

RESOLUTION AGREEMENT

I. Recitals

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

2. Authority of HHS. HHS 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”) and 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”). HHS has the authority to conduct the investigations of complaints alleging violations of the Privacy and Security Rules by covered entities, and a covered entity must cooperate with HHS’ investigation. 45 C.F.R. § 160.306(c) and §160.310(b).

3. Factual Background and Covered Conduct. The Office for Civil Rights (OCR) received a Breach Report from the DHSS dated October 30, 2009. The document indicated that a portable electronic storage device potentially containing electronic protected health information (e-PHI) was stolen from the vehicle of a DHSS computer technician on or about October 12, 2009.

On January 8, 2010, OCR notified DHSS that it will be conducting an investigation. On March 3, 2010, June 1, 2010, November 19, 2010, and April 1, 2011, OCR received DHSS’ written responses, policies, procedures, information regarding training activities, and documentation related to compliance with the Privacy and Security Rules. On June 17-18, 2010, OCR conducted a site visit to interview selected DHSS workforce members. OCR also received information from DHSS through email and telephone contacts throughout this investigation.

As a result of its investigation, OCR determined that DHSS had not 1) completed a risk analysis (*See* 45 C.F.R. § 164.308(a)(1)(ii)(A)); 2) implemented sufficient risk management measures (*See* 45 C.F.R. § 164.308(a)(1)(ii)(B)); 3) completed security training for DHSS workforce members (*See* 45 C.F.R. § 164.308(a)(1)(ii)(A)(5)(i)); 4) implemented device and media controls (*See* 45 C.F.R. § 164.310 (d)(1)); and 5) addressed device and media encryption (*See* 45 C.F.R. § 164.312(a)(2)(iv).

4. No Admission. This Agreement is not an admission of liability by DHSS.

5. No Concession. This Agreement is not a concession by HHS that DHSS is not in violation of either the Privacy Rule or the Security Rule and that DHSS is not liable for civil money penalties.

6. Intention of Parties to Effect Resolution. This Agreement is intended to resolve OCR Transaction Number: 10-106853 regarding possible violations of the Federal Standards for Privacy of Individually Identifiable Health Information and/or the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules). 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

7. Payment. DHSS agrees to pay HHS the amount of \$1,700,000 (Resolution Amount). DHSS agrees to pay the Resolution Amount by electronic funds transfer pursuant to written instructions to be provided by HHS. DHSS agrees to make this payment on or before the date it signs this Agreement.

8. Corrective Action Plan. DHSS 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 DHSS breaches the CAP, and fails to cure the breach as set forth in the CAP, then DHSS will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph 9 of this Agreement.

9. Release by HHS. In consideration and conditioned upon DHSS' performance of its obligations under this Agreement, HHS releases DHSS from any actions it may have against DHSS under the Privacy and Security Rules for the covered conduct identified in paragraph 3. HHS does not release DHSS from, nor waive any rights, obligations, or causes of action other than those 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.

10. Agreement by Released Parties. DHSS shall not contest the validity of its obligations to pay, nor the amount of, the Resolution Amount *or* any other obligations agreed to under this Agreement. DHSS 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.

11. Binding on Successors. This Agreement is binding on DHSS and its successors, heirs, transferees, and assigns.

12. 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.

13. 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.

14. 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.

15. 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 HHS (Effective Date).

16. Tolling of Statute of Limitations. Pursuant to 42 U.S.C. § 1320a-7a(c)(1), a civil money penalty must be imposed within six 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, DHSS agrees that the time between the Effective Date of this Resolution Agreement (as set forth in paragraph 15) and the date the Resolution Agreement may be terminated by reason of DHSS' 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. DHSS 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 3 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.

17. 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, 5 U.S.C. § 552, and its implementing regulations, 45 C.F.R. Part 5.

18. 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.

19. Authorizations. The individual(s) signing this Agreement on behalf of DHSS represent and warrant that they are authorized by DHSS to execute this Agreement. The individual(s) signing this Agreement on behalf of HHS represent and warrant that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

For Alaska Department of Health and Social Services

_____/s/_____
William J. Streur, Commissioner
Alaska Department of Health and Social Services

6/22/2012
Date

For United States Department of Health and Human Services

_____/s/_____
Linda Yuu Connor
Regional Manager, Region X
Office for Civil Rights

6/25/2012
Date

Appendix A

CORRECTIVE ACTION PLAN

BETWEEN THE

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES

I. Preamble

Alaska Department of Health and Social Services (DHSS) 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, DHSS is entering into a Resolution Agreement with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. DHSS enters into this CAP as consideration for the release set forth in paragraph 9 of the Resolution Agreement.

