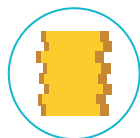


Health Care Fraud Self-Disclosure Protocol: (3) Dealing with damages



CRA shares practical insights gained by helping clients voluntarily disclose self-discovered evidence of potential fraud, under the guidance contained in the US Health and Human Services' Office of Inspector General's Health Care Fraud Self-Disclosure Protocol (SDP), as updated on November 8, 2021.



A dollar saved is \$1.50 earned

The Office of Inspector General has stated that its "general practice in [civil monetary penalty] settlements of SDP matters is to require a minimum multiplier of 1.5 times the single damages." For every dollar by which single damages can be reduced, the disclosing party can expect to save at least \$1.50.



Demonstrate that the sample is reasonably representative

To ensure the defensibility of the damages analysis, the disclosing party should consider analyzing its statistically valid sample to demonstrate that the sampled units are reasonably representative of the population as a whole.



Pick the best approach

Disclosing parties often consider "but-for" reimbursements as an offset to estimated total damages. Government representatives may be open to this approach as a matter of equity if it is 1) disclosed and presented in a transparent manner and 2) consistent with the underlying facts and circumstances of the situation.



Keep track of underpayment

The SDP prohibits a "...reduction, or 'netting' for any underpayments discovered in the review." However, if a significant number of underpayments are noted during the review process, disclosing parties may choose to include them in the SDP report for context as the information may be relevant in their negotiations with the government regarding penalties.



Avoid double payment

The disclosing party does not need to repay improper claims that were identified during the probe sample if 1) they were included in the study population from which a statistically valid sample was drawn and 2) repayment was made based on that sample. This would result in a double payment to the government.

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