

**AMENDMENT TO H.R. \_\_\_\_\_**  
**OFFERED BY MR. WAXMAN OF CALIFORNIA**  
**[amendment to hitec\_004]**

Insert at the end of subtitle B of title III the following:

1 **SEC. 320. ENFORCEMENT THROUGH STATE ATTORNEYS**

2 **GENERAL.**

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

6 “(c) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—  
7

8 “(1) CIVIL ACTION.—Except as provided in  
9 subsection (b), in any case in which the attorney  
10 general of a State has reason to believe that an interest of one or more of the residents of that State  
11 has been or is threatened or adversely affected by  
12 any person who violates a provision of this part, the  
13 attorney general of the State, as *parens patriae*, may  
14 bring a civil action on behalf of such residents of the  
15 State in a district court of the United States of appropriate  
16 jurisdiction—  
17

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

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

6           “(2) STATUTORY DAMAGES.—

7           “(A) IN GENERAL.—For purposes of para-  
8 graph (1)(B), the amount determined under  
9 this paragraph is the amount calculated by mul-  
10 tiplying the number of violations by up to \$100.  
11 For purposes of the preceding sentence, in the  
12 case of a continuing violation, the number of  
13 violations shall be determined consistent with  
14 the HIPAA privacy regulations (as defined in  
15 section 1180(b)(3)) for violations of subsection  
16 (a).

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

21           “(C) REDUCTION OF DAMAGES.—In as-  
22 sessing damages under subparagraph (A), the  
23 court may consider the factors the Secretary  
24 may consider in determining the amount of a

1 civil money penalty under subsection (a) under  
2 the HIPAA privacy regulations.

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

7 “(4) NOTICE TO SECRETARY.—The State shall  
8 serve prior written notice of any action under para-  
9 graph (1) upon the Secretary and provide the Sec-  
10 retary with a copy of its complaint, except in any  
11 case in which such prior notice is not feasible, in  
12 which case the State shall serve such notice imme-  
13 diately upon instituting such action. The Secretary  
14 shall have the right—

15 “(A) to intervene in the action;

16 “(B) upon so intervening, to be heard on  
17 all matters arising therein; and

18 “(C) to file petitions for appeal.

19 “(5) CONSTRUCTION.—For purposes of bring-  
20 ing any civil action under paragraph (1), nothing in  
21 this section shall be construed to prevent an attor-  
22 ney general of a State from exercising the powers  
23 conferred on the attorney general by the laws of that  
24 State.

25 “(6) VENUE; SERVICE OF PROCESS.—

1           “(A) VENUE.—Any action brought under  
2           paragraph (1) may be brought in the district  
3           court of the United States that meets applicable  
4           requirements relating to venue under section  
5           1391 of title 28, United States Code.

6           “(B) SERVICE OF PROCESS.—In an action  
7           brought under paragraph (1), process may be  
8           served in any district in which the defendant—

9                   “(i) is an inhabitant; or

10                   “(ii) maintains a physical place of  
11           business.

12           “(7) LIMITATION ON STATE ACTION WHILE  
13           FEDERAL ACTION IS PENDING.—If the Secretary has  
14           instituted an action against a person under sub-  
15           section (a) with respect to a specific violation of this  
16           part, no State attorney general may bring an action  
17           under this subsection against the person with re-  
18           spect to such violation during the pendency of that  
19           action.

20           “(8) APPLICATION OF CMP STATUTE OF LIMI-  
21           TATION.—A civil action may not be instituted with  
22           respect to a violation of this part unless an action  
23           to impose a civil money penalty may be instituted  
24           under subsection (a) with respect to such violation

1 consistent with the second sentence of section  
2 1128A(c)(1).”.

3 (b) CONFORMING AMENDMENTS.—Subsection (b) of  
4 such section is amended—

5 (1) in paragraph (1), by striking “A penalty  
6 may not be imposed under subsection (a)” and in-  
7 serting “No penalty may be imposed under sub-  
8 section (a) and no damages obtained under sub-  
9 section (c)”;

10 (2) in paragraph (2)—

11 (A) by striking “A penalty may not be im-  
12 posed under subsection (a)” and inserting “No  
13 penalty may be imposed under subsection (a)  
14 and no damages obtained under subsection (c)”;  
15 and

16 (B) by inserting “or the court, respec-  
17 tively,” after “the Secretary”;

18 (3) in paragraph (3)(A)—

19 (A) in the matter before clause (i), by  
20 striking “a penalty may not be imposed under  
21 subsection (a)” and inserting “no penalty may  
22 be imposed under subsection (a) and no dam-  
23 ages obtained under subsection (c)”;

24 (B) in clause (ii), by inserting “or dam-  
25 ages” after “the penalty”;

1           (4) in paragraph (3)(B)(i), by striking “The pe-  
2           riod” and inserting “With respect to the imposition  
3           of a penalty by the Secretary under subsection (a),  
4           the period”; and

5           (5) in paragraph (4), by inserting “and any  
6           damages under subsection (c)” after “any penalty  
7           under subsection (a)”.

8           (c) EFFECTIVE DATE.—The amendments made by  
9           this section shall apply to violations occurring after the  
10          date of the enactment of this Act.

          In section 312, strike “and 319” and insert “319,  
          and 320”.

