

HHS Immediately Reduces Annual Limits Across HIPAA Violations

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The Department of Health and Human Services (HHS) issued a [notice](#), effective immediately, that it is exercising its enforcement discretion in how it applies HHS regulations concerning the assessment of Civil Money Penalties (CMPs) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HHS currently applies the same annual CMP limit across four separate tiers of violations based on the level of culpability surrounding the HIPAA violation. HHS will reduce the annual CMP limit for each of the four penalty tiers, pending further rulemaking, to better reflect the text of the Health Information Technology for Economic and Clinical Health (HITECH) Act.

HITECH outlines minimum and maximum CMPs for HIPAA enforcement based on whether the organization in question was aware of the violation and whether it had taken steps to abide by HIPAA's rules. The tiers escalate in severity based on the level of culpability associated with the violation: (1) the person or organization did not know (and, by exercising reasonable diligence would not have known) that the person violated the provision; (2) the violation was due to reasonable cause, and not willful neglect; (3) the violation was due to willful neglect that is timely corrected; and (4) the violation was due to willful neglect that is not timely corrected. Although the HITECH act identifies four different tiers of culpability, its enforcement rule penalizes the tiers differently only in terms of the minimum and maximum penalty amounts per violation. HITECH applies the same annual upper limit penalty of \$1.5 million across all tiers. HHS is now amending its interpretation of the HITECH penalty such that organizations displaying lower tier levels of culpability are penalized at a lower annual limit than organizations with higher tier levels of

culpability.

The updated annual caps are interim figures pending further rulemaking. The chart below summarizes HHS changes to the annual limit amounts:

Culpability Tier	Original Annual Limit	Updated Annual Limit
No Knowledge	\$1,500,000	\$25,000
Reasonable Cause	\$1,500,000	\$100,000
Willful Neglect - Corrected	\$1,500,000	\$250,000
Willful Neglect - Not Corrected	\$1,500,000	\$1,500,000

This change comes on the heels of a record-breaking enforcement year in 2018 whereby the Office for Civil Rights at HHS entered into 10 settlements and received summary judgment in a case before an Administrative Law Judge totaling nearly \$28.7 million in enforcement actions. We discuss the [2018 enforcement results](#) further.

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