

## Report on Medicare Compliance Volume 32, Number 3. January 23, 2023 In New Policy, DOJ Spells Out Rewards for Self-Disclosure, Reinforces Compliance Programs

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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.<sup>[1]</sup> 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.

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