

Provider Self-Disclosure Podcast

Standard opening (lead-in music)

Canned: This is a Medicaid program integrity podcast. The Centers for Medicare & Medicaid Services developed and produced these podcasts to keep you informed about Medicaid program integrity topics.

Narrator: Welcome to the “Provider Self-disclosure” podcast. This podcast provides information on the voluntary disclosure of a provider’s improper receipt of an overpayment in the Medicaid program. By being more aware of the consequences of Medicaid overpayments, providers continue to serve their Medicaid patients.

Dr. Williams, the managing partner of a large family practice clinic, has recently discovered what appears to be a pattern of improper billing by one of their physicians. He has asked Ms. Soloway, the practice’s attorney, for advice on how to handle the situation. Ms. Soloway educates Dr. Williams about a process known as a provider self-disclosure.

Let’s join Dr. Williams and Ms. Soloway as they discuss the advantages of using provider self-disclosure and the possible consequences of not using provider self-disclosure.

(End music)

Scene – Ms. Soloway’s private office.

Receptionist: Ms. Soloway, Dr. Williams is here to see you.

Ms. Soloway: Thanks, Jan! Send him in. Good morning, Dr. Williams. Come on in and have a seat!

Dr. Williams: Thanks for seeing me this morning, Claire, especially on such short notice.

Ms. Soloway: My door is always open. Now, it sounds like you might have a problem. What’s going on?

Dr. Williams: OK. Here’s the situation. We discovered earlier this week that one of the physicians in our office that serves mainly the poorer, more rural population has been billing routine office visits at a higher rate than what Medicaid allows. This has been going on for the past several months. He’s relatively new to the practice and has no history of problems in the past. Well, we believe he is a good doctor and very dedicated to the patients he serves. But, I have talked to him and it is unclear to me if he did this intentionally or unintentionally. He says he didn’t mean to break any laws but, in the same breath, he talked about how low the Medicaid reimbursement rate is in this State.

I’m afraid what he’s done could jeopardize everything we’ve worked so hard to build over the years. I need to know our legal liabilities and options.

- Ms. Soloway:** Look, I'm sure he's a good doctor, but this isn't good. Both the Federal government and the States take this very seriously. I believe the best course of action is to disclose the situation up front to the appropriate government agency. You do it by using the "provider self-disclosure process." To do otherwise invites a very negative and more costly outcome.
- Dr. Williams:** What's the provider self-disclosure process? How can I make this right?
- Ms. Soloway:** Well, let me start with a little history on how this whole provider self-disclosure process came to be and how it's evolved over the past 17 or 18 years. It may help put things into context. OK?
- Dr. Williams:** OK.
- Ms. Soloway:** In 1998, the HHS-OIG published the first Provider Self-Disclosure Protocol.[1] OIG did it to establish a way for health care providers to voluntarily identify, disclose, and resolve instances of potential fraud in Federal health care programs, especially Medicaid and Medicare. The OIG further refined the process over the years and issued an updated provider self-disclosure process in April 2013.[2]
- Dr. Williams:** Wait. Wait. Who said anything about fraud? You're making me nervous.
- Ms. Soloway:** The key phrase here is "potential fraud." Try to think like a Federal or State investigator. If you were to see a pattern of over-billing over a period of time, wouldn't you conclude that this could potentially be fraud? I know I would.
- Dr. Williams:** Well, you are a lawyer. Of course you would (pokes fun at).
- Ms. Soloway:** (Laughs). Yeah, OK, but you need to understand that this provider self-disclosure process is not available for matters that do not involve potential violations of law ... I'm getting ahead of myself. By establishing this protocol, the OIG believes it benefits both the government and the provider. From the government's point of view, it streamlines the whole labor intensive process of investigating and pursuing a formal case and gets to resolution much more quickly.
- And there's a number of benefits for the provider. Because provider self-disclosure is viewed as a sign of good faith, the OIG offers a number of incentives to the provider to acknowledge good faith. One of those benefits is a lower multiplier than normally applied in a government-initiated case. This is generally a minimum of 1.5 times the single damages of the actual amount of the overpayment.[3]
- Dr. Williams:** So, how does that benefit me?
- Ms. Soloway:** Again, let's put it into context. In a government-initiated case, we're more likely talking about triple damages, not to mention the possibility of False Claims Act penalties that can run between \$5,500 and \$11,000 per claim.[4]
- Dr. Williams:** Whoa! That's a lot of money! Please tell me you're kidding.
- Ms. Soloway:** I told you the Federal and State government takes the issue of improper billing very seriously. One of the benefits of pursuing resolution through the provider self-disclosure process is that it may mitigate potential exposure to liability under the Civil Monetary Penalties Law[5] and the False Claims Act.

