

OFFICE OF THE TEXAS ATTORNEY GENERAL

TEXAS MEDICAL RECORDS PRIVACY ACT
ANNUAL REPORT¹

FISCAL YEAR 2016



¹ This annual report for FY 2016 is submitted to the Texas Legislature in accordance with the requirements of the Texas Medical Records Privacy Act, Tex. Health & Safety Code Ann. §§ 181.104 (West 2015).

OFFICE OF THE TEXAS ATTORNEY GENERAL TEXAS MEDICAL RECORDS PRIVACY ACT ANNUAL REPORT FISCAL YEAR 2016

INTRODUCTION

The 82nd Texas Legislature amended the Texas Medical Records Privacy Act (the “Act”) by enacting HB 300, effective September 1, 2012.ⁱ

The Act requires certain persons and entities including health care providers, health plans and entities that process health insurance claims to take certain measures with respect to protected health information (PHI) including mandatory training for employees concerning PHI. In most instances, the Act prohibits covered entities from using or disclosing PHI without first obtaining an individual’s consent.

The Act also requires the Texas Attorney General to submit an annual report to the Legislature describing the number and types of medical privacy related consumer complaints received by the attorney general and by state agencies which regulate persons or entities subject to the Act and further, to report on the related enforcement actions taken in response to such complaints.ⁱⁱ This report for Fiscal Year 2016 is submitted in accordance with that requirement.

DATA GATHERING

The Act provides that certain specifically named agencies (the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance) as well as other state agencies which regulate covered entities, must submit to the Attorney General the information required to compile this report.ⁱⁱⁱ Thus, the Attorney General requested and obtained information from the following state agencies:

- Texas Department of Aging and Disability Services
- Texas Board of Chiropractic Examiners
- Texas State Board of Dental Examiners
- Texas Department of Family and Protective Services
- Texas Health and Human Services
- Texas Department of State Health Services
- Texas Department of Insurance
- Texas Medical Board
- Texas Board of Nursing
- Texas Optometry Board
- Texas State Board of Pharmacy
- Executive Council of Physical Therapy and Occupational Therapy Examiners
- Texas State Board of Podiatric Medical Examiners
- Texas State Board of Examiners of Psychologists

With respect to Fiscal Year 2016, each agency was asked to report the following information to the Attorney General:

- the total number of consumer complaints received in which the consumer alleged medical privacy violations;
- the types of violations alleged in these complaints;
- the total number of enforcement or disciplinary actions taken by the agency; and
- the types of enforcement/disciplinary actions taken by each.

Each agency's individual report to the OAG is included here (*See Attachments 1 through 14*). Attachment 15 provides the same information regarding complaints received and enforcement action taken by the Attorney General. The overview which follows is a compilation of these individual reports.

OVERVIEW: COMPLAINTS RECEIVED

The reporting agencies received a total of 999 complaints. This number includes all complaints in which a consumer alleged a possible medical privacy violation without regard to the complaint's validity or ultimate substantiation and also, without regard to whether the complaint made specific reference to the Act. The number of complaints reported by each agency is as follows:

| | |
|--|-----|
| • Texas Department of Aging and Disability Services | 1 |
| • Texas Board of Chiropractic Examiners | 38 |
| • Texas State Board of Dental Examiners | 4 |
| • Texas Department of Family and Protective Services | 0 |
| • Texas Health and Human Services | 512 |
| • Texas Department of State Health Services | 109 |
| • Texas Department of Insurance | 8 |
| • Texas Medical Board | 169 |
| • Texas Board of Nursing | 67 |
| • Texas Optometry Board | 9 |
| • Executive Council of Physical Therapy and Occupational Therapy Examiners | 0 |
| • Texas State Board of Podiatric Medical Examiners | 10 |
| • Texas State Board of Examiners of Psychologists | 16 |
| • Texas Board of Pharmacy | 13 |

In addition, the Attorney General received 43 consumer complaints.

Each entity analyzed its complaints to determine the type of violations alleged by consumers and reported on the type of violations alleged:

- 14 allegations of unlawful marketing practices;^{iv}

- 150 allegations that a covered entity had failed to provide a requested health record;^v
- 14 allegations of failure to provide required training;^{vi}
- 827 allegations that a covered entity had unlawfully disclosed PHI;^{vii}
- 2 allegations that a covered entity had failed to provide notice.^{viii}

OVERVIEW: ENFORCEMENT ACTIONS

Each of the agencies also reported the number and types of enforcement or disciplinary actions taken during the reporting period. Details regarding the specific type of action taken by each reporting agency and by the Attorney General are included in Attachments 1-15. All total, the agencies reported 214 enforcement or disciplinary actions. Because each of the agencies has its own enforcement authority, process and scope of responsibility, the Attorney General-in the interest of efficiency-asked each agency to report its enforcement activity using the disciplinary and enforcement action categories which each already had in place and utilized in other reports.^{ix}

