

By: Kolkhorst

S.C.R. No. 21

1 SENATE CONCURRENT RESOLUTION

2 WHEREAS, On June 11, 2015, the Department of Aging and  
3 Disability Services ("DADS"), a "covered entity" under Privacy,  
4 Security, and Breach Notification Rules ("HIPAA Rules"), filed a  
5 breach notification report with the United States Department of  
6 Health and Human Services, Office for Civil Rights ("OCR") stating  
7 that an impermissible disclosure of unsecured electronic protected  
8 health information (ePHI) in violation of HIPAA Rules had occurred  
9 when a DADS web application was accessible to unauthorized parties;  
10 and

11 WHEREAS, On July 23, 2015, OCR notified DADS of its  
12 investigation of DADS compliance with the HIPAA Rules and  
13 determined that:

14 a. DADS failed to conduct an accurate and thorough  
15 assessment of the potential risks and vulnerabilities to the  
16 confidentiality, integrity, and availability of ePHI held by the  
17 covered entity. (See 45 C.F.R. Section 164.308(a)(1)(ii)(A))

18 b. DADS failed to implement appropriate technical  
19 policies and procedures for electronic information systems that  
20 maintain electronic protected health information to allow access  
21 only to those persons or software programs that have been granted  
22 access rights as specified in 45 C.F.R. Section 164.308(a)(4).  
23 (See 45 C.F.R. Section 164.312(a)(1))

24 c. DADS failed to implement appropriate hardware,

1 software, and/or procedural mechanisms that record and examine  
2 activity in information systems that contained or used ePHI. (See  
3 45 C.F.R. Section 164.312(b))

4 d. As a result of its failure to appropriately  
5 safeguard the ePHI in a web-based application, DADS impermissibly  
6 disclosed the ePHI of up to 6,617 individuals. (See 45  
7 C.F.R. Section 164.502(a)); and

8 WHEREAS, OCR presented the State of Texas a Resolution  
9 Agreement with Corrective Action Plan (the "Settlement Agreement")  
10 in lieu of civil monetary penalties and to provide DADS an  
11 opportunity to correct DADS's failures to safeguard ePHI; and

12 WHEREAS, The State of Texas has presented a counter-proposal  
13 to the Settlement Agreement to OCR that applies to those covered  
14 functions and information resources involved in the breach that  
15 were formerly operated by DADS but that have been transferred to the  
16 Health and Human Services Commission ("TX HHS"); and

17 WHEREAS, The proposed Settlement Agreement comprises the  
18 following terms and conditions:

19 Payment. TX HHS agrees to pay the amount of  
20 \$1,600,000.00.

21 Corrective Action Plan. TX HHS has entered into and  
22 agrees to comply with a Corrective Action Plan ("CAP"). If TX HHS  
23 breaches the CAP, and fails to cure the breach as set forth in the  
24 CAP, then TX HHS will be in breach of the Settlement Agreement and  
25 OCR will not be subject to the release set forth in the Settlement  
26 Agreement. Compliance with the RA/CAP of the Settlement Agreement  
27 by TX HHS is conditioned upon TX HHS obtaining the approval of, and

1 appropriation of funds needed to comply with, the RA/CAP by the  
2 Legislature of the State of Texas. (See Texas Civil Practice and  
3 Remedies Code Section [111.003\(b\)](#)). The term of the Corrective  
4 Action Plan will be three (3) years from the effective date of the  
5 proposed agreement.

6 Release by OCR. In consideration of and conditioned  
7 upon performance by TX HHS of its obligations under the proposed  
8 Settlement Agreement, OCR releases TX HHS from any actions it may  
9 have against TX HHS under the HIPAA Rules arising out of or related  
10 to the conduct identified in paragraph 2 of this concurrent  
11 resolution. OCR does not release TX HHS from, nor waive any rights,  
12 obligations, or causes of action other than those arising out of or  
13 related to said conduct and referred to in this paragraph.

14 Agreement by Released Parties. TX HHS shall not contest  
15 the validity of its obligation to pay, nor the amount of, the  
16 Resolution Amount or any other obligations agreed to under the  
17 proposed Settlement Agreement. TX HHS waives all procedural rights  
18 granted under Section 1128A of the Social Security Act (42  
19 U.S.C. Section 1320a-7a); and 45 C.F.R. Part 160, Subpart E; and  
20 claims collection regulations at 45 C.F.R. Part 30, including, but  
21 not limited to, notice, hearing, and appeal with respect to the  
22 Resolution Amount; and

23 WHEREAS, Section [111.003\(a\)\(2\)](#), Civil Practice and Remedies  
24 Code, requires the legislature to approve a settlement of a claim or  
25 action against the state if the settlement commits the state to a  
26 course of action that in reasonable probability will entail a  
27 continuing increased expenditure of state funds over subsequent

1 state fiscal biennia; and

2 WHEREAS, The CAP of the proposed agreement commits the State  
3 of Texas to a course of action that in reasonable probability  
4 entails a continuing increased expenditure of state funds over  
5 subsequent state fiscal biennia; now, therefore, be it

6 RESOLVED, That the 86th Legislature of the State of Texas  
7 hereby approve the proposed Settlement Agreement.