§ 1320d–5

TITLE 42—THE PUBLIC HEALTH AND WELFARE

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"(ii) designated by the Secretary of Health and Human Services under section 162.910(a) of title 45, Code of Federal Regulations.

"(ii) Construction.—Nothing in clause (i) shall be construed to affect the application of section 552 of title 5, United States Code (commonly known as the 'Freedom of Information Act'), including the exceptions from disclosure provided under subsection (b) of such section.

"(6) Enforcement through exclusion from participation in Medicare.

"(A) In general.—In the case of a person described in paragraph (1) who fails to submit a plan in accordance with paragraph (2), and who is not in compliance with the applicable requirements of subparts I through R of part 162 of title 45, Code of Federal Regulations, on or after October 16, 2002, the person may be excluded at the discretion of the Secretary of Health and Human Services from participation (including under part C or as a contractor under sections 1616, 1616d, and 1683) (42 U.S.C. 1395t, 1395ddd) in title XVIII of the Social Security Act (42 U.S.C. 1396 et seq.).

"(B) Procedure.—The provisions of section 1128A of the Social Security Act (42 U.S.C. 1320a–7a) (other than the first and second sentences of subsection (a) and subsection (b)) shall apply to an exclusion under this paragraph in the same manner as such provisions apply with respect to an exclusion or proceeding under section 1128A(a) of such Act.

"(C) Construction.—The availability of an exclusion under this paragraph shall not be construed to affect the imposition of penalties under section 1176 of the Social Security Act (42 U.S.C. 1320d–5)."
(b) Limitations

(1) Offenses otherwise punishable

No penalty may be imposed under subsection (a) and no damages obtained under subsection (d) with respect to an act if a penalty has been imposed under section 1320d–6 of this title with respect to such act.

(2) Failures due to reasonable cause

(A) In general

Except as provided in subparagraph (B) or subsection (a)(1)(C), no penalty may be imposed under subsection (a) and no damages obtained under subsection (d) if the failure to comply is corrected during the 30-day period beginning on the first date the person liable for the penalty or damages knew, or by exercising reasonable diligence would have known, that the failure to comply occurred.

(B) Extension of period

(i) No penalty

With respect to the imposition of a penalty by the Secretary under subsection (a), the period referred to in subparagraph (A) may be extended as determined appropriate by the Secretary based on the nature and extent of the failure to comply.

(ii) Assistance

If the Secretary determines that a person failed to comply because the person was unable to comply, the Secretary may provide technical assistance to the person during the period described in subparagraph (A). Such assistance shall be provided in any manner determined appropriate by the Secretary.

(3) Reduction

In the case of a failure to comply which is due to reasonable cause and not to willful neglect, any penalty under subsection (a) and any damages under subsection (d) that is not entirely waived under paragraph (3) may be waived to the extent that the payment of such penalty would be excessive relative to the compliance failure involved.

(e) Noncompliance due to willful neglect

(1) In general

A violation of a provision of this part due to willful neglect is a violation for which the Secretary is required to impose a penalty under subsection (a)(1).

(2) Required investigation

For purposes of paragraph (1), the Secretary shall formally investigate any complaint of a violation of a provision of this part if a preliminary investigation of the facts of the complaint indicate such a possible violation due to willful neglect.

(d) Enforcement by State attorneys general

(1) Civil action

Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as parens patriae, may bring a civil action on behalf of

\[\text{So in original. Probably should be "are".}\]

\[\text{So in original. Probably should be "are".}\]

\[\text{So in original. The words "or damages" probably should appear after "penalty".}\]
such residents of the State in a district court of the United States of appropriate jurisdic-

(A) to enjoin further such violation by the defendant; or

(B) to obtain damages on behalf of such residents of the State, in an amount equal to
the amount determined under paragraph (2).

(2) Statutory damages

(A) In general

For purposes of paragraph (1)(B), the amount determined under this paragraph is the
amount calculated by multiplying the number of violations by up to $100. For pur-
poses of the preceding sentence, in the case of a continuing violation, the number of vi-
lations shall be determined consistent with the HIPAA privacy regulations (as defined in
section 1320d–9(b)(3) of this title) for violations of subsection (a).

(B) Limitation

The total amount of damages imposed on the person for all violations of an identical
requirement or prohibition during a cal-
endar year may not exceed $25,000.

(C) Reduction of damages

In assessing damages under subparagraph (A), the court may consider the factors the
Secretary may consider in determining the
amount of a civil money penalty under sub-
section (a) under the HIPAA privacy regula-
tions.

(3) Attorney fees

In the case of any successful action under paragraph (1), the court, in its discretion, may
award the costs of the action and reasonable
attorney fees to the State.

(4) Notice to Secretary

The State shall serve prior written notice of
the person liable for the penalty did not know (and by exercising reasonable
diligence would not have known) of the viola-
tion involved.

