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Bipartisan Budget Bill Increases Civil Monetary Penalties for Health Care Fraud

Scott R. Grubman (Chilivis Cochran Larkins & Bever LLP, Atlanta GA)

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On February 9, 2018, President Trump signed into law the Bipartisan Budget Act of 2018, also known as the Honoring Hometown Heroes Act. While this law received a lot of attention for avoiding a lengthy government shutdown and extending the Children's Health Insurance Program (CHIP), the law also affects health care providers by drastically increasing potential penalties for acts of fraud, waste, and abuse related to federal health care programs.

The Civil Monetary Penalties Law (CMPL), codified at 42 U.S.C. § 1320a-7a, imposes civil monetary penalties and assessments for various types of conduct, including, among other things, filing certain improper claims, accepting or paying kickbacks, offering beneficiary inducements, and arranging or contracting with excluded persons. Under the 2018 Budget Act, the penalties available to the government under the CMPL have now more than doubled. For example, while the CMPL provides that violating the Anti-Kickback Statute (AKS) can lead to a penalty of \$50,000 per violation, the Budget Act increases that penalty to \$100,000 per violation. Conduct that used to be punishable by up to \$10,000 per violation under the CMPL (for example, for knowingly filing an improper claim) is now punishable by CMPs of up to \$20,000 per violation. (Note that the original penalties were already higher than listed in the CMPL due to relatively recent upward adjustments for inflation.)

The 2018 Budget Act also amends the AKS, codified at 42 U.S.C. § 1320a-7b(b), which makes it a felony to knowingly and willfully solicit, receive, offer, or pay remuneration in exchange for federal health care program referrals. Specifically, the Budget Act increases the maximum penalty under the AKS from \$25,000 to \$100,000 per violation, and increases the maximum term of imprisonment from five to ten years. It is important to note that the increased penalties under the 2018 Budget Act are applicable only to violations committed after the date of enactment, February 9, 2018.

These provisions of the 2018 Budget Act demonstrate the federal government's continued commitment to aggressively pursue alleged fraud, waste, and abuse affecting federal health care programs.

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