

§ 150.217 Preliminary determination.

If, at the end of the 30-day period (and any extension), the State has not established to CMS's satisfaction that it is substantially enforcing the HIPAA requirements described in the notice, CMS takes the following actions:

(a) Consults with the appropriate State officials identified in § 150.211 (or their designees).

(b) Notifies the State of CMS's preliminary determination that the State has failed to substantially enforce the requirements and that the failure is continuing.

(c) Permits the State a reasonable opportunity to show evidence of substantial enforcement.

§ 150.219 Final determination.

If, after providing notice and a reasonable opportunity for the State to show that it has corrected any failure to substantially enforce, CMS finds that the failure to substantially enforce has not been corrected, it will send the State a written notice of its final determination. The notice includes the following:

(a) Identification of the HIPAA requirements that CMS is enforcing.

(b) The effective date of CMS's enforcement.

§ 150.221 Transition to State enforcement.

(a) If CMS determines that a State for which it has assumed enforcement authority has enacted and implemented legislation to enforce HIPAA requirements and also determines that it is appropriate to return enforcement authority to the State, CMS will enter into discussions with State officials to ensure that a transition is effected with respect to the following:

(1) Consumer complaints and inquiries.

(2) Instructions to issuers.

(3) Any other pertinent aspect of operations.

(b) CMS may also negotiate a process to ensure that, to the extent practicable, and as permitted by law, its records documenting issuer compliance and other relevant areas of CMS's enforcement operations are made available for incorporation into the records of the State regulatory authority that

will assume enforcement responsibility.

Subpart C—CMS Enforcement With Respect to Issuers and Non-Federal Governmental Plans—Civil Money Penalties

§ 150.301 General rule regarding the imposition of civil money penalties.

If any health insurance issuer that is subject to CMS's enforcement authority under § 150.101(b)(2), or any non-Federal governmental plan (or employer that sponsors a non-Federal governmental plan) that is subject to CMS's enforcement authority under § 150.101(b)(1), fails to comply with HIPAA requirements, it may be subject to a civil money penalty as described in this subpart.

§ 150.303 Basis for initiating an investigation of a potential violation.

(a) *Information.* Any information that indicates that any issuer may be failing to meet the HIPAA requirements or that any non-Federal governmental plan that is a group health plan as defined in section 2791(a)(1) of the PHS Act and 45 CFR § 144.103 may be failing to meet an applicable HIPAA requirement, may warrant an investigation. CMS may consider, but is not limited to, the following sources or types of information:

(1) Complaints.

(2) Reports from State insurance departments, the National Association of Insurance Commissioners, and other Federal and State agencies.

(3) Any other information that indicates potential noncompliance with HIPAA requirements.

(b) *Who may file a complaint.* Any entity or individual, or any entity or personal representative acting on that individual's behalf, may file a complaint with CMS if he or she believes that a right to which the aggrieved person is entitled under HIPAA requirements is being, or has been, denied or abridged as a result of any action or failure to act on the part of an issuer or other responsible entity as defined in § 150.305.

(c) *Where a complaint should be directed.* A complaint may be directed to any CMS regional office.