

(3) Establishment of methodology to distribute percentage of CMPS collected to harmed individuals

Not later than 3 years after February 17, 2009, the Secretary shall establish by regulation and based on the recommendations submitted under paragraph (2), a methodology under which an individual who is harmed by an act that constitutes an offense referred to in paragraph (1) may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense.

(4) Application of methodology

The methodology under paragraph (3) shall be applied with respect to civil monetary penalties or monetary settlements imposed on or after the effective date of the regulation.

(d) Tiered increase in amount of civil monetary penalties

(1) to (3) Omitted

(4) Effective date

The amendments made by this subsection shall apply to violations occurring after February 17, 2009.

(e) Enforcement through State attorneys general

(1), (2) Omitted

(3) Effective date

The amendments made by this subsection shall apply to violations occurring after February 17, 2009.

(Pub. L. 111-5, div. A, title XIII, §13410, Feb. 17, 2009, 123 Stat. 271.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a)(2) and (c)(1), 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.

For reference to “the amendments made by subsection (a)” in subsec. (b)(1) and “the amendments made by this subsection” in subsecs. (d)(4) and (e)(3), see Codification note below.

CODIFICATION

Section is comprised of section 13410 of Pub. L. 111-5. Subsecs. (a)(1), (d)(1)-(3), (e)(1), (2), and (f) of section 13410 of Pub. L. 111-5 amended section 1320d-5 of this title.

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.

§ 17940. Audits

The Secretary shall provide for periodic audits to ensure that covered entities and business associates 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.)

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.

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