Dr. Williams: Wow.

Ms. Soloway: I can't emphasize this strongly enough: The key element to this whole provider self-disclosure process is your willingness to cooperate fully every step of the way.

Dr. Williams: I understand.

Ms. Soloway: Cooperation includes things like conducting a thorough investigation, submitting all necessary information, communicating through a consistent point of contact (and I can help you there), being responsive to requests for additional information and, of course, your willingness to pay a penalty or a multiplier of damages.

Dr. Williams: All right.

Ms. Soloway: You also have to implement corrective action. You need to be able to show that not only has the behavior been stopped, but it's not likely to reoccur. Now here's the kicker—if you fail to cooperate fully, all bets are off, exposing the practice to some of the more stringent, legal courses of action I just described to you.

Dr. Williams: Is self-disclosure our only option?

Ms. Soloway: Well, no. Many States have their own provider self-disclosure processes, and that includes our State.[6] Because the claims we're talking about are predominantly Medicaid claims, I recommend we pursue this through our State's provider self-disclosure program.

Dr. Williams: OK.

Ms. Soloway: While many State protocols are very similar, bear in mind that all of them emanate from the original HHS-OIG model. But, in my experience, State provider self-disclosure protocols sometimes offer additional incentives.

Dr. Williams: Really? Like what?

Ms. Soloway: Well, just like the Federal OIG, the State may offer benefits or incentives to the provider in exchange for a provider's good faith disclosure.[7] These benefits may include the waiver or reduction of interest payable on an overpayment, extended repayment terms, and the waiver of some or all applicable penalties or sanctions. And, in both the Federal and State provider self-disclosure protocols, if the disclosure is made within 60 days of identifying the overpayment, you can avoid False Claims Act penalties which, as I explained earlier, can be a huge deal. So, now is the time to act.

Dr. Williams: You sound pretty confident that this is the best course of action.

Ms. Soloway: I am completely confident that this is the way to go. Remember though, like the Federal OIG, our State OIG expects the provider to cooperate fully, timely, and in good faith throughout the process.[8] If you fail to do so, the OIG may pursue the matter through its regular audit and investigation processes and the advantages we just discussed, like less stringent repayment or sanction terms, may no longer apply.

Dr. Williams: This sounds like it's going to take a lot of my time.

Ms. Soloway: Yeah. It's a time-consuming, labor-intensive process. But I advise you to commit fully to the process. If you don't, you run the risk of far more severe consequences.

Dr. Williams: OK.

Ms. Soloway: You also need to be sure you deal with the provider who got you into this mess in the first place.

Dr. Williams: OK.

Ms. Soloway: At a minimum, he needs to be re-trained in terms of proper billing practices to assure that this doesn't happen again. You can do this internally, but you must document it thoroughly and include it in your overall provider self-disclosure package. There's a number of available resources that can help you.

Dr. Williams: All right.

Ms. Soloway: The State offers a variety of training and re-training sessions and the Centers for Medicare & Medicaid Services has engaged a national contractor to conduct provider education. This contractor has developed various training tools and modalities that you may find very helpful.

Dr. Williams: All right. (dejected)

Ms. Soloway: Are we on the same page. Are you ready to commit fully to the provider self-disclosure process?

Dr. Williams: It's hard to hear, but it sounds necessary. This has been an eye-opening experience for me. I don't like it, but I am ready to commit to the process. Let's do whatever we have to do to get started with the provider self-disclosure process.

(Closing with music)

Canned: More questions? For additional information about voluntary provider self-disclosure programs, contact your State Medicaid agency or the Office of Inspector General at [www \[dot\] oig \[dot\] hhs \[dot\] gov](http://www.oig.hhs.gov).

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