



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Office for Civil Rights

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Washington, D.C. 20201

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**Via Certified Mail, U.S. Postal Service,
Return Receipt Requested,
and Electronic Mail**

October 25, 2019

Texas Health and Human Services Commission
Dr. Courtney N. Phillips, Executive Commissioner
4900 N. Lamar Blvd.
Austin, TX 78751-2316

Re: OCR Transaction Number: 15-213170

NOTICE OF FINAL DETERMINATION

Dear Dr. Phillips:

Pursuant to the authority delegated by the Secretary of the United States Department of Health and Human Services (HHS) to the Director of the Office for Civil Rights (OCR), I am writing to inform you that the civil money penalty (CMP) of **\$1,600,000** against the Texas Health and Human Services Commission, Department of Aging and Disability Services (HHSC), is final.¹ This letter also contains instructions for HHSC to make payment of the CMP amount.

I. HHSC is Waiving the Right to Request a Hearing Before an ALJ and Petition for Judicial Review.

By OCR's letter, dated July 29, 2019, (Notice of Proposed Determination, which is attached hereto), HHSC was notified of the proposed CMP of **\$1,600,000** and the findings of the fact forming the basis for the CMP. The Notice of Proposed Determination notified HHSC of its right

¹ As of September 1, 2017, the functions of the Texas Department of Aging and Disability Services (DADS) were transferred to the Texas Health and Human Services Commission (HHSC), and DADS was abolished. Because of this transfer and the abolishment of DADS, the covered entity will be referred to as HHSC throughout this Notice. The CMP reflects the penalty tiers described in the Notification of Enforcement Discretion (April 30, 2019). See <https://www.federalregister.gov/documents/2019/04/30/2019-08530/notification-of-enforcement-discretion-regarding-hipaa-civil-money-penalties>.

to request a hearing on the proposed CMP and gave instructions for HHSC to request a hearing within 90 days. The Notice of Proposed Determination stated that HHSC's failure to request a hearing within that time period permitted the imposition of the proposed CMP without the right to a hearing under 45 C.F.R. § 160.504 or the right of appeal under 45 C.F.R. § 160.548. HHSC received the Notice of Proposed Determination on July 31, 2019.

By letter dated October 23, 2019, I understand HHSC is ready to pay the CMP of **\$1,600,000.00** and is waiving its right to a hearing pursuant to 45 C.F.R. § 160.420(b), and is not contesting the findings in the Notice of Proposed Determination. Further, I understand HHSC is waiving its right to petition for judicial review before any U.S. Court of Appeals challenging the imposition of the CMP pursuant to 45 C.F.R. § 160.548(k) and 42 U.S.C. § 1320a-7a.

Accordingly, by operation of HHSC's waiver of its procedural rights to challenge the CMP under 45 C.F.R. Part 160 Subparts D and E and 42 U.S.C. § 1320a-7a, the CMP referenced above is now final. Therefore, pursuant to the authority delegated by the Secretary of HHS to the Director of OCR, I am authorized to impose the CMP against HHSC in the full amount of **\$1,600,000.00** as set forth in the Notice of Proposed Determination.

II. Instructions for Payment of the CMP Amount

The payment of the full and aggregate amount of **\$1,600,000** is due upon HHSC's receipt of this Notice of Final Determination. Payment can be made by electronic funds transfer in accordance with the instructions on Exhibit 1 to this Notice of Final Determination.

III. Consequences of Nonpayment

In the event that payment is not received by wire funds transfer upon HHSC's receipt of this Notice of Final Determination, the amount of the penalty may be deducted from any sum then or later owing by the United States or by a State agency, and a civil action may be brought in the United States District Court to recover the amount of the penalty.

The Legal Basis for This Action

This action is being taken under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), § 262(a), Pub.L. 104-191, 110 Stat. 1936, as amended, codified at 42 U.S.C. § 1320d5, and under the enforcement regulations at 45 C.F.R. Part 160, subpart D. The Secretary of HHS is authorized to impose CMPs (subject to the limitations at 42 U.S.C. § 1320d-5(b)) against any covered entity, as described at 42 U.S.C. § 1320d-1(a), that violates a provision of Part C (Administrative Simplification) of Title XI of the Social Security Act. *See* 42 U.S.C. § 1320d5(a), as amended. This authority extends to violations of the regulations commonly known as the Privacy and Security Rules promulgated at 45 C.F.R. Part 160 and subparts A, C, and E of Part 164, pursuant to Section 264(c) of HIPAA. The Secretary has delegated enforcement responsibility for the Privacy Rule to the Director of OCR. *See* Office for Civil Rights; Statement of Delegation of Authority, 65 Fed. Reg. 82381 (Dec. 28, 2000).

If you have any questions concerning this letter, please contact Marisa M. Smith, Ph.D., Regional Manager, OCR, Southwest Region, at (214)-767-6973.

Sincerely,



Roger Severino
Director, Office for Civil Rights

Enclosed:
Exhibit 1 - Payment Instructions
Attachment - Notice of Proposed Determination