Report on Medicare Compliance Volume 27, Number 7. February 19, 2018

Providers Will Be Hit With Higher Civil Money Penalties Under 2018 Bipartisan Budget Act

By Nina Youngstrom

With little fanfare, the 2018 Bipartisan Budget Act signed by President Trump on Feb. 9 increased the amount of money that providers will pay when they run afoul of civil monetary penalty (CMP) laws. Providers could face twice as much in fines when the HHS Office of Inspector General pursues them for administrative violations, such as submitting false claims and Stark Law noncompliance, or when they report violations to the OIG Self-Disclosure Protocol.

"These are pretty significant," says San Francisco attorney Judy Waltz, with Foley & Lardner LLP. For the most part, Congress "doubled the penalties in place under the CMPs. They sounded bad before, and they sound a lot worse now. OIG now has the authority to levy much higher penalties." What's mystifying is that Congress dropped in the penalty increases without generating any attention, she says.

CMPs that were $50,000 are rising to $100,000. Fines that were $10,000 are going to $20,000, and $2,000 fines are increasing to $5,000. They are ceilings, however, Waltz notes. That's on top of fairly substantial CMP increases that were announced in 2016 when federal agencies, including CMS, OIG and the HHS Office for Civil Rights, updated CMP amounts for inflation (RMC 9/12/16, p. 3). The 2018 increased penalties are particularly significant for the authorities added by the Affordable Care Act, because their inflation-rate increases were limited to a shorter period, Waltz says. "Some of the older CMPs had already risen steeply to reflect inflation over many years."