The agencies' disciplinary and enforcement actions focused on taking administrative action rather than referring matters to the Attorney General and the specific number and types of enforcement and disciplinary actions reported were as follows:

| | |
|---|----|
| Administrative Penalty | 3 |
| Applicant Eligibility Order | 1 |
| Counseling | 87 |
| Directed Plan of Correction | 16 |
| Disciplinary Action – Agreed Order | 1 |
| Dismiss – No Violation | 8 |
| Fine Only | 5 |
| Fine w/Remedial Education (FR) & Deferred (FRD) | 2 |
| License Expiration | 1 |
| Litigation | 2 |
| Probated Suspension | 1 |
| Remedial Education (RE) & Deferred (RED) | 5 |
| Remedial Plans | 12 |
| Resigned in Lieu of Adjudication | 1 |
| Restriction | 6 |
| Retraining | 38 |
| Revocation (RV) | 2 |
| Revoked | 1 |
| Suspension | 1 |
| Termination | 5 |
| Warning | 10 |
| Warning w/Stipulation (WS) & Deferred (WSD) | 6 |

In addition to the administrative actions taken by each of the agencies, during this reporting period the Texas Attorney General obtained two judgments in medical privacy enforcement suits. First, in Hidalgo County, the State obtained an agreed final judgment in *State of Texas v Neil Cruz and Cruz Carranza Ambulance Service, LLC, No C-0958-15-D, 275th Judicial District*. In Bexar County, the State filed a law suit and obtained an agreed final judgment in *State of Texas vs Maria Olveda and Alliance Health Management & Consulting Inc. No 2015CI19048, 45th Judicial District*. In each of these cases, the State alleged that defendants violated the Texas Identity Theft Enforcement and Protection Act (ITEPA)^x by unlawfully disposing of documents containing sensitive personal information – including protected health information - in publicly accessible dumpsters. Each judgment includes injunctive terms to assure future compliance with ITEPA including a prohibition on defendants disposing of records with medical information unless the records are first modified by shredding, erasing, or other means to make such information unreadable or undecipherable. These cases, like others filed by the Attorney General in previous reporting years, also included causes of action pursuant to the Texas Deceptive Trade Practices Act (DTPA).^{xi}

ATTACHMENTS AND ADDITIONAL INFORMATION

As amended, the Act also requires the Attorney General to maintain a website providing information concerning consumer’s privacy rights regarding protected health information and a list of the state agencies which regulate covered entities under the Act, the types of entities which each agency regulates, detailed information regarding each agency’s complaint enforcement process and contact information for each of the agencies for reporting possible violations of the Act.^{xii} In accordance with the requirements of the Act, that information has been compiled and together with this report-is available at the website of the Attorney General: <https://texasattorneygeneral.gov/cpd/list-of-regulatory-agencies>.

ⁱ Tex. Health & Safety Code Ann. §§ 181.001-181.207 (West 2015).

ⁱⁱ Tex. Health & Safety Code Ann. § 181.104 (West 2015).

ⁱⁱⁱ *Id.* §§ 181.103, 181.104.

^{iv} For purposes of analyzing complaints for this report, unlawful marketing practices refers to possible violations of the following sections of the Act: § 181.151 and §§ 181.152(a)-(c).

^v The Act requires health care providers who utilize electronic systems capable of fulfilling such requests to provide the electronic health record of persons who request such records. The records must be provided not later than the 15th business day after the date the provider receives the person’s written request and must be in electronic form unless the requestor agrees to accept records in another form. *See id.* § 181.102(a). This requirement is subject to the exceptions found in § 181.102(b).

^{vi} *Id.* § 181.101(a)-(d).

^{vii} For purposes of analyzing complaints for this report, unlawful disclosure of PHI refers to possible violations of the following sections of the Act: § 181.153(a) and § 181.154(a)-(c).

^{viii} Failure to provide notice refers to possible violation of the following sections of the Act: § 181.151 and §§ 181.152(a)-(c).

^{ix} See Texas Health Professions Council, Annual Report, February 1, 2016-Appendix A-Disciplinary Data reports for agencies including the following: Board of Nursing, Board of Pharmacy, Texas Medical Board, Texas Optometry Board, Board of Dental Examiners, Board of Chiropractic Examiners, Board of Podiatric Examiners and Board of Examiners of Psychologists and Executive Council of Physical Therapy and Occupational Therapy Examiners. *See* www.hpc.texas.gov/wp-content/uploads/HPCDOCS/FY_2015_Annual_Report.pdf (last accessed November 30, 2016).

^x Tex. Bus. & Com Code Ann. § 521.001-521.151 (West 2015).

^{xi} Tex. Bus. & Com Code Ann. § 17.01-17.926 (West 2015).

^{xii} Tex. Health & Safety Code Ann. § 181.103 (West 2015).

