

1-1 By: Kolkhorst S.C.R. No. 21  
 1-2 (In the Senate - Filed February 25, 2019; March 7, 2019,  
 1-3 read first time and referred to Committee on Health & Human  
 1-4 Services; April 3, 2019, reported adversely, with favorable  
 1-5 Committee Substitute by the following vote: Yeas 9, Nays 0;  
 1-6 April 3, 2019, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.C.R. No. 21 By: Kolkhorst

1-19 SENATE CONCURRENT RESOLUTION

1-20 WHEREAS, On June 11, 2015, the Department of Aging and  
 1-21 Disability Services ("DADS"), a "covered entity" under Privacy,  
 1-22 Security, and Breach Notification Rules ("HIPAA Rules"), filed a  
 1-23 breach notification report with the United States Department of  
 1-24 Health and Human Services, Office for Civil Rights ("OCR") stating  
 1-25 that an impermissible disclosure of unsecured electronic protected  
 1-26 health information (ePHI) in violation of HIPAA Rules had occurred  
 1-27 when a DADS web application was accessible to unauthorized parties;  
 1-28 and

1-29 WHEREAS, On July 23, 2015, OCR notified DADS of its  
 1-30 investigation of DADS compliance with the HIPAA Rules and  
 1-31 determined that:

1-32 a. DADS failed to conduct an accurate and thorough  
 1-33 assessment of the potential risks and vulnerabilities to the  
 1-34 confidentiality, integrity, and availability of ePHI held by the  
 1-35 covered entity. (See 45 C.F.R. Section 164.308(a)(1)(ii)(A))

1-36 b. DADS failed to implement appropriate technical  
 1-37 policies and procedures for electronic information systems that  
 1-38 maintain electronic protected health information to allow access  
 1-39 only to those persons or software programs that have been granted  
 1-40 access rights as specified in 45 C.F.R. Section 164.308(a)(4).  
 1-41 (See 45 C.F.R. Section 164.312(a)(1))

1-42 c. DADS failed to implement appropriate hardware,  
 1-43 software, and/or procedural mechanisms that record and examine  
 1-44 activity in information systems that contained or used ePHI. (See  
 1-45 45 C.F.R. Section 164.312(b))

1-46 d. As a result of its failure to appropriately  
 1-47 safeguard the ePHI in a web-based application, DADS impermissibly  
 1-48 disclosed the ePHI of up to 6,617 individuals. (See 45  
 1-49 C.F.R. Section 164.502(a)); and

1-50 WHEREAS, OCR presented the State of Texas a Resolution  
 1-51 Agreement with Corrective Action Plan (the "Settlement Agreement")  
 1-52 in lieu of civil monetary penalties and to provide DADS an  
 1-53 opportunity to correct DADS's failures to safeguard ePHI; and

1-54 WHEREAS, The State of Texas has presented a counter-proposal  
 1-55 to the Settlement Agreement to OCR that applies to those covered  
 1-56 functions and information resources involved in the breach that  
 1-57 were formerly operated by DADS but that have been transferred to the  
 1-58 Health and Human Services Commission ("TX HHS"); and

1-59 WHEREAS, The proposed Settlement Agreement comprises the  
 1-60 following terms and conditions:

2-1 Payment. TX HHS agrees to pay the amount of  
2-2 \$1,600,000.00.

2-3 Corrective Action Plan. TX HHS has entered into and  
2-4 agrees to comply with a Corrective Action Plan ("CAP"). If TX HHS  
2-5 breaches the CAP, and fails to cure the breach as set forth in the  
2-6 CAP, then TX HHS will be in breach of the Settlement Agreement and  
2-7 OCR will not be subject to the release set forth in the Settlement  
2-8 Agreement. Compliance with the RA/CAP of the Settlement Agreement  
2-9 by TX HHS is conditioned upon TX HHS obtaining the approval of, and  
2-10 appropriation of funds needed to comply with, the RA/CAP by the  
2-11 Legislature of the State of Texas. (See Texas Civil Practice and  
2-12 Remedies Code Section 111.003(b)). The term of the Corrective  
2-13 Action Plan will be three (3) years from the effective date of the  
2-14 proposed agreement.

2-15 Release by OCR. In consideration of and conditioned  
2-16 upon performance by TX HHS of its obligations under the proposed  
2-17 Settlement Agreement, OCR releases TX HHS from any actions it may  
2-18 have against TX HHS under the HIPAA Rules arising out of or related  
2-19 to the conduct identified in paragraph 2 of this concurrent  
2-20 resolution. OCR does not release TX HHS from, nor waive any rights,  
2-21 obligations, or causes of action other than those arising out of or  
2-22 related to said conduct and referred to in this paragraph.

2-23 Agreement by Released Parties. TX HHS shall not contest  
2-24 the validity of its obligation to pay, nor the amount of, the  
2-25 Resolution Amount or any other obligations agreed to under the  
2-26 proposed Settlement Agreement. TX HHS waives all procedural rights  
2-27 granted under Section 1128A of the Social Security Act (42  
2-28 U.S.C. Section 1320a-7a); and 45 C.F.R. Part 160, Subpart E; and  
2-29 claims collection regulations at 45 C.F.R. Part 30, including, but  
2-30 not limited to, notice, hearing, and appeal with respect to the  
2-31 Resolution Amount; and

2-32 WHEREAS, Section 111.003(a)(2), Civil Practice and Remedies  
2-33 Code, requires the legislature to approve a settlement of a claim or  
2-34 action against the state if the settlement commits the state to a  
2-35 course of action that in reasonable probability will entail a  
2-36 continuing increased expenditure of state funds over subsequent  
2-37 state fiscal biennia; and

2-38 WHEREAS, The CAP of the proposed agreement commits the State  
2-39 of Texas to a course of action that in reasonable probability  
2-40 entails a continuing increased expenditure of state funds over  
2-41 subsequent state fiscal biennia; now, therefore, be it

2-42 RESOLVED, That the 86th Legislature of the State of Texas  
2-43 hereby approve the proposed Settlement Agreement.

2-44 \* \* \* \* \*