

HEALTH CARE PRACTICE GROUP ADVISORY

OIG Revises Self-Disclosure Protocol

On March 24, 2009, the Office of Inspector General (“OIG”) of the United States Department of Health and Human Services, issued an “Open Letter to Health Care Providers” (the “Open Letter”) revising the OIG’s Self-Disclosure Protocol (“SDP”). The revisions are meant to focus the OIG’s resources on kickbacks intended to induce or reward a physician’s referrals.

The SDP was created by the OIG in 1998 as a means of protecting the integrity of federal health care programs (e.g., Medicare, Medicaid, etc.) by encouraging providers to voluntarily disclose self-discovered evidence of potential fraud. The Open Letter sets forth two (2) significant amendments to the SDP. These amendments are as follows:

- 1) The OIG will no longer accept disclosure of a matter that **only** induces a potential violation of the Stark Law. The matter must include a potential violation of the Anti-Kickback Statute. (The OIG will continue to accept disclosures that involve matters of only potential Anti-Kickback Statute liability.)
- 2) A minimum \$50,000 settlement will be required by the OIG to resolve kickback-related submissions accepted into the SDP. The OIG will continue to analyze the facts and circumstances of each disclosure to determine the appropriate settlement amount.

These revisions to the SDP indicate the OIG’s commitment to deterring kickbacks among providers.

If you have any questions regarding the Open Letter or the SDP, please do not hesitate to contact any of the attorneys at The Rogers Law Firm.

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