

## OIG Refines Self-Disclosure Protocol

On April 15, 2008, Inspector General Daniel R. Levinson of the Department of Health and Human Services Office of the Inspector General ("OIG") issued an Open Letter to Health Care Providers in which he addresses changes to the OIG's Provider Self-Disclosure Protocol ("SDP"). The SDP, created in 1998, is intended to encourage health care providers to voluntarily disclose to the OIG evidence of potential fraud that they discover, in hopes of ensuring the integrity of the Federal health care programs, such as Medicare and Medicaid. This is the third such Open Letter to Health Care Providers issued by the OIG with respect to the SDP since the program's inception.

The purpose of this most recent Open Letter is to make health care providers aware of refinements to the SDP and to clarify a number of ongoing issues related to the SDP. Among the refinements and clarifications included in the Inspector General's letter are: (1) clarification regarding the information that must be included in an initial submission made under the SDP, (2) a discussion of the actions taken by providers that may result in their removal from the SDP, (3) clarification of the types of disclosures that are not properly addressed by the SDP, and (4) an explanation of a recent change in

the possible outcomes of the SDP for providers.

According to the Inspector General, an initial submission to the SDP must include four pieces of information in addition to the Basic Information described in the SDP itself as set out at 63 Fed. Reg. 210 (Oct. 30, 1998). First, the provider must describe the conduct that it is disclosing. Second, the provider must describe the internal investigation it has conducted, or provide the OIG with a commitment regarding when that inspection will be completed. Third, an estimate of the damages to the Federal health care programs must be submitted to the OIG, along with the methodology used in drafting that estimate. If this information has not yet been calculated, the provider must submit to the OIG a commitment as to when it will complete the estimate. Finally, the provider must include a statement of the laws potentially violated by the discovered conduct. When submitting this information to the OIG, the provider must be able to complete its investigation and estimate of damages within three months of its acceptance into the SDP.

Once accepted into the SDP, the provider is required to cooperate with the OIG as it works toward



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verifying the information that has been disclosed. To that end, Inspector General Levinson has indicated in his letter that if a provider fails to disclose in good faith and timely respond to requests for additional information by the OIG, that provider will be removed from participation in the SDP.

The Open Letter has also clarified the types of discoveries that are not properly reported to the SDP. In cases where the provider discovers “mere billing errors or overpayments”, reports should be submitted directly to the appropriate claims-processing entity, such as the Medicare contractor. These issues are not appropriately addressed through the SDP, according to Inspector General Levinson.

Finally, Inspector General Levinson addresses a refinement to the SDP with respect to the benefits that self-disclosure brings providers. The OIG has determined that where a provider submits a complete and informative disclosure of evidence that fraud may have occurred, quickly responds to requests from the OIG for additional information, and performs an accurate audit, the OIG will presume that the provider has adopted effective

compliance measures. As a result, the OIG will not generally require those providers to enter into Corporate Integrity Agreements or Certification of Compliance Agreements as a part of the resolution of the matter under the applicable OIG administrative monetary and permissive exclusion authorities. It is the OIG’s hope, according to Inspector General Levinson, that this presumption in favor of not requiring compliance agreements will advance the OIG’s goal of quickly resolving self-disclosures, while at the same time recognizing the commitment made by certain providers to the integrity of the Federal health care programs.

To read Inspector General Levinson’s Open Letter to Health Care Providers, go to: <http://oig.hhs.gov/fraud/docs/openletters/OpenLetter4-15-08.pdf>.

For more information about the OIG’s Self-Disclosure Protocol, including the refinements and clarifications included in Inspector General’s Open Letter to Health Care Providers, please contact Mary C. Malone at (804) 967-9604 or by email at [mmalone@hdjn.com](mailto:mmalone@hdjn.com). Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at [www.hdjn.com](http://www.hdjn.com).

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