

# Repay Overpayments

(18 USC 1347; 42 CFR 401.301 et seq.)



# Repaying Overpayments

- If provider has received an “overpayment”, provider must:
  - Return the overpayment to federal agency, state, intermediary, or carrier, and
  - Notify the entity of the reason for the overpayment.
- Must report and repay within the later of:
  - 60 days after overpayment is identified.
  - date corresponding cost report is due.

(42 USC 1320a-7k(d); 42 CFR 401.305)

- New regulations issued 2/12/16.

# Overpayments: Penalty

- “Knowing” failure to report and repay by deadline =
  - False Claims Act violation
    - \$11,000 to \$22,000 per violation
    - 3x damages
    - *Qui tam* lawsuit  
(31 USC 3729)
  - Civil Monetary Penalty Law violation
    - \$10,000 penalty
    - 3x damages
    - Exclusion from Medicare or Medicaid  
(42 USC 1320a-7a(a)(10))



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FOR IMMEDIATE RELEASE

Wednesday, August 24, 2016

## **Manhattan U.S. Attorney Announces \$2.95 Million Settlement With Hospital Group For Improperly Delaying Repayment Of Medicaid Funds**

### **Continuum Admits That It Did Not Fully Reimburse Medicaid For Erroneously Billed Claims For Over Two Years**

Preet Bharara, the United States Attorney for the Southern District of New York, Scott J. Lampert, Special Agent in Charge of the New York Field Office of the U.S. Department of Health and Human Services

# Overpayments

- “Overpayment” = funds a person receives or retains to which the person, after applicable reconciliation, is not entitled, e.g.,
  - Payments for non-covered services
  - Payments in excess of the allowable amount
  - Errors and non-reimbursable expenses in cost reports
  - Duplicate payments
  - Receipt of Medicare payment when another payor is primary
  - Payments received in violation of Stark, Anti-Kickback Statute, Exclusion Statute.
- 6 year lookback period. (42 CFR 401.305(f))

# Repaying Overpayments

## Condition of payment from govt program

- Requires repayment, e.g.,
  - **Billing or claim requirements**
  - **Anti-Kickback Statute**
  - **Stark**
  - **Civil Monetary Penalties re excluded individuals**

## Condition of participation in govt program other regulation

- Does not necessarily require repayment, e.g.,
  - **Conditions of Participation**
  - **Conditions of Coverage**
  - **Licensure requirements**
  - **HIPAA**
  - **EMTALA**
  - **OSHA**

# Overpayments: Identified

- Identify overpayment = person has or should have, through exercise of reasonable diligence, determined that they received overpayment.
  - Actual knowledge
  - Reckless disregard or intentional ignorance
- Have duty to investigate if receive info re potential overpayment, e.g.,
  - Significant and unexplained increase in Medicare revenue
  - Review of bills shows incorrect codes
  - Discover services rendered by unlicensed provider
  - Internal or external audit discloses overpayments
  - Discover AKS, Stark or CMPL violation
- “Reasonable diligence” =
  - Proactive monitoring
  - Reactive investigations

(81 FR 7659-61)



# Overpayments: Deadline

- 60-day deadline begins to run when either:
  - Person completes reasonably diligent investigation which confirms:
    - Received overpayment, and
    - Quantified amount of overpayment.
  - If no investigation, the day the person received credible information that should have triggered reasonable investigation.
- “Reasonable diligence” = timely, good faith investigation
  - At most 6 months to conclude diligence
  - 2 months to report and repay
- Deadline suspended by:
  - OIG Self-Disclosure Protocol
  - CMS Stark Self-Referral Disclosure Protocol (“SRDP”)
  - Person requests extended repayment schedule

(42 CFR 401.305(a); 81 FR 7661-63)



# Overpayments: Reporting

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May either:

- Use Medicare contractor process for reporting overpayments, e.g.,
  - **claims adjustment**
  - **credit balance**
  - **self-reported refund**
- Use OIG or CMS self-disclosure protocol that results in settlement.

