

Lower Maximum Penalties for HIPAA Violations Takes Immediate Effect

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Health care providers may be able to sleep a little easier as the Department of Health and Human Services (HHS) recently announced that it has lowered the maximum civil monetary penalties that can be assessed for certain HIPAA violations.

In 2013, HHS adopted a penalty tier structure which varied based on a health care provider's culpability and mitigation efforts in connection with a HIPAA breach. To address some internal inconsistencies identified in the rulemaking process, HHS adopted a \$1.5 million maximum for every penalty tier.

Citing the move as "a matter of enforcement discretion," HHS announced on April 29, 2019, that the \$1.5 million maximum for all penalty tiers would be significantly reduced for three of the four penalty tiers. The chart set forth below describes each tier, the previous maximum penalty, and the new maximum penalty. HHS indicated that the new annual limit would be adjusted annually for inflation.

Tier	Minimum Penalty per Violation	Maximum Penalty	Prior Annual Limit	New Annual Limit
No Knowledge	\$100	\$50,000	\$1,500,000	\$25,000
Reasonable Cause	\$1,000	\$50,000	\$1,500,000	\$100,000
Willful Neglect-Corrected	\$10,000	\$50,000	\$1,500,000	\$250,000
Willful Neglect-Not Corrected	\$50,000	\$50,000	\$1,500,000	\$1,500,000

Because the risk of a HIPAA breach is largely a question of "when" and not "if," the prior annual limits for the lower tiers were particularly draconian and inequitable. With a significantly lower annual limit for these lower tier breaches, providers will have greater incentive to take appropriate measures to implement risk management and institute self-imposed corrective action. The announcement comes in the wake of unprecedented HIPAA fines. In 2018, the Office of Civil Rights (which oversees HIPAA enforcement) set a new record by levying a total of \$28.7 million in judgments, fines, and settlements. Among those settlements included the largest settlement in history - \$16 million with Anthem, Inc. for the 2014-2015 cyber attacks which affected almost 79 million individuals. The new penalty tier structure took effect on April 30, 2019, and will remain in effect indefinitely. HHS also indicated that it intends to engage in future formal rulemaking to revise the penalty tiers, but did not indicate whether such rulemaking activity would be undertaken to formalize the newly-announced structure or to make more significant changes.

Related Team



Scott V. Carroll
Partner | Team Co-
Leader - Health Care



Elise M. Edwards
Senior Associate



Brigid M. Maloney
Partner | Team Co-
Leader - Health Care



Lauren A. Suttell
Senior Associate



ALBANY | 54 State Street, Suite 1001 • Albany, NY 12207 • 518.462.0110
BUFFALO | 50 Fountain Plaza, Suite 1700 • Buffalo, NY 14202 • 716.853.5100
CHICAGO | 332 S. Michigan Ave., 9th Floor • Chicago, IL 60604 • 872.254.5500
GREATER TORONTO AREA (PRACTICE FOCUSED ON U.S. LAW) | 1100 Burloak Drive, Suite 300 • Burlington, ON L7L 6B2 • 905.319.8964
JACKSONVILLE | 10151 Deerwood Park Blvd. , Bldg. 300, Suite 300 • Jacksonville, FL 32256 • 904.660.0020
NEW YORK CITY | 477 Madison Avenue, 6th Floor • New York City, NY 10022 • 646.673.8633
WASHINGTON, D.C. | 1900 K Street, NW, Suite 730 • Washington, DC 20006 • 202.888.7610