

An Open Letter to Health Care Providers

Dear Clients and Friends,

We at Abrams Fensterman would like to make you aware of an Open Letter to Health Care Providers written by Daniel R. Levinson of the Office of the Inspector General.

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March 24, 2009

This Open Letter refines the OIG's Self-Disclosure Protocol (SDP) to build upon the initiative announced in my April 24, 2006, Open Letter. The 2006 Open Letter promoted the use of the SDP to resolve matters giving rise to civil monetary penalty (CMP) liability under both the anti-kickback statute and the physician self-referral ("Stark") law. As part of our ongoing efforts to evaluate and prioritize our work, these refinements aim to focus our resources on kickbacks intended to induce or reward a physician's referrals. Kickbacks pose a serious risk to the integrity of the health care system, and deterring kickbacks remains a high priority for OIG.

To more effectively fulfill our mission and allocate our resources, we are narrowing the SDP's scope regarding the physician self-referral law. OIG will no longer accept disclosure of a matter that involves only liability under the physician self-referral law in the absence of a colorable anti-kickback statute violation. We will continue to accept providers into the SDP when the disclosed conduct involves colorable violations of the anti-kickback statute, whether or not it also involves colorable violations of the physician self-referral law. Although we are narrowing the scope of the SDP for resources purposes, we urge providers not to draw any inferences about the Government's approach to enforcement of the physician self-referral law.

To better allocate provider and OIG resources in addressing kickback issues through the SDP, we are also establishing a minimum settlement amount. For kickback-related submissions accepted into the SDP following the date of this letter, we will require a minimum \$50,000 settlement amount to resolve the matter. This minimum settlement amount is consistent with OIG's statutory authority to impose a penalty of up to \$50,000 for each kickback and an assessment of up to three times the total remuneration. See 42 U.S.C. § 1320a-7a(a)(7). We will continue to analyze the facts and circumstances of each disclosure to determine the appropriate settlement amount consistent with our practice, stated in the 2006 Open Letter, of generally resolving the matter near the lower end of the damages continuum, i.e., a multiplier of the value of the financial benefit conferred.

These refinements to OIG's SDP are part of our ongoing efforts to develop the SDP as an efficient and fair mechanism for providers to work with OIG collaboratively. I look forward to continuing our joint efforts to promote compliance and protect the Federal health care programs and their beneficiaries.

Sincerely,

Daniel R. Levinson

Daniel R. Levinson Inspector General