

## Insights

### Bipartisan Budget Act Includes Important Changes to Fraud and Abuse Penalties

April 30, 2018

By: Thomas N. Hutchinson and Brandon W. Shirley

The Bipartisan Budget Act of 2018 (“BBA”) was signed into law February 9 and funds the federal government through March 23. Additionally, the legislation contains significant health care policy changes. Of important note are dramatic increases to civil and criminal penalties for federal health care program fraud and abuse under the Civil Monetary Penalties Law (“CMPL”).<sup>[1]</sup>

The Health and Human Services Office of Inspector General’s (“OIG”) CMPL Regulations codified at 42 C.F.R. 1003 authorize the OIG to assess a monetary penalty against health care providers for violations of federal health care program (Medicare/Medicaid) requirements or conditions, including: 1) submitting false or fraudulent claims to a federal health care program;<sup>[2]</sup> 2) Anti-Kickback and Self-Referral violations;<sup>[3]</sup> 3) contracting with excluded individuals;<sup>[4]</sup> 4) EMTALA violations;<sup>[5]</sup> and 5) inducements to beneficiaries in a federal health care program,<sup>[6]</sup> among others. The OIG has discretion to determine the amount of penalty to assess up to the maximum amount set by statute after considering the facts and circumstances of the violation.

The BBA raises that maximum penalty amount under the CMPL for knowingly filing an improper claim for a medical or other item or service to \$20,000 (previously \$10,000) per claim. Penalties for knowingly making or causing to be made a false statement, omission or misrepresentation of a material fact in any application, bid or contract to participate or enroll as a provider of services or a supplier under a federal health care program also doubled to \$100,000 per false statement. Penalties for payments to induce reduction or limitation of services are increased as well.<sup>[7]</sup>

The BBA also increases criminal penalties for violations of the Anti-Kickback Statute (“AKS”). Previously, a provider who violated the AKS could be fined up to \$25,000 and receive up to a five (5) year term of imprisonment. The BBA increases the maximum fine to \$100,000 and doubles the prison term to a maximum of ten (10) years.<sup>[8]</sup> These criminal penalties are in addition to the OIG’s civil monetary penalties referenced herein.

Importantly, the BBA’s changes do not impact the OIG’s processes and procedures for assessing these penalties or create any new exceptions or exemptions. Furthermore, penalties under the BBA are applicable only to violations committed after **February 9, 2018**.

For questions on Stark Law and AKS compliance, or fraud and abuse actions generally, please contact Thomas N. Hutchinson at [thutchinson@kdlegal.com](mailto:thutchinson@kdlegal.com), Andrew C. Walker at [awalker@kdlegal.com](mailto:awalker@kdlegal.com), Brandon W. Shirley at [bshirley@kdlegal.com](mailto:bshirley@kdlegal.com), or your regular Krieg DeVault attorney.

[1] 42 U.S.C. § 1320a-7a(a).

[2] 42 C.F.R. § 1003.200 *et seq.*

[3] *Id.* at § 1003.300 *et seq.*

[4] *Id.* at § 1003.400 *et seq.*

[5] *Id.* at § 1003.500 *et seq.*

[6] *Id.* at § 1003.1000 *et seq.*

[7] 42 U.S.C. § 1320a-7a(b).

[8] 42 U.S.C. § 1320a-7b.