

PUBLICATION

CMS Self-referral Disclosure Protocol: 2013 Update and Summary of Settlements [Ober|Kaler]

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The CMS Self-referral Disclosure Protocol – Background

Under delegated authority, the Centers for Medicare and Medicaid Services (CMS) released its Self-Referral Disclosure Protocol (SRDP) on September 23, 2010, with the goal of enabling providers and suppliers to self-disclose actual or potential violations of the physician self-referral statute known as Stark. Stark, Section 1877 of the Social Security Act, prohibits physicians from making referrals for certain designated health services payable by Medicare to an entity with which the physician (or an immediate family member) has a financial relationship. The SRDP is open to all health care providers and suppliers, whether individuals or entities. The SRDP is available only for matters that may actually violate the Stark law. (Matters which may violate the antikickback statute as well should be reported to the Office of the Inspector General's Self Disclosure Program.)

A variety of resources are available to assist in the development of a submission under CMS's current SRDP process. The SRDP itself lists the required information that a party's disclosure must include such as a description of the actual or potential violations, and a financial analysis of the actual or potential violations. You can learn more about the history of the SRDP and CMS's internal review process by reading the [Implementation Report to Congress](#). CMS also published answers to a set of SRDP Frequently Asked Questions in May 2012. Last but not least, AHLA's Practitioner's Guide to the Stark Self-referral Disclosure Protocol, published in 2013, is an excellent resource containing practical tips for successfully submitting a disclosure.

SRDP Statistics

The SRDP has quickly become the much-needed pathway for providers and suppliers to seek resolution of actual or potential Stark violations. Since its implementation, many providers of services and suppliers have taken advantage of the opportunity afforded by the SRDP to resolve such liabilities. As an additional impetus advancing the SRDP, the Affordable Care Act (Pub. L. 111-148) established a deadline for reporting and returning overpayments, leading numerous providers and suppliers to submit to the SRDP because submission of a disclosure temporarily tolls a provider's obligation to return overpayments.

As anticipated, submissions to CMS for resolution of Stark matters have continued to increase since the first three settlements were produced under the SRDP in 2011. The SRDP produced 13 settlements in 2012 and 21 in 2013. A brief description of each settlement since inception of the SRDP follows. The sizes of the settlements vary dramatically, suggesting that settlement calculations are highly fact dependent. CMS has yet to disclose the total potential overpayments in settled cases, so providers are unable to calculate an average discount that may be realized through disclosure. Nonetheless, providers and suppliers have come to view the SRDP as a viable means for resolving potential liabilities they may be facing under Stark violations.

Published SRDP Settlements

2011

1. February 10 – A Massachusetts hospital settled several Stark law violations involving failure to satisfy the requirements of the personal services arrangements exception with department chiefs and medical staff for leadership services, and for arrangements with physician groups for on-site overnight coverage for patients at the hospital.
Settlement Amount - \$579,000
2. September 10 – An Ohio physician group practice settled two Stark law violations involving prescribing and supplying a certain type of DME that did not satisfy the requirements of the in-office ancillary services exception.
Settlement Amount - \$60
3. November 11 – A Mississippi critical access hospital settled several violations of the Stark law relating to its failure to satisfy the requirements of the personal services arrangements exception for arrangements with hospital and emergency room physicians.
Settlement Amount - \$130,000

2012

4. January 5 - A California hospital settled two Stark law violations that exceeded the annual nonmonetary compensation limit for physicians.
Settlement Amount - \$6,700
5. January 5 - A hospital in Georgia settled violations involving two physicians and the annual nonmonetary compensation limit. Settlement Amount - \$4,500
6. March 9 - A physician group practice in Iowa settled Stark law violations after disclosing that its compensation for certain employed physicians failed to satisfy the requirements of the bona fide employment relationship exception.
Settlement Amount - \$74,000
7. March 20 - An Arizona acute care hospital settled a Stark law violation after disclosing a single physician arrangement that did not meet the personal service arrangements exception.
Settlement Amount - \$22,000
8. April 5 - A hospital located in North Carolina settled six Stark law violations for \$6,800 after disclosing that it exceeded the calendar year nonmonetary compensation limit for two physicians during three consecutive years.
Settlement Amount - \$6,800
9. June 13 - An Alabama hospital resolved a Stark violation involving a rental charge formula that did not satisfy the requirements of the rental of equipment exception.
Settlement Amount - \$42,000
10. June 28 - A hospital in Maine settled potential Stark law violations relating to arrangements with a physician and physician group practice that failed to satisfy the requirements of the personal services exception.
Settlement Amount - \$59,000
11. July 31 - A Massachusetts hospital settled violations concerning arrangements with two physician practices for call coverage that did not satisfy the personal service arrangements exceptions.
Settlement Amount - \$208,000
12. August 15 - A hospital located in Florida resolved arrangements with three physicians that did not satisfy the personal service arrangements exception.
Settlement Amount - \$22,000

13. August 22 - A Missouri hospital settled Stark law violations involving two physicians for the provision of dental services that did not meet the requirements of the personal service exception.
Settlement Amount - \$125,000
14. October 25 - A North Carolina-based general acute care hospital and its hospice agreed to settle several Stark law violations involving arrangements and payments that failed to meet the physician recruitment, fair market value, and personal services arrangement exceptions.
Settlement Amount - \$584,700
15. November 6 - A hospital in California settled a Stark law violation, which arose from its failure to meet the physician recruitment exception.
Settlement Amount - \$28,000
16. December 27 - An acute care hospital in California settled a violation of the Stark law after disclosing that it failed to meet the personal service arrangements exception for an on-call arrangement with a physician.
Settlement Amount - \$1,600

