

RESOLUTION AGREEMENT

I. Recitals

1. Parties. The Parties to this Resolution Agreement (“Agreement”) are:

A. The United States Department of Health and Human Services, Office for Civil Rights (“HHS”), which enforces the Federal standards that govern the privacy of individually identifiable health information (45 C.F.R. Part 160 and Subparts A and E of Part 164, the “Privacy Rule”), the Federal standards that govern the security of electronic individually identifiable health information (45 C.F.R. Part 160 and Subparts A and C of Part 164, the “Security Rule”), and the Federal standards for notification in the case of breach of unsecured protected health information (PHI) (45 C.F.R. Part 160 and Subparts A and D of 45 C.F.R. Part 164, the “Breach Notification Rule”). HHS has the authority to conduct compliance reviews and investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules (the “HIPAA Rules”) by covered entities and business associates, and covered entities and business associates must cooperate with HHS compliance reviews and investigations. *See* 45 C.F.R. §§ 160.306(c), 160.308, and 160.310(b).

B. Memorial Hermann Health System (“MHHS”), which is a covered entity, as defined at 45 C.F.R. § 160.103, and therefore is required to comply with the HIPAA Rules. MHHS serves a multi-county area along the Gulf Coast and is the largest not-for-profit health system in southeast Texas. MHHS includes thirteen hospitals, eight Cancer Centers, three Heart & Vascular Institutes, and twenty-seven sports medicine and rehabilitation centers, and employs approximately 24,000 employees.

HHS and MHHS shall together be referred to herein as the “Parties.”

2. Factual Background and Covered Conduct.

On October 13, 2015, HHS initiated a compliance review of MHHS, based on multiple media reports that suggested that MHHS disclosed a patient’s protected health information (PHI) to the media and various public officials without the patient’s authorization.

HHS’ investigation indicated that the following conduct occurred (“Covered Conduct”):

- A. Between September 15, 2015, and October 1, 2015, MHHS knowingly and intentionally failed to safeguard PHI in its possession.
- B. Between September 15, 2015, and September 19, 2015, MHHS impermissibly disclosed the patient’s PHI through press releases issued to fifteen media outlets and/or reporters. Following the publications, MHHS’ senior leaders further disclosed the patient’s PHI during three meetings which occurred on September 17, September 21, and September 25, 2015, with an advocacy group, state representatives, and a state senator, in response to the events. MHHS also disclosed the patient’s PHI in a

statement on its website, between September 15, 2015, and October 1, 2015. MHHS did not obtain the patient's written authorization to disclose the PHI. (*See* 45 C.F.R. § 164.502(a)).

C. MHHS failed to document timely the sanctions imposed against members of its workforce who failed to comply with its privacy policies and procedures or the Privacy Rule. (*See* 45 C.F.R. § 164.530(e)(2)).

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

4. No Concession. This Agreement is not a concession by HHS that MHHS is not in violation of the HIPAA Rules and not liable for civil money penalties ("CMPs").

5. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number: 16-222173 and any potential violations of the HIPAA Rules related to the Covered Conduct specified in paragraph I.2 of this Agreement. 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. HHS has agreed to accept, and MHHS has agreed to pay HHS, the amount of \$ 2,400,000.00 ("Resolution Amount"). MHHS 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. MHHS 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 MHHS breaches the CAP, and fails to cure the breach as set forth in the CAP, then MHHS will be in breach of this Agreement, and HHS will not be subject to the Release set forth in paragraph II.8 of this Agreement.

8. Release by HHS. In consideration of and conditioned upon MHHS' performance of its obligations under this Agreement, HHS releases MHHS from any actions it may have against MHHS under the HIPAA Rules arising out of, or related to, the Covered Conduct identified in paragraph I.2 of this Agreement. HHS does not release MHHS from, nor waive any rights, obligations, or causes of action other than those arising out of, or related to, the Covered Conduct and 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 Parties. MHHS 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. MHHS waives all procedural rights granted under Section 1128A of the Social Security Act (42 U.S.C. § 1320a- 7a) and 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 MHHS 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 or by 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 shall be set forth in writing and signed by all 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, MHHS agrees that the time between the Effective Date of this Agreement (as set forth in Paragraph 14) and the date the Agreement may be terminated by reason of MHHS’ 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. MHHS waives and will not plead any statute of limitations, laches, or similar defenses to any administrative action relating to the covered conduct identified in paragraph I.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 Agreement.

