



Association of Academic Health Centers
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December 29, 2009

VIA ELECTRONIC SUBMISSION

U.S. Department of Health and Human Services
Office for Civil Rights
Hubert H. Humphrey Building
Room 509F
200 Independence Avenue, SW
Washington, DC 20201

ATTN: HIPAA Enforcement Rule IFR (RIN 0991-AB55)

The Association of Academic Health Centers (AAHC) welcomes this opportunity to comment on the Office for Civil Rights' (OCR) interim final rule, "HIPAA Administrative Simplifications: Enforcement." The AAHC, representing more than 100 academic health centers nationwide, is dedicated to improving the nation's health care system by mobilizing and enhancing the strengths and resources of the academic health center enterprise in health professions, education, patient care, and research.

Academic health centers are committed to ensuring the privacy and confidentiality of the patients and research participants whom they serve and support the establishment of appropriate compliance standards and infrastructures for patient protection. The AAHC supports the concept of tiered penalties for violations of the HIPAA Privacy and Security Rules based upon the intent of the violation, diligence, and time to correction. However, we are concerned that the OCR has erred in its interpretation of the maximum calendar year penalty amounts, which OCR references in §164.404 and Table 1 of the interim final rule. We call attention to the legislative language, which clearly lays out varying maximums per calendar year, depending on the circumstances of the violations, as seen in Section 1176(a)(3) of the Social Security Act (42 U.S.C. 1320d-5) as amended by Section 13410 of the HITECH Act and below:

3) TIERS OF PENALTIES DESCRIBED.—For purposes of paragraph (1), with respect to a violation by a person of a provision of this part—

“(A) the amount described in this subparagraph is \$100 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000;

“(B) the amount described in this subparagraph is \$1,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$100,000;

“(C) the amount described in this subparagraph is \$10,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$250,000; and

“(D) the amount described in this subparagraph is \$50,000 for each such violation, except that the total amount imposed on the person for all such violations of an identical requirement or prohibition during a calendar year may not exceed \$1,500,000.”.

By defining four different maximums for violations during the calendar year in the legislative language, the AAHC believes it is clear that Congress intended for the varying maximums to remain, regardless of the per violation penalty amount that ranges from \$100 to \$50,000. The OCR’s interpretation that would allow the full \$1.5 million maximum for all tiers of violations would unfairly punish covered entities that are found guilty of violations that the institution did not know about and with reasonable diligence could not have known about. The AAHC believes that such circumstances were not what Congress intended. Thus, the AAHC requests that the OCR revise the final rule to defer to the calendar year maximums as prescribed in the statute.

Thank for the opportunity to submit our comments. The AAHC would be pleased to work with the OCR not only to ensure effectiveness in the implementation of the rule but also that the appropriate protections extend to the patient community. If you have any questions regarding our comments or require any additional information on HIPAA-related issues, please feel free to contact me at 202-265-9600 or at erubin@aaahcdc.org.

Sincerely,

Elaine R. Rubin, PhD
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Association of Academic Health Centers