

Department of Health and Human Services Office of Inspector General (HHS OIG) Announces Revamped Self- Disclosure Protocol

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The Office of the Inspector General (“OIG”) recently updated the 15-year-old Provider Self-Disclosure Protocol (“[SDP](#)”) in an effort to provide clearer and more concise guidance to providers. Since its inception, the SDP has recovered more than \$280 million in federal funds.

According to the OIG, “the newly revised SDP supersedes and replaces the 1998 Federal Register Notice and the Open Letters [issued in 2006, 2008 and 2009]...” Notable changes include: revisions to the damages multiplier; reporting of individuals excluded from participating in federal programs; and reporting anti-kickback (“AKS”) violations.

Specifically, with respect to calculating provider penalties, the updated SDP indicates that a multiplier of 1.5 will typically be used; however, the OIG reserves the right to adjust the multiplier on a case-by-case basis. Additionally, the revised SDP clarifies how to treat information regarding individuals prohibited from involvement in federal health care programs. For instance, disclosed information must include a description of the employers’ process for identifying excluded individuals. The revised SDP also requires employers to screen all employees and contractors after one excluded employee is identified, so all excluded individuals may be disclosed simultaneously. Regarding AKS and Stark law violations, the revised SDP requires providers to include an admission that, from a reasonable assessment at the time of disclosure, “...the subject arrangement(s) constitute potential violations of the AKS and, if applicable, the Stark Law.” Additionally, the OIG provided examples of helpful information in resolving reported disclosures.

The new OIG guidance also highlights the benefits of SDP disclosures including: 1) a very low chance of permissive exclusion; 2) the application of the lower damages multiplier; and 3) suspension of the “[60-day rule](#)” requiring providers to return an overpayment within 60-days of discovery.

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