

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 Skagit County, Washington (Skagit County).

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”), 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 that govern notification in the case of breach of unsecured protected health information (45 C.F.R. Part 160 and Subparts A and D of Part 164, the “Breach Notification Rule.”) HHS has the authority to conduct the investigations of complaints alleging violations of the Privacy, Security, and Breach Notification Rules by covered entities, and covered entities must cooperate with HHS’ investigation. 45 C.F.R. § 160.306(c) and §160.310(b).

3. Factual Background and Covered Conduct. On December 9, 2011, HHS received notification from Skagit County regarding a breach of its unsecured electronic protected health information (ePHI). On May 25, 2012, HHS notified Skagit County of its investigation regarding Skagit County’s compliance with the Privacy, Security, and Breach Notification Rules. HHS’s investigation indicated that the following conduct occurred (“Covered Conduct”).

- i. From approximately September 14, 2011 until September 28, 2011, Skagit County disclosed the ePHI of 1,581 individuals in violation of the Privacy Rule (*See* 45 C.F.R. §§160.103 and 164.502 (a)) by providing access to electronic protected health information (ePHI) on its public web server;
- ii. From November 28, 2011 until present, Skagit County failed to provide notification as required by the Breach Notification Rule (*See* 45 C.F.R. § 164.404) to all of the individuals for whom it knew or should have known that the privacy or security of the individual’s ePHI had been compromised as a result of the breach incident described in paragraph I.3.i., above;
- iii. From April 20, 2005 until present, Skagit County failed to implement sufficient policies and procedures to prevent, detect, contain, and correct security violations (*See* 45 C.F.R. § 164.308(a)(1)(i));
- iv. From April 20, 2005 until June 1, 2012, Skagit County failed to implement and maintain in written or electronic form policies and procedures reasonably designed to ensure compliance with the Security Rule (*See* 45 C.F.R. § 164.316(a) and (b)); and

- v. From April 20, 2005 until present, Skagit County failed to provide security awareness and training to all workforce members, including its Information Security staff members, as necessary and appropriate for the workforce members to carry out their functions within Skagit County (*See* 45 C.F.R. § 164.308(a)(5)).

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

5. No Concession. This Agreement is not a concession by HHS that Skagit County is not in violation of the Privacy Rule, the Security Rule, or the Breach Notification Rule and that Skagit County is not liable for civil money penalties.

6. Intention of Parties to Effect Resolution. This Agreement is intended to resolve HHS Transaction Number: 12-136147 regarding possible violations of the Federal Standards for Privacy of Individually Identifiable Health Information, the Security Standards for the Protection of Electronic Protected Health Information, and Notification in the Case of Breach of Unsecured Protected Health Information (45 C.F.R. Parts 160 and 164, Subparts A, C, D, and E), the Privacy, Security, and Breach Notification 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

1. Payment. Skagit County agrees to pay HHS the amount of \$215,000 (Resolution Amount). Skagit County agrees to pay the Resolution Amount on the Effective Date of this Agreement as defined in paragraph II.9 by automated clearing house transaction pursuant to written instructions to be provided by HHS.

2. Corrective Action Plan. Skagit County 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 Skagit County breaches the CAP, and fails to cure the breach as set forth in the CAP, then Skagit County will be in breach of this Agreement and HHS will not be subject to the Release set forth in paragraph 3 of section II of this Agreement.

3. Release by HHS. In consideration and conditioned upon Skagit County's performance of its obligations under this Agreement, HHS releases Skagit County from any actions it may have against Skagit County under the Privacy, Security, and Breach Notification Rules for the covered conduct identified in paragraph 3 of section I. HHS does not release Skagit County 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.

4. Agreement by Released Parties. Skagit County 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. Skagit County 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.

5. Binding on Successors. This Agreement is binding on Skagit County and its successors, heirs, transferees, and assigns.

6. 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.

7. 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.

8. 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.

9. 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).

10. 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, Skagit County 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 Skagit County'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. Skagit County 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 of section I 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.

11. 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.

12. 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.

13. Authorizations. The individual(s) signing this Agreement on behalf of Skagit County represent and warrant that they are authorized by Skagit County 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 Skagit County, Washington

Board of Commissioners
Skagit County, Washington

_____/s/_____
Ron Wesen, Chair

_____/s/_____
Kenneth A. Dahlstedt, Commissioner

_____/s/_____
Sharon D. Dillon, Commissioner

March 5, 2014
Date

For United States Department of Health and Human Services

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

March 6, 2014
Date

Appendix A

CORRECTIVE ACTION PLAN

BETWEEN THE

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

AND

SKAGIT COUNTY, WASHINGTON

I. Preamble

Skagit County, Washington (Skagit County) 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, Skagit County is entering into a Resolution Agreement with HHS, and this CAP is incorporated by reference into the Resolution Agreement as Appendix A. Skagit County enters into this CAP as consideration for the release set forth in section II, paragraph 3 of the Resolution Agreement.

