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Informational Notice

Date: August 23, 2016

To: Participating Medical Assistance Program Vendors

Re: Self-Disclosure Protocol

As a result of Public Act 097-0689, referred to as the Save Medicaid Access and Resources Together (SMART) Act, the Department of Healthcare and Family Services (the Department) is required to establish a protocol to enable health care providers to disclose an actual or potential violation of Medical Assistance (Medicaid) program requirements. The Department Office of Inspector General (the OIG) "self-disclosure protocol" establishes a voluntary disclosure process that providers may utilize upon detection of receipt of an overpayment from the Department. The self-disclosure protocol will also assist providers to comply with overpayment detection and repayment obligations under the federal Patient Protection and Affordable Care Act.

The self-disclosure protocol is intended to establish a fair, reasonable, and consistent process that is mutually beneficial for both the Department and the disclosing provider. The OIG recognizes that the situations which are appropriate for referral to the protocol will vary significantly; therefore, the protocol is written in general terms to allow providers and the OIG the flexibility to address the unique aspects of each matter. Each disclosure is distinct and will be reviewed, assessed, and verified by the Department on an individual basis.

In exchange for the provider's good-faith self-disclosure and ongoing cooperation, the Department may offer benefits to the provider. These benefits may include the waiver or reduction of interest payable on the overpayment, extended repayment terms, and wavier of some or all applicable penalties or sanctions.

Bradley Hart
Inspector General

**Illinois Department of Healthcare and Family Services
Office of Inspector General**

SELF-DISCLOSURE PROTOCOL

Introduction

The mission of the Illinois Department of Healthcare and Family Services (the Department) Office of Inspector General (the OIG) is to prevent, detect, and eliminate fraud, waste, abuse, mismanagement, and misconduct in the Medical Assistance (Medicaid) program. As part of the multi-disciplinary approach to attaining these goals, the OIG supports health care providers and vendors (providers) who voluntarily self-refer to the provider disclosure protocol upon detection of a violation of Medicaid program requirements resulting in an overpayment from the department.

The federal Patient Protection and Affordable Care Act (ACA), requires providers to timely identify and repay Medicaid overpayments. Under the ACA, providers are obligated to report, explain, and repay overpayments within 60 calendar days of identification. (See 42 U.S.C.A. Section 1320a-7 k (d)). Providers failing to disclose, explain, and repay the overpayment in a timely manner may be subject to liability under the federal False Claims Acts, among other penalties.

While providers who identify that they have received inappropriate payments from the Medicaid program are obligated to return the overpayments, it is essential to develop and maintain a fair, reasonable, and consistent process that will be mutually beneficial for both the department and the provider involved. In order to encourage providers to utilize the self-disclosure protocol, the OIG offers incentives for providers to investigate and report matters that involve possible fraud, waste, abuse, mismanagement, or misconduct—whether intentional or unintentional—under the Medicaid program. By forming a partnership with providers through this self-disclosure approach, the OIG's mission will be enhanced, while simultaneously offering providers a mechanism that may reduce their legal and financial exposure.

The OIG recognizes that the situations that are appropriate for referral to the self-disclosure protocol could vary significantly; therefore, this protocol is written in general terms to allow providers and the OIG the flexibility to address the unique aspects of the matters disclosed.

Advantages of Self-Disclosure

Self-disclosure of overpayments will, in most circumstances, result in a better outcome for a provider than if the OIG discovered the matter independently. While the specific resolution of a self-disclosed matter depends upon the individual merits of the case, the OIG typically extends the following benefits to providers who participate in a self-disclosure in good-faith:

- Forgiveness or reduction of interest payments (for up to two years)
- Extended repayment terms
- Waiver of some or all applicable penalties and/or sanctions
- Timely resolution of the overpayment
- Decreased likelihood of imposition of an OIG Corporate Integrity Agreement (CIA)
- If made within 60 days of identification, avoidance of False Claims Act penalties.

