Insights

Beginning June 1, CMS Requires Providers to Complete SRDP Using Forms

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For the first time since its September 2010 introduction, CMS' Self-Referral Disclosure Protocol ("SRDP") is undergoing sweeping changes. Beginning June 1, 2017, parties using SRDP to voluntarily disclose actual or potential violations of the Stark law will use specifically-designed forms to submit information to CMS. Formerly, no standardized process existed under SRDP, resulting in submissions of varying size and detail. The new submission forms, as well as other changes to the SRDP program, were implemented as originally proposed in May 2016.[1] Below please find a summary of CMS' new forms and other changes to the SRDP process.

SRDP Submission Forms

The new SRDP submission process requires disclosing parties to submit four (4) forms:

1.) *SRDP Disclosure Form*: Provides information about the disclosing party, including information regarding the party's history of abuse, pervasiveness of noncompliance (i.e., how common or frequent the disclosed noncompliance was in comparison with similar financial relationships between the disclosing party and physicians), and steps to prevent future noncompliance.

2.) *Physician Information Form*: The disclosing party must submit this form for each physician included in the disclosure (i.e., if the disclosure impacts a physician group containing 100 members, then 100 forms must be submitted). This form provides details of the noncompliant relationship between the physician and the disclosing party.

3.) *Financial Analysis Worksheet*: This form quantifies the overpayment for each physician included in the disclosure and must be in MS Excel-compatible format.

4.) *Certification*: This form certifies the truthfulness of the disclosure and must be signed by the disclosing party or the CEO, CFO, or other authorized official of a disclosing entity.

Supplemental Submission Information

CMS uses the forms themselves to provide additional guidance to disclosing parties. In respect of the SRDP Disclosure Form, CMS provides examples of "Pervasiveness of Noncompliance" narrative descriptions, detailing various ways disclosing parties can communicate facts to CMS. The SRDP Disclosure Form also requests disclosing parties to provide information regarding current government inquires of the party.

The Physician Information Form requires the disclosing party to provide identifying information for each physician included in the disclosure (e.g., name, NPI, and physician organization, if applicable). A lengthy narrative section requires disclosing parties to detail the nature of the financial arrangement and

noncompliance in question, including detail on how the faulty arrangement was "cured" or terminated. Importantly, the Physician Information Form also requires the parties to divulge the period of noncompliance and the exact date of discovery. The date of discovery will start the clock of the ACA's 60-day overpayment rule, which requires disclosing entities to report and return amounts actually or potentially received pursuant to the Stark noncompliance within 60 days of the date when noncompliance was first identified. Disclosing parties may have flexibility in determining this date and should consider all available options before completing this section of the Physician Identification Form.

Similar to the current SRDP process, disclosing parties must include a financial analysis detailing a potential overpayment resulting from noncompliance. Along with the new submission forms, CMS is updating the financial analysis process as well. CMS' new financial analysis requires the following:

1.) Detail of each physician included in the self-disclosure.

2.) The date that the overpayment associated with each physician was identified; and

3.) The overpayment arising from each physician's prohibited referrals, itemized by calendar year.

As detailed in 42 C.F.R. § 401.305(f), the financial analysis must include a six-year lookback period, beginning (again) with the date of identification of the overpayment. Similar to completion of the Physician Identification Form above, incorporation of the date of identification should be carefully analyzed and consider all available options to the disclosing party.

Summary of SRDP Changes

While the new forms streamline the SRDP process for both CMS and the disclosing parties, new issues arise. Primarily, the SRDP process never required disclosing parties to identify the start date of noncompliance, thereby implicating the 60-day repayment rule. Additionally, requiring detailed information regarding all affected physicians may prove problematic for some providers, particularly when dealing with non-affiliated physician groups.

Notwithstanding, the new SRDP process is CMS' mandate. Should you have any questions regarding these changes or the SRDP process in general, please contact Thomas N. Hutchinson.

[1] https://www.gpo.gov/fdsys/pkg/FR-2016-05-06/pdf/2016-10705.pdf