On March 15, 2019, the Centers for Medicare & Medicaid Services (CMS) released proposed changes to its methodology for calculating Civil Money Penalties (CMPs) for Medicare Advantage (MA) and Part D Prescription Drug Plan (MA and Part D) sponsors. The proposed changes would impact both the calculation methodology for 2019 as well as the CMP amounts for 2019 and beyond in an effort to increase plan accountability. CMS is accepting comments on these proposed changes until April 15, 2019 at 11:59 PM ET.

Though CMS has exercised its statutory and regulatory authority to impose CMPs on MA and Part D sponsors from the outset of these programs, it did not publicly release its methodology for calculating CMPs until December 2016. The current proposed changes are the first to be issued since that initial release.

CMPs are calculated by applying a standard penalty amount to each deficiency committed by an organization. The standard penalty amount imposed on an organization is calculated on either a “per enrollee” or “per determination” basis. CMS may increase the standard penalty when specific aggravating factors (e.g., delay of prescription drugs for acute conditions) are identified. However, CMS places limits on CMP amounts imposed on organizations to ensure they are not paying excessive amounts compared to their number of enrollees.

Most significantly, CMS proposes to modify the aggravating factors considered in its determinations, to add, in cases of inappropriate denial of services/prescription drugs, consideration of whether the services/drugs were delayed or were, in fact, never received. CMS further proposes to remove as an aggravating factor whether the violations were among the top conditions in the Annual MA/PD Audit and Enforcement Report.

In addition, CMS proposes to begin using the cost of living adjustment to calculate penalty increases in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (Sec. 701 of Pub. L. 114-74). CMS would calculate these amounts annually but would only implement the resulting increases to the standard penalty amounts no more often than every 3 years to correspond to its 3-year MA/PD audit cycles. In reliance on the proposed adjustment, for 2019, CMS would increase the standard per enrollee penalty, such as for inappropriate delay/denial of Part C medical services or part D drugs or for charging incorrect premium amounts, by $12 (to $212 from the current $200). It is unclear whether CMS would also apply this cost of living adjustment to its per determination penalty amounts.