

Penalties in health care fraud cases to nearly double on August 1, 2016

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As if the penalties for violations of the federal False Claims Act (FCA) weren't already substantial enough to bankrupt a health care provider, on June 30, 2016, the Department of Justice (DOJ) published an [interim final rule](#) in the Federal Register announcing an increase in the civil monetary penalties (CMPs) that are assessed or enforced by DOJ, including penalties for violations of the FCA, 31 U.S.C. 3729 et seq, and the Program Fraud Civil Remedies Act (PFCRA), 31 U.S.C. 3802. The increase in the penalties is effective August 1, 2016.

Under federal law, agencies are required to adjust their CMPs periodically to ensure they continue to have a deterrent effect. The formula for determining the amount of the adjustment is set forth in federal law and was recently revised in the Bipartisan Budget Act of 2015. The current penalties for violations of the FCA range from a minimum of \$5,500 to a maximum of \$11,000. Under the interim final rule, the new range of penalties will be \$10,781 to \$21,563 as of August 1, 2016. The current PFCRA penalty is \$5,500. The new PFCRA penalty effective August 1, 2016, will be \$10,781. The adjusted penalty amounts for the FCA and PFCRA "are applicable only to civil penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015, the date of enactment of the [Bipartisan Budget Act of 2015.]" This means that for violations that occurred on or before November 2, 2015, and for penalties assessed prior to August 1, 2016, for violations that occurred after November 2, 2015, the current penalty amounts (\$5,500 to \$11,000 for FCA, \$5,500 for PFCRA) will still apply.

As any health care provider who has been involved in an FCA case is well aware, the current penalty amounts have already resulted in significant financial liability for providers who settled cases involving FCA allegations or were found by a court to have violated the FCA. While it is not clear how much additional deterrent effect the increased penalty amounts will have, the increased amounts certainly raise the stakes even higher for health care providers involved in conduct that may implicate the FCA or PFCRA.

Authors

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