

SEC. 13405. RESTRICTIONS ON CERTAIN DISCLOSURES AND SALES OF HEALTH INFORMATION; ACCOUNTING OF CERTAIN PROTECTED HEALTH INFORMATION DISCLOSURES; ACCESS TO CERTAIN INFORMATION IN ELECTRONIC FORMAT.

(a) Requested Restrictions on Certain Disclosures of Health Information- In the case that an individual requests under paragraph (a)(1)(i)(A) of section 164.522 of title 45, Code of Federal Regulations, that a covered entity restrict the disclosure of the protected health information of the individual, notwithstanding paragraph (a)(1)(ii) of such section, the covered entity must comply with the requested restriction if--

(1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and

(2) the protected health information pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

(b) Disclosures Required to Be Limited to the Limited Data Set or the Minimum Necessary-

(1) IN GENERAL-

(A) IN GENERAL- Subject to subparagraph (B), a covered entity shall be treated as being in compliance with section 164.502(b)(1) of title 45, Code of Federal Regulations, with respect to the use, disclosure, or request of protected health information described in such section, only if the covered entity limits such protected health information, to the extent practicable, to the limited data set (as defined in section 164.514(e)(2) of such title) or, if needed by such entity, to the minimum necessary to accomplish the intended purpose of such use, disclosure, or request, respectively.

(B) GUIDANCE- Not later than 18 months after the date of the enactment of this section, the Secretary shall issue guidance on what constitutes 'minimum necessary' for purposes of subpart E of part 164 of title 45, Code of Federal Regulation. In issuing such guidance the Secretary shall take into consideration the guidance under section 13424(c) and the information necessary to improve patient outcomes and to detect, prevent, and manage chronic disease.

(C) SUNSET- Subparagraph (A) shall not apply on and after the effective date on which the Secretary issues the guidance under subparagraph (B).

(2) DETERMINATION OF MINIMUM NECESSARY- For purposes of paragraph (1), in the case of the disclosure of protected health information, the covered entity or business associate disclosing such information shall determine what constitutes the minimum necessary to accomplish the intended purpose of such disclosure.

(3) APPLICATION OF EXCEPTIONS- The exceptions described in section 164.502(b)(2) of title 45, Code of Federal Regulations, shall apply to the requirement under paragraph (1) as of the effective date described in section 13423 in the same manner that such exceptions apply to section 164.502(b)(1) of such title before such date.

(4) RULE OF CONSTRUCTION- Nothing in this subsection shall be construed as affecting the use, disclosure, or request of protected health information that has been de-identified.