

PUBLICATION

CMS Approves New Group Information Form under Self-Referral Disclosure Protocol

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Following the comment period that ended on August 8, 2022, the Centers for Medicare and Medicaid Services (CMS) recently finalized changes to the Self-Referral Disclosure Protocol (SRDP) for physician practices to disclose group practice noncompliance under the physician self-referral law (commonly referenced as the Stark Law).

On December 28, 2022, the Office of Management and Budget (OMB) approved revisions to the forms required to be submitted under the SRDP process. The changes, as outlined below, are effective on March 1, 2023.

Prior SRDP Process

The SRDP process has required submission of:

1. The SRDP disclosure form;
2. Physician information form(s) for each physician included in the disclosure;
3. A financial analysis worksheet; and
4. A certification signed by the disclosing party (submitted as hard copy by mail).

The application of the "stand in the shoes" standard causes any non-compliant financial relationship with a physician group with multiple owners to be viewed as a financial relationship with each of the physician owners. As a result, disclosing groups were required to submit a separate physician information form for each owner. CMS acknowledged industry concerns that such a process is duplicative and time-consuming, primarily because generally there are no substantive differences between physician owners. Thus, CMS **proposed** a process by which physician practices could disclose "group practice noncompliance" by submitting a single Group Practice Information Form covering all the physicians in the practice who made prohibited referrals to the practice.

Updated Process

CMS opted to finalize its proposal to facilitate a more consolidated process for certain disclosures. Physician practices disclosing noncompliance resulting from a failure to satisfy the definition of "group practice" under 42 C.F.R. § 411.352 can now use the new Group Practice Information Form rather than completing an individual Physician Information Form for each physician who made prohibited referrals.

The new Group Practice Information Form requires a list of each element of the "group practice" definition that was not satisfied and a description of the non-compliance. In addition, the form requires submission of a spreadsheet containing the following information about each physician who made prohibited referrals to the practice:

- Physician's name
- Physician's NPI
- Statement of whether the physician is an owner, employee, or independent contractor of the practice

- Statement of whether the physician received compensation that failed to comply with the volume or value of referrals requirement at § 411.352(g), taking into account the special rule for profit shares and productivity bonuses at § 411.352(i)
- Period of noncompliance (i.e., period during which the physician made prohibited referrals to the practice)

Although this spreadsheet does not take the place of the required Financial Analysis Worksheet, CMS confirmed that the information required to be in both may be submitted in one consolidated spreadsheet.

Finally, the signed certification is no longer required to be submitted by sending a hard copy to CMS. This requirement was a source of confusion because all other disclosure documents had to be submitted by email. Under the new process, all documents may be submitted electronically.

Takeaways

The [newly approved forms](#) were available for use between the time of their announcement in January 2023 and the effective date of March 1, 2023. However, any disclosures submitted on or after March 1, 2023, must use only the updated forms. The changes help streamline the submission process in certain limited scenarios. Specifically, the transition only applies to noncompliance related to the failure to qualify as a group practice. The individual Physician Information Forms must still be completed for disclosures involving any other category of noncompliance.

For example, if a group practice is making a disclosure for failure to make required advanced imaging notices, such as, an in-office ancillary services exception issue, the streamlined approach would not be available, even though parties can tend to think of the group practice definition and the related in-office ancillary services exception as one and the same.

Other scenarios also are not fully clear. For example, if a group practice had a non-compliant distributions formula for three years of the lookback period, and also failed to properly give the advanced imaging notice across other portions of the lookback period, it is not clear whether the new streamlined approach would be available.

For this and other fact patterns that reflect gray areas under the new guidance, providers should consult with experienced healthcare counsel to obtain direction before submitting such a self-disclosure.

For questions about the new process or for help completing an SRDP, please contact [Sanford V. Teplitzky](#), [Joseph B. Keillor](#), [Tenia Clayton](#) or any member of Baker Donelson's [Health Law](#) group.