



OIG Self-Disclosures

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OIG Self-Disclosures

- Benefits
- Eligibility
- Requirements
- Resolution

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OIG Self-Disclosures

- What is the OIG Self-Disclosure Protocol?
 - Created 1998, Updated 2013
 - Receive about 100 submissions a year
 - What = potential violations of federal criminal, civil, or administrative law for which CMPs are authorized
 - Not admitting liability

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OIG Self-Disclosures: Benefits

There are significant advantages to disclosing potential fraud

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OIG Self-Disclosures: Benefits

One

Two

Three

Four

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OIG Self-Disclosures: Benefits (1)

Good faith disclosure and cooperation generally indicates a robust and effective compliance program.

Disclosure creates a presumption against exclusion

SDP cases usually end up with releases of OIG's exclusion authority

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OIG Self-Disclosures: Benefits (2)

Lower Multiplier

Disclosing parties deserve to pay a lower multiplier on single damages than they would in a government initiated investigation

General Practice: minimum of 1.5 time singles damages

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OIG Self-Disclosures: Benefits (3)

Suspended Overpayment Obligations

SDP mitigates potential exposure under the 60 day rule.

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OIG Self-Disclosures: Benefits (4)

Quick Resolution

Specific and Detailed Process

Goal of 12 months or less (usually faster)

Initial investigation to Damage calculation: 90 Days

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OIG Self-Disclosures: Eligibility

What is proper for the SDP and
what should be disclosed to
another authority

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OIG Self-Disclosures: Eligibility

WHO: Who may disclose?

WHAT: What conduct is eligible?

WHAT NOT: What conduct is ineligible?

WHEN-ISH: The tolling of the statute of limitations

WHY: Corrective action

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OIG Self-Disclosures: Eligibility

WHO: Who may disclose?

All health care providers, suppliers, or individuals or entities who are subject to OIG's CMPs.

Not limited to any particular industry, medical specialty, or service

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OIG Self-Disclosures: Eligibility

WHAT: What conduct is eligible?

Any conduct that potentially violates Federal criminal, civil, or administrative laws for which OIG has CMPs.

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OIG Self-Disclosures: Eligibility

WHAT NOT: What conduct is ineligible?

1. Any conduct that does not potentially violates Federal criminal, civil, or administrative laws for which OIG has CMPs.
2. Advisory Opinion type questions: whether an actual or potential violation has occurred
3. Stark only conduct.

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OIG Self-Disclosures: Eligibility

WHEN-ISH: The tolling of the statute of limitations

Suspended Overpayment Obligations

Disclosing Parties agree to waive and not plead statute of limitations, laches, or similar defenses to administrative actions

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OIG Self-Disclosures: Eligibility

WHY: corrective action

Ensure conduct has ended
(or within 90 days for an improper kickback arrangement)

Taken any other necessary corrective action

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OIG Self-Disclosures: Requirements

Internal investigation and findings (if incomplete, certify it will be within 90)

Laws that are potentially violated by the disclosed conduct

Federal health care programs affected by the disclosed conduct

Estimate of the damages

Corrective action

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OIG Self-Disclosures: Requirements

False Billing Requirements/Damages

A review of either:

- 1) all claims submitted or;
- 2) statistically valid random sample
(at least 100 items)

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OIG Self-Disclosures: Requirements

Employment of Excluded Individual Requirements

Identity, provider number

Job duties

Dates of employment/contracting

Background checks (before, during, after)

Employee screening

How it was discovered

Corrective action

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OIG Self-Disclosures: Requirements

Employment of Excluded Individual Damages

Direct provider vs. Indirect provider

Non-separately billable items or services

Total employment costs x FHCP payor mix

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OIG Self-Disclosures: Requirements

Kickback and Stark violation Requirements

statement and analysis of each arrangement

Examples: FMV assessment, timing of payments, commercial reasonableness, payment for services not performed, whether payment took into account volume or value of referrals

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OIG Self-Disclosures: Requirements

Kickback and Stark violation Damages

Affected claims

Amount of improper remuneration

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OIG Self-Disclosures: Resolution

Cooperation is key to achieving the benefits of disclosure

conducting a thorough investigation
submitting all necessary information
communicating through a consistent point of contact
responding to OIG requests for additional information
being willing to pay a penalty or multiplier

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OIG Self-Disclosures: Resolution

Coordination with DOJ

Civil and Criminal conduct

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OIG Self-Disclosures: Resolution

Coordination with CMS

Stark Only Conduct and the Self-Referral Disclosure Protocol

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OIG Self-Disclosures: Resolution

Reconciliation: Minimum settlement amounts

While OIG does not demand an admission of liability in settlement agreements, disclosing parties should expect to pay above single damages for disclosed conduct that potentially violates Federal law.

