disclosure, identify the law(s) at issue, and acknowledge that the conduct disclosed is a potential violation. If a matter does not involve potential CMPs, such as one that exclusively involves overpayments or errors, it should not be disclosed through the SDP. Additionally, parties should not use the SDP to request a determination of whether an actual or potential violation has occurred or for matters that are exclusively Stark Law violations.

What To Do Before Disclosing And What To Include In The Disclosure?

Prior to disclosing, the disclosing party is expected to conduct an internal investigation and report its findings in its SDP submission. Additionally, the disclosing party should ensure that the conduct has ended or, for improper kickback arrangements, corrective action will be taken and the arrangement terminated within 90 days of submission.

The internal investigation must result in the compilation of detailed information, including, among other things: information about the disclosing party and associated government payors; a concise statement of all details of the disclosed conduct; the federal laws and programs affected; actual or estimated damages; a description of corrective action; and the disclosing party's certification as to the veracity and completeness of the disclosure. The SDP provides additional information regarding calculating damages for improper claims, disclosures related to the employment of, or contracting with, excluded individuals and entities and disclosures for violations of the Anti-Kickback Statute.

What To Expect After Disclosing?

Successful and speedy resolution depends on the disclosing party's willingness to work cooperatively with OIG, including conducting a thorough investigation, submitting all necessary information, responding to requests for additional information and being willing to pay a penalty or multiplier of damages. OIG's general practice is to require a minimum multiplier of 1.5 times the single damages, although individual cases may demand a higher multiplier. For kickback related disclosures, OIG requires a minimum \$50,000 settlement amount to resolve the matter; \$10,000 for all other matters.

Benefits Of Disclosure

OIG recognizes the following benefits of self-disclosure:

- Evidences a robust and effective compliance program;
- Presumption against requiring integrity agreement obligations in exchange for a release of OIG's permissive exclusion authorities;
- Lower multiplier on single damages than would normally be required;
- Ability to work with OIG if disclosing party is unable to pay appropriate settlement amounts;
- Potential mitigation of the 60-day overpayment obligation.

Additionally, OIG is committed to reducing the average time a case is pending to less than 12 months from acceptance into the SDP. To accomplish this goal, OIG is changing the timeframe to submit the findings of the completed internal investigation and damages calculations from 90 days from acceptance into the SDP to 90 days from the date of initial submission.

If you have questions regarding the OIG Self-Disclosure Protocol, please contact your Vorys attorney.