

# Office for Civil Rights



I am pleased to present the Office for Civil Rights (OCR) Fiscal Year 2018 Congressional Justification. This budget supports the President's and Secretary's priority initiatives and reflects the goals and objectives of the Department.

OCR will fulfill its core mission and focus on new initiatives to meet Administration priorities and will continue to explore ways to improve operations via creative cost cutting and streamlining of operations. OCR will meet the challenges of a mounting caseload and the need to respond efficiently and timely to complaints by supporting privacy enforcement activities through the expenditure of settlement funds.

OCR remains fully committed to enforcing our nation's laws protecting health information privacy and security, conscience, and civil rights in healthcare and throughout human services and will rise to the challenge presented by tightening budgets. The people we serve deserve no less.

A handwritten signature in blue ink, which appears to read "Roger Severino", is positioned above the printed name.

Roger Severino  
Director, Office for Civil Rights

## Table of Contents

### Section I – Introductory Items

|                         |   |
|-------------------------|---|
| Organization Chart..... | 3 |
|-------------------------|---|

### Section II – Executive Summary

|                                 |    |
|---------------------------------|----|
| Introduction and Mission.....   | 5  |
| Overview of Budget Request..... | 6  |
| Overview of Performance.....    | 7  |
| All Purpose Table .....         | 10 |

### Section III – Office for Civil Rights

#### Budget Exhibits

|                                       |    |
|---------------------------------------|----|
| Appropriations Language.....          | 11 |
| Amounts Available for Obligation..... | 12 |
| Summary of Changes .....              | 13 |
| Budget Authority by Activity.....     | 14 |
| Authorizing Legislation.....          | 15 |
| Appropriations History.....           | 16 |

#### Activity Narratives

|   |    |
|---|----|
| Summary of the Request .....                          | 18 |
| Enforcement and Regional Operations.....              | 19 |
| Programs and Policy.....                              | 23 |
| Planning and Business Administration Management ..... | 28 |

### Section IV – Supplementary Tables

|  |    |
|--|----|
| Budget Authority by Object Class.....                | 30 |
| Salaries and Expenses.....                           | 31 |
| Detail of Full-Time Equivalent Employment (FTE)..... | 32 |
| Detail of Positions.....                             | 33 |