Developing a partnership with the OIG during the self-disclosure process may also lead to a better understanding of the OIG's audit and investigatory processes, benefitting the provider in the future.

Determining if Self-Disclosure is Appropriate

Providers should utilize the self-disclosure protocol after the provider fully investigates and confirms that an overpayment exists, or that billings were submitted erroneously even if no overpayment occurred. In addition, providers must be mindful that 42 U.S.C.A Section 1320a-7k(d)(2) requires a provider to self-disclose an overpayment within 60 days of the overpayment being identified or the date that any corresponding cost report is due, if applicable. Failure to report the overpayment in a timely manner subjects the overpayment claims to False Claims Act penalties (\$5,500 to \$11,000 per claim plus three times the amount of damages). However, because of the wide variance in the nature, amount, and frequency of overpayments that may occur, coupled with a wide variety of provider types, it is difficult to present a comprehensive set of criteria by which to judge whether disclosure is appropriate. Providers must determine whether the repayment warrants a self-disclosure or whether it would be better handled through administrative billing processes.¹

Issues appropriate for self-disclosure may include, but are not limited to:

- Substantial routine errors
- Systematic errors
- Patterns of errors
- Potential violation of state and federal laws relating to the Medicaid program, such as non-compliance pertaining to documentation and records, quality of care, cost reports, and third party liability.

The protocol is not intended to be used for minor or insignificant matters such as the repayment of simple occurrences of overpayment(s). Repayment of simple overpayments should typically be handled through traditional resolution methods such as voiding or adjusting the amounts of claims. The OIG encourages providers to utilize the self-disclosure protocol when circumstances warrant.

The Disclosure Process

Once a provider determines that disclosure to the OIG is appropriate, the provider should prepare a written Disclosure Report with the following information, as applicable.

1. Provider information, including name (include doing business as name, or first, middle and last name as name), Medicaid provider identification number, license number, NPI, DEA number, business address, mailing address, telephone number, fax number, and e-mail address.
2. Contact person, if not the provider, and contact information. Specify the relationship of the contact person to the provider.

¹ Due to the complexity of some issues surrounding self-disclosures, providers may want obtain the advice of experienced health care legal counsel or consultants.

3. The basis (or bases) for the self-disclosure, including the approximate dates of service covered, the Medicaid recipient identification numbers if available, applicable procedure and/or diagnosis codes affected if applicable, and an assessment of the potential financial impact.
4. Citations to the specific state and federal Medicaid program laws, regulations, rules, policies, guidance, Handbook provisions, and/or other authorities that are or may be implicated;
5. A password protected or otherwise secure Excel or MS Access file with a detailed list of claims paid or submitted that comprise the overpayments. Each claim should list the Medicaid provider identification number, recipient name, Recipient Identification Number (RIN), date(s) of service, procedure code(s) billed, and the amount(s) paid by the Department;
 - o For identification purposes, the file/s must be named in accordance with the following format: NPI Number_SelfD_SubmittingDate.extension (xls/xlsx/mdb). For example: 1234567890_SelfD_01012013.xls or xlsx (Excel) or 1234567890_SelfD_01012013.mdb (MS Access).
6. Any law enforcement, state, and/or federal agency that has been notified of the same conduct. Include the name, title and contact information of notified individuals and the date of notification.
7. The nature and extent of any investigation or audit conducted by the provider to identify and determine the amount of the overpayment.
8. A summary of the identified underlying cause of the issue(s) involved and any corrective action taken, the date the correction occurred, and the process for monitoring the issue to prevent reoccurrence;
9. The names of individuals involved in any suspected improper or illegal conduct and whether they are still employed by, or otherwise affiliated with, the provider; and
10. An attestation of accuracy and completeness of the Disclosure Report, signed by the provider (if an individual) or an authorized individual (if an organization).