16. Disclosure. HHS places no restriction on the publication of the Agreement. In addition, HHS may be required to disclose material related to this Agreement to any person upon request consistent with the applicable provisions of the Freedom of Information Act, 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 signing this Agreement on behalf of MHHS represents and warrants that he is authorized by MHHS to execute this Agreement. The individual signing this Agreement on behalf of HHS represents and warrants that she is signing this Agreement in her official capacities and that she is authorized to execute this Agreement.

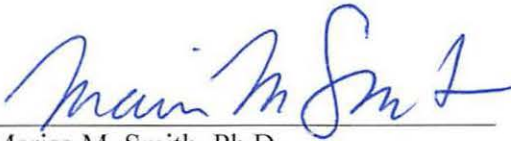
For Memorial Hermann Health System



Benjamin K. Chu, M.D., M.P.H., M.A.C.P.
President and Chief Executive Officer
Memorial Hermann Health System

4/20/17
Date

For the United States Department of Health and Human Services



Marisa M. Smith, Ph.D.
Regional Manager
Office for Civil Rights
Southwest Region

4/20/17
Date

CORRECTIVE ACTION PLAN
BETWEEN THE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
AND
MEMORIAL HERMANN HEALTH SYSTEM

I. Preamble

Memorial Hermann Health System (“MHHS”) 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, MHHS is entering into a Resolution Agreement (“Agreement”) with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. MHHS enters into this CAP as part of consideration for the release set forth in paragraph II.8 of the Agreement.

II. Contact Persons and Submissions

A. Contact Persons

MHHS 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:

Benjamin K. Chu, M.D., M.P.H, M.A.C.P.
President and Chief Executive Officer
Memorial Hermann Health System
929 Gessner Drive, Suite 2600
Houston, TX 77024

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

Marisa M. Smith, Ph.D.
Regional Manager
Office for Civil Rights, Southwest Region
U.S. Department of Health and Human Services
1301 Young Street, Suite 1169
Dallas, TX 75202

MHHS 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 II.14 of the Agreement (“Effective Date”). The period for compliance (“Compliance Term”) with the obligations assumed by MHHS under this CAP shall begin on the Effective Date of this CAP and end two (2) years from the Effective Date, unless HHS has notified MHHS under Section VIII hereof of its determination that MHHS breached this CAP. In the event HHS notifies MHHS of a breach under section VIII hereof, the Compliance Term shall not end until HHS notifies MHHS that HHS has determined MHHS failed to meet the requirements of section VIII.C of this CAP and issues a written notice of intent to proceed with an imposition of a civil money penalty against MHHS pursuant to 45 C.F.R. Part 160. After the Compliance Term ends, MHHS shall still be obligated to: (a) submit the final Annual Report as required by section VI; and (b) comply with the document retention requirement in section VII. Nothing in this CAP is intended to eliminate or modify MHHS’s obligation to comply with the document retention requirements in 45 C.F.R. § 164.316(b) and § 164.530(j).

IV. Time

In computing any period of time prescribed or allowed by this CAP, all days referred to shall be calendar days. 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 which is not one of the aforementioned days.

V. Corrective Action Obligations

MHHS agrees to the following:

A. Policies and Procedures

1. MHHS shall develop, maintain, and revise, as necessary, its written policies and procedures (“policies and procedures”) to comply with the Federal standards that govern the privacy and security of individually identifiable health information. MHHS’ policies and procedures shall include, but not be limited to, the minimum content set forth in Section V.C.

2. MHHS shall provide such policies and procedures, consistent with paragraph 1 above, to HHS within sixty days of the Effective Date for review and approval. Upon receiving any required changes to such policies and procedures from HHS, MHHS shall have thirty days to revise the

policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.