II. Contact Persons and Submissions

A. Contact Persons

DHSS 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:

Thor Ryan, DHSS Chief Security Officer
P.O. Box 240249
Anchorage, AK 99503
Voice: (907) 269-0076
Fax: (907) 269-5022
E-mail: Thor.Ryan@alaska.gov

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

Linda Yuu Connor, Regional Manager, OCR Region X
2201 Sixth Avenue, Mail Stop: RX-11
Seattle, WA 98121-1831
Voice: (206) 615-2290
Fax: (206) 615-2297
E-mail: Linda.Connor@hhs.gov

DHSS 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. Term of CAP

The period of compliance obligations assumed by DHSS under this CAP shall begin on the effective date of this CAP (Effective Date) and end three years from the date of HHS' approval of the Monitor Plan as provided in section V.F.2, except that after this period DHSS 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. The Effective Date for this CAP shall be calculated in accordance with paragraph 15 of the Resolution Agreement.

IV. Time

Any reference to number of days refers to number of calendar days. 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 Federal 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

DHSS agrees to the following:

A. Policies and Procedures

1. DHSS shall develop, maintain, and revise as necessary, its written policies and procedures related to the provisions described in the last paragraph of I.3 of the Resolution Agreement to comply with the Federal standards that govern the privacy and security of individually identifiable health information (45 C.F.R. Parts 160 and 164, Subparts A, C, and E, the Privacy and Security Rules). DHSS' policies and procedures shall include, but not be limited to, the minimum content set forth in section V.C.

2. DHSS shall provide such policies and procedures, consistent with paragraph 1 above, to HHS within 90 days of the Effective Date for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, DHSS shall have 60 days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.

3. DHSS shall officially adopt such policies and procedures within 30 days of receipt of HHS' approval.

B. Distribution and Updating of Policies and Procedures

1. DHSS shall distribute the policies and procedures identified in section V.A. to all members of the workforce who have access to e-PHI within 90 days of HHS approval of such policies and to new members of the workforce within 30 days of their beginning of service.

2. DHSS 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 who have access to e-PHI stating that the workforce members have read, understand, and shall abide by such policies and procedures.

3. DHSS shall assess, update, and revise as necessary, the policies and procedures at least annually (and more frequently if appropriate). DHSS shall provide such revised policies and procedures to HHS for review and approval, and to the Monitor (described in section V.F.) within 30 days of the

effective date of any approved substantive revisions. DHSS shall distribute such revised policies and procedures to all members of its workforce who have access to e-PHI, and shall require new compliance certifications as required by paragraph 2 of this section.

4. Beginning on the date that a member of the workforce is required to have received policies and procedures under paragraph 1 of this section, DHSS shall not allow such member of its workforce to use or access e-PHI unless that workforce member has signed or provided the written or electronic certification required by paragraphs 2 & 3 of this section.

C. Minimum Content of the Policies and Procedures

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

1. Procedure for tracking devices containing e-PHI;
2. Procedure for safeguarding devices containing e-PHI;
3. Procedure for encrypting devices that contain e-PHI;
4. Procedure for disposal and/or re-use of devices that contain e-PHI;
5. Procedure for responding to security incidents; and
6. Procedure for applying sanctions to work force members who violate these policies and procedures.

Upon receiving information that a member of its workforce may have violated the above policies and procedures, DHSS shall promptly investigate the alleged violation.

If DHSS determines that a member of its workforce has violated the above policies and procedures, DHSS shall provide written notification to HHS and the Monitor described in section V.F. within 30 days. Such violations shall be known as Reportable Events. The report to HHS and the Monitor shall include the following information:

- a. A complete description of the event, including the relevant facts, the persons involved, and the provision(s) of the policies and procedures implicated; and
- b. A description of DHSS' actions taken to mitigate any harm and any further steps DHSS plans to take to address the matter and prevent it from recurring.

D. Training

1. All members of the DHSS workforce who have access to e-PHI shall receive general Security Rule training and specific training related to the new policies and procedures under section V.A. within 90 days of the adoption of the policies and procedures or within 30 days of their beginning as a member of the workforce.

2. Each individual who is required to attend training shall certify, in writing or in electronic form, that he or she has received the required training. The training certification shall specify the date training was received. All course materials shall be retained in compliance with section VII.

