

CMS publishes new data on self-referral disclosure protocol settlements

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The Centers for Medicare & Medicaid Services (CMS) recently published updated data regarding settlements¹ made under the Voluntary Self-Referral Disclosure Protocol (SRDP), an important mechanism through which providers may disclose actual or potential violations of the federal physician self-referral prohibition commonly known as the Stark Law.

Although the data remain limited, they show a significant increase in the number of disclosures settled in the last year, consistent with public statements from agency representatives about how CMS is now processing disclosures. While the number of settlements is up, the amounts paid thereunder appear to be generally consistent with years past, though observers should resist the temptation to read too much into the data.

Background

The Affordable Care Act required the establishment of a voluntary self-referral disclosure protocol that sets forth a process through which providers may disclose actual or potential violations of the Stark Law. In accordance with this mandate, CMS established the SRDP on September 23, 2010.

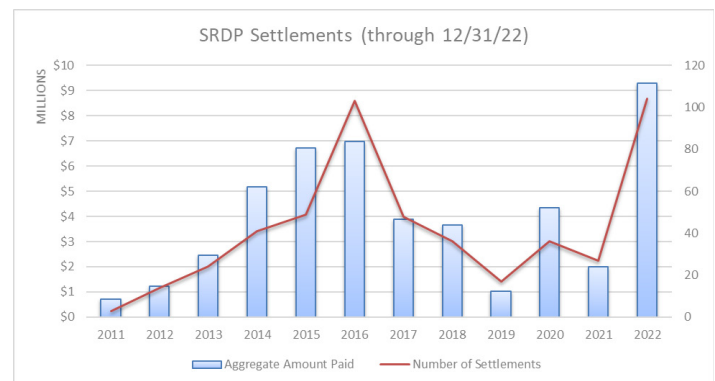
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Over the years, CMS has published certain information about SRDP settlements. Initially, CMS published short descriptions of each settlement, including a general description of the disclosing party (e.g., an acute care hospital located in Tennessee), the nature of the actual or potential violation (e.g., failure to satisfy the requirements of the personal services arrangements exception for certain physicians), the date of the settlement, and the amount paid thereunder.

In 2016, CMS changed course. Rather than reporting each individual settlement, it began reporting the data on an aggregate level. Specifically, CMS reported, for each year, the number of disclosures settled, the range of amounts of settlements, and the aggregate amount of settlements. CMS has continued to report SRDP settlements in this format ever since, generally updating the data yearly.

New SRDP settlement data

On July 5, CMS provided its latest update. This most recent update was the first in over 18 months and includes data from both 2021 and 2022 (as well as a couple of 2020 settlements not included in the previous update). The following graph depicts, by year, the total number of settlements and the aggregate amount paid.



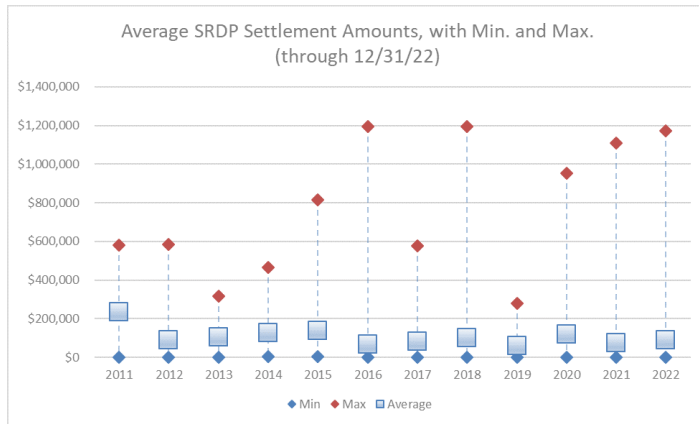
While the agency resolved 27 submissions in 2021, it picked up the pace significantly in 2022, resolving 104 settlements over the year. The 104 settlements mark the largest number of settlements in a year thus far.

This accelerated pace is consistent with public statements from CMS representatives that the agency has recently devoted more resources to resolving SRDP matters. CMS representatives have shared that CMS is reviewing and responding to some submissions as they come in rather than responding in the order in which they were received, which we have seen firsthand.

The 104 settlements in 2022 mark the largest number of settlements in a year thus far.

Although the data show an uptick in the number of settlements, the amounts paid appear to be fairly consistent from year to year. In 2021, the 27 settlements ranged from \$631 to \$1,110,148 and yielded a total of \$1,988,451. In 2022, the 104 settlements ranged

from \$299 to \$1,171,174 and yielded a total of \$9,287,866. As shown below, these numbers, and the average settlement values they suggest, appear to align with historical values.



Having said that, it is important to remember that there is no “average” SRDP submission, nor is there a discernible formula that can be used to predict the settlement amount. CMS evaluates the facts and circumstances of each submission individually and may consider various factors, including, among other things, the nature and extent of the improper or illegal practice, the timeliness of disclosure, and the cooperation of the disclosing party.

It is also worth noting that, as of December 31, 2022, CMS reports that 232 SRDP submissions have been withdrawn, closed without

settlement, or settled by CMS’s law enforcement partners. This number is up from 155 as of December 31, 2020, and 148 as of December 31, 2019.

It is important to remember that there is no “average” SRDP submission, nor is there a discernible formula that can be used to predict the settlement amount.

This increase may relate to CMS’s efforts over the past couple of years to ensure that disclosing parties have fully considered recent clarifications regarding requirements common to many Stark Law exceptions, such as those relating to documentation and signatures.

Takeaways

In 2021 and 2022, over 200 SRDP submissions were either settled through the SRDP (131) or withdrawn, closed without settlement, or settled by CMS’s law enforcement partners (77). These figures reflect a substantial undertaking, one that is consistent with public statements from agency representatives that CMS has devoted more resources to resolving disclosures. Those who await a settlement offer should know that the conventional wisdom on timing is changing. Resolution may come sooner than you expect

Notes

¹ <https://bit.ly/3Qtld6g>

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