

Proceed with Caution in Using New Process to Self-Report Stark Law Violations

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Like tax forgiveness programs, the new self-reporting process for Stark Law violations offers health care providers the possibility of reduced government penalties in return for resolving their compliance issues. However, providers must navigate this process carefully to avoid making a bad situation worse.

Effective June 1, health care providers must use standardized forms for reporting Stark Law violations to the Centers for Medicare & Medicaid Services (CMS). These forms are part of a [self-referral disclosure protocol \(SRDP\)](#) that establishes a process for health care providers to voluntarily report physician self-referral violations.

While the offer of reduced penalties is inviting, the self-reporting of Stark Law violations can have significant legal consequences. The new SRDP process includes four mandatory reporting components:

- SRDP Disclosure Form - This form requires a full description of the violation, and the extent or "pervasiveness" of noncompliance, as well as the steps taken to prevent future violations.

Using this form, the health care provider must disclose to CMS violations going back six years (the "look-back period"). The provider must disclose whether this was an isolated incident or a pattern of noncompliance. The report also may trigger enforcement actions by the Office of Inspector General and Department of Justice for Anti-Kickback Statute, False Claims Act or other related offenses.

- Physician Information Form - This form must be completed for each physician that participated in, or benefitted from, the improper referral arrangement.

Because the submission of this form does not require the individual physician's consent or permission, it may result in legal disputes between the physician and the reporting entity as to whether the report is necessary or accurate, and who ultimately is responsible for the violation.

- Financial Analysis Worksheet - This worksheet attempts to quantify any Medicare overpayments that must be refunded.

The Stark Law prohibits a health care provider from billing Medicare and patients for any services that derive from an improper physician referral arrangement. This can make the calculation of the overpayments substantial and difficult to quantify. Also, the Affordable Care Act requires the provider to refund any overpayments within 60 days of discovery. Although an SRDP report suspends this 60-day repayment period, it cannot correct a provider's initial failure to report that exceeds 60 days, possibly by several years.

- Certification - The CEO, CFO or another authorized representative of the reporting entity must sign a certification that the SRDP report is truthful and accurate.

CMS warns that a person's intentional submission of false or incomplete information may be referred to federal authorities for criminal or civil sanctions, including exclusion from the Medicare program.

Finally, CMS encourages health care providers to conduct a legal analysis of the potential Stark Law violation, and to include this analysis with its SRDP submission. This may include a description of the provider's compliance program, what went wrong, and what efforts were made to reform or restructure the noncompliant arrangement. CMS offers to work cooperatively with counsel in attempting to reach a reasonable settlement, but with no guarantee of reduced penalties.

Although CMS makes no promises, SRDP may be a useful tool to clear up and resolve any Stark Law violation that becomes known rather than risk a future audit or possible whistleblower action. Even if the violation should have been discovered and reported sooner, SRDP makes it possible to work cooperatively with CMS to reach a settlement that likely will result in reduced penalties.

Health care providers are encouraged to promptly address any Stark Law violation and to seek the assistance of counsel to assess the legal risks, reform any improper arrangement and if necessary, self-report to CMS in order to negotiate a favorable settlement.

If you have any questions concerning the new SRDP requirements, call Barley Snyder partner Chris Churchill at 717-399-1571, or contact him at cchurchill@barley.com.

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