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas Department of Aging and Disability Services
Submitted By Janet Clayton
Reporting Period FY 2016
Total Number of Complaints 1

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 1 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency

Texas Board of Chiropractic
Examiners

Submitted By

Scott Parker

Reporting Period

FY 2016

Total Number of Complaints

38

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 22 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 16 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 5

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Fine Only | 5 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas State Board of Dental
Examiners
Submitted By Lisa Jones
Reporting Period FY 2016
Total Number of Complaints 4

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 4 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas Department of Family and Protective Services
Submitted By Jose Martinez
Reporting Period FY 2016
Total Number of Complaints 0

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 0 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

| | |
|-----------------------------------|---------------------------------|
| Agency | Texas Health and Human Services |
| Submitted By | Tim Hawkins |
| Reporting Period | FY 2016 |
| Total Number of Complaints | 512 |

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 512 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 130

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| Counseling | 87 |
| Retraining | 38 |
| Termination | 5 |

Comments

The Texas Health and Human Services System (HHS) is responsible for operational programs including Medicaid, Children’s Health Insurance Program (CHIP), Healthy Texas Women Program, Disaster Assistance and the Medical Transportation Program. As such, each year, HHSC serves millions of program beneficiaries. See, <https://hhs.texas.gov/about-hhs/records-and-statistics/research-and-statistics> (last accessed 11/30/2016).

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas Department of State Health
 Services Program 1
Submitted By Sarah Hawkins
Reporting Period FY 2016
Total Number of Complaints 83

Agency Texas Department of State Health
 Services Program 2 - 13
Submitted By Carol Miller
Reporting Period FY 2016
Total Number of Complaints 26

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 5 |
| Failure to Provide Access: Health Record | 3 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 101 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 32

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| 1000 Warning | 10 |
| 1500 Suspension | 1 |
| 1800 Probated Suspension | 1 |
| 2300 Administrative Penalty | 3 |
| 2800 Directed Plan of Correction | 16 |
| 3200 License Expiration | 1 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas Department Insurance
Submitted By Anne Hemenway
Reporting Period FY 2016
Total Number of Complaints 8

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 1 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 1 |
| Unlawful/Unauthorized Disclosure of PHI | 3 |
| Unlawful Marketing | 4 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency

Texas Medical Board

Submitted By

Sonia Aurelius

Reporting Period

FY 2016

Total Number of Complaints

169

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 84 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 84 |
| Unlawful Marketing | 1 |

Total Number of Enforcement/Disciplinary Action Taken: 18

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Remedial Plans | 12 |
| Restriction | 6 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency
Submitted By
Reporting Period
Total Number of Complaints

Texas Board of Nursing
Skylar Caddell
FY 2016
67

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 1 |
| Failure to Provide Access: Health Record | 2 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 60 |
| Unlawful Marketing | 9 |

Total Number of Enforcement/Disciplinary Action Taken: 15

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| Remedial Education (RE) & Deferred (RED) | 5 |
| Warning w/Stipulation (WS) & Deferred (WSD) | 6 |
| Revocation (RV) | 2 |
| Fine w/Remedial Education (FR) & Deferred (FRD) | 2 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency

Texas Optometry Board

Submitted By

Chris Kloeris

Reporting Period

FY 2016

Total Number of Complaints

9

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 4 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 5 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency

Texas Board of Pharmacy

Submitted By

Debra Beall

Reporting Period

FY 2016

Total Number of Complaints

13

| Complaints by Alleged Violations | Number |
|--|---------------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 3 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 10 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|--|---------------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency

Executive Council of Physical
Therapy and Occupational Therapy

Submitted By

Mark Turek

Reporting Period

FY 2016

Total Number of Complaints

0

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 0 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 0 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas Department of Podiatric
Medical Examiners
Submitted By Hemant Makan
Reporting Period FY 2016
Total Number of Complaints 10

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 0 |
| Failure to Provide Access: Health Record | 10 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 0 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 0

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| None | 0 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas State Board of Examiners of
Psychologists
Submitted By Brenda Skiff
Reporting Period FY 2016
Total Number of Complaints 16

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 5 |
| Failure to Provide Access: Health Record | 8 |
| Failure to Provide Notice | 1 |
| Unlawful/Unauthorized Disclosure of PHI | 2 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 12

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| Dismiss – No Violation | 8 |
| Applicant Eligibility Order | 1 |
| Disciplinary Action – Agreed Order | 1 |
| Revoked | 1 |
| Resigned in Lieu of Adjudication | 1 |

TEXAS MEDICAL RECORDS PRIVACY ACT REPORT

Agency Texas Attorney General
Submitted By Mary Vinson
Reporting Period FY 2016
Total Number of Complaints 43

| Complaints by Alleged Violations | Number |
|--|--------|
| Failure to Provide Required Training | 2 |
| Failure to Provide Access: Health Record | 14 |
| Failure to Provide Notice | 0 |
| Unlawful/Unauthorized Disclosure of PHI | 29 |
| Unlawful Marketing | 0 |

Total Number of Enforcement/Disciplinary Action Taken: 2

| Types of Disciplinary/Enforcement Actions Taken | Number |
|---|--------|
| Litigation | 2 |

| Comments |
|----------|
| |