FALSE CLAIMS COST MORE: DOJ INCREASES CIVIL PENALTIES FOR FALSE CLAIMS ACT VIOLATIONS

On June 19, 2020, the Department of Justice (the "DOJ") announced its Final Rule[1] increasing the penalties assessable under the False Claims Act ("FCA"). The DOJ raised the minimum penalty for a single false claim from $11,181 to $11,665; the maximum penalty from $22,363 to $23,331.

Under the False Claims Act,[2] any person who knowingly submits a false claim to the government is subject to a civil penalty of "not less than $5,000 and not more than $10,000." This statutory amount, however, understates the real penalty that may be imposed. The DOJ increased the penalty amounts to a minimum $5,500 and maximum $11,000 in 1999,[3] and under the Federal Civil Penalties Inflation Adjustment Act, which was first passed in 1990 and amended in 2015, the penalties are increased each year to account for inflation.

The DOJ increased its penalties in 2016,[4] 2017[5] and 2018.[6] This is the first increase since 2018 as the DOJ provided no adjustment in 2019. While the DOJ gave no reason for the omission, it calculated the new penalty amounts by first applying the 2018 inflation rate and then the 2019 rate to get the DOJ back on track. These adjustments are, in one sense, retroactive. The DOJ's Final Rule increases the maximum penalty for conduct that occurred after November 2, 2015, where the DOJ actually assessed the penalty after June 19, 2020.

Along with the penalties associated with the FCA, the DOJ updated other civil penalties, including those assessed under the Program Fraud Civil Remedies Act, the Anti-Kickback Statute and the Americans with Disabilities Act.

PRACTICAL TAKEAWAY

The inflation adjustment may seem minimal, but it is uncommon for the government or a whistleblower to bring an action based on one false claim. FCA defendants often defend against allegations that span several years or include hundreds, if not thousands of individual claims, and the penalties assessed by the DOJ quickly add up—often resulting in multi-million dollar settlements. Health care entities should also be aware that the Department of Health and Human Services has its own authority[7] to issue civil penalties for false claims, further increasing the potential cost of violations.

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[1] 85 Fed. Reg. 37,004.

[2] 31 U.S.C. § 3729

[3] 64 Fed. Reg. 47,099.

[4] 81 Fed. Reg. 42,491.

[5] 82 Fed. Reg. 9,131.

[6] 83 Fed. Reg. 3,944.

[7] 42 U.S.C. § 1320a-7a(a)

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