

## **ARRA/HITECH SEC. 13410. IMPROVED ENFORCEMENT.**

### **(e) ENFORCEMENT THROUGH STATE ATTORNEYS GENERAL.—**

(1) IN GENERAL.—Section 1176 of the Social Security Act (42 U.S.C. 1320d–5) is amended by adding at the end the following new subsection:

#### **“(d) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—**

“(1) CIVIL ACTION.—Except as provided in subsection (b), in any case in which the attorney general of a State has reason to believe that an interest of one or more of the residents of that State has been or is threatened or adversely affected by any person who violates a provision of this part, the attorney general of the State, as *parens patriae*, may bring a civil action on behalf of such residents of the State in a district court of the United States of appropriate jurisdiction—

“(A) to enjoin further such violation by the defendant; or

“(B) to obtain damages on behalf of such residents of the State, in an amount equal to the amount determined under paragraph (2).

#### **“(2) STATUTORY DAMAGES.—**

“(A) IN GENERAL.—For purposes of paragraph (1)(B), the amount determined under this paragraph is the amount calculated by multiplying the number of violations by up to \$100. For purposes of the preceding sentence, in the case of a continuing violation, the number of violations shall be determined consistent with the HIPAA privacy regulations (as defined in section 1180(b)(3)) for violations of subsection (a).

“(B) LIMITATION.—The total amount of damages imposed on the person for all violations of an identical requirement or prohibition during a calendar year may not exceed \$25,000.

“(C) REDUCTION OF DAMAGES.—In assessing damages under subparagraph (A), the court may consider the factors the Secretary may consider in determining the amount of a civil money penalty under subsection (a) under the HIPAA privacy regulations.

“(3) ATTORNEY FEES.—In the case of any successful action under paragraph (1), the court, in its discretion, may award the costs of the action and reasonable attorney fees to the State.

“(4) NOTICE TO SECRETARY.—The State shall serve prior written notice of any action under paragraph (1) upon the Secretary and provide the Secretary with a copy of its complaint, except in any case in which such prior notice is not H. R. 1—161 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, United States Code.

“(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 1128A(c)(1).”.

(2) CONFORMING AMENDMENTS.—Subsection (b) of such section, as amended by subsection (d)(3), is amended—

(A) in paragraph (1), by striking “A penalty may not be imposed under subsection (a)” and inserting “No penalty may be imposed under subsection (a) and no damages obtained under subsection (d)”;

(B) in paragraph (2)(A)—

(i) after “subsection (a)(1)(C),”, by striking “a penalty may not be imposed under subsection (a)” and inserting “no penalty may be imposed under subsection (a) and no damages obtained under subsection (d)”;

(ii) in clause (ii), by inserting “or damages” after “the penalty”;

(C) in paragraph (2)(B)(i), by striking “The period” and inserting “With respect to the imposition of a penalty by the Secretary under subsection (a), the period”; and

(D) in paragraph (3), by inserting “and any damages under subsection (d)” after “any penalty under subsection (a)”.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply to violations occurring after the date of the enactment of this Act. H. R. 1—162

(f) ALLOWING CONTINUED USE OF CORRECTIVE ACTION.— Such section is further amended by adding at the end the following new subsection:

“(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.”.