

Centers for Medicare & Medicaid Services
CMS Voluntary Self-Referral Disclosure Protocol
Frequently Asked Questions

The following FAQs relating to this topic are collected here for your convenience. The FAQs have not been revised since they were originally issued unless otherwise noted. Any questions regarding these FAQs or the CMS Voluntary Self-Referral Disclosure Protocol should be directed to the CMS Physician Self-Referral Call Center at 1877CallCenter@cms.hhs.gov.

Q. Following a change of ownership, should the seller or the purchaser submit a disclosure under the CMS Voluntary Self-Referral Disclosure Protocol (SRDP)?

A. Liability for overpayment refunds lies with the entity that is currently the party to the relevant Medicare provider agreement, regardless of when the noncompliance occurred. Therefore, the correct party to disclose noncompliance with the physician self-referral law under the SRDP depends on whether the purchaser accepted assignment of the seller's Medicare provider agreement.

If the purchaser accepted assignment of the seller's Medicare provider agreement, the purchaser is liable for a Medicare overpayment (regardless of any contractual obligations of the seller and purchaser to the contrary) and is the correct party to submit a disclosure under the SRDP.

If the purchaser rejects assignment of the seller's Medicare provider agreement, the seller is the correct party to submit a disclosure under the SRDP.

However, if the purchaser rejects assignment of the seller's Medicare provider agreement, but the noncompliance continued after the change of ownership and the purchaser billed Medicare for designated health services provided under its Medicare provider number, the purchaser may also be in violation of the physician self-referral law and should consider whether a disclosure under the SRDP is appropriate. (FAQ9084) [Revised for clarification 8/1/17]

Q. In a settlement under the CMS Voluntary Self-Referral Disclosure Protocol (SRDP), what is the scope of the release provided to disclosing parties?

A. Under the SRDP, CMS may release the disclosing party from administrative liabilities and claims under section 1877(g)(1) of the Social Security Act (the Act). Settlements under the SRDP do not include releases for any other section of the Act, or other laws or regulations.

Sections 1877(g)(3) and (g)(4) of the Act are authorities of the Department of Health & Human Services Office of Inspector General (OIG). The OIG is not a signatory to settlement agreements entered into under the SRDP. Similarly, the Federal Anti-kickback Statute and the False Claims Act are authorities belonging to the OIG and the Department of Justice, respectively. Liability under those laws is not released under the SRDP. Disclosing parties seeking a release of liability under other authorities should contact the appropriate law enforcement agency. (FAQ9100)

Q. If a purchaser takes assignment of a Medicare provider agreement from a seller who disclosed actual or potential noncompliance with the physician self-referral law under the CMS Voluntary Self-Referral Disclosure Protocol (SRDP) before the change of ownership, must the purchaser resolve the disclosure under the SRDP?

A. Beginning on the effective date of the change of ownership, the purchaser is liable for outstanding overpayments related to noncompliance with the physician self-referral law that occurred prior to the change in ownership because the purchaser took assignment of the Medicare provider agreement. However, a party's participation in the SRDP is voluntary. The purchaser may decide whether to (1) provide the appropriate certifications and resolve the disclosure under the SRDP; (2) withdraw the disclosure if it determines that a violation of the physician self-referral did not occur; or (3) withdraw the disclosure and repay the full amount of the outstanding overpayment to Medicare.

Parties are reminded that if, after a disclosure is made to CMS, the disclosing party files for bankruptcy, undergoes a change of ownership, or changes the designated representative, the disclosing party must inform CMS of the changes within 30 days. Updates must be submitted by e-mail to the following address:

1877SRDP@cms.hhs.gov. Include the word "UPDATE" in the subject of the e-mail.

(FAQ9086) [Revised for clarification as of 8/1/17]

Q. Under the CMS Voluntary Self-Referral Disclosure Protocol (SRDP), should a disclosing party inform CMS of a contemporaneous disclosure to the Department of Health & Human Services Office of Inspector General (OIG) of

arrangements related to, or involving the same parties as, the SRDP disclosure?