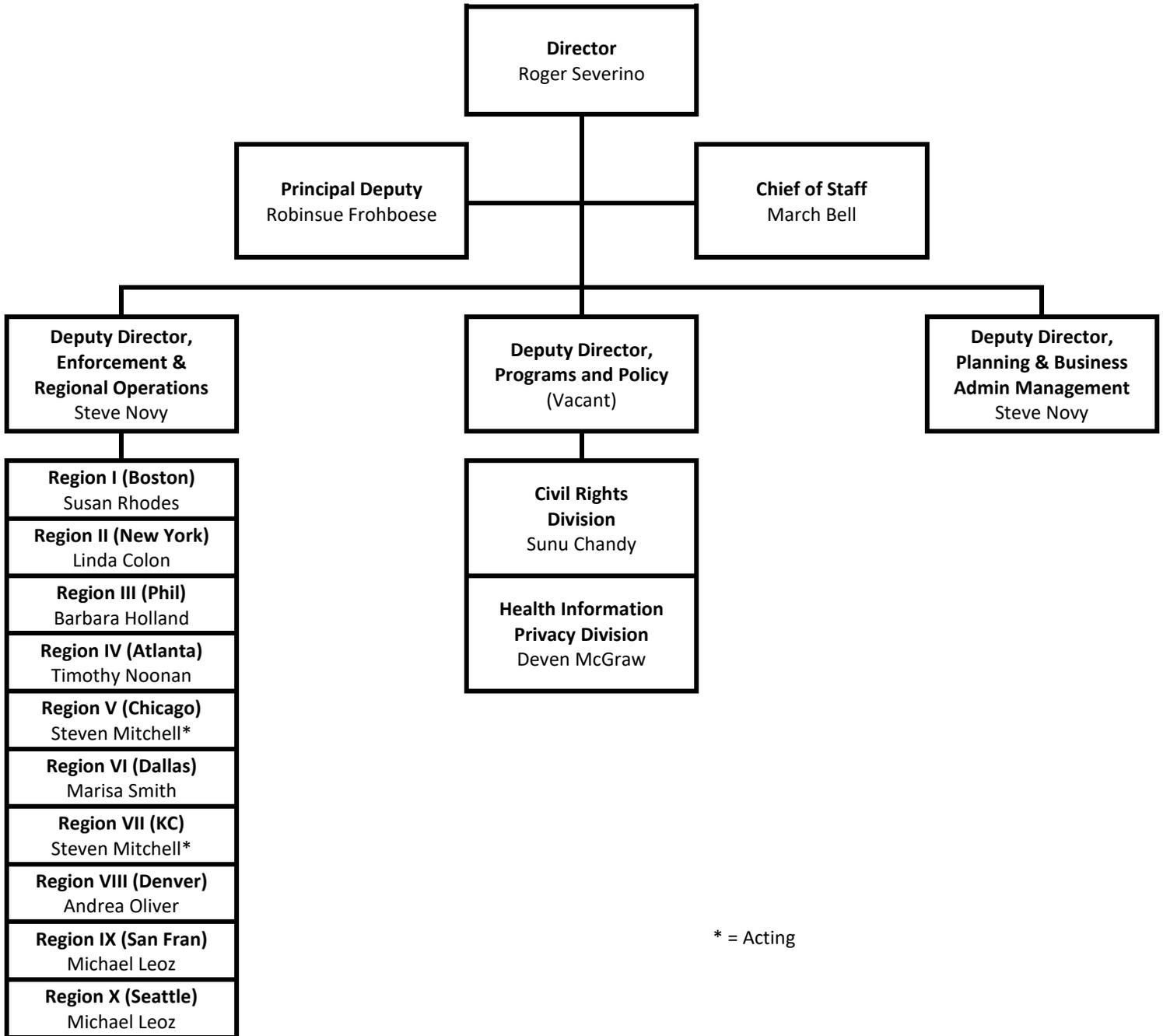
### Section V – Significant Items

|  |    |
|--|----|
| #1 OCR Response to Senate Committee on Appropriations Report ..... | 34 |
| #2 OCR Response to House Committee on Appropriations Report .....  | 35 |

## Section I - Introductory Items

### Organization Chart

(April 2017)



\* = Acting

## Organizational Chart: Text Version

### Office for Civil Rights

- Director Roger Severino
- Principal Deputy Robinsue Frohboese
- Chief of Staff March Bell

The following offices report directly to the Director:

- 1 Deputy Director, Enforcement and Regional Operations
  - 1.2 Steve Novy
- 2 Deputy Director, Programs and Policy
  - 2.2 Vacant
- 3 Deputy Director, Planning and Business Administration Management
  - 3.2 Steve Novy

The following regional managers report to the Deputy Director, Enforcement and Regional Operations:

- Susan Rhodes, Boston Regional Office
- Linda Colon, New York Regional Office
- Barbara Holland, Philadelphia Regional Office
- Timothy Noonan, Atlanta Regional Office
- Steven Mitchell (Acting), Chicago Regional Office
- Marisa Smith, Dallas Regional Office
- Steven Mitchell (Acting), Kansas City Regional Office
- Andrea Oliver, Denver Regional Office
- Michael Leoz, San Francisco Regional Office
- Michael Leoz, Seattle Regional Office

The following offices report to the Deputy Director of Programs and Policy:

- Civil Rights Division
  - Sunu Chandy
- Health Information Privacy Division
  - Deven McGraw

## Introduction and Mission

The Office for Civil Rights (OCR), a staff division of the U.S. Department of Health and Human Services (HHS) Office of the Secretary, ensures that individuals receiving services from HHS-funded programs are not subject to unlawful discrimination, providers and others can exercise their conscience rights, and individuals can exercise their rights to access their health information and can trust the privacy and security of their health information. By rooting out invidious discrimination and removing unlawful barriers to HHS-funded services, OCR carries out the HHS mission of improving the health and well-being of all Americans and providing essential human services. By ensuring individuals and institutions can exercise their conscience rights, OCR furthers justice and tolerance in a pluralistic society. By promoting the right to access health information and protecting the privacy and security of this information, OCR helps empower people's health care decision-making and helps ensure the integrity of the health care system, both of which promote better health outcomes for the nation.