II. Contact Persons and Submissions

A. Contact Persons

Skagit County 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:

Donnie LaPlante, Senior Human Resources/Risk Analyst
Skagit County, Washington
1800 Continental Place, Mount Vernon, WA 98273
Voice: (360) 419-7602
Fax: (360) 336-9424

HHS has identified the following individual as its authorized representative and contact person with whom Skagit County 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

Skagit County 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 Skagit County under this CAP shall begin on the effective date of this CAP (Effective Date) and end three years from the date HHS approves the Policies and Procedures required by section V.E., except that after this period Skagit County shall be obligated to (a) submit the Annual Report for the final Reporting Period, as set forth in section VI.; 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 Section II, paragraph 9 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

Skagit County agrees to the following:

A. Provide Substitute Breach Notification to Affected Individuals Not Previously Notified.

1. Skagit County shall create a substitute breach notification to be conspicuously published in a major print or broadcast media serving the geographic areas where the affected individuals not previously provided with individual notification are likely to reside or conspicuously posted for a period of 90 days on Skagit County's home page. Skagit County's substitute breach notification shall include all of the information required by 45 C.F.R. §164.404(c) and a toll-free number that shall remain active for at least 90 days from the date the notice is published in the media or posted on Skagit County's home page, as required by 45 C.F.R. §164.404(d)(2)(ii)(B).
2. Within 30 days of the Effective Date, Skagit County shall provide its substitute breach notification to HHS for review and approval. Upon receiving any recommended changes to its substitute breach notification from HHS, Skagit County shall have 15 days to revise the substitute breach notice accordingly and provide the revised substitute breach notification to HHS for review and approval.
3. Within 15 days of receiving HHS's approval of its substitute breach notification, Skagit County shall publish the conspicuous notice of its substitute breach notification in a major print or broadcast media or conspicuously post the substitute breach notification on its home page and provide HHS with documentation of the same.

B. Accounting of Disclosures.

1. Within 30 days of the Effective Date, Skagit County shall provide to HHS for its review and approval a description of its procedure that ensures that the content of any accounting of disclosures provided pursuant to 45 C.F.R. § 164.528, to any individual whose PHI was disclosed, will include the disclosure of PHI as a result of the security incident described in paragraph I.3.i. of the Agreement.

2. Upon receiving any recommended changes from HHS to its accounting of disclosures procedure, Skagit County shall have 15 days to revise the accounting of disclosures procedure accordingly and provide the revised accounting of disclosures procedure to HHS for review and approval. Upon receiving notice from HHS approving the procedure, Skagit County shall promptly implement the procedure.

C. Hybrid Entity and Business Associate Documentation.

1. Within 60 days of the Effective Date, Skagit County shall submit for HHS's review and approval hybrid entity documents designating its covered health care components in accordance with 45 C.F.R. §164.105. Skagit County shall include with its document submission its policies and procedures to ensure compliance with 45 C.F.R. §164.105, including the safeguards requirements at 45 C.F.R. §164.105(a)(2)(ii) and a sample of its business associate agreement or memorandum of understanding to be used with any business associate that performs business associate functions for a Skagit County covered health care component, pursuant to 45 C.F.R. §§164.502(e), 164.504(e), 164.308(b), and 164.314(a).
2. Upon receiving any recommended changes from HHS to its documents, Skagit County shall have 30 days to revise the documents accordingly and provide the revised documents to HHS for review and approval. Within 30 days of HHS's approval of its documents, Skagit County shall provide documentation that it has implemented its hybrid entity and related safeguards policies and procedures. It will also provide documentation that it has obtained satisfactory assurances from each business associate of a Skagit County covered health care component that it will appropriately safeguard the PHI created or received on behalf of such covered health care component, in accordance with 45 C.F.R. §§164.502(e), 164.504(e), 164.308(b), and 164.314(a).

D. Security Management Process.

1. Skagit County shall conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of electronic protected health information (ePHI) held by the covered health care components of Skagit County as identified in its hybrid entity documentation approved by HHS. Skagit County shall implement security measures sufficient to reduce the risks and vulnerabilities identified in the risk analysis to a reasonable and appropriate level.
2. Within 120 days of HHS's approval of its hybrid entity documentation under section V.C., above, Skagit County shall provide its risk analysis and description of risk management measures (including implementation dates for such measures) to HHS for review and approval. Upon receiving any recommended changes to the risk analysis and description of risk management measures from HHS, Skagit County shall have 60 days to revise the risk analysis and description of risk management measures, and provide the revisions to HHS for review and approval.

