

Health Law Client Alert: OIG Narrows Scope of Permissive Self-Disclosures and Imposes a Floor on Kickback Settlement Amounts

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In an Open Letter to Health Care Providers (the “Open Letter”) issued on [March 24, 2009](#), the Office of Inspector General (OIG) announced significant limits on the use of its Self-Disclosure Protocol (SDP). According to the Open Letter, providers should self-disclose to the OIG matters that involve liability under the Stark Law only when a colorable violation of the Anti-kickback Statute also is involved. The OIG underscored that providers should not draw any inferences about the government’s enforcement of Stark Law violations because its narrowing of the scope of the SDP was for “resources purposes.”

The OIG also established a minimum settlement amount of \$50,000 to resolve any kickback issues through the SDP. To explain the basis for this floor, the OIG referenced its statutory authority to impose a per-kickback penalty of up to \$50,000 and up to three times the total remuneration at issue. The OIG also reiterated its promise from its [April 24, 2006](#) Open Letter to settle SDP matters near the “lower end of the damages continuum, *i.e.*, a multiplier of the value of the benefit conferred.” Again, the OIG made clear that it implemented this new settlement floor in the interest of allocating resources appropriately.

The effect of this pronouncement on providers remains to be seen. While some may welcome the Open Letter’s clarification of circumstances in which providers should disclose Stark Law violations to the OIG, others may lament the uncertainty of this change in policy.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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