

CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT FOR 2018

The U.S. Department of Health and Human Services ("HHS") published in the Federal Register the 2018 updated civil monetary penalties ("CMPs") adjusted for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (§701 of Pub. Law 114-74) (the "Act"). The updated CMPs became effective on the date of publication, October 11, 2018. A table featuring a sampling of the adjusted CMPs can be found [here](#). For a complete list of HHS CMP adjustments, click [here](#).

BACKGROUND

Congress frequently adds CMPs to laws to foster compliance. However, their effectiveness is limited if the CMPs are not adjusted from time to time for inflation as was the case across the federal agencies. The Act was passed in 2015 to "improve the effectiveness of the CMPs and to maintain the deterrent effect of such penalties" by providing for annual CMP inflation adjustments. For 2018, the CMPs were increased by a CPI-U related cost of living adjustment multiplier of 1.02041.

SUBSTANTIAL INCREASE IN PER INCIDENT CMPS

Some of the per incident CMPs have increased quite substantially. For example, the CMP for an Emergency Medical Treatment and Active Labor Act ("EMTALA") (patient dumping) violation is now a maximum of \$106,965 for hospitals with 100 or more beds and a maximum of \$53,484 for hospitals with fewer than 100. For years, for hospitals with 100 or more beds, the EMTALA violation CMP was only a maximum of \$50,000. For hospitals with fewer than 100 beds, the CMP for an EMTALA violation was limited to a maximum of \$25,000.

In other examples of the significant increase, the CMP for knowingly making a false statement in any application to participate as a provider or supplier is now a maximum of \$100,000 when it was only a maximum of \$55,262 in 2017. The CMP increased from up to \$55,262 in 2017 to up to \$100,000 in 2018 for making or using a false record or statement material to a false or fraudulent claim.

PRACTICAL TAKEAWAYS AND RECOMMENDATIONS

- Stakeholders subject to the laws and rules of the HHS agencies and offices should take note of the increased CMPs made effective on October 11, 2018. As summarized above, in certain cases, the increase in CMPs for 2018 is quite substantial, making it all the more critical that providers maintain effective compliance programs. We recommend that providers review their existing compliance program functions for any deficiencies and make any upgrades necessary. Hall Render's [compliance attorneys](#) and its affiliated company [Nova Consulting and Compliance, LLC](#) can assist with a compliance program review and recommendations for improvement as necessary.
- The adjusted CMP amounts apply to penalties assessed on or after October 11, 2018, if the violation occurred on or after November 2, 2015. If the violation occurred prior to November 2, 2015 or a penalty was assessed prior to September 6, 2016, the pre-adjustment CMPs in effect prior to September 6, 2016 will apply.

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