



# CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

November 9, 2017

## **H.R. 3245** **Medicare Civil and Criminal Penalties Update Act**

*As ordered reported by the House Committee on Energy and Commerce  
on October 4, 2017*

### **SUMMARY**

H.R. 3245 would modify certain monetary penalties (both civil and criminal) for violations of federal law related to health care programs. CBO estimates that H.R. 3245 would not have a significant budgetary impact. Enacting H.R. 3245 could affect direct spending and revenues; therefore, pay-as-you-go procedures apply.

CBO estimates that enacting H.R. 3245 would not have a significant effect on net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3245 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

### **BASIS OF ESTIMATE**

Under current law, the government may impose financial sanctions for violations of federal health care statutes.<sup>1</sup> For example, it is illegal to bill federal health care programs for services that were not provided or that were provided by unlicensed professionals.

Those financial sanctions generally involve restitution—often between 150 percent and 300 percent of the amount that the federal government paid for illegally billed health care goods and services—and may involve an additional monetary penalty that may be assessed on a per-violation basis. The government may also exclude the perpetrator from participating in federal health care programs. Under current law, sections 1128A and 1128B of the Social Security Act establish penalties for each violation of “not more than” a specified amount—for example, not more than \$10,000 for violations related to false

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1. All penalties collected, both civil and criminal, are revenues and some result in new direct spending. Some penalties collected for violations that occurred in a state Medicaid program or in programs funded by the Maternal and Child Health Block Grant are returned to the states. Amounts paid to states or to other federal programs with the authority to spend them without further appropriations action would be direct spending.

claims or claims provided by providers not eligible for payment. H.R. 3245 would increase that specified amount, either doubling or quadrupling it.

Based on discussions with staff of the Office of the Inspector General for the Department of Health and Human Services, CBO has concluded that the existing caps on the amount of the civil or criminal penalties for each violation almost never impose a constraint on the amount that may be collected through the combination of restitution and monetary penalties.

That conclusion is based on two considerations. First, restitution is the prosecutors' main tool; they set the amount—for example, 200 percent of the amount of illegal billings—based on the egregiousness of the violation and the ability of the perpetrator to pay. Second, nearly all cases involve numerous illegal claims, so imposing the current maximum penalty on each claim would risk violating the prohibition on excessive fines under the Eighth Amendment to the U.S. Constitution.

Based on those considerations, CBO estimates that enacting H.R. 3245 would not have a significant effect on direct spending or revenues over the 2018-2027 period.

## **PAY-AS-YOU-GO CONSIDERATIONS**

The bill would increase the cap on the amount of monetary penalties that may be assessed for each violation of federal health care statutes. Such a change in limits on penalties could affect direct spending and revenues; therefore pay-as-you-go applies to the bill. However, based on the small number of cases that would be affected, CBO estimates that any such effects would be insignificant.

## **INCREASE IN LONG-TERM DIRECT SPENDING AND DEFICITS**

CBO estimates that enacting the legislation would not increase budget deficits in any of the four consecutive 10-year periods beginning in 2028.

## **MANDATES**

H.R. 3245 contains no intergovernmental or private-sector mandates as defined in UMRA.

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