(42 CFR 401.305(d))

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JF Part B / Browse by Topic / Overpayment and Recoupment

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ICD-9

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Incentive Programs

## Overpayment and Recoupment

Topic	Brief Description
<a href="#">Extended Repayment Schedule (ERS)</a>	Providers may need longer than 30 days to repay the full amount of an overpayment. Providers have the option to submit a Request For Extended Repayment Schedule (ERS) Form. When this has been determined, the request for ERS must be submitted immediately and completely.
<a href="#">Medicare Secondary Payer (MSP) Overpayments</a>	In order for Medicare to demand an overpayment after a MSP (Medicare Secondary Payer) claim has paid, the MSP Part B Form must be submitted along with the primary insurer EOBs.
<a href="#">Request Immediate Recoupment</a>	Medicare allows providers to sign up for Immediate Recoupment, a process which allows overpayments to be automatically recouped from currently processed and paid claims. The provider will need to have currently processed and paid claims to cover the overpayment amounts prior to the 30th day, so interest

<https://med.noridianmedicare.com/web/jfb/topics/overpayment-recoupment>

# Overpayment: Reporting

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- Repayment per Repayment Rule does not resolve violations or penalties under other laws, e.g.,
  - **Anti-Kickback Statute, Civil Monetary Penalties Law, or False Claims Act, which are resolved by OIG or DOJ.**
  - **Stark, which is resolved by CMS.**
- If Medicare contractor believes repayment involves violation of federal law, contractor may report repayment to the OIG, CMS, or other federal agency.

# Overpayment: Reporting

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- May want to consider other disclosure protocols.
  - **OIG Self-Disclosure Protocol**,  
<https://oig.hhs.gov/compliance/self-disclosure-info/index.asp>
  - **Stark Self-Referral Disclosure Protocol**,  
[https://www.cms.gov/medicare/fraud-and-abuse/physiciansselfreferral/self\\_referral\\_disclosure\\_protocol.html](https://www.cms.gov/medicare/fraud-and-abuse/physiciansselfreferral/self_referral_disclosure_protocol.html)

## Self-Referral Disclosure Protocol Settlements

The CMS Voluntary Self-Referral Disclosure Protocol (SRDP) enables providers of services and suppliers to self-disclose actual or potential violations of the physician self-referral statute. The following table displays settlements to date and will be updated on a yearly basis.

Calendar Year	Number of Disclosures Settled	Range of Amounts of Settlements	Aggregate Amount of Settlements
2011	3	\$60 - \$579,000	\$709,060
2012	14	\$1,600 - \$584,700	\$1,236,200
2013	24	\$760 - \$317,620	\$2,468,348
2014	41	\$3,322 - \$463,473	\$5,175,168
2015	49	\$5,081 - \$815,405	\$6,706,458
<b>Totals</b>	<b>131</b>	<b>\$60 - \$815,405</b>	<b>\$16,295,234</b>

### Notes:

As of December 31, 2015, an additional 56 disclosures to the SRDP were withdrawn or settled by CMS' law enforcement partners.

Because disclosures of actual or potential violations of the physician self-referral law include proprietary, confidential, or



# OIG SDP Settlements (2016)

Conduct	Settlement
Care center employed excluded individual.	\$162,171
Hospital paid physicians in excess of FMV for services not performed	\$79,167
Hospital paid submitted claims to Medicaid without preauthorization	\$196,013
Hospital received services by home health agency to induce referrals	\$1,923,993
Health care company employed two excluded individuals	\$359,388
Hospital submitted unsupported claims for home health services	\$3,757,615
Hospital submitted claims for services that were not provided as claimed	\$872,925
Physician group upcoded claims	\$259,746
Physician group submitted claims for services that were not	\$422,741



# Idaho Repayment Statute



# Idaho Medicaid: Repayment

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- **Provider must repay overpayments or claims previously found to have been obtained contrary to statute, rule regulation or provider agreement.**
  - **Penalties**
    - **Exclusion from state health programs, e.g., Medicaid**
    - **Civil penalty of up to \$1000 per violation**
    - **Referral to Medicaid fraud unit**
- (IC 56-209h(6)(h))
- **Provider agreement requires providers to immediately repay overpayments.**



# Idaho Medicaid: Repayment

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- Medicaid ostensibly requires immediate repayment.
  - Notice requires response within 15 days.
  - May have up to 60 days interest free.
  - May enter repayment agreement, which is typically no longer than 12 months.