E. Create and Update Policies and Procedures.

1. Skagit County shall create and revise, as necessary, written policies and procedures for its covered health care components to comply with the Federal standards that govern the privacy, security, and breach notification of individually identifiable health

information (45 C.F.R. Parts 160 and 164, Subparts A, C, D, and E, the Privacy, Security, and Breach Notification Rules).

2. Within 60 days after HHS's approval of Skagit County's risk analysis and description of its risk management measures discussed above under Section V.D., Skagit County shall provide such policies and procedures, consistent with paragraph 1 above, to HHS for review and approval. Upon receiving any recommended changes to such policies and procedures from HHS, Skagit County shall have 30 days to revise such policies and procedures accordingly and provide the revised policies and procedures to HHS for review and approval.
3. Skagit County shall officially adopt such policies and procedures within 30 days of receipt of HHS's approval.

F. Training.

1. All workforce members of Skagit County's covered health care components who have access to ePHI shall receive general Privacy, Security, and Breach Notification Rule training and specific training related to the new policies and procedures under section V.E. within 90 days of the adoption of the policies and procedures. Any new members of a covered health care component workforce that are hired after the initial training period described in this paragraph shall be trained 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. Skagit County shall provide copies of the written or electronic certifications of training for the workforce members of its covered health care components to HHS within 30 days of training. All course materials shall be retained in compliance with section VII.
3. Skagit County 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 workforce member of a covered health care component is required to receive training under paragraph 1 of this section, Skagit County shall not allow such workforce member to use or access ePHI unless that workforce member has signed or provided the written or electronic training certification required by paragraph 2 of this section.

G. Reportable Events.

1. The one-year period beginning on the Effective Date and each following one-year period shall be referred to as "the Reporting Periods." During each Reporting Period under this CAP, Skagit County shall, upon receiving information that a workforce member of a covered health care component may have failed to comply with its Privacy, Security, and Breach Notification policies and procedures, promptly investigate the matter. If Skagit County, after review and investigation, determines that a member of the workforce of a covered health care component has failed to comply with its Privacy, Security and Breach Notification policies and procedures,

Skagit County shall notify HHS in writing within 30 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 provision(s) of Skagit County’s Privacy, Security, and Breach Notification policies and procedures implicated; and
 - b. A description of the actions taken and any further steps Skagit County plans to take to address the matter, to mitigate any harm, and to prevent it from recurring, including the application of appropriate sanctions against covered health care component 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, Skagit County shall so inform HHS in its Annual Report for that Reporting Period in accordance with section VI. of this CAP.

VI. Annual Reports

Skagit County shall submit to HHS Annual Reports with respect to the status of and findings regarding Skagit County’s compliance with this CAP for each of the Reporting Periods. Skagit County 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:

- A. A summary of the security management measures (defined in section V.D.) taken during the Reporting Period;
- B. A summary of Reportable Events (defined in section V.G.) identified during the Reporting Period and the status of any corrective and preventative action relating to all such Reportable Events; and
- C. An attestation signed by an officer of Skagit County 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

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

VIII. Breach Provisions

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

A. Timely Written Requests for Extensions. Skagit County 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’s 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 Skagit County constitutes a breach of the Resolution Agreement. Upon a determination by HHS that Skagit County has breached this CAP, HHS may notify Skagit County of (a) Skagit County's breach; and (b) HHS's 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 section I of the Resolution Agreement and any other conduct that constitutes a violation of the HIPAA Privacy, Security, or Breach Notification Rules (this notification is hereinafter referred to as the "Notice of Breach and Intent to Impose CMP").

C. Response. Skagit County 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. Skagit County 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) Skagit County has begun to take action to cure the breach; (ii) Skagit County is pursuing such action with due diligence; and (iii) Skagit County has provided to HHS a reasonable timetable for curing the breach.

D. Imposition of CMP. If at the conclusion of the 30 day period, Skagit County fails to meet the requirements of section VIII.C. to HHS's satisfaction, HHS may proceed with the imposition of a CMP against Skagit County 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 Skagit County in writing of its determination to proceed with the imposition of a CMP.

For Skagit County, Washington

Board of Commissioners
Skagit County, Washington

_____/s/_____
Ron Wesen, Chair

_____/s/_____
Kenneth A. Dahlstedt, Commissioner

_____/s/_____
Sharon D. Dillon, Commissioner

_____March 5, 2014_____
Date

For United States Department of Health and Human Services

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

_____March 6, 2014_____
Date