

If the HHS determines that more than one covered entity was responsible for violating an administrative simplification provision, the HHS will impose a civil money penalty against each such covered entity.

A plan can be held liable for a civil money penalty based on the actions of any agent, including a workforce member, acting within the scope of the agency. Remember, that “workforce” includes volunteers, trainees, or other persons whose conduct in the performance of work for the plan is under direct control of those responsible for the plan.

In a memorandum from the U.S. Department of Justice (DOJ) Office of Legal Counsel, the DOJ indicated that the only persons directly liable under the Administrative Simplification provision of HIPAA are the covered entities under the law — health plans, health care clearinghouses, those health care providers specified in the law, and Medicare prescription drug card sponsors. These are the only entities that may be prosecuted for violations. Depending on the facts of a given case, certain directors, officers, and employees of these entities may be liable directly in accordance with general principles of corporate criminal liability. Other persons may not be liable directly.

In a related situation, a district court held that the HIPAA privacy rules provide for enforcement by the HHS, not by private individuals.

### **Amount of civil penalties**

The maximum civil money penalties are up to \$50,000 per violation and up to \$1,500,000 for violations of an identical requirement or prohibition in a calendar year (January 1 through the following December 31).

The American Recovery and Reinvestment Act of 2009 increased the penalties, and added tiers. The original \$100 per violation with a related cap of \$25,000 for multiple violations of the same requirement is still in place. The additional tiers are as follows:

- For violations because of reasonable cause but without willful neglect, the penalties are \$1,000 per violation with a \$100,000 cap.
- For violations that are because of willful neglect but are corrected, the penalties are \$10,000 per violation with a \$250,000 cap.
- For violations that are not corrected, the penalties are \$50,000 per violation with a \$1,500,000 cap.

The statute mentions other penalties as well, for those who engage in activities involving wrongful disclosure of individually identifiable health information in violation of the statute. The following violations are punishable by being fined up to \$50,000, imprisoned for up to one year, or both:

- If someone knowingly uses or causes to be used a unique health identifier,