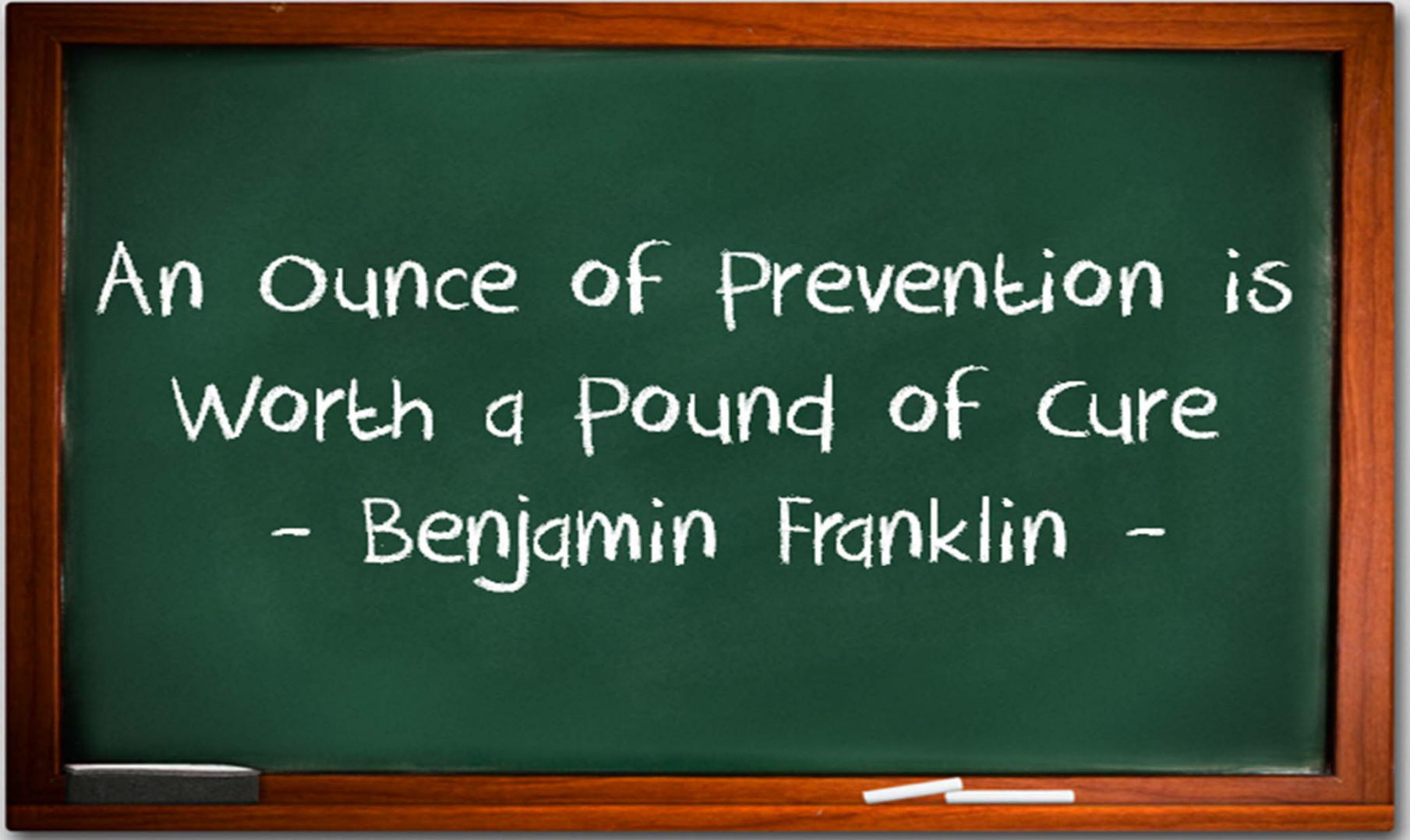
# Self-Reporting



If you think you have a problem,

- Contact compliance officer
- Consider contacting knowledgeable attorney
- Self-report, if appropriate.

**Better to comply in the first place!**



An Ounce of Prevention is  
Worth a Pound of Cure  
- Benjamin Franklin -

# Action Items



# Action Items

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- Identify remuneration to referral sources (e.g., providers, facilities, vendors, govt program patients).
  - Contracts (employment, independent contractors, etc.).
  - Group compensation structures.
  - Leases (space, equipment, etc.).
  - Subsidies or loans.
  - Joint ventures or partnerships.
  - Free or discounted items or services (e.g., use of space, equipment, personnel or resources; professional courtesies; gifts; etc.).
  - Marketing programs.
  - Financial policies.

# Action Items

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- Review relationships for compliance with statute or exception, e.g.,
  - No intent to induce referrals for government program business.
  - Written contract that is current and signed by parties.
  - Compliance with terms of contract.
    - Parties providing required services.
    - Documentation confirming that services provided.
  - Fair market value.
  - Compensation not based on volume or value of referrals.
  - Arrangement is commercially reasonable and serves legitimate business purpose.

# Action Items

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- Implement method to track and monitor relationships with referral sources for compliance.
  - Central repository for contracts or deals.
  - Method to track contract termination dates.
  - Process for confirming compliance before payment.
  - Require review and approval by compliance officer, attorney or other qualified individual.
    - Contracts.
    - Joint transactions with referral sources.
    - Benefits or perks to referral sources.
    - Marketing or advertising.

