

§ 160.316

§ 160.316 Refraining from intimidation or retaliation.

A covered entity may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual or other person for—

(a) Filing of a complaint under § 160.306;

(b) Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing under this part; or

(c) Opposing any act or practice made unlawful by this subchapter, provided the individual or person has a good faith belief that the practice opposed is unlawful, and the manner of opposition is reasonable and does not involve a disclosure of protected health information in violation of subpart E of part 164 of this subchapter.

Subpart D—Imposition of Civil Money Penalties

SOURCE: 71 FR 8426, Feb. 16, 2006, unless otherwise noted.

§ 160.400 Applicability.

This subpart applies to the imposition of a civil money penalty by the Secretary under 42 U.S.C. 1320d-5.

§ 160.402 Basis for a civil money penalty.

(a) *General rule.* Subject to § 160.410, the Secretary will impose a civil money penalty upon a covered entity if the Secretary determines that the covered entity has violated an administrative simplification provision.

(b) *Violation by more than one covered entity.* (1) Except as provided in paragraph (b)(2) of this section, if the Secretary determines that more than one covered entity was responsible for a violation, the Secretary will impose a civil money penalty against each such covered entity.

(2) A covered entity that is a member of an affiliated covered entity, in accordance with § 164.105(b) of this subchapter, is jointly and severally liable for a civil money penalty for a violation of part 164 of this subchapter based on an act or omission of the affiliated covered entity, unless it is es-

45 CFR Subtitle A (10-1-09 Edition)

tablished that another member of the affiliated covered entity was responsible for the violation.

(c) *Violation attributed to a covered entity.* A covered entity is liable, in accordance with the federal common law of agency, for a civil money penalty for a violation based on the act or omission of any agent of the covered entity, including a workforce member, acting within the scope of the agency, unless—

(1) The agent is a business associate of the covered entity;

(2) The covered entity has complied, with respect to such business associate, with the applicable requirements of §§ 164.308(b) and 164.502(e) of this subchapter; and

(3) The covered entity did not—

(i) Know of a pattern of activity or practice of the business associate, and

(ii) Fail to act as required by §§ 164.314(a)(1)(ii) and 164.504(e)(1)(ii) of this subchapter, as applicable.

§ 160.404 Amount of a civil money penalty.

(a) The amount of a civil money penalty will be determined in accordance with paragraph (b) of this section and §§ 160.406, 160.408, and 160.412.

(b) The amount of a civil money penalty that may be imposed is subject to the following limitations:

(1) The Secretary may not impose a civil money penalty—

(i) In the amount of more than \$100 for each violation; or

(ii) In excess of \$25,000 for identical violations during a calendar year (January 1 through the following December 31).

(2) If a requirement or prohibition in one administrative simplification provision is repeated in a more general form in another administrative simplification provision in the same subpart, a civil money penalty may be imposed for a violation of only one of these administrative simplification provisions.

§ 160.406 Violations of an identical requirement or prohibition.

The Secretary will determine the number of violations of an administrative simplification provision based on