3. DHSS shall review the training annually, and, where appropriate, update the training to reflect changes in Federal law or HHS guidance, any issues discovered during audits or reviews, and any

other relevant developments.

4. Beginning when a member of its workforce is required to receive training under paragraph 1 of this section, DHSS shall not allow such member of its workforce to use or access e-PHI unless that workforce member has signed or provided the written or electronic training certification required by paragraph 2 of this section.

E. Risk Analysis and Risk Management

1. DHSS shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of e-PHI held by DHSS; and, DHSS shall implement security measures sufficient to reduce the risks and vulnerabilities identified in the risk analysis to a reasonable and appropriate level.

2. DHSS shall provide its risk analysis and description of risk management measures to HHS within 240 days of the Effective Date for review and approval. Upon receiving any recommended changes to the risk analysis and description of risk management measures from HHS, DHSS shall have 60 days to revise the risk analysis and description of risk management measures accordingly and provide the revisions to HHS for review and approval.

F. Monitoring

1. Designation of Independent Monitor. Within 90 days of the Effective Date, DHSS shall designate an individual or entity, to be a monitor and to review DHSS' compliance with this CAP. The Monitor must certify in writing that it has expertise in compliance with the Security Rule and is able to perform the reviews described below in a professionally independent fashion taking into account any other business relationships or other engagements that may exist. Within the above-referenced time period, DHSS shall submit the name and qualifications of the designated individual or entity to HHS for HHS' approval. Upon receiving such approval, DHSS shall enter into an engagement with Monitor for the reviews specified below.

2. Monitor Plan. Within 90 days of being approved for service by HHS, the Monitor shall submit to HHS and DHSS a written plan, describing with adequate detail, the Monitor's plan for fulfilling the duties set forth in this subsection (Monitor's Plan). Within 30 days of its receipt of the Monitor's Plan, HHS may submit comments and recommended changes to the Monitor's Plan. The Monitor shall make such changes to the Plan as HHS may reasonably have requested. The Monitor shall review the Plan at least annually and shall provide HHS and DHSS with a copy of any revisions to the Plan within 10 days of the Monitor's making such revisions. HHS shall have a reasonable opportunity to comment and make recommendations regarding any revisions or modifications at any time while the CAP is in effect. The Monitor shall make such changes to the revisions as HHS may reasonably request.

3. Retention of Records. The Monitor and DHSS shall retain and make available to HHS, upon request, all work papers, supporting documentation, correspondence, and draft reports (those exchanged between the Monitor and DHSS) related to the reviews.

4. Description of Monitor Reviews. The Monitor reviews shall address and analyze DHSS' compliance with this CAP. The Monitor will conduct quarterly progress meetings with DHSS' Security Officer, interview workforce members as needed and follow-up on reports of possible security violations.

5. Monitor Review Reports and Response. The Monitor shall prepare a quarterly report based on the reviews it has performed and provide such report to HHS and DHSS. DHSS shall prepare a response to the report and provide such response to HHS and the Monitor. The Monitor shall

immediately report any significant violations of the CAP to HHS and DHSS, and DHSS shall prepare a response, including a plan(s) of correction, and provide such response to HHS and the Monitor.

6. Monitor Removal/Termination. If DHSS intends to terminate any Monitor during the course of the engagement, DHSS must submit a notice explaining its reasons to HHS prior to the termination, unless exigent circumstances require immediate termination. DHSS must engage a new Monitor in accordance with this CAP within 30 days of terminating the previous Monitor. In the event HHS has reason to believe that a Monitor does not possess the expertise, independence, or objectivity required by this CAP, or has failed to carry out its responsibilities as set forth in this CAP, HHS may, at its sole discretion, require DHSS to engage a new Monitor in accordance with this CAP. Prior to requiring DHSS to engage a new Monitor, HHS shall notify DHSS of its intent to do so and provide a written explanation of why HHS believes such a step is necessary.

7. Validation Review. In the event HHS has reason to believe that (a) the Monitor reviews or reports fail to conform to the requirements of this CAP; or (b) the Monitor report results are inaccurate, HHS may, at its sole discretion, conduct its own review to determine whether the Monitor reviews or reports complied with the requirements of the CAP and/or are inaccurate (“Validation Review”).

