

OIG Issues Open Letter Regarding Refinements to Provider Voluntary Self-Disclosure Protocol

On April 15, 2008, the *Office of Inspector General* (OIG) of the Department of Health and Human Services issued an “*Open Letter to Health Care Providers*”¹ (“*2008 Open Letter*”) which updated the provisions of the *OIG Provider Self-Disclosure Protocol* (SDP). Since its inception in 1998, the SDP has offered detailed instructions for how healthcare providers can voluntarily report potential fraud in their dealings with federal health care programs. Originally, the SDP guidelines did not make any commitment as to how a self-disclosed case would be handled. However, since 1998, the OIG has issued multiple Open Letters that have consistently increased incentives for providers to self-disclose by *diminishing the severity of penalties imposed after self-disclosure*. For example, in 2001, the OIG departed from its practice of imposing five-year *Corporate Integrity Agreements* (CIAs) in favor of three-year *Certification of Compliance Agreements* (CCAs),¹ and in 2006, the OIG stated that it would ordinarily forego its exclusion powers for providers that self-disclosed and would impose monetary penalties that were “*near the lower end of the damages continuum*.”¹

With the goal of increasing efficiency and benefiting providers who self-disclose, the OIG has once again improved incentives for providers to participate in the SDP. In the *2008 Open Letter*, the SDP has been refined so that participants who submit complete and informative disclosures; quickly respond to OIG’s requests for further information; and, perform accurate audits will “*generally [not be] require[d]...to enter into a Corporate Integrity Agreement or Certification of Compliance Agreement*.” The OIG will also continue to impose monetary penalties near the lower end of the damages continuum to participants that fully cooperate.

In exchange for these increased incentives, which the OIG hopes will reward providers that are truly committed to integrity in the delivery of healthcare, the new SDP refinements have added *additional pieces of information* that the initial SDP submission must contain, in an effort to improve and streamline the disclosure process. In addition to the Basic Information required by the 1998 SDP, a *complete submission must now contain the following*: (1) a complete description of the conduct being disclosed; (2) a description of the provider’s internal investigation or a commitment regarding when it will be completed; (3) an estimate of

the damages to the Federal health care programs and the methodology used to calculate that figure or a commitment regarding when the provider will complete such estimate; and, (4) a statement of the laws potentially violated by the conduct. Finally, a provider must be in a position to complete the investigation and damages assessment within months.¹ These additional requirements are not expected to be a problem for most SDP participants as it is expected that most participants will have already conducted an internal investigation prior to self-reporting.

The purpose of the SDP is to “*facilitate resolution of matters that potentially violate federal criminal law, civil law, or administrative laws for which exclusion or civil monetary penalties are authorized*,” and it is not intended to penalize “*mere billing errors or overpayments*,” which should be submitted directly to the appropriate claims-processing entity.¹ While it is the goal of the OIG to make the SDP process more efficient and fairer towards self-disclosing providers, the *2008 Open Letter* continues to state nothing regarding how the Department of Justice will approach penalizing the violations that are self-disclosed. Nevertheless, Inspector General Daniel R. Levinson believes that the presumption in favor of not requiring compliance agreements “*appropriately recognizes the provider’s commitment to integrity*,” and that the new approach “*benefits both disclosing providers and the Government and furthers our efforts to strengthen the integrity of the Federal health care programs*.”¹ The new program rewards providers that submit a complete and accurate disclosure; respond promptly to OIG informational request; and, perform an adequate internal investigation of the underlying issues, while facing the prospect of *no integrity agreement*, a penalty which can prove onerous and extraordinarily expensive for the provider. The new refinements to the SDP give self-disclosing providers significant advantages over providers who do not self-disclose, which the OIG hopes will not only streamline the self-disclosure process, but will also make providers more efficient by allowing them to save money as they are working to correct the problem.

¹ “An Open Letter to Health Care Providers,” By Daniel R. Levinson, Inspector General of the Dept. of Health and Human Services, April 15, 2008, <http://www.oig.hhs.gov/fraud/docs/openletters/OpenLetter4-15-08.pdf>

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(Accessed 6/9/08).

¹ “An Open Letter to Health Care Providers,” By Janet Rehnquist, Inspector General of the Dept. of Health and Human Services, November 20, 2001, <http://www.oig.hhs.gov/fraud/docs/openletters/openletter111901.htm> (Accessed 6/9/08).

¹ “An Open Letter to Health Care Providers,” By Daniel R. Levinson, Inspector General of the Dept. of Health and Human Services, April 24, 2006, <http://www.oig.hhs.gov/fraud/docs/openletters/Open%20Letter%20to%20Providers%202006.pdf> (Accessed 6/9/08).

¹ “An Open Letter to Health Care Providers,” By Daniel R. Levinson,

Inspector General of the Dept. of Health and Human Services, April 15, 2008, <http://www.oig.hhs.gov/fraud/docs/openletters/OpenLetter4-15-08.pdf> (Accessed 6/9/08).

¹ “An Open Letter to Health Care Providers,” By Daniel R. Levinson, Inspector General of the Dept. of Health and Human Services, April 15, 2008, <http://www.oig.hhs.gov/fraud/docs/openletters/OpenLetter4-15-08.pdf> (Accessed 6/9/08).

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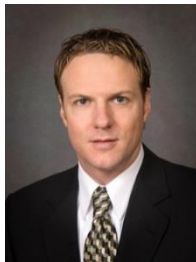
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