

# Report on Medicare Compliance Volume 29, Number 2. January 20, 2020

## Attorneys: If CMS Ignores SRDP Submissions for Years, Hospitals Are Off FCA Hook

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By Nina Youngstrom

In 2014, a hospital reported a potential Stark Law<sup>[1]</sup> violation to CMS's Self-Referral Disclosure Protocol (SRDP),<sup>[2]</sup> expecting to settle the matter in a reasonable amount of time for a bearable sum. Nearly six years later, there's still radio silence—CMS has neither accepted the hospital's submission nor rejected it—and as far as two attorneys are concerned, the hospital is now off the hook for the potential Stark violations and any False Claims Act<sup>[3]</sup> (FCA) liability stemming from it. CMS has let this drag on for so long that the six-year statute of limitations has almost expired and the hospital should withdraw from the SRDP, says the attorney who represents the hospital. And the hospital is not alone, a function of the length of time it takes CMS to respond to SRDP submissions, says the attorney, who prefers not to be identified. Even after submissions are accepted, CMS often takes years to resolve SRDP cases.

“I think the Self-Referral Disclosure Protocol is broken,” the attorney tells *RMC*. The SRDP, which was created by the Affordable Care Act, offers sharply reduced penalties to hospitals and other organizations that provide designated health services (DHS) if they voluntarily disclose “actual or potential” violations of the Stark Law.

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