

sociates that are subject to the requirements of this subchapter and subparts C and E of part 164 of title 45, Code of Federal Regulations, as such provisions are in effect as of February 17, 2009, comply with such requirements.

(Pub. L. 111-5, div. A, title XIII, §13411, Feb. 17, 2009, 123 Stat. 276.)

#### Editorial Notes

##### REFERENCES IN TEXT

This subchapter, referred to in text, was in the original “this subtitle”, meaning subtitle D (§13400 et seq.) of title XIII of div. A of Pub. L. 111-5, Feb. 17, 2009, 123 Stat. 258, which is classified principally to this subchapter. For complete classification of subtitle D to the Code, see Tables.

#### Statutory Notes and Related Subsidiaries

##### EFFECTIVE DATE

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

### § 17941. Recognition of security practices

#### (a) In general

Consistent with the authority of the Secretary under sections 1320d-5 and 1320d-6 of this title, when making determinations relating to fines under such section 1320d-5 (as amended by section 13410 of Pub. L. 111-5) or such section 1320d-6, decreasing the length and extent of an audit under section 17940 of this title, or remedies otherwise agreed to by the Secretary, the Secretary shall consider whether the covered entity or business associate has adequately demonstrated that it had, for not less than the previous 12 months, recognized security practices in place that may—

(1) mitigate fines under section 1320d-5 of this title (as amended by section 13410 of Pub. L. 111-5);

(2) result in the early, favorable termination of an audit under section 17940 of this title; and

(3) mitigate the remedies that would otherwise be agreed to in any agreement with respect to resolving potential violations of the HIPAA Security rule (part 160 of title 45 Code of Federal Regulations and subparts A and C of part 164 of such title) between the covered entity or business associate and the Department of Health and Human Services.

#### (b) Definition and miscellaneous provisions

##### (1) Recognized security practices

The term “recognized security practices” means the standards, guidelines, best practices, methodologies, procedures, and processes developed under section 272(c)(15) of title 15, the approaches promulgated under section 1533(d) of title 6, and other programs and processes that address cybersecurity and that are developed, recognized, or promulgated through regulations under other statutory authorities. Such practices shall be determined by the covered entity or business associate, consistent with the HIPAA Security rule (part 160 of title 45 Code of Federal Regulations and subparts A and C of part 164 of such title).

#### (2) Limitation

Nothing in this section shall be construed as providing the Secretary authority to increase fines under section 1320d-5 of this title (as amended by section 13410 of Pub. L. 111-5), or the length, extent or quantity of audits under section 17940 of this title, due to a lack of compliance with the recognized security practices.

#### (3) No liability for nonparticipation

Subject to paragraph (4), nothing in this section shall be construed to subject a covered entity or business associate to liability for electing not to engage in the recognized security practices defined by this section.

#### (4) Rule of construction

Nothing in this section shall be construed to limit the Secretary’s authority to enforce the HIPAA Security rule (part 160 of title 45 Code of Federal Regulations and subparts A and C of part 164 of such title), or to supersede or conflict with an entity or business associate’s obligations under the HIPAA Security rule.

(Pub. L. 111-5, div. A, title XIII, §13412, as added Pub. L. 116-321, §1, Jan. 5, 2021, 134 Stat. 5072.)

PART B—RELATIONSHIP TO OTHER LAWS; REGULATORY REFERENCES; EFFECTIVE DATE; REPORTS

### § 17951. Relationship to other laws

#### (a) Application of HIPAA State preemption

Section 1178 of the Social Security Act (42 U.S.C. 1320d-7) shall apply to a provision or requirement under this subchapter in the same manner that such section applies to a provision or requirement under part C of title XI of such Act [42 U.S.C. 1320d et seq.] or a standard or implementation specification adopted or established under sections 1172 through 1174 of such Act [42 U.S.C. 1320d-1 to 1320d-3].

#### (b) Health Insurance Portability and Accountability Act of 1996

The standards governing the privacy and security of individually identifiable health information promulgated by the Secretary under sections 262(a) and 264 of the Health Insurance Portability and Accountability Act of 1996 shall remain in effect to the extent that they are consistent with this subchapter. The Secretary shall by rule amend such Federal regulations as required to make such regulations consistent with this subchapter.

#### (c) Construction

Nothing in this subchapter shall constitute a waiver of any privilege otherwise applicable to an individual with respect to the protected health information of such individual.

(Pub. L. 111-5, div. A, title XIII, §13421, Feb. 17, 2009, 123 Stat. 276.)

#### Editorial Notes

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