Prior to initiating a Validation Review, HHS shall notify DHSS of its intent to do so and provide a written explanation of why HHS believes such a review is necessary. To resolve any concerns raised by HHS, DHSS may request a meeting with HHS to discuss the results of any Monitor Review submissions or findings; present any additional or relevant information to clarify the results of the Monitor Review to correct the inaccuracy of the Monitor Review; and/or propose alternatives to the proposed Validation Review. DHSS shall provide any additional information as may be requested by HHS under this Section in an expedited manner. HHS will attempt in good faith to resolve any Monitor Review concerns with DHSS prior to conducting a Validation Review. However, the final determination as to whether or not to proceed with a Validation Review shall be made at the sole discretion of HHS.

8. The use of a monitor does not affect HHS’ authority to investigate complaints or conduct compliance reviews itself, or the DHSS’ responsibilities under 45 C.F.R. Part 160, Subpart C.

VI. Implementation Report and Annual Reports

A. Implementation Report. Within 120 days after the receipt of HHS’ approval of the policies and procedures required by section V.A., DHSS shall submit a written report to HHS and the Monitor 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 officer of DHSS attesting that the Policies and Procedures are being implemented, have been distributed to all appropriate members of the workforce, and that DHSS has obtained all of the compliance certifications required by sections V.B.2. and V.B.3.;
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 officer of DHSS attesting that all members of the workforce have completed the Security Rule training required by this CAP and have executed the training certifications required by section V.D.2.;
4. The engagement letter with the Monitor, a summary description of all engagements

between DHSS and the Monitor, including, but not limited to, any outside financial audits, compliance program engagements, or reimbursement consulting, and the proposed start and completion dates of the first Monitor Review;

5. A copy of the certification from the Monitor regarding its professional independence from DHSS as required by section V.F.1.;

6. An attestation signed by an officer of DHSS listing all DHSS locations (including locations and mailing addresses), the corresponding name under which each location is doing business, the corresponding phone numbers and fax numbers, and attesting that each such location has complied with the obligations of this CAP; and

7. An attestation signed by an officer of DHSS 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 each subsequent one-year period during the course of the period of compliance obligations shall be referred to as “the Reporting Periods.” DHSS also shall submit to HHS and the Monitor Annual Reports with respect to the status of and findings regarding DHSS’ compliance with this CAP for each of the three Reporting Periods. DHSS 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 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 officer of DHSS 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/description of all engagements between DHSS and the Monitor, including, but not limited to, any outside financial audits, compliance program engagements, or reimbursement consulting, if different from what was submitted as part of the Implementation Report;

4. A summary of Reportable Events (defined in section V.C.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events;

5. An attestation signed by an officer of DHSS 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 and truthful.

VII. Document Retention

DHSS shall maintain for inspection and copying all documents and records relating to compliance with this CAP for six years.

VIII. Breach Provisions

DHSS is expected to fully and timely comply with all provisions of its CAP obligations.

A. Timely Written Requests for Extensions. DHSS 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 or file any notification or report 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 by which any act is due to be performed or any notification or report is due to be filed. It is within HHS’ sole discretion as to whether to grant or deny the extension requested.

B. Notice of Breach and Intent to Impose CMP. The Parties agree that a breach of this CAP by DHSS constitutes a breach of the Resolution Agreement. Upon a determination by HHS that DHSS has breached this CAP, HHS may notify DHSS of (a) DHSS’ breach; and (b) HHS’ intent to impose a civil money penalty (CMP) pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in paragraph 3 of the Resolution Agreement and any other conduct that constitutes a violation of the HIPAA Privacy and Security Rules (this notification is hereinafter referred to as the “Notice of Breach and Intent to Impose CMP”).

C. DHSS’ Response. DHSS 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. DHSS is in compliance with the obligations of the CAP cited by HHS as being 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 (i) DHSS has begun to take action to cure the breach; (ii) DHSS is pursuing such action with due diligence; and (iii) DHSS has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30 day period, DHSS fails to meet the requirements of section VIII.C. to HHS’ satisfaction, HHS may proceed with the imposition of a CMP against DHSS pursuant to 45 C.F.R. Part 160 for the Covered Conduct set forth in paragraph 3 of the Resolution Agreement and any other conduct that constitutes a violation of the HIPAA Privacy and Security Rules. HHS shall notify DHSS in writing of its determination to proceed with the imposition of a CMP.

For Alaska Department of Health and Social Services

_____/s/_____
William J. Streur, Commissioner
Alaska Department of Health and Social Services

6/22/2012
Date

For United States Department of Health and Human Services

_____/s/_____
Linda Yuu Connor
Regional Manager, Region X
Office for Civil Rights

6/25/2012
Date