**Instructions for Disclosures of Noncompliance with the Physician Self-Referral Law Arising *Solely* from a Violation of 42 C.F.R. § 411.362(b)(3)(ii)(C)**

To date, CMS has reviewed numerous disclosures involving noncompliance with 42 C.F.R. § 411.362(b)(3)(ii)(C), which requires physician-owned hospitals and rural providers that are hospitals to disclose on any public website for the hospital and in any public advertising that the hospital is owned or invested in by physicians. CMS has determined that, in order to satisfy the disclosure requirements of the *CMS Voluntary Self-Referral Disclosure Protocol* (OMB Control No.: 0938-1106),[1] parties disclosing *solely* noncompliance with 42 C.F.R. § 411.362(b)(3)(ii)(C) need only provide the information noted below. Parties disclosing noncompliance with *any* other provision of the physician self-referral law, including parties disclosing mixed noncompliance with § 411.362(b)(3)(ii)(C) *and* noncompliance with any other provision of the physician self-referral law, must continue to provide all the information required by the *CMS Voluntary Self-Referral Disclosure Protocol*. In addition, CMS retains the right to request additional information and/or documentation to assist in its verification process, up to and including all the information required by the *CMS Voluntary Self-Referral Disclosure Protocol*. See section V of the *CMS Voluntary Self- Referral Disclosure Protocol*, titled "Verification."

Required information for disclosures of noncompliance with 42 C.F.R. § 411.362(b)(3)(ii)(C) **only**:

- Name and address of the hospital
- Hospital's CMS Certification Number(s) (CCN), National Provider Identifier(s) (NPI), and tax identification number(s) (TIN)
- Name and contact information of the Hospital's designated representative
- Names and NPIs of all physicians who were owners/investors during the period(s) of noncompliance identified below.
- Period(s) of noncompliance: For the period beginning on September 23, 2011,[2] identify the months during which the hospital had at least one instance of noncompliance with 42 C.F.R. § 411.362(b)(3)(ii)(C). To satisfy this requirement, the hospital can provide a date range (e.g., "Period of noncompliance: December 2012 through March 2014") and exclude months during which the hospital was in compliance (e.g., "Periods of noncompliance: September 2011 through October 2012; December 2013 through January 2015").
- Certification that, for each of the months in the period(s) of noncompliance identified above, there was at least one instance of noncompliance with 42 C.F.R. § 411.362(b)(3)(ii)(C). To satisfy this requirement, the hospital may state that, because it cannot certify that it complied with 42 C.F.R. § 411.362(b)(3)(ii)(C) for each of the months in the period(s) of noncompliance identified above, it is certifying noncompliance.
- Certification that, during each of the months in the period(s) of noncompliance identified

[1] The OMB-approved collection instrument entitled *CMS Voluntary Self-Referral Disclosure Protocol* can be found at https://www.cms.gov/Medicare/Fraud-and- Abuse/PhysicianSelfReferral/Self_Referral_Disclosure_Protocol.html

[2] September 23, 2011 is the effective date of the requirement at 42 C.F.R. § 411.362(b)(3)(ii)(C)

above, at least one physician owner/investor made referrals to the hospital for designated health services, and the hospital billed Medicare for these services.

- Certification that the hospital met the other requirements of 42 C.F.R. § 411.362 and the remaining requirements of 42 C.F.R. § 411.356(c)(1) or (c)(3), as applicable.

- Certification that no other exception to the physician self-referral law was available during the period(s) of noncompliance identified above to except referrals from physicians with ownership or investment interests in the hospital.

The initial disclosure and any related supplemental submission must include a certification signed by the disclosing party's Chief Executive Officer, Chief Financial Officer, or other individual who is authorized by the disclosing party to disclose the matter to CMS and to certify the truthfulness of the information contained in the disclosure. The signed certification must state that, to the best of the individual's knowledge, the information provided contains truthful information and is based on a good faith effort to bring the matter to CMS' attention for the purpose of resolving the disclosed potential liabilities relating to the physician self-referral law.[3] The signed certification must be submitted electronically to the e-mail address above along with the complete disclosure.

Instructions for submission:

The complete disclosure must be submitted electronically to 1877SRDP@cms.hhs.gov, with a copy to Laura.Dash@cms.hhs.gov. Include the following phrase in the subject line of the e-mail: "Website and advertisement disclosures."

[3] See section IV.A.2.e of the *CMS Voluntary Self-Referral Disclosure Protocol* "Instructions Regarding the Voluntary Self-Referral Disclosure Protocol Submission".