1.5 x minimum multiplier

\$10,000 min for false billing and \$50,000 min for AKS

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OIG Self-Disclosures: Resolution

Reconciliation: Overpayments

Prior refunds will be credited to the ultimate settlement amount

OIG will review the methodology for the prior overpayment

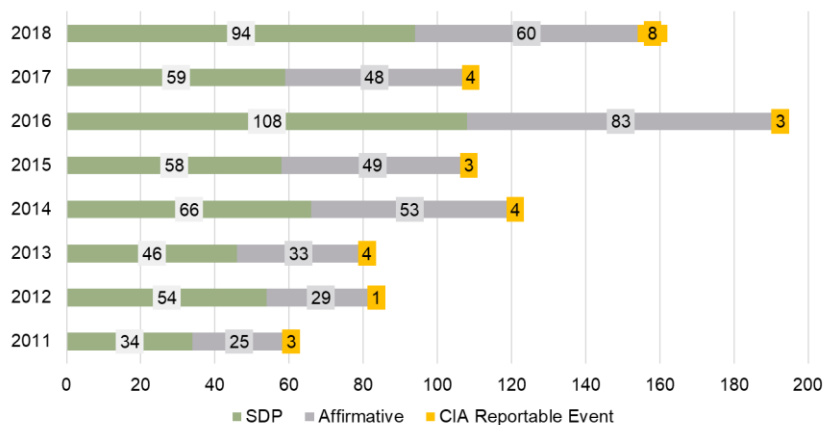
Still expect to pay multiplier on the damages

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OIG Self-Disclosures: Resolution Statistics

CMP Settlement Count by Case Type

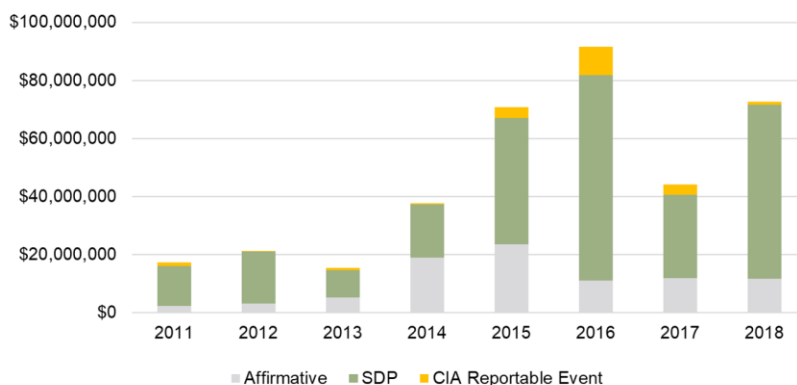


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OIG Self-Disclosures: Resolution Statistics

CMP Monetary Recoveries by Case Type

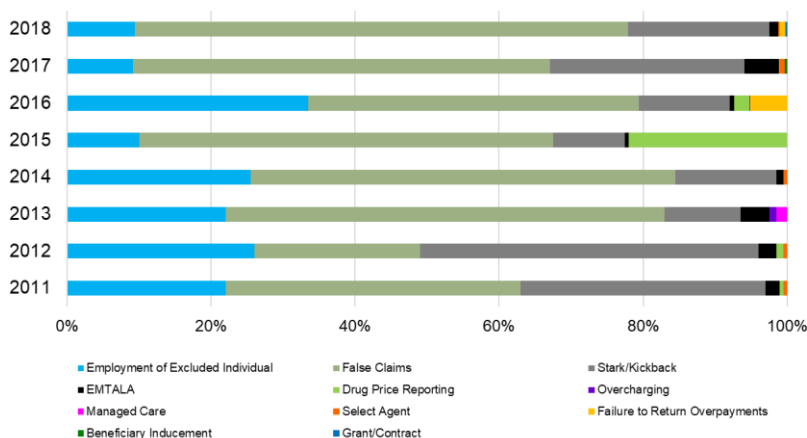


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OIG Self-Disclosures: Resolution Statistics

CMP Monetary Recoveries by Allegation



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Case Examples

Illinois physician agreed to pay \$24,027.10 for allegedly submitting claims to Medicare for incident-to services provided by nurse practitioners under his National Provider Identifier when the Medicare supervision requirements had not been met.

December 20, 2018

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Case Examples

Illinois Community Hospital agreed to pay \$10,000 for allegedly submitting claims to Medicare for incident-to services provided by nurse practitioners under a physician's National Provider Identifier when Medicare supervision requirements had not been met.

December 20, 2018

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Case Examples

Illinois hospital network agreed to pay \$461,130.66 for allegedly paying remuneration to physicians in the form of: (1) cash equivalent gift cards; (2) excessive compensation for electroencephalography and electromyography interpretation services; and (3) excessive compensation for medical director services.

October 24, 2018

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Case Examples

Illinois hospital agreed to pay \$29,932.86 for employing an individual that it knew or should have known was excluded from participation in Federal health care programs.

August 17, 2016

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Case Examples

Illinois hospital agreed to pay \$285,683.03 for allegedly employing an individual that it knew or should have known was excluded from participation in Federal health care programs.

May 19, 2016

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Case Examples

Illinois health system agreed to pay \$398,053.31 for allegedly submitting claims to Medicare and Medicaid for medical services performed by a physician based on CPT codes that resulted in greater payment than the code applicable to the services actually provided.

March 07, 2014

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Case Examples

Illinois community hospital agreed to pay \$230,320 for allegedly paying remuneration to three medical group practices in the forms of a cash collections guarantee, start-up expenses, and loan forgiveness to subsidize the practices recruitment of a midwife, an advanced practice nurse practitioner, and a certified nurse practitioner.

December 03, 2013

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Questions?

<https://oig.hhs.gov/compliance/self-disclosure-info/protocol.asp>

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