

Pub. L. 111-5, § 13410(d)(3)(B)(i), substituted “in subparagraph (B) or subsection (a)(1)(C), a penalty may not be imposed under subsection (a) if the failure to comply is corrected” for “in subparagraph (B), a penalty may not be imposed under subsection (a) of this section if—

“(i) the failure to comply was due to reasonable cause and not to willful neglect; and

“(ii) the failure to comply is corrected”.

Subsec. (b)(2)(B), Pub. L. 111-5, § 13410(d)(3)(B)(ii), substituted “(A)” for “(A)(ii)” in two places.

Subsec. (b)(2)(B)(i), Pub. L. 111-5, § 13410(e)(2)(C), substituted “With respect to the imposition of a penalty by the Secretary under subsection (a), the period” for “The period”.

Subsec. (b)(3), Pub. L. 111-5, § 13410(e)(2)(D), inserted “and any damages under subsection (d)” after “any penalty under subsection (a)”.

Pub. L. 111-5, § 13410(d)(3)(A), redesignated par. (4) as (3). Former par. (3) redesignated (2).

Subsec. (b)(4), Pub. L. 111-5, § 13410(d)(3)(A), redesignated par. (4) as (3).

Subsec. (c), Pub. L. 111-5, § 13410(a)(1)(B), added subsec. (c).

Subsec. (d), Pub. L. 111-5, § 13410(e)(1), added subsec. (d).

Subsec. (e), Pub. L. 111-5, § 13410(f), added subsec. (e).

EFFECTIVE DATE OF 2009 AMENDMENT

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

Amendment by section 13410(a)(1) of Pub. L. 111-5 applicable to penalties imposed on or after the date that is 24 months after Feb. 17, 2009, see section 17939(b)(1) of this title.

Amendment by section 13410(d)(1)–(3) of Pub. L. 111-5 applicable to violations occurring after Feb. 17, 2009, see section 17939(d)(4) of this title.

Amendment by section 13410(e)(1), (2) of Pub. L. 111-5 applicable to violations occurring after Feb. 17, 2009, see section 17939(e)(3) of this title.

§ 1320d-6. 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.

(Aug. 14, 1935, ch. 531, title XI, § 1177, as added Pub. L. 104-191, title II, § 262(a), Aug. 21, 1996, 110 Stat. 2029; amended Pub. L. 111-5, div. A, title XIII, § 13409, Feb. 17, 2009, 123 Stat. 271.)

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;

(II) to ensure appropriate State regulation of insurance and health plans;

(III) for State 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