

Part B Insider (Multispecialty) Coding Alert

Enforcement: Note the Major CMP Increases Under the Bipartisan Budget Act

Hint: Maximum criminal penalties quadrupled from \$25k to \$100k.

Before you submit your Part B claims, you may want to double-check for mistakes. Improper claims remain at the core of the HHS Office of Inspector General's (OIG) enforcement efforts. And recent increases to civil and criminal penalties for federal healthcare violations make even a minor offense seem like a major financial blow.

Background: Last month, the Bipartisan Budget Act of 2018 was implemented to avoid a government shutdown. It was then signed by President Trump. Among the changes impacting Medicare providers were some major increases to the Civil Monetary Penalty Law (CMPL) and punishments under the Anti-Kickback Statute (AKS), which fall under the Sections 1128 A and 1128 B respectively of the Social Security Act (SSA).

Despite a recent increase due to inflation, the changes are pretty significant, suggest attorneys **Benjamin Fee, Ross C. D'Emanuele, and Laura B. Morgan** of Dorsey and Whitney LLP in online analysis for the Dorsey Healthlaw Group blog. "The previous statutory maximum penalties had already been increased from the amounts set forth in the statute, and now have been increased even further," Fee, D'Emanuele, and Morgan noted in the blog post. "It is not clear how inflation adjustments will be applied in 2018 to the new statutory penalty maximums under these laws."

Here is a quick overview of the biggest changes:

Civil: CMP increases for improperly filed claims under Section 1128A of the SSA (42 U.S.C. 1320a-7a(a)), according to the Budget Act text include:

- \$10,000 to \$20,000;
- \$15,000 to \$30,000; and
- \$50,000 to \$100,000.

Maximum penalty increases for providers to reduce or limit services to Medicare beneficiaries under Section 1128A of the SSA (42 U.S.C. 1320a-7a(b)) include:

- \$2,000 to \$5,000; and
- \$5000 to \$10,000.

Criminal: Under the Bipartisan Budget Act, "criminal penalties for acts involving federal health care programs under [1128B of the SSA] 42 U.S.C. § 1320a-7b, including but not limited to the Anti-Kickback Statute" were raised, the Dorsey and Whitney attorneys note in the blog. Those increases include:

- \$2,000 to \$4,000;
- \$10,000 to \$20,000; and
- \$25,000 to \$100,000.

Prison sentencing: For false statements and representations, AKS abuses, and excess charges, the maximum sentences went from "not more than 5 years" to "not more than 10 years," stated the Budget Act text.

Warning: "These provisions of the 2018 Budget Act demonstrate the federal government's continued commitment to aggressively pursue alleged fraud, waste, and abuse affecting federal healthcare programs," cautions law firm **Chilivis, Cochran, Larkins & Bever LLP** in online analysis of the changes in a blog post.

Note: See the law's text at:

[www.congress.gov/bill/115th-congress/house-bill/1892/text?q={\"search\":\[\"bipartisan+budget+act+of+2018\"\]}&r=1](http://www.congress.gov/bill/115th-congress/house-bill/1892/text?q={\).