

By: Meza

H.C.R. No. 54

CONCURRENT RESOLUTION

1 WHEREAS, In 2015, the federal Department of Justice (DOJ)
2 began an investigation of the Health and Human Services Commission
3 (HHSC) quality control (QC) of the Supplemental Nutrition
4 Assistance Program (SNAP) from 2007 to the present, requesting
5 documents from HHSC in April 2017 and deposing HHSC staff in March
6 2019; and

7 WHEREAS, DOJ's investigation focused on whether HHSC
8 properly and accurately calculated, determined, and reported
9 Texas' error rates in compliance with FNS requirements regarding
10 SNAP QC; specifically, DOJ focused on HHSC's relationship with
11 Julie Osnes Consulting (Osnes), a contractor who assisted HHSC in
12 determining SNAP error rates and quality control review of SNAP
13 cases from September 2009 to June 2015; and

14 WHEREAS, DOJ was concerned that, by following certain
15 recommendations by Osnes, HHSC failed to maintain the integrity of
16 the QC system by introducing bias into its processes; and

17 WHEREAS, Osnes reached a settlement with DOJ in June 2019 of
18 \$751,571, and to date three other states have settled DOJ's claims
19 related to their implementation of Osnes's recommendations:

- 20 (a) April 2017--Virginia settled for \$7,150,436;
- 21 (b) April 2017--Wisconsin settled for \$6,991,905;
- 22 (c) September 2017--Alaska settled for \$2,489,999; and

23 WHEREAS, DOJ claimed that HHSC's SNAP management violated the
24 Federal False Claims Act (31 U.S.C. 3729, et seq.) and the Program

1 Fraud Civil Remedies Act (31 U.S.C. 3801, et seq.), in addition to
2 asserting various claims under common law; and

3 WHEREAS, The Covered Conduct alleged by DOJ included:

4 (a) Changing QC findings or dropping cases from review to
5 reduce or eliminate errors;

6 (b) Adding to or removing information from case files as
7 necessary to support the new findings and submitting the revised
8 findings and information to the U.S. Food and Nutrition Service;

9 (c) Finding ways to induce client responses to justify
10 dropping error cases from the review and asking leading questions
11 of clients to obtain desired answers to eliminate error potential;

12 (d) Selectively applying requirements and policies to
13 overturn and reduce errors;

14 (e) Retaliating against SNAP employees who questioned using
15 Osnes's methods by removing the employees from the QC review team;
16 and

17 WHEREAS, DOJ sought recovery of two years of accuracy
18 performance bonuses paid to HHSC, as well as certain other costs
19 associated with the QC process and the relationship with Osnes; and

20 WHEREAS, DOJ engaged HHSC in settlement negotiations, with
21 the Office of the Attorney General representing HHSC in both the
22 investigation and settlement discussions; and

23 WHEREAS, In December 2019, the parties reached agreement on
24 the following terms:

25 (a) A total settlement amount of \$15,294,360:

26 (1) Of that amount, DOJ characterizes \$13,396,343 as
27 restitution for the performance bonuses paid to the State;

1 (2) The remaining \$1,898,017 represents repayment of
2 the federally funded portion of HHSC's QC costs and the amounts paid
3 to Osnes, plus a "multiplier" required by DOJ;

4 (b) Waiver by HHSC of any claim to the 2014 performance
5 bonus that was awarded but never paid to the State;

6 (c) No admission of liability by HHSC; and

7 WHEREAS, Section 111.003(b) of the Texas Civil Practice and
8 Remedies Code prohibits HHSC from entering a settlement agreement
9 that requires the payment of damages of more than \$10,000,000
10 within a fiscal biennium; therefore, the settlement agreement is
11 expressly conditioned upon the legislature approving and
12 appropriating the agreed upon settlement amount; and

13 WHEREAS, Since the findings resulting in the settlement, the
14 U.S. Department of Agriculture has reviewed HHSC's Quality Control
15 SNAP section processes twice and did not identify any adverse
16 finding; now, therefore, be it

17 RESOLVED, That the 87th Legislature of the State of Texas
18 hereby approve the proposed Settlement Agreement.