2013

17. February 21 - A South Carolina general acute care hospital settled several violations of the Stark law involving arrangements with physicians and physician group practices that failed to satisfy the requirements of the FMV compensation exception, the personal services arrangements exception, and the rental office space exception.
Settlement Amount - \$256,000
18. March 7 – A Massachusetts acute care hospital settled several Stark law violations involving arrangements with physicians that failed to satisfy the definition of entity, the rental office space exception, and the personal services arrangement exception.
Settlement Amount - \$199,400
19. March 29 – A Louisiana acute care hospital used the SRDP to resolve violations related to professional service arrangements with physicians, a professional staffing organization, and a physician group practice.
Settlement Amount - \$317,620
20. May 7 – A Minnesota hospital agreed to settle a Stark violation that stemmed from a recruitment arrangement that failed to satisfy the requirements of the physician recruitment exception.
Settlement Amount - \$760
21. May 7 – A Texas rehabilitation hospital resolved several Stark violations through the SRDP involving arrangements for ownership interests held by certain physicians that failed to satisfy the whole hospital exception.
Settlement Amount - \$23,730
22. May 22 – A general acute care hospital in New York agreed to settle a violation of the Stark law that involved an arrangement that failed to satisfy the requirements of the rental office space exception.
Settlement Amount - \$78,500
23. June 6 – A Florida acute care hospital settled several Stark violations relating to arrangements with multiple physicians for emergency cardiology call-coverage that did not satisfy the requirements of any applicable exception.
Settlement Amount - \$109,000
24. June 6 – A general acute care hospital in Florida settled several Stark violations involving an arrangement with a group practice to provide residency program services, a physician to provide electronic health records subject matter expert services, a physician to provide Medical Director services, and a physician to provide leadership services for a hospital committee, none of which satisfied applicable exceptions.
Settlement Amount - \$76,000

25. June 12 – An Alabama acute care hospital resolved a violation of the Stark law involving an arrangement with a physician group practice for the rental of office space that did not satisfy the exception.
Settlement Amount - \$187,340
26. June 18 – A Wisconsin critical access hospital used the SRDP to resolve a violation of the Stark law relating to an arrangement with one physician for the provision of emergency room call coverage services at adjacent walk-in clinics that failed to satisfy any applicable exception.
Settlement Amount - \$12,724
27. June 18 – A Tennessee acute care hospital settled a Stark violation involving an arrangement with one physician for the supervision of cardiac stress tests that failed to satisfy the requirements of any applicable exception.
Settlement Amount - \$72,270
28. June 20 – An acute care hospital in Pennsylvania resolved several Stark violations related to arrangements for Medical Director services with certain physicians and a physician practice that did not satisfy the personal services exception.
Settlement Amount \$24,740
29. July 8 – A general acute care hospital in Ohio used the SRDP to settle violations of the Stark law that involved arrangements with certain physicians for EKG interpretation, medical director services, Vice-Chief of Staff services, and hospital services that did not satisfy the requirements of any applicable exception. Additional violations stemmed from arrangements with certain physicians and a physician group practice for the donation of EHR items and services that failed to satisfy the applicable exception.
Settlement Amount \$235,565
30. July 11 – A Texas acute care hospital settled a Stark violation involving an arrangement for case management physician advisor services with a physician that did not satisfy the requirements of any applicable exception.
Settlement Amount - \$54,108
31. August 19 – A physician group practice in Louisiana resolved a Stark violation relating to arrangements with two physicians that failed to satisfy the requirements of the in-office ancillary services exception.
Settlement Amount - \$13,572
32. August 20 – A non-profit community hospital in Minnesota settled a violation of the Stark law that involved an arrangement with a physician group practice for the rental of office space and provision of support services that failed to satisfy the requirements of any applicable exception.
Settlement Amount - \$9,570
33. August 29 – A California acute-psychiatric hospital resolved two Stark violations relating to arrangements with two physicians for the provision of psychiatric services that did not satisfy the requirements of any applicable exception.
Settlement Amount - \$67,750
34. September 10 – A North Carolina acute care hospital used the SRDP to settle several violations of the Stark law relating to arrangements with a physician to provide Medical Director Services, a physician group practice to provide medical coding and consulting services, and a physician and a physician group practice for the lease of office space, that failed to satisfy the requirements of any applicable exception.
Settlement Amount - \$87,110
35. September 12 – A general acute care hospital in Texas resolved a Stark violation involving an arrangement with a physician to provide utilization review services that did not satisfy any applicable exception.
Settlement Amount – \$82,055

36. September 18 – A California acute care hospital resolved several violations of the Stark law involving arrangements with three physicians for the provision of on-call services to the hospital's emergency department that did not satisfy the requirements of any applicable exception.
Settlement Amount - \$42,630
37. November 8 – An acute care hospital in Oklahoma used the SRDP to settle several Stark violations relating to arrangements with four physicians for the provision of electrocardiogram interpretation services that failed to satisfy the requirements of the personal services exception.
Settlement Amount - \$124,008