- A. Yes. Under Section IV.2. of the SRDP Disclosure Form (CMS-10328), disclosing parties should include a statement identifying whether the disclosing party has a history of similar conduct, or has any prior criminal, civil, or regulatory enforcement actions (including payment suspensions) against it. Under Section IV.1. of the SRDP Disclosure Form, disclosing parties should inform CMS of a contemporaneous disclosure under the OIG's Provider Self-Disclosure Protocol (SDP) that involves arrangements related to, or involving the same parties as, the SRDP disclosure.

Disclosing parties are reminded to consult Section III of the SRDP (Cooperation with OIG and the Department of Justice (DOJ)). In cases where the conduct implicates and potentially violates both the physician self-referral law and the Federal Anti-kickback Statute, the matter should be disclosed only to the OIG's SDP. The disclosing parties should not disclose the same conduct under both CMS' SRDP and the OIG's SDP.

For those parties that currently have corporate integrity agreements (CIAs) or certification of compliance agreements (CCAs) with OIG, the parties should comply with any disclosure or reportable event requirements under such agreements and should disclose this information in their submission to CMS as instructed in Section III of the SRDP. (FAQ9090) [Revised to update citations 8/1/17]

- Q. What procedures are in place to ensure that the government does not recover duplicate overpayments where a party discloses conduct under both the CMS Voluntary Self-Referral Disclosure Protocol (SRDP) and the Department of Health & Human Services Office of Inspector General (OIG) Provider**

Self-Disclosure Protocol (SDP), and the violations involve the same parties but different arrangements covering the same time period?

- A. Disclosing parties should notify CMS of a disclosure under the OIG's SDP of related conduct to that disclosed under the SRDP. CMS will coordinate with OIG to appropriately resolve the disclosed conduct. (FAQ9094)

Q. Which party receives a release from section 1877(g)(1) of the Social Security Act if a purchaser takes assignment of a Medicare provider agreement from a seller that disclosed a violation of the physician self-referral law under the CMS Voluntary Self-Referral Disclosure Protocol (SRDP) before the change of ownership?

- A. Liability for an overpayment arising from noncompliance with the physician self-referral law lies with the entity that is the current party to the relevant Medicare provider agreement, regardless of when the noncompliance occurred. Therefore, the entity that is a party to the relevant Medicare provider agreement at the time of settlement under the SRDP will receive a release of section 1877(g)(1) of the Social Security Act. (FAQ9088) [Revised for clarification 8/1/17]

Q. May a party that is disclosing multiple compensation arrangements with physicians that violate section 1877 of the Social Security Act due solely to the fact that, pursuant to 42 C.F.R. § 411.354(c), the physicians are deemed to stand in the

shoes of the same physician organization that is a party to the noncompliant arrangement(s) with a DHS entity streamline its submission to the SRDP? That is, in addition to the SRDP Disclosure Form, Financial Analysis Worksheet, and necessary certifications, may the disclosing party submit a single Physician Information Form that details the noncompliant compensation arrangement(s) with the physician organization along with a separate listing of each physician who is deemed to have the same noncompliant compensation arrangement(s) with the DHS entity as the physician organization and the period(s) of noncompliance for each physician?

- A. Yes, but only if, for each physician included in the disclosure, the only reason for noncompliance during the lookback period is the disclosed noncompliant arrangement(s) with the physician organization. The listing of physicians should include: (1) the names and NPIs of each physician who stood in the shoes of the physician organization during the lookback period; (2) the period(s) of noncompliance for each physician relative to each noncompliant compensation arrangement disclosed; and (3) any other relevant information that is unique to one of the physicians who stands in the shoes of the physician organization, such as an explanation that the physician became an owner of or left the physician organization on a certain date, resulting in a change in his or her status as standing in the shoes of the physician organization. [Published October 5, 2017]