

Legislative Approval of OCR Settlement Agreement

*A concurrent resolution to approve a settlement agreement with the
U.S. Department of Health and Human Services Office for Civil Rights*



TEXAS
Health and Human
Services

*Sen. Lois W. Kolkhorst • Senate Concurrent Resolution 21 |
Rep. Giovanni Capriglione • House Concurrent Resolution 78*

Problem

- The U.S. Department of Health and Human Services Office for Civil Rights (OCR) has proposed an agreement to HHSC to settle certain Health Insurance Portability and Accountability Act (HIPAA) violations that were discovered in 2015 by the legacy Department of Aging and Disability Services (DADS).
- The proposed settlement agreement requires HHSC to pay \$1.6 million in lieu of civil monetary penalties and complete a corrective action plan to improve its information security program.
- Texas law requires HHSC to obtain legislative approval of the settlement agreement (Texas Civil Practice and Remedies Code Chapter 111.003(b)).

Solution

- A concurrent resolution, which requires approval by both chambers of the Legislature and the governor, is needed to allow the settlement agreement to move forward.
- The resolution describes the terms and conditions of the proposed settlement agreement, including the corrective action plan, and confers legislative approval.
- Without legislative approval, the settlement agreement is void.

What happens if we don't pass the resolution?

If HHSC doesn't abide by the terms of the corrective action plan, OCR will assess an initial civil monetary penalty of \$8 million General Revenue in fiscal year 2018, followed by a penalty of \$1.7 million per year until HHSC is fully compliant.

Questions, comments or concerns?

Contact Will Krueger • Will.Krueger@hhsc.state.tx.us

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Q&A

What was the HIPAA violation that resulted in the OCR settlement agreement and corrective action plan?

On April 21, 2015, the legacy DADS learned its public-facing website contained a database of names, addresses, Social Security and Medicaid numbers, and treatment or diagnosis information for 6,617 clients in the Community Living Assistance and Deaf Blind with Multiple Disabilities programs. The database had been public facing since 2007. The application housing the information was decommissioned, and affected clients were notified and offered credit monitoring services for one year.

DADS reported the breach as required by federal law. OCR investigated the breach and found in January 2018 that DADS violated HIPAA in four different ways. Because of these findings, OCR proposed a resolution agreement that includes a monetary payment and corrective action plan.

Why is HHSC responsible for completing the corrective action plan?

DADS no longer exists as a separate agency and its functions have been consolidated into HHSC, so HHSC must respond to OCR and comply with the corrective action plan as the successor agency.

How long will it take to complete the corrective action plan and how much will it cost?

It will require three years to complete at an estimated cost of \$23.8 million. HHSC has a related Exceptional Item Request.

Why is a concurrent resolution required?

Chapter 111.003(b) of the Texas Civil Practice and Remedies Code prohibits HHSC from entering a settlement agreement that requires paying for damages of more than \$10 million within a fiscal biennium or committing the state to a course of action that will entail continuing increased expenditures over subsequent biennia without legislative approval. Compliance with the resolution agreement and corrective action plan is contingent on HHSC obtaining the approval and appropriation of necessary funds.

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