# Action Items

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- Ensure your compliance policies address fraud and abuse laws.
- Train key personnel regarding compliance.
  - Administration.
  - Compliance officers and committees.
  - Human resources.
  - Physician relations and medical staff officers.
  - Marketing / public relations.
  - Governing board members.
  - Purchasing.
  - Accounts payable.
- Document training.



# If you think you have a problem

- Don't do this!



# If you think you have a problem

- Suspend payments or claims until resolved.
- Investigate problem per compliance plan.
  - Consider involving attorney to maintain privilege.
- Implement appropriate corrective action.
  - But remember that prospective compliance may not be enough.
- If repayment is due:
  - Report and repayment per applicable law.
  - Self-disclosure program.
    - To OIG, if there was knowing violation of False Claims Act, Anti-Kickback Statute or Civil Monetary Penalties Law.
    - To CMS, if there was violation of Stark.

# Additional Resources

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# https://oig.hhs.gov/compliance/

The screenshot shows a Windows Internet Explorer browser window displaying the 'Compliance' page of the Office of Inspector General (OIG) website. The address bar shows the URL 'https://oig.hhs.gov/compliance/'. The browser's Favorites bar includes links to 'AHLA Lists', 'AKS', 'CMS home', 'CMS Stark', 'eCFR', 'EMTALA guidelines', 'Gmail', 'HIPAA', 'Hotmail', 'Idaho Statutes', 'IDAPA DHW', 'IDSOS Search', 'MapQuest', 'Nursing Facilities', 'OCR HIPAA', 'OIG', and 'Stark'. The website header features a 'REPORT FRAUD' button, navigation links for 'Home', 'FAQs', 'FOIA', 'Careers', 'HEAT', and 'Contact Us', and social media icons for YouTube and Twitter. The main navigation menu includes 'About OIG', 'Reports & Publications', 'Fraud', 'Compliance', 'Recovery Act Oversight', 'Exclusions', and 'Newsroom'. The 'Compliance' section is active, showing a breadcrumb trail 'Home > Compliance' and a search bar. The page content is divided into two columns. The left column features two main sections: 'Accountable Care Organizations' and 'Advisory Opinions'. Each section includes a brief description and a 'Read More' button. The right column contains a red 'I'm looking for' callout box with the text 'Let's start by choosing a topic' and a 'Select One' dropdown menu. Below this, a list of topics is displayed, including 'Accountable Care Organizations', 'Advisory Opinions', 'Compliance 101 and Provider Education', 'Compliance Guidance', 'Corporate Integrity Agreements', 'Open Letters', 'RAT-STATS', and 'Safe Harbor Regulations'. The browser's status bar at the bottom shows 'Done', 'Internet | Protected Mode: Off', and the system clock indicating 7:43 PM on 2/19/2013.

Compliance | Office of Inspector General | U.S. Department of Health and Human Services - Windows Internet Explorer provided by

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## Compliance

### Accountable Care Organizations

The Affordable Care Act contains several provisions that support the development of Accountable Care Organizations to manage and coordinate care for beneficiaries.

Read More

### Advisory Opinions

The OIG issues advisory opinions about the application of OIG's fraud and abuse authorities to the requesting party's existing or proposed business arrangement.

Read More

**I'm looking for**

Let's start by choosing a topic

Select One

- Accountable Care Organizations
- Advisory Opinions
- Compliance 101 and Provider Education
- Compliance Guidance
- Corporate Integrity Agreements
- Open Letters
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<https://www.hollandhart.com/healthcare#overview>



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**Kim Stanger**  
Partner  
Boise



**Blaine Benard**  
Partner  
Salt Lake City

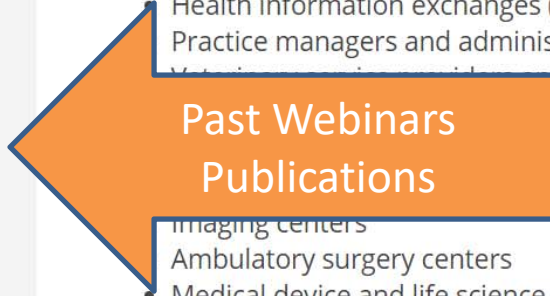


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# Questions?

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Kim C. Stanger

office 208-383-3913

cell 208-409-7907

[kcstanger@hollandhart.com](mailto:kcstanger@hollandhart.com)