(Aug. 14, 1935, ch. 531, title XI, § 1176, as added
XIII, §13410(a)(1), (d)(1)–(3), (e)(1), (2), (f), Feb. 17,
2009, 123 Stat. 271–276.)

AMENDMENTS

2009—Subsec. (a)(1). Pub. L. 111–5, §13410(d)(1), sub-
stituted “who violates a provision of this part—” for
“who violates a provision of this part a penalty of not
more than $100 for each such violation, except that the
total amount imposed on the person for all violations
of an identical requirement or prohibition during a cal-
endar year may not exceed $25,000.” added subpars. (A)
to (C), and inserted concluding provisions.

(3).

Subsec. (b)(1). Pub. L. 111–5, §13410(e)(2)(A), substi-
tuted “No penalty may be imposed under subsection
(a) and no damages obtained under subsection (d)” for
“A penalty may not be imposed under subsection (a)”.

Pub. L. 111–5, §13410(a)(1)(A), substituted “A penalty
has been imposed under section 1320d–6 of this title
with respect to a violation of this part” for “the act constitutes an of-
fense punishable under section 1320d–6 of this title”.

Subsec. (b)(2). Pub. L. 111–5, §13410(d)(3)(A), redesign-
ated par. (3) as (2) and struck out former par. (2). Prior
to amendment, text of par. (2) read as follows: “A pen-
alty may not be imposed under subsection (a) of this
section with respect to a provision of this part if it is
established to the satisfaction of the Secretary that
the person liable for the penalty did not know, and by
exercising reasonable diligence would not have known,
that such person violated the provision.”

Subsec. (b)(3). Pub. L. 111–5, §13410(e)(2)(B)(ii), which
directed amendment of cl. (ii) of subpar. (A) by insert-
ing “or damages” after “the penalty”, was exe-
cuted by making the insertion in subpar. (A) to reflect
the probable intent of Congress and the intervening
amendment by Pub. L. 111–5, §13410(d)(3)(B)(ii), which
struck out the cl. (ii) designation. See below.

Pub. L. 111–5, §13410(e)(2)(B)(i), substituted “no pen-
alty may be imposed under subsection (a) and no dam-
ages obtained under subsection (d)” for “a penalty may
not be imposed under subsection (a)”.

(1) is an inhabitant; or

(7) Limitation on State action while Federal
action is pending

If the Secretary has instituted an action
against a person under subsection (a) with re-
spect to a specific violation of this part, no
State attorney general may bring an action
under this subsection against the person with
respect to such violation during the pendency
of that action.

(8) Application of CMP statute of limitation

A civil action may not be instituted with re-
spect to a violation of this part unless an ac-
tion to impose a civil money penalty may be
instituted under subsection (a) with respect to
such violation consistent with the second sen-
tence of section 1320a–7a(c)(1) of this title.

(e) Allowing continued use of corrective action

Nothing in this section shall be construed as
preventing the Office for Civil Rights of the De-
partment of Health and Human Services from
continuing, in its discretion, to use corrective
action without a penalty in cases where the
person did not know (and by exercising reasonable
diligence would not have known) of the viola-
tion involved.
§ 1320d-7

Wrongful disclosure of individually identifiable health information

(a) Offense
A person who knowingly and in violation of this part—
(1) uses or causes to be used a unique health identifier;
(2) obtains individually identifiable health information relating to an individual; or
(3) discloses individually identifiable health information to another person,
shall be punished as provided in subsection (b).

For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.

(b) Penalties
A person described in subsection (a) shall—
(1) be fined not more than $50,000, imprisoned not more than 1 year, or both;
(2) if the offense is committed under false pretenses, be fined not more than $100,000, imprisoned not more than 5 years, or both; and
(3) if the offense is committed with intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, be fined not more than $250,000, imprisoned not more than 10 years, or both.


AMENDMENTS
2009—Subsec. (a). Pub. L. 111-5 inserted at end “For purposes of the previous sentence, a person (including an employee or other individual) shall be considered to have obtained or disclosed individually identifiable health information in violation of this part if the information is maintained by a covered entity (as defined in the HIPAA privacy regulation described in section 1320d-9(b)(3) of this title) and the individual obtained or disclosed such information without authorization.”

Effective Date of 2009 Amendment
Amendment by Pub. L. 111-5 effective 12 months after Feb. 17, 2009, see section 13423 of Pub. L. 111-5, set out as an Effective Date note under section 17931 of this title.

§ 1320d-7. Effect on State law

(a) General effect

(1) General rule
Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d-1 through 1320d-3 of this title, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) Exceptions
A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1320d-1 through 1320d-3 of this title, shall not supersede a contrary provision of State law, if the provision of State law—
(A) is a provision the Secretary determines—
(i) is necessary—
(I) to prevent fraud and abuse; or
(II) to ensure appropriate State regulatory reporting on health care delivery or costs; or
(IV) for other purposes; or
(ii) addresses controlled substances; or
(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) Public health
Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) State regulatory reporting
Nothing in this part shall limit the ability of a State to require a health plan to report, or to