

Stark Law: New Self-Disclosure Protocol

Insights

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On March 28, 2017, CMS issued a new Voluntary Self-Referral Disclosure Protocol (SRDP) that CMS describes as a “streamlined and standardized format” for disclosing actual or potential violations of the physician self-referral law (the Stark law). The Protocol requires providers and suppliers to use the forms included in the OMB-approved collection instrument entitled [CMS Voluntary Self-Referral Disclosure Protocol \(SRDP\)](#) in order to utilize the SRDP.

Use of the new protocol is mandatory effective June 1, 2017, but CMS is encouraging use of the forms immediately. A complete disclosure under the new protocol includes the following items: (1) SRDP Disclosure Form; (2) Physician Information Form(s); (3) Financial Analysis Worksheet; and (4) Certification. While the new SRDP forms require the same basic information as was required under the previous protocol, there are some additional requirements. In particular, the disclosing party must now, among other requirements:

- detail the pervasiveness of noncompliance, which, for purposes of the SRDP, means how common or frequent the disclosed noncompliance was in comparison with similar financial relationships between the disclosing party and physicians;
- submit, for each physician included in the disclosure, a separate [Physician Information Form](#) providing details of the noncompliant financial relationship between the physician and the disclosing party;
- with each noncompliant financial relationship, either: (a) state that the financial relationship was noncompliant, or (b) state that, because it cannot confirm that the financial relationship complied with the physician self-referral law, it is certifying noncompliance with the law; and,
- include a specific form of a financial analysis worksheet quantifying overpayments for each physician in Excel format.

The SRDP process, which has been in place since 2010, allows providers and suppliers to self-disclose Stark law violations and seek reduced settlement amounts from CMS for such violations. While not obligated to offer a compromised settlement, CMS typically considers a number of specified factors, and offers a settlement that is a fraction of the total Medicare collections affected. It is important to note that CMS settlement offers are effectively non-negotiable and providers must accept the offer or drop out of the SRDP (virtually impossible once the provider has certified noncompliance as required under the new protocol above). Finally, the SRDP may not always be the best option. For example, if the amount of Medicare collections received in violation of the Stark Law is small, it may be easier to simply return all the funds to the Medicare

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Administrative Contractor (MAC) rather than go through the sometimes lengthy SRDP. *For additional information, please contact [Charles Oppenheim](#) or [Alicia Macklin](#) in Los Angeles at 310.551.8111; [Paul Smith](#) or [Ben Durie](#) in San Francisco at 415.875.8500; [David Schumacher](#) or [Amy Joseph](#) in Boston at 617.532.2700 ; or [Bob Roth](#) in Washington, D.C. At 202.580.7700.*

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