



LEGAL ADVICE FOR HEALTH PLANS

HEALTH LAW ALERT

September 12, 2016

HHS Civil Money Penalties Increase By Up to 98%

Penalties Adjusted for Inflation; Increases Vary Significantly

Last week, the Department of Health and Human Services (HHS) implemented a statutorily-required “catch-up” inflation adjustment to the Civil Money Penalties that the agency has authority to impose on health plans for a variety of programs. The adjustments generally take into account inflation from the time HHS was first granted authority to impose the Penalties until this year, resulting in some dramatic increases in the amount of Penalties that can be assessed for a violation. Thus, for example, Penalties for some Medicaid Managed Care violations increased by 97.9%, because HHS was given authority to impose the penalties in the late 1980s and the Penalties have not been adjusted since. In contrast, Penalties for HIPAA Privacy, Security, and Breach Notification violations, which were established by the HITECH Act in 2009, increased by a more modest 10.0%.

HHS will adjust the amount of these Civil Money Penalties each year going forward. This year’s “catch-up” inflation adjustment along with future annual adjustments are designed “to improve the effectiveness of civil money penalties and to maintain their deterrent effect.” Among the affected Penalties are:

- Penalties for HIPAA Privacy, Security, Breach Notification, and Transactions Rules violations increased by 10.0%. For example, violations due to willful neglect that have not been corrected within 30 days may each draw a Civil Money Penalty of \$55,010 (up from \$50,000), not to exceed \$1,650,300 in a year (up from \$1,500,000).
- Penalties for Medicare Advantage violations, such as employing or contracting with an excluded person or failing to comply with marketing regulations or guidance were increased by 47.2% to \$36,794 for each of these violations (up from \$25,000).
- Penalties for violation of Affordable Care Act requirements, such as failure to provide the Summary of Benefits and Coverage increased 8.7% to \$1,087 for each SBC violation (up from \$1,000).

- Penalties for Medicaid Managed Care violations, such as substantially failing to provide medically necessary services to Medicaid beneficiaries or misrepresenting or falsifying information furnished to HHS, increased by 97.9% to \$49,467 and \$197,869 per violation, respectively.

These new penalties apply to violations taking place since the statute became law on November 2, 2015, unless the Penalty has already been assessed. The Interim Final Rule contains a table showing the inflation-adjusted Civil Money Penalty for various violations.

The final rules (and the table showing adjusted Penalties) are published at 81 *Federal Register* 61537 ([click here](#)). [Click here](#) for my compilation of HIPAA Administrative Simplification Rules and Selected Federal Health Insurance Provisions incorporating the inflation adjustment amendments into the rules (or see the “Resources” page at tbixbylaw.com).

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For more information, please contact Tom Bixby at (608) 661-4310 or TBixby@tbixbylaw.com

Thomas D. Bixby Law Office LLC

(608) 661-4310 | www.tbixbylaw.com

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