

116TH CONGRESS
2D SESSION

H. R. 7898

IN THE SENATE OF THE UNITED STATES

DECEMBER 10, 2020

Received

AN ACT

To amend the Health Information Technology for Economic and Clinical Health Act to require the Secretary of Health and Human Services to consider certain recognized security practices of covered entities and business associates when making certain determinations, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. RECOGNITION OF SECURITY PRACTICES.**

2 Part 1 of subtitle D of the Health Information Tech-
3 nology for Economic and Clinical Health Act (42 U.S.C.
4 17931 et seq.) is amended by adding at the end the fol-
5 lowing:

6 **“SEC. 13412. RECOGNITION OF SECURITY PRACTICES.**

7 “(a) IN GENERAL.—Consistent with the authority of
8 the Secretary under sections 1176 and 1177 of the Social
9 Security Act, when making determinations relating to
10 fines under such section 1176 (as amended by section
11 13410) or such section 1177, decreasing the length and
12 extent of an audit under section 13411, or remedies other-
13 wise agreed to by the Secretary, the Secretary shall con-
14 sider whether the covered entity or business associate has
15 adequately demonstrated that it had, for not less than the
16 previous 12 months, recognized security practices in place
17 that may—

18 “(1) mitigate fines under section 1176 of the
19 Social Security Act (as amended by section 13410);

20 “(2) result in the early, favorable termination
21 of an audit under section 13411; and

22 “(3) mitigate the remedies that would otherwise
23 be agreed to in any agreement with respect to re-
24 solving potential violations of the HIPAA Security
25 rule (part 160 of title 45 Code of Federal Regula-
26 tions and subparts A and C of part 164 of such

1 title) between the covered entity or business asso-
2 ciate and the Department of Health and Human
3 Services.

4 “(b) DEFINITION AND MISCELLANEOUS PROVI-
5 SIONS.—

6 “(1) RECOGNIZED SECURITY PRACTICES.—The
7 term ‘recognized security practices’ means the stand-
8 ards, guidelines, best practices, methodologies, pro-
9 cedures, and processes developed under section
10 2(c)(15) of the National Institute of Standards and
11 Technology Act, the approaches promulgated under
12 section 405(d) of the Cybersecurity Act of 2015, and
13 other programs and processes that address cyberse-
14 curity and that are developed, recognized, or promul-
15 gated through regulations under other statutory au-
16 thorities. Such practices shall be determined by the
17 covered entity or business associate, consistent with
18 the HIPAA Security rule (part 160 of title 45 Code
19 of Federal Regulations and subparts A and C of
20 part 164 of such title).

21 “(2) LIMITATION.—Nothing in this section
22 shall be construed as providing the Secretary author-
23 ity to increase fines under section 1176 of the Social
24 Security Act (as amended by section 13410), or the
25 length, extent or quantity of audits under section

1 13411, due to a lack of compliance with the recog-
2 nized security practices.

3 “(3) NO LIABILITY FOR NONPARTICIPATION.—
4 Subject to paragraph (4), nothing in this section
5 shall be construed to subject a covered entity or
6 business associate to liability for electing not to en-
7 gage in the recognized security practices defined by
8 this section.

9 “(4) RULE OF CONSTRUCTION.—Nothing in
10 this section shall be construed to limit the Sec-
11 retary’s authority to enforce the HIPAA Security
12 rule (part 160 of title 45 Code of Federal Regula-
13 tions and subparts A and C of part 164 of such
14 title), or to supersede or conflict with an entity or
15 business associate’s obligations under the HIPAA
16 Security rule.”.

17 **SEC. 2. TECHNICAL CORRECTION.**

18 (a) IN GENERAL.—Section 3022(b) of the Public
19 Health Service Act (42 U.S.C. 300jj–52(b)) is amended
20 by adding at the end the following new paragraph:

21 “(4) APPLICATION OF AUTHORITIES UNDER IN-
22 SPECTOR GENERAL ACT OF 1978.—In carrying out
23 this subsection, the Inspector General shall have the
24 same authorities as provided under section 6 of the
25 Inspector General Act of 1978 (5 U.S.C. App.).”.

(b) **EFFECTIVE DATE.**—The amendment made by subsection (a) shall take effect as if included in the enactment of the 21st Century Cures Act (Public Law 114–255).

Passed the House of Representatives December 9,
2020.

Attest: **CHERYL L. JOHNSON,**
Clerk.