3. MHHS shall implement such policies and procedures within thirty days after receiving HHS' final approval.

B. Distribution and Updating of Policies and Procedures

1. MHHS shall distribute the policies and procedures identified in Section V.A to all members of the workforce within thirty days of HHS approval of such policies and to new members of the workforce within thirty days of their beginning of service.

2. MHHS shall require, at the time of distribution of such policies and procedures, a signed written or electronic initial compliance certification from all members of the workforce, stating that the workforce member has read, understands, and shall abide by such policies and procedures.

3. MHHS shall assess, update, and revise, as necessary, the policies and procedures at least annually. MHHS shall provide the revised policies and procedures to HHS for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, MHHS shall have thirty days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval. Within thirty days of the effective date of any approved, substantive revisions, MHHS shall distribute such revised policies and procedures to all members of its workforce, and to new members, and shall require new compliance certifications.

4. MHHS shall not involve any member of its workforce in the use or disclosure of PHI if that workforce member has not signed or provided the written or electronic certification required by paragraph V.B.2 of this section.

C. Minimum Content of the Policies and Procedures

The Policies and Procedures shall include, but not be limited to:

1. Instructions and Procedures that address (a) Uses and disclosures for which an authorization is required, including to the media, to public officials, and on the internet; (b) Disclosures for law enforcement purposes; and (c) Uses and disclosures for health oversight activities.

2. Identification of MHHS personnel or representatives whom workforce members, agents, or business associates may contact in the event of any inquiry or concern regarding compliance with HIPAA in relation to these activities.

3. Internal reporting procedures which will require all workforce members to report to the designated person or office at the earliest possible time any potential violations of the Privacy, Security or Breach Notification Rules or of MHHS' privacy and security policies and

procedures. Such reporting procedures shall require MHHS to promptly investigate and address all received reports in a timely manner.

4. Application and documentation of appropriate sanctions (which may include retraining or other instructive corrective action, depending on the circumstances) against members of MHHS' workforce, including senior level management, who fail to comply with the Privacy, Security or Breach Notification Rules or MHHS' privacy and security policies and procedures. This content shall include a description of the sanctions; a timeframe in which MHHS will apply and document sanctions for violations of the HIPAA Rules or of MHHS' privacy, security or breach policies or procedures; the manner in which MHHS will document the sanctions; and where MHHS will store or retain such documentation (e.g., personnel file).

D. Reportable Events

1. During the Compliance Term, MHHS shall, upon receiving information that a workforce member may have failed to comply with its Privacy, Security, and Breach Notification policies and procedures, promptly investigate this matter. If MHHS, after review and investigation, determines that a member of its workforce has failed to comply with its Privacy, Security, and Breach Notification policies and procedures, MHHS shall notify HHS in writing within thirty days. Such violations shall be known as Reportable Events. The report to HHS shall include the following:

a. A complete description of the event, including the relevant facts, the persons involved, and the applicable provision(s) of MHHS' Privacy, Security, and Breach Notification policies and procedures; and

b. A description of the actions taken and any further steps MHHS plans to take to address the matter to mitigate any harm, and to prevent it from recurring, including application of any appropriate sanctions against workforce members who failed to comply with its Privacy, Security, and Breach Notification policies and procedures.

2. If no Reportable Events have occurred within a Reporting Period, MHHS shall so inform HHS in its Annual Report for that Reporting Period in accordance with section VI of this CAP.

E. Training

1. All members of MHHS' workforce¹ shall receive training on MHHS' policies and procedures to comply with the Privacy Rule within sixty days of the implementation of the policies and procedures, or within thirty days of when they become a member of the workforce of MHHS.

2. Training shall cover all the topics that are necessary and appropriate for each member of the workforce to carry out that workforce member's function within MHHS. At a minimum, this shall include uses and disclosures for which an authorization is required, including, but not limited to, disclosures to law enforcement, the media, and public officials.

¹ *Workforce* means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a covered entity or business associate, is under the direct control of such covered entity or business associate, whether or not they are paid by the covered entity or business associate.

3. Each workforce member shall certify, in electronic or written form, that he or she has received and understands the required training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with Section VII.