### **Mission**

Through investigations, technical assistance, voluntary compliance efforts, enforcement, policy development, and education OCR ensures that everyone has access to health care and human services without discrimination or violation of conscience and protects the privacy and security of individuals' health information by:

- Ensuring that recipients of HHS federal financial assistance comply with federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, sex, and religion.
- Enforcing provisions of Obamacare that prohibit discrimination in health care programs and activities to advance health equity.
- Ensuring that Federal agencies, state and local governments, health care providers, and health plans comply with federal laws guaranteeing the exercise of religious beliefs and moral convictions in HHS conducted or funded programs.
- Ensuring the practices of health care providers, health plans, healthcare clearinghouses, and their business associates adhere to federal privacy, security, and breach notification regulations under the Health Insurance Portability and Accountability Act (HIPAA) through the investigation of citizen complaints, self-reports of breaches, compliance reviews, and audits.
- Leading interagency efforts to ensure comprehensive privacy and security protections for individuals' personal health information when shared to promote research and medical discoveries or through emerging technologies.
- Enforcing privacy protections under the Genetic Information Nondiscrimination Act and the confidentiality provisions of the Patient Safety and Quality Improvement Act.

### **Vision**

Through enforcement of laws prohibiting discrimination, including discrimination against those who exercise conscience rights, and protecting the rights of individuals to access their health information and the privacy and security of this information, OCR helps to ensure equal access to health and human services, advance the health and well-being of members of communities, protect individuals' private health information, and provide the tools for provider awareness and full consumer engagement in decisions related to their health care.

## Overview of Budget Request

OCR's FY 2018 budget request of \$32,530,000 represents a \$6,194,000 decrease from the FY 2017 Annualized Continuing Resolution (CR) amount.

The request supports OCR's essential programmatic focus as the primary defender of the public's right to nondiscriminatory access to and receipt of HHS funded health and human services, conscience protections, consumer access to health information, and privacy and security protections for individually identifiable health information.

### Program decreases:

Civil Rights and Health Information Privacy (-\$6.194 million): While OCR remains viable, the budget reduction would require decreases in authorized regional investigators which could limit OCR's capacity to resolve complaints and perform other related agency functions such as investigations, compliance reviews, technical assistance, and outreach. To minimize the impact of reduction in budget authority, OCR will increase use of funds from monetary settlements collected via OCR's HIPAA enforcement activities to cover other items related to health information privacy (HIP) enforcement activities. OCR does not consider the impact of this change to be significant on operations. The planned usage of at least \$2.928 million of settlements leaves the overall total program reduction at approximately \$3.266 million.

## Overview of Performance

OCR's overarching goals encompass multiple supporting objectives that align with the Department's Strategic Plan:

| OCR Goal  | OCR Supporting Objectives   | HHS Goal/Objectives   |
|---|---|---|
| <ul style="list-style-type: none"> <li>Raise awareness, increase understanding, and ensure compliance with all federal laws requiring non-discriminatory access to HHS funded programs and protect the privacy and security of personal health information</li> </ul> | <ul style="list-style-type: none"> <li>Increase access to and receipt of non-discriminatory quality health and human services while protecting conscience and the integrity of HHS federal financial assistance</li> <li>Protect the privacy and security of personally identifiable health information for healthcare consumers (HIPAA rule activities and enforcement)</li> <li>Provide information, public education activities, and training to representatives of health and human service providers, other interest groups, and consumers (civil rights, conscience, and health information privacy mission activities)</li> <li>Increase the number of covered entities that take corrective action, including making substantive policy changes or developing new policies as a result of review and/or intervention</li> </ul> | <p>#1 E , #3 A,C</p> <p>#1 E,F</p> <p>#1 E , #3 B</p> <p>#1 E</p> |
| <ul style="list-style-type: none"> <li>Enhance operational efficiency</li> </ul>  | <ul style="list-style-type: none"> <li>Maximize efficiency of operations by streamlining processes and the optimal allocation of resources</li> <li>Improve financial management and the integration of budget and performance data (Increase resource management process oversight, strengthen internal controls, maintain viable performance objectives)</li> <li>Advance human capital management (Provide training, develop and mentor subordinates, promote effectiveness)</li> </ul>  | <p>#4 A</p> <p>#4 A</p> <p>#4 C</p>                               |