The Disclosure Report (including the password protected or otherwise secure Excel or MS Access File) must be submitted electronically to the following email address:

HFS.OIG.SelfDisclosure@illinois.gov

The Office of Inspector General will acknowledge receipt of each Self-Disclosure via return e-mail and will contact the appropriate contact person with any questions and/or concerns.

No disclosure is complete until the department receives a complete Self-Disclosure Report.

Assessment of Disclosures

The OIG will consider each disclosed incident on an individual basis. In considering how a disclosure will be brought to conclusion, factors that the OIG will consider include, but are not limited to:

- The exact issue(s)
- The dollar amount involved
- The percentage of provider's overall Medicaid reimbursement involved
- Any patterns or trends
- The period of non-compliance
- Timely use of the self-disclosure protocol
- The circumstances that led to the non-compliance

- The provider's history with the department, including recurring overpayments for the same reason
- Whether the provider has a CIA in place.

Upon review of the provider's disclosure, the OIG may independently conclude that the matter warrants referral to the Illinois Attorney General's Medicaid Fraud Control Unit (MFCU) and/or other authorities. Alternatively, the provider may request the participation of a representative of the MFCU, Department of Health and Human Services Office of Inspector General, the Department of Justice, or a local United States Attorney's Office.

Upon review of the provider's disclosure, the OIG will consult with the provider and determine the most appropriate process for proceeding. The OIG expects the provider to cooperate fully, timely and in good-faith throughout the process. The OIG may request additional information or documentation. The OIG recommends that providers submit all requested and relevant information initially, to lessen the likelihood that additional information will be requested. Assuming that the provider cooperates, the OIG expects that self-disclosures will be handled in a timely manner.

The OIG will consider the provider's full, timely, and good-faith cooperation throughout the disclosure process in determining the most appropriate resolution and the best mechanism to achieve that resolution. In the event that the provider and the OIG cannot reach agreement on the amount of the overpayment, or if a provider fails to cooperate in good-faith, the OIG may pursue the matter through established audit or investigation processes, and the possible advantages of self-disclosure, such as less stringent repayment and/or sanction terms, may no longer apply. Assuming the provider acts in good-faith, the mere fact that the provider and the OIG are unable to agree on a repayment amount will not automatically preclude favorable repayment terms, particularly related to the portion of the matter to which the provider and the OIG are able to agree.

Relation to Ongoing Audits

Matters related to an ongoing Department audit of the provider are not generally eligible for resolution under the self-disclosure protocol. Unrelated matters disclosed during an ongoing audit may be eligible for processing under the protocol. If the OIG is already auditing or investigating the provider, and the provider wishes to avail themselves of the protocol, the provider should bring the matter to the attention of the assigned auditor and make a submission under the protocol. If an outside agency is auditing or investigating the provider for the conduct, and the provider seeks to disclose an issue to the OIG, the provider should follow this guidance accordingly.

Access to Information

Providers are expected to promptly comply with OIG requests to provide documents and information materially related to the disclosure and to speak with relevant individuals. The OIG also expects the provider to execute and provide business record certifications, whenever requested, in a form acceptable to the OIG.

The OIG is committed to working with providers in a cooperative manner to obtain relevant facts and evidence without interfering with the attorney-client privilege or work-product protection. A provider's cooperation will be measured by the extent to which a provider (or provider's counsel) discloses relevant facts and evidence, not its waiver of privilege or protection. However, a lack of information may make it difficult for the OIG to determine the nature and extent of the conduct which caused the overpayment.

Restitution

All provider self-disclosures are subject to independent OIG review and verification, including determining whether the overpayment amount identified by the provider is accurate. While repayment is accepted throughout the self-disclosure process and repayments will be credited toward the final settlement amount, the OIG will not accept any payment for self-disclosures as full and final payment prior to finalizing its review and verification process.

Once a repayment amount has been agreed upon between the OIG and the provider, the OIG expects the provider to reimburse the State of Illinois for the overpayment with payment in full or to enter into a repayment agreement if repayment was not previously made.

Upon closure of a matter, the OIG will issue settlement documentation.