

RESOLUTION AGREEMENT

I. Recitals

1. Parties: The Parties to this Resolution Agreement (Agreement) are the United States Department of Health and Human Services (HHS), Office for Civil Rights and Concentra Health Services (Concentra).

2. Factual Background and the Covered Conduct: On December 28, 2011, HHS received notification from Concentra regarding a breach of its unsecured electronic protected health information (ePHI). Specifically, an unencrypted laptop was stolen on November 30, 2011, out of its physical therapy center located at 1308 N. Glenstone Avenue, Springfield, MO, 65802. On May 31, 2012, HHS notified Concentra of its investigation regarding Concentra's compliance with the Privacy, Security, and Breach Notification Rules promulgated by HHS pursuant to the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub.L. 104-191, 110 Stat. 1936.

HHS' investigation indicated that the following conduct occurred (Covered Conduct):

(1) Concentra failed to adequately remediate and manage its identified lack of encryption or, alternatively, document why encryption was not reasonable and appropriate and implement an equivalent alternative measure to encryption, if reasonable and appropriate, from October 27, 2008, until June 22, 2012 (date on which a complete inventory assessment was completed and Concentra immediately took action to begin encrypting all unencrypted devices) (see 45 C.F.R. § 164.312(a)(2)(iv)).

(2) Concentra did not sufficiently implement policies and procedures to prevent, detect, contain, and correct security violations under the security management process standard when it failed to adequately execute risk management measures to reduce its identified lack of encryption to a reasonable and appropriate level from October 27, 2008, (date of Concentra's last project report indicating that 434 out of 597 laptops were encrypted) until June 22, 2012 (date on which a complete inventory assessment was completed and Concentra immediately took action to begin encrypting all unencrypted devices) (see 45 C.F.R. § 164.308(a)(1)(i)).

3. No Admission: This Agreement is not an admission of liability by Concentra.

4. No Concession: This Agreement is not a concession by HHS that Concentra is not in violation of the HIPAA Privacy, Security, or Breach Notification Rules and that Concentra is not liable for civil money penalties.

5. Intention of Parties to Effect Resolution: This Agreement is intended to resolve OCR Complaint No. 13-150288 regarding possible violations of the Security Rule promulgated by HHS pursuant to the administrative simplification provisions of HIPAA. In consideration of the Parties' interest in avoiding the uncertainty, burden and expense of further investigation and formal proceedings, the Parties agree to resolve this matter according to the Terms and Conditions below.

II. Terms and Conditions

6. Payment: Concentra agrees to pay HHS the amount of \$1,725,220 (Resolution Amount). Concentra agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.14 by automated clearing house transaction pursuant to written instructions to be provided by HHS.

7. Corrective Action Plan: Concentra has entered into and agrees to comply with the Corrective Action Plan (CAP), attached as Appendix A, which is incorporated into this Agreement by reference. If Concentra breaches the CAP, and fails to cure the breach as set forth in the CAP, then Concentra will be in breach of this Agreement and HHS will not be subject to the terms and conditions in the Release set forth in paragraph 8 of this Agreement.

8. Release by HHS: In consideration of and conditioned upon Concentra's performance of its obligations under this Agreement, HHS releases Concentra from any actions it has or may have against Concentra under the HIPAA Privacy, Security, and Breach Notification Rules for the Covered Conduct identified in paragraph 2. HHS does not release Concentra from, nor waive any rights, obligations, or causes of action other than specifically referred to in this paragraph. This release does not extend to actions that may be brought under section 1177 of the Social Security Act, 42 U.S.C. § 1320d-6.

9. Agreement by Released Party: Concentra shall not contest the validity of its obligation to pay, nor the amount of, the Resolution Amount or any other obligations agreed to under this Agreement. Concentra waives all procedural rights granted under section 1128A of the Social Security Act (42 U.S.C. § 1320a-7a), 45 C.F.R. Part 160, Subpart E; and HHS claims collection regulations at 45 C.F.R. Part 30, including, but not limited to, notice, hearing, and appeal with respect to the Resolution Amount.

10. Binding on Successors: This Agreement is binding on Concentra and its successors, heirs, transferees, and assigns.

11. Costs: Each Party to this Agreement shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. No Additional Releases: This Agreement is intended to be for the benefit of the Parties only and by this instrument the Parties do not release any claims against any other person or entity.

13. Effect of Agreement: This Agreement constitutes the complete agreement between the Parties. All material representations, understandings, and promises of the Parties are contained in this Agreement. Any modifications to this Agreement must be set forth in writing and signed by both Parties.

14. Execution of Agreement and Effective Date: The Agreement shall become effective (i.e., final and binding) upon the date of signing of this Agreement and the CAP by the last signatory (Effective Date).

15. Tolling of Statute of Limitations: Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a CMP must be imposed within six (6) years from the date of the occurrence of the violation. To ensure that this six-year period does not expire during the term of this Agreement, Concentra agrees that the time between the Effective Date of this Resolution Agreement (as set forth in paragraph 14) and the date same may be terminated by reason of Concentra's breach, plus one year thereafter, will not be included in calculating the six (6) year statute of limitations applicable to the violations which are the subject of this Agreement. Concentra waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the Covered Conduct specified in paragraph 2 that is filed by HHS within the time period set forth above, except to the extent that such defenses would have been available had an administrative action been filed on the Effective Date of this Resolution Agreement.

16. Disclosure: HHS places no restriction on the publication of the Agreement. This Agreement and information related to this Agreement may be made public by either party. In addition, HHS may be required to disclose this Agreement and related material to any person upon request consistent with the applicable provisions of the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.

17. Execution in Counterparts: This Agreement may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement.

18. Authorizations: The individual(s) signing this Agreement on behalf of Concentra represent and warrant that they are authorized by Concentra to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represents and warrants that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement.

For Concentra Health Services

//s// 4/16/2014
Ted Bucknam
President

For the United States Department of Health and Human Services

//s// 4/21/2014
Frank Campbell
Regional Manager
Office for Civil Rights
Region VII

Appendix A

**CORRECTIVE ACTION PLAN
BETWEEN THE
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
CONCENTRA HEALTH SERVICES**

I. Preamble

Concentra Health Services (“Concentra”) hereby enters into this Corrective Action Plan (“CAP”) with the United States Department of Health and Human Services, Office for Civil Rights (“HHS”). Contemporaneously with this CAP, Concentra is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Agreement as Appendix A. Concentra enters into this CAP as part of the consideration for the release set forth in paragraph 8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

Concentra has identified the following individual as its authorized representative and contact person regarding the implementation of this CAP and for receipt and submission of notifications and reports:

Ms. Kim T. Cole
Director of Privacy
Concentra
5080 Spectrum, Suite 1200W | Addison, TX 75001
972.725.6675

HHS has identified the following individual as its contact person with whom Concentra is to report information regarding the implementation of this CAP:

Mr. Frank Campbell
Regional Manager, Region VII
U.S. Department of Health and Human Services, Office for Civil Rights
601 E 12th Street- Room 353
Kansas City, MO 64106

Concentra and HHS agree to promptly notify each other of any changes in the contact persons or the other information provided above.

B. Proof of Submissions

Unless otherwise specified, all notifications and reports required by this CAP may be made by any means, including certified mail, overnight mail, or hand delivery, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

III. Effective Date and Term of CAP

The Effective Date for this CAP shall be calculated in accordance with paragraph 14 of the Resolution Agreement (Effective Date). The period for compliance with the obligations assumed by Concentra under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date, except that after this period Concentra shall be obligated to: (a) submit the Annual Report for the final Reporting Period, as set forth in section VI.B.; and (b) comply with the document retention requirement set forth in section VII.

IV. Time

In computing any period of time prescribed or allowed by this CAP, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day that is not one of the aforementioned days.

V. Corrective Action Obligations

Concentra agrees to the following:

A. Security Management Process Requirements

1. Within 120 days of the Effective Date, at one year following the Effective Date, and at the conclusion of the one year period thereafter, Concentra shall provide:

a. A risk analysis to HHS which will include a thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of all Concentra ePHI.

b. A risk management plan that explains Concentra's strategy for implementing security measures sufficient to reduce the risks and vulnerabilities identified in the risk analysis to a reasonable and appropriate level based on Concentra's circumstances. This shall include with it the following:

i. Material evidence of all implemented and all planned remediation actions associated with the risk management plan.

ii. For all planned remediation actions, Concentra shall provide specific timelines for their expected completion and identify the compensating controls that will be in place in the interim to safeguard Concentra ePHI.

2. In addition to the referenced times in section V.A.1, Concentra shall provide, when applicable, an updated risk analysis in association with any changes or updates to its organizational information technology (IT) infrastructure (security environment) that affect the risks and vulnerabilities to ePHI received or maintained by Concentra. Concentra shall include with the updated risk analysis an updated risk management plan and all corresponding documentation as outlined in sections V.A.1.b, V.A.1.b.i, and V.A.1.b.ii.

3. HHS shall review the information provided by Concentra as outlined in section V.A.1, and, when applicable, section V.A.2. Upon receiving notice from HHS either approving or specifying any required changes, Concentra shall promptly implement the security management process, including any applicable training, in accordance with its applicable administrative procedures.

B. Encryption Status Update Requirements

1. Within 120 days of the Effective Date, at one year following the Effective Date, and at the conclusion of the one year period thereafter, Concentra shall provide an update to HHS regarding its encryption status, which shall include:

a. The percentage of all Concentra devices and equipment (laptops, desktops, medical equipment, tablets, and other storage devices) that are encrypted at that point in time.

b. Evidence that all new devices and equipment (laptops, desktops, medical equipment, tablets, and other storage devices) have been encrypted.

c. An explanation for the percentage of devices and equipment that are not encrypted.

d. A breakdown of the percentage of encrypted devices and equipment for each specific Concentra facility and worksite.

C. Security Awareness Training Requirements

Within 120 days of the Effective Date, at one year following the Effective Date, and at the conclusion of the one year period thereafter, Concentra shall provide documentation to indicate that all workforce members have completed security awareness training (to include training on Concentra's Acceptable Use Policy), which shall also include all training materials used for the training, a summary of the topics covered, the length of the session(s), and a schedule of when the training session(s) were held.

VI. Implementation Report and Annual Reports

A. Implementation Report. Within 120 days of the Effective Date, Concentra shall submit a written report to HHS summarizing the status of its implementation of the obligations of this CAP ("Implementation Report"). The Implementation Report shall include:

1. The initial set of the documentation and evidence required under sections V.A, V.B., and V.C. of this CAP;

2. An attestation signed by an officer of Concentra listing all of Concentra locations, the name under which each location is doing business, the corresponding mailing address, phone number and fax number for each location, and attesting that each location has complied with the obligations of this CAP;

3. An attestation signed by an officer of Concentra stating that he or she has reviewed the Implementation Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

B. Annual Reports. The one-year period beginning on the Effective Date and the following one-year period during the course of the period of compliance obligations shall be known as “the Reporting Periods.” Concentra shall submit to HHS Annual Reports with respect to the status of and findings regarding Concentra’s compliance with this CAP for each of the two Reporting Periods. Concentra shall submit each Annual Report to HHS no later than 60 days after the end of each corresponding Reporting Period. The Annual Report shall include:

1. A summary of Concentra’s security management process (addressed in section V.A.) and the security measures taken during the Reporting Period, including, if applicable, any documentation of training related to those measures;

2. A summary of Concentra’s encryption efforts (addressed in section V.B.) taken during the Reporting Period;

3. A summary of Concentra’s security awareness training efforts (addressed in section V.C.) taken during the Reporting Period;

4. An attestation signed by an officer of Concentra attesting that it is obtaining and maintaining written or electronic training certifications from all persons that require training that they received training pursuant to the requirements set forth in this CAP; and

5. An attestation signed by an officer of Concentra stating that he or she has reviewed the Annual Report, has made a reasonable inquiry regarding its content and believes that, upon such inquiry, the information is accurate and truthful.

VII. Document Retention

Concentra shall maintain for inspection and copying all documents and records relating to compliance with this CAP for six (6) years from the Effective Date.

VIII. Breach Provisions

Concentra is expected to fully and timely comply with all provisions contained in this CAP.

A. Timely Written Requests for Extensions. Concentra may, in advance of any due date set forth in this CAP, submit a timely written request for an extension of time to perform any act required by this CAP. A “timely written request” is defined as a request in writing received by HHS at least 5 days prior to the date such an act is required or due to be performed.

B. Notice of Breach and Intent to Impose CMP. The Parties agree that a breach of this CAP by Concentra that has not been cured in accordance with section VIII.C. below constitutes a breach of the Agreement. Upon a determination by HHS that Concentra has breached this CAP, HHS may notify Concentra of (1) Concentra’s breach and (2) HHS’ intent to impose a civil monetary penalty (CMP), pursuant to 45 C.F.R. Part 160, for the Covered Conduct set forth in paragraph 2 of the Agreement and for any other conduct that constitutes a violation of the HIPAA Privacy and Security Rules (“Notice of Breach and Intent to Impose CMP”).

C. Concentra Response. Concentra shall have 30 days from the date of receipt of the Notice of Breach and Intent to Impose CMP to demonstrate to HHS’ satisfaction that:

1. Concentra is in compliance with the obligations of this CAP that HHS cited as the basis for the breach;
2. the alleged breach has been cured; or
3. the alleged breach cannot be cured within the 30-day period, but that: (a) Concentra has begun to take action to cure the breach; (b) Concentra is pursuing such action with due diligence; and (c) Concentra has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30-day period, Concentra fails to meet the requirements of section VIII.C. to HHS’s satisfaction, HHS may proceed with the imposition of the CMP against Concentra pursuant to 45 C.F.R. Part 160 for any violations of the Privacy and Security Rules related to the Covered Conduct set forth in paragraph 2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Privacy or Security Rules. HHS shall notify Concentra in writing of its determination to proceed with the imposition of a CMP. Concentra shall retain all of the rights and obligations specified under 45 C.F.R. Part 160, Subparts C through E, with respect to any determination by HHS that Concentra has violated the Privacy Rule or the Security Rule and with respect to the imposition of the CMP under this paragraph.

For Concentra Health Services

Ted Bucknam
President

For the United States Department of Health and Human Services

Frank Campbell
Regional Manager
Office for Civil Rights
Region VII