



LEGAL ADVICE FOR HEALTH PLANS

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## ***HEALTH LAW ALERT***

### ***November 6, 2019***

## **HHS Adjusts Civil Money Penalties for Inflation**

Yesterday, the Department of Health and Human Services (HHS) published a Final Rule applying a 2019 annual penalty inflation adjustment to the Civil Money 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 inflation adjustment to be 2.522% for the time period since the last date on which the HHS Civil Monetary Penalties were adjusted for inflation.

The inflation adjustment is authorized by the Federal Civil Penalties Inflation Adjustment Act of 1990 as modified by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The annual adjustments are designed “to improve the effectiveness of civil monetary penalties . . . and to maintain the deterrent effect of such penalties.”

The Final Rule modifies 45 C.F.R. Part 102, which contains a table showing the inflation-adjusted Civil Money Penalty for various types of violations. The Final Rule (and the table showing adjusted Penalties) are published at 84 *Federal Register* 59549 ([click here](#)).

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 \$58,490 (up from \$57,051), not to exceed \$1,754,698 (up from \$1,711,533).

To see all HIPAA-related Civil Money Penalties incorporating the inflation adjustments, [click here](#) (or see the “Resources” page at [tbixbylaw.com](http://tbixbylaw.com) and scroll down to “Other Resources”).

- 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 \$39,121 per violation (up from \$38,159).
- Penalties for violation of Affordable Care Act requirements, such as failure to provide the Summary of Benefits and Coverage increased to \$1,156 for each individual to whom an SBC is not provided (up from \$1,128). Similarly, violations for failure to timely and accurately pay rebates under the ACA's medical loss ratio provisions increased from \$113 to \$116 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, which increased to \$52,596 (from \$51,302) per violation and misrepresenting or falsifying information furnished to HHS, which increased to \$210,386 (from \$205,211) per violation.
- 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 \$102,522 (from \$100,000).

The inflation adjustments took effect yesterday (November 5, 2019) and apply to penalties assessed on or after the effective date (even if the violations took place prior to yesterday).<sup>1</sup>

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<sup>1</sup> Violations that occurred prior to November 2, **2015**, the date on which the statute authorizing inflation adjusted penalties went into effect. Are subject to the penalties in effect at that time.