

such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Secretary shall have the right—

- (A) to intervene in the action;
- (B) upon so intervening, to be heard on all matters arising therein; and
- (C) to file petitions for appeal.

(5) Construction

For purposes of bringing any civil action under paragraph (1), nothing in this section shall be construed to prevent an attorney general of a State from exercising the powers conferred on the attorney general by the laws of that State.

(6) Venue; service of process

(A) Venue

Any action brought under paragraph (1) may be brought in the district court of the United States that meets applicable requirements relating to venue under section 1391 of title 28.

(B) Service of process

In an action brought under paragraph (1), process may be served in any district in which the defendant—

- (i) is an inhabitant; or
- (ii) maintains a physical place of business.

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

If the Secretary has instituted an action against a person under subsection (a) with respect 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 respect to a violation of this part unless an action to impose a civil money penalty may be instituted under subsection (a) with respect to such violation consistent with the second sentence 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 Department 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 violation involved.

(Aug. 14, 1935, ch. 531, title XI, §1176, as added Pub. L. 104-191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2028; amended Pub. L. 111-5, div. A, title 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), substituted “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.

Subsec. (a)(3). Pub. L. 111-5, §13410(d)(2), added par. (3).

Subsec. (b)(1). Pub. L. 111-5, §13410(e)(2)(A), substituted “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 such act” for “the act constitutes an offense punishable under section 1320d-6 of this title”.

Subsec. (b)(2). Pub. L. 111-5, §13410(d)(3)(A), redesignated par. (3) as (2) and struck out former par. (2). Prior to amendment, text of par. (2) read as follows: “A penalty 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)(2)(A). Pub. L. 111-5, §13410(e)(2)(B)(ii), which directed amendment of cl. (ii) of subpar. (A) by inserting “or damages” after “the penalty”, was executed 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)(i), which struck out the cl. (ii) designation. See below.

Pub. L. 111-5, §13410(e)(2)(B)(i), substituted “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(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 provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.

(Aug. 14, 1935, ch. 531, title XI, §1178, as added Pub. L. 104-191, title II, §262(a), Aug. 21, 1996, 110 Stat. 2029.)

REFERENCES IN TEXT

Section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, referred to in subsec. (a)(2)(B), is section 264(c)(2) of Pub. L. 104-191, which is set out as a note under section 1320d-2 of this title.

§ 1320d-8. Processing payment transactions by financial institutions

To the extent that an entity is engaged in activities of a financial institution (as defined in section 3401 of title 12), or is engaged in authorizing, processing, clearing, settling, billing, transferring, reconciling, or collecting payments, for a financial institution, this part, and any standard adopted under this part, shall not apply to the entity with respect to such activities, including the following:

(1) The use or disclosure of information by the entity for authorizing, processing, clearing, settling, billing, transferring, reconciling or collecting, a payment for, or related to, health plan premiums or health care, where such payment is made by any means, including a credit, debit, or other payment card, an account, check, or electronic funds transfer.

(2) The request for, or the use or disclosure of, information by the entity with respect to a payment described in paragraph (1)—

(A) for transferring receivables;

(B) for auditing;

(C) in connection with—

(i) a customer dispute; or

(ii) an inquiry from, or to, a customer;