

Penalties For Health Care Law Violations Surge



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The civil monetary penalties for violations of myriad health care laws continue to rise. In June, we [discussed](#) the enormous increase in penalties under the federal False Claims Act (“FCA”). Through an interim final rule, the Department of Justice nearly doubled the per-claim FCA penalty. The minimum per-claim FCA penalty increased **from \$5,500 to \$10,781** and the maximum per-claim FCA penalty increased **from \$11,000 to \$21,563**. The FCA penalties nearly doubled because the Federal Civil Penalties Inflation Adjustment Act of 2015 (the “2015 Adjustment Act”) required federal agencies to update civil monetary penalties (“CMPs”) within their jurisdiction by August 1, 2016 to catch-up with inflation.

Because of the 2015 Adjustment Act, numerous other CMPs—in addition to the FCA—recently have increased or likely will increase.

First, as we [predicted](#), the Office of Inspector General (“OIG”) [recently announced](#) that it will review state false claims acts to verify that the state’s per-claim penalties utilize the increased federal FCA penalties. Under the Deficit Reduction

Act of 2005, states a receive 10% increase in FCA recoveries if OIG determines that the state's FCA, among other things, (1) is "at least as effective" as the federal FCA, and (2) contains a civil penalty amount at least the same as the federal FCA's civil penalty. States have a two-year grace period to amend their state FCAs. Whether states are willing to double the amount of state FCA penalties remains to be seen.

Second, the Department of Health and Human Services ("HHS") issued an interim final rule increasing the CMPs applied by all HHS agencies. The breadth of the amended penalties is staggering. The interim final rule includes a table entitled "Calculation of CMP Adjustments," listing the affected provisions, the percentage penalty increase, and the new maximum penalty. The table spans 21 pages of the Federal Register, listing nearly 300 amended penalties.

Health care providers and suppliers should refer to HHS's "Calculation of CMP Adjustments" table for the complete list of CMP increases. But to select a few examples, HHS will increase the CMPs for:

- A health care provider who violates the Stark Law's prohibition on physician self-referrals;
- A clinical laboratory that fails to meet Medicare participation and certification requirements;
- A skilled nursing facility that fails to comply with Medicare certification requirements;
- A health care provider that employs or contracts with an individual who has been excluded from participation in federal health care programs; and
- A pharmaceutical or medical device manufacturer that does not meet the Sunshine Act's reporting requirements.

HHS's CMP increases apply to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015.

The breadth of increased CMPs for violations of the enormously complex regulatory landscape in which health care providers operate ups the ante for robust compliance programs. When health care providers face allegations that they violated one of myriad health care laws, the increased penalties likely will factor into their calculation about whether to challenge or resolve the allegations against them.

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