

Report on Medicare Compliance Volume 32, Number 3. January 23, 2023

In New Policy, DOJ Spells Out Rewards for Self-Disclosure, Reinforces Compliance Programs

By Nina Youngstrom

Voluntary self-disclosure got a shot in the arm from a new Department of Justice (DOJ) policy that gives tangible rewards to companies when they come forward and reveal their involvement in possible criminal misconduct.^[1] The new policy, announced Jan. 17, is the latest in a series of moves intended to light a fire under corporate self-policing.

According to the corporate enforcement policy—which has been added to the Justice Manual—companies that DOJ believes are engaged in criminal wrongdoing have a better chance of avoiding prosecution if they self-disclose. When criminal prosecution is warranted even with self-disclosure, DOJ will recommend sentencing a 50% to 75% reduction of the fine range from the U.S. Sentencing Guidelines, except in cases of criminal recidivists. Companies also are required to cooperate with DOJ, remediate the wrongdoing and forfeit ill-gotten gains. Recidivists get a less-generous break for self-disclosure.

“It shows that DOJ is serious about giving a clear benefit to companies they feel have gone above and beyond in demonstrating an effective compliance program,” said former federal prosecutor Anthony Burba, with Barnes & Thornburg LLP in Chicago. The policy is another reason why compliance programs—which are traditionally viewed as a cost center—should be recognized for the “immense benefits that will be available when you have a compliance failure.”

The road to the policy started at least a decade ago, when DOJ’s Foreign Corrupt Practices Act (FCPA) unit devised a corporate self-disclosure pilot program, Burba said. The pilot program was a response to criticism from the industry that existing DOJ guidance on corporate cooperation credit was neither evenly applied nor specific enough to give adequate guidance to companies. “There was a big push to self-report,” he noted. The initial FCPA pilot offered more concrete guidelines for credit for self-disclosure and cooperation with DOJ, Burba said. Informally, other DOJ units, including the health fraud unit, applied the FCPA pilot in corporate fraud investigations.

This document is only available to subscribers. Please log in or purchase access.

[Purchase Login](#)