AMERICAN HEALTH LAWYERS ASSOCIATION

PRACTICE GROUP email alert

To: Hospitals and Health Systems *and* Fraud and Abuse Practice Group Members

From: Hospitals and Health Systems Practice Group Leadership
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CMS Issues FAQs Providing Option to Limit SRDP Financial Analysis to Four Years

By John Garver and Jennifer Hutchens*

The Centers for Medicare & Medicaid Services (CMS) recently posted on its website four new frequently asked questions (FAQs) that provide important new guidance on the implementation of the Self-Referral Disclosure Protocol (SRDP). The FAQs can be accessed on the CMS website by clicking on the topic "Fraud and Abuse" and then on "Physician Self-Referral."

These FAQs signal a major change in how SRDP disclosures may be submitted and how those already going through the protocol are being reviewed by CMS. It is all good news for providers, and the biggest SRDP development since its inception. Specifically, two of the FAQs limit the requirement to disclose physician remuneration and designated health services (DHS) receipts beyond the four-year period covered by the reopening rules.

CMS apparently has acquiesced to the view that in most instances the financial analysis, e.g., the baseline amount of tainted DHS receipts from which CMS begins its evaluation of the appropriate reduced settlement amount, may be calculated based on the four-year period in the reopening rules. Previous CMS guidance, and indeed the SRDP itself, specified the entire length of the "look back period," which is the time period during which an arrangement has been out of compliance. CMS did not amend the SRDP--it still states that the financial analysis must cover the entire look-back period. But, the guidance contained in these FAQs amounts to an amendment. Note that the disclosing party must comply with the other aspects of the SRDP's Section IV.B.2., including disclosing the potential period of noncompliance, which may be longer than the reopening period on which it chooses to base its financial analysis.

CMS, as part of its continuing evaluation and tweaking of the SRDP process, has listened to various providers and has adjusted its views. This will result in reducing the burden on future disclosing parties to search for financial information that may no longer be readily available. And just as importantly, it establishes the starting point for discussions as to the appropriate reduced settlement amount at a number more favorable to providers, including, of course, those currently working their way through the protocol.

**We would like to thank John G. Garver III, Esquire, and Jennifer Csik Hutchens, Esquire (Robinson Bradshaw & Hinson PA, Charlotte, NC), for providing this email alert, and the Hospitals and Health Systems Practice Group leadership for sharing this alert with the Fraud and Abuse Practice Group.*

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