



LEGAL ADVICE FOR HEALTH PLANS

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## ***HEALTH LAW ALERT***

### ***October 11, 2018***

## **HHS Civil Monetary Penalties Adjusted for Inflation**

### **HHS Anti-Fraud Penalties Also Increase**

Today, the Department of Health and Human Services (HHS) published a Final Rule applying a 2018 annual penalty inflation adjustment to the Civil Monetary Penalties that the agency has authority to impose on health plans for a variety of programs. The adjustments are based on the Consumer Price Index for all Urban Consumers (CPI-U). The Federal Office of Management and Budget determined the adjustment to be 2.041% for the time period since the last date on which the HHS Civil Monetary Penalties were adjusted for inflation. The annual adjustments are designed “to improve the effectiveness of civil money penalties . . . and to maintain their deterrent effect.”

The Final Rule also includes increases in Civil Monetary Penalties for certain HHS-enforced Anti-Fraud provisions as dictated by the Bipartisan Budget Act of 2018. Under that legislation, Civil Monetary Penalties that HHS may impose were increased for violations such as (i) knowingly presenting false claims to the Federal government, (ii) employing or contracting with an excluded individual, (iii) making a false statement, omission or misrepresentation in an application, bid, or contract under a Federal health care program, and (iv) failing to report and return an overpayment by the Federal government.

The Final Rule contains a table showing the inflation-adjusted Civil Monetary Penalty for various violations. The Final Rule (and the table showing adjusted Penalties) are published at 83 *Federal Register* 51369 ([click here](#)). [Click here](#) and see “Other Resources” for my abbreviated table showing the Civil Monetary Penalties incorporating the inflation adjustments (or see the “Resources” page at [tbixbylaw.com](http://tbixbylaw.com)).

Among the affected Penalties are:

- Penalties for HIPAA Privacy, Security, Breach Notification, and Transactions Rules violations. For example, a HIPAA violation due to willful neglect that has not been corrected within 30 days is subject to a minimum Civil Monetary Penalty of \$57,051 (up from \$55,910), not to exceed \$1,711,533 (up from \$1,677,299).

- Penalties for making a false statement, omission or misrepresentation of a material fact in any application, bid, or contract under a Federal health care program were increased to \$100,000 (from \$55,262).
- 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 to \$38,159 per violation (up from \$37,396).
- Penalties for violation of Affordable Care Act requirements, such as failure to provide the Summary of Benefits and Coverage increased to \$1,128 for each individual to whom an SBC is not provided (up from \$1,105). Similarly, medical loss ratio violations increased from \$111 to \$113 per day per individual affected by the violation.
- 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 to \$38,159 (from \$37,396) and \$152,638 (from \$149,585) per violation, respectively.

The inflation adjustments take effect today (October 11, 2018) and apply to penalties assessed on or after today (even if the violations took place prior to today).<sup>1</sup>

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<sup>1</sup> “[T]he pre-adjustment civil penalty amounts . . . will apply” to violations that occurred prior to November 2, 2015, the date on which the statute authorizing inflation adjusted penalties went into effect.