



## *COMPLIANCE ALERT 10-44*

### **Voluntary Self-Referral Disclosure Protocol (SRDP) for Stark Violations Issued by CMS**

CMS today, September 23, 2010, issued a Medicare self-referral protocol (SRDP) as required by the Affordable Care Act enacted on March 23, 2010. The SRDP is open to all health care providers with an intention of resolving its overpayment liability exposure under the physician self-referral statute (Stark).

When to use the new SRDP: Participation in the SRDP is limited to actual or potential violations of the Stark statute. The OIG self-disclosure protocol (See [Compliance Alert 10-01](#)) must be used for other violations of federal, civil, or administrative laws. Disclosure of the same conduct should not be disclosed under both this SRDP and the OIG's self-disclosure protocol.

#### **Key Elements for SRDP Submission:**

##### I. Disclosure of the Actual or Potential Violation(s)

- A. Submit to CMS: Submitted electronically to [1877SRDP@cms.hhs.gov](mailto:1877SRDP@cms.hhs.gov). An original and 1 copy must be mailed to: Division of Technical Payment Policy, ATTN: Provider and Supplier Self-Disclosure, Centers for Medicare and Medicaid Services, 7500 Security Blvd, Mailstop C4-25-02, Baltimore, MD 21224-1850.

##### II. Required Information for Potential Violation(s) must include:

- A. Description of Actual or Potential Violation(s) including:
  - 1) Name, address, NPI, CMS Certification Number(s), and Tax ID of disclosing party. Provide name and address of disclosing party's designated representative for purposes of voluntary disclosure.
  - 2) Description of the nature of the matter being disclosed including type of financial arrangement, time period involved, type of designated health service provided, type of transaction involved, and names of entities and individuals involved with their respective roles.
  - 3) Statement why disclosing party feels that a violation of the Stark law may have occurred, including a complete legal analysis of

the application of the Stark law and the physician self-referral exception that applies to the conduct in question.

- 4) Circumstances under which the disclosed matter was discovered and measures taken upon discovery to address the issue and prevent future problems.
- 5) Statement regarding any history of similar conduct by the disclosing entity and any current or prior criminal, civil, or regulatory actions.
- 6) Description of the existence and adequacy of a pre-existing compliance program. Describe all efforts to prevent a recurrence. Describe efforts to re-structure the non-compliant relationship.
- 7) Description of appropriate notices, if applicable, provided to other Government agencies in connection with the disclosed matter.
- 8) Statement regarding knowledge of any other inquiry by a Government agency or contractor for this disclosed matter.

B. Financial Analysis which should:

- 1) Set forth the total amount itemized by year that is potentially owed based on the look-back period.
- 2) Describe the methodology used to determine the amount and/or estimates included.
- 3) Summarize the auditing activity undertaken and a summary of the documents used.

III. Certification: Hospital must submit a certification stating that to the best of the individual's knowledge, the information provided contains truthful information and is based on good faith effort to bring the matter to CMS's attention for the purpose of resolving any liabilities.

**Next Steps:** After the submission, CMS will immediately acknowledge via electronic means receipt of the electronic submission. Once this confirmation has been received, ***the obligation to return any potential overpayment within 60 days will be suspended until a settlement agreement is entered, the provider of services withdraws from the SRDP, or CMS removes the provider from the SRDP.***

CMS will verify the information received in the disclosure and request any additional information. Entities have will be given at least 30 days to provide the additional information.

No payments should be given to CMS prior to the completion of the inquiry. Disclosing parties are encouraged to put the suspected amount into an interest-

bearing escrow account to ensure adequate resources have been set aside to repay any obligation.

CMS has the authority to reduce the amounts owed. **Factors CMS may Consider in Reducing the Amounts Owed:**

1. Nature and extent of the improper or illegal practice
2. Timeliness of self-disclosure
3. Cooperation in providing additional information related to disclosure
4. Litigation risk associated with the matter disclosed
5. Financial position of the disclosing party.

**Finally, CMS has no obligation to reduce any amounts due and owing.**

Source: OMB Control Number: 0938-1106 :

[http://www.cms.gov/PhysicianSelfReferral/Downloads/6409\\_SRDP\\_Protocol.pdf](http://www.cms.gov/PhysicianSelfReferral/Downloads/6409_SRDP_Protocol.pdf)