



Department of Justice Imposes Almost 100% Increase in Minimum and Maximum Monetary Penalties Under FCA

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On June 30, 2016, the U.S. Department of Justice (DOJ) announced an interim final rule almost doubling per-claim penalties under the False Claims Act (FCA). The FCA still imposes treble damages for government losses in addition to the per-claim penalties.

The DOJ increased the penalties to comply with the Federal Civil Penalties Inflation Adjustment Act, which Congress enacted in 2015 as part of the Bipartisan Budget Act of 2015. In that law, Congress instructed agencies to increase their penalties in accordance with inflation. Additionally, the law requires agencies to publish "catch up" rules to make up for lost time since the last adjustments.

It was anticipated that this summer's increase would be based on a prior 1996 increase for inflation. However, the DOJ made changes from a prior increase in 1986, bolstering the increases by almost 100%. Minimum per-claim penalties will increase from \$5,500 to \$10,781 and the maximum per-claim penalties will increase from \$11,000 to \$21,563.

Penalties for violations of the Anti-Kickback law will also increase with the 2016 interim rule, from \$11,000 to \$21,563.

The increases are effective August 1, 2016 and affect any violation found after November 2, 2015.

DOJ had the opportunity to enact a smaller penalty increase, if the agency had found that the full increase would create "a negative economic impact." However, the DOJ declined to impose a smaller increase. The DOJ did not state its reasoning.

The penalty increases under the new DOJ rule will immediately affect health care providers that submit Medicare and Medicaid claims. The penalty increases affect over 50 other categories in other industries as well, such as the labor and employment industry.

However, the increase in penalties under FCA could carry greater risk to health care providers, since one FCA case often includes hundreds of Medicare and Medicaid fraud claims, each with its own

penalty. Ultimately, the health care industry may see an increase in defenses based on the Eighth Amendment "Excessive Fines" clause, although these cases have not been successful in court to date.

Health care providers can protect themselves from these increases by working to maintain strong compliance programs. The increased penalties will also be relevant in evaluating the merits of settling or vigorously defending FCA cases.

Last fiscal year, the DOJ reported obtaining more than \$3.5 billion in settlements and judgments from civil cases involving claims fraud and false claims against the government. Of the \$3.5 billion recovered in the 2015 fiscal year, \$1.9 billion came from companies and individuals in the health care industry for allegedly providing unnecessary or inadequate care, paying kickbacks to health care providers to induce the use of certain goods and services, or overcharging for goods and services paid for by Medicare, Medicaid and other federal health care programs.

The rule is open for public comment until August 29, 2016 and may be found [here](#).

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