The following Outputs and Outcomes Table presents the current OCR performance measures and results along with the proposed FY 2018 targets:

| Program/Measure  | Year and Most Recent Result / Target for Recent Result / (Summary of Result) | FY 2017 Target | FY 2018 Target     | FY 2018 Target +/- FY 2017 Target |
|--|--|----------------|--------------------|-----------------------------------|
| <b>1.1.1 The number of covered entities taking corrective actions as a result of OCR intervention per year (Outcome)</b>               | FY 2016: 2,386<br>Target: 5,900<br>(Target Not Met)                          | 3,000          | 1,000 <sup>1</sup> | -2,000                            |
| <b>1.1.2 The number of Covered Entities making substantive policy changes as a result of OCR intervention/year (Outcome)</b>           | FY 2016: 229<br>Target: 750<br>(Target Not Met)                              | 750            | 250                | -500 <sup>2</sup>                 |
| <b>1.1.3A Percent of closure for civil rights cases/ cases received each year (Outcome)<sup>3</sup></b>                                | FY 2016: 111%<br>Target: 90%<br>(Target Exceeded)                            | 90%            | 90%                | Maintain                          |
| <b>1.1.3B Percent of closure for health information privacy cases/cases received each year (Outcome)</b>                               | FY 2016: 116%<br>Target: 75%<br>(Target Exceeded)                            | 80%            | 90%                | +10%                              |
| <b>1.1.3C Percent of closure for Medicare application review/reviews received each year (Output)<sup>3</sup></b>                       | FY 2016: 140%<br>Target: 90%<br>(Target Exceeded)                            | 90%            | 90%                | Maintain                          |
| <b>1.1.4 Percent of civil rights cases and Medicare application reviews resolved per received per year. (Outcome)</b>                  | FY 2016: 121%<br>Target: 92%<br>(Target Exceeded)                            | 92%            | 92%                | Maintain                          |
| <b>1.1.6 Number of individuals whom OCR provides information and training annually (Output)<sup>4</sup></b>                            | FY 2016: 5,000,027<br>Target: 3,426,000<br>(Target Exceeded)                 | 3,426,000      | 3,426,000          | Maintain                          |
| <b>1.1.7 Percent of civil rights complaints requiring formal investigation resolved within 365 days (Output)</b>                       | FY 2016: 51%<br>Target: 41%<br>(Target Exceeded)                             | 41%            | 41%                | Maintain                          |
| <b>1.1.8 Percentage of civil rights complaints not requiring formal investigation resolved within 180 days (Output)</b>                | FY 2016: 93%<br>Target: 80%<br>(Target Exceeded)                             | 95%            | 95%                | Maintain                          |
| <b>1.1.9 Percentage of health information privacy complaints requiring formal investigation resolved within 365 days (Output)</b>      | FY 2016: 68%<br>Target: 68%<br>(Target Met)                                  | 68%            | 68%                | Maintain                          |
| <b>1.1.10 Percentage of health information privacy complaints not requiring formal investigation resolved within 180 days (Output)</b> | FY 2016: 96%<br>Target: 75%<br>(Target Exceeded)                             | 95%            | 95%                | Maintain                          |

<sup>1</sup> 1.1.1 Manual civil rights clearances are no longer included in this computation.

<sup>2</sup> 1.1.2 Manual civil rights clearances are no longer included in this computation.

<sup>3</sup> 1.1.3 *Percentage of closure for civil rights cases, health information privacy cases, and Medicare reviews/ cases and reviews received* is now captured as 1.1.3 A, B, and C. 1.1.5 *Percentage of privacy cases resolved per cases received* was eliminated as the data is captured in 1.1.3 B.

<sup>4</sup> FY15 and forward targets for 1.1.6 were adjusted upward to account for the change in methodology for calculating this measure. Beginning in FY 2014, this measure included the number of times the OCR website is viewed.

In FY 2016, OCR met its productivity and closure targets by closing a high percentage of cases in excess of all cases received in the year. (Measure 1.1.3A, Target: 90%, FY16 Actual: 111% and Measure 1.1.3B, Target: 75%, FY16 Actual: 116%). The total number of cases resolved in this time