4. MHHS shall review the training at least annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during internal or external audits or reviews, and any other relevant developments.

5. MHHS shall not provide access to PHI to any member of its workforce if that workforce member has not signed or provided the written or electronic certification required by paragraph V.E.3.

VI. Implementation Report and Annual Reports

A. **Implementation Report.** Within sixty days after HHS approves the policies and procedures required by section V.A., MHHS shall submit a written report to HHS summarizing the status of its implementation of the requirements of this CAP. This report, known as the “Implementation Report,” shall include:

1. An attestation signed by an owner or officer of MHHS attesting that the policies and procedures are being implemented, have been distributed to all appropriate members of the workforce, and that MHHS has obtained all of the compliance certifications required by Section V.B.2;

2. A copy of all training materials used for the training required by this CAP, a description of the training, including a summary of the topics covered, the length of the session(s) and a schedule of when the training session(s) were held;

3. An attestation signed by an owner or officer of MHHS attesting that all members of the workforce have completed the initial training required by this CAP and have executed the training certifications required by Section V.E.3;

4. An attestation signed by an owner or officer of MHHS listing all MHHS locations (including location name, mailing address, telephone and fax number(s)), listing the corresponding name under which each location is doing business, and attesting that each such location has complied with the obligations of this CAP;

5. An attestation signed by an owner or officer of MHHS 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, truthful, and complete.

B. **Annual Reports.** The one-year period beginning on the Effective Date and each subsequent one-year period during the course of the period of compliance obligations shall be referred to as “the Reporting Periods.” MHHS shall submit to HHS, Annual Reports with respect to the status of and findings regarding MHHS’ compliance with this CAP for each of the annual Reporting Periods. MHHS shall submit each Annual Report to HHS no later than thirty days after the end of each corresponding Reporting Period. The Annual Report shall include:

1. A schedule, topic outline, and copies of the training materials for the training programs attended in accordance with this CAP during the Reporting Period that is the subject of the report;
2. An attestation signed by an owner or officer of MHHS 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;
3. A summary of Reportable Events identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;
4. An attestation signed by an owner or officer of MHHS attesting 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, truthful, and complete.

VII. Document Retention

MHHS shall maintain for inspection and copying, and shall provide to HHS upon request, all documents and records relating to compliance with this CAP for six years from the Effective Date.

VIII. Breach Provisions

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

A. Timely Written Requests for Extensions

MHHS 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 five days prior to the date such an act is required or due to be performed. This requirement may be waived by HHS only.

B. Notice of Breach of this CAP and Intent to Impose Civil Monetary Penalty. The parties agree that a breach of this CAP by MHHS constitutes a breach of the Agreement. Upon a determination by HHS that MHHS has breached this CAP, HHS may notify MHHS of: (1) MHHS’ breach; and (2) HHS’ intent to impose a civil money penalty (“CMP”) pursuant to 45 C.F.R. Part 160, or other remedies for the Covered Conduct set forth in paragraph I.2 of the Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (“Notice of Breach and Intent to Impose CMP”).

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


1. MHHS is in compliance with the obligations of the 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 thirty-day period, but that: (a) MHHS has begun to take action to cure the breach; (b) MHHS is pursuing such action with due diligence; and (c) MHHS has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the thirty-day period, MHHS fails to meet the requirements of Section VIII.C. of this CAP to HHS' satisfaction, HHS may proceed with the imposition of a CMP against MHHS pursuant to 45 C.F.R. Part 160 for any violations of the Covered Conduct set forth in paragraph I.2 of the Agreement and for any other act or failure to act that constitutes a violation of the HIPAA Rules. HHS shall notify MHHS in writing of its determination to proceed with the imposition of a CMP pursuant to 45 C.F.R. Part 160.


For Memorial Hermann Health System



Benjamin K. Chu, M.D., M.P.H., M.A.C.P.
President and Chief Executive Officer
Memorial Hermann Health System

4/20/17
Date

For United States Department of Health and Human Services



Marisa M. Smith, Ph.D.
Regional Manager
Office for Civil Rights
Southwest Region

4/20/17
Date