



Published: September 21, 2016

HHS Penalties Increase

Ed MacConnell | Total Benefit Solutions Inc. | (215) 355-2121 | edmac@totalbenefits.net

On September 6, 2016, the Department of Health and Human Services (“HHS”) issued an interim final regulation that adjusts civil penalties for inflation. The interim final regulation does not follow the usual procedures that offer a notice and comment period. As such, a Notice of Proposed Rulemaking has not been issued and a comment period is not provided due to potential delay in the applicability of the regulation.

The adjusted penalties are applicable to penalties assessed after August 1, 2016, whose associated violations occurred after November 2, 2015.

The following chart contains updated penalties applicable to group health plans only:

DESCRIPTION	CURRENT PENALTY	UPDATED PENALTY
Pre-February 18, 2009 violation of HIPAA administrative simplification provisions	\$100 per violation \$37,561 annual cap	\$150 per violation \$37,561 annual cap
February 18, 2009 or later violation of HIPAA administrative simplification provision w/out knowledge	\$100 min. \$50,000 max. \$1,500,000 annual cap	\$110 min. \$55,010 max. \$1,650,300 annual cap
February 18, 2009 or later violation of HIPAA administrative simplification provision w/ reasonable cause and not to willful neglect	\$1,000 min. \$50,000 max. \$1,500,000 annual cap	\$1,100 min. \$55,010 max. \$1,650,300 annual cap
February 18, 2009 or later violation of HIPAA administrative simplification provision due to willful neglect AND corrected during 30-day period	\$10,000 min. \$50,000 max. \$1,500,000 annual cap	\$11,002 min. \$55,010 max. \$1,650,300 annual cap

DESCRIPTION	CURRENT PENALTY	UPDATED PENALTY
February 18, 2009 or later violation of HIPAA administrative simplification provision due to willful neglect AND NOT corrected during 30-day period	\$50,000 min. \$1,500,000 max. \$1,500,000 annual cap	\$50,000 min. \$1,500,000 max. \$1,500,000 annual cap
Failure to Provide the Summary of Benefits Coverage	\$1,000 per day	\$1,087 per day
Penalty for an employer or other entity to offer financial or other incentive to individual entitled to Medicare/Medicaid benefits not to enroll under a group health plan that would be primary	\$5,000	\$8,908
Penalty for entity serving as insurer, TPA, or fiduciary for a group health plan that fails to provide information to HHS Secretary identifying when the GHP was primary payer to Medicare	\$1,000	\$1,138

Employer Action

Covered Entities subject to the HIPAA regulation must ensure proper application and compliance with HIPAA's privacy and security requirements. Furthermore, employers with a large Medicaid/Medicare employee eligible population should be cautious not to offer incentives not to enroll in the employer's health plan. Finally, employers should be aware of the Summary of Benefits Coverage disclosure requirement and ensure employees receive SBCs in a timely fashion (e.g. open enrollment).