

By: Kolkhorst

S.C.R. No. 21

CONCURRENT RESOLUTION

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

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

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

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

23 c. DADS failed to implement appropriate hardware,
24 software, and/or procedural mechanisms that record and examine

1 activity in information systems that contained or used ePHI. (See
2 45 C.F.R. Section 164.312(b))

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

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

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

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

18 Payment. OCR has agreed to deduct, and HHSC agrees to
19 not contest deduction by OCR, the amount of \$1,600,000.00
20 ("Resolution Amount" or "RA") on or before May 31, 2019, from any
21 sum owing to HHSC from the Centers for Medicare and Medicaid
22 Services pursuant to 45 C.F.R. Section 160.424(c).

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

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

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

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

25 WHEREAS, Section [111.003\(a\)\(2\)](#), Civil Practice and Remedies
26 Code, requires the legislature to approve a settlement of a claim or
27 action against the state if the settlement commits the state to a

1 course of action that in reasonable probability will entail a
2 continuing increased expenditure of state funds over subsequent
3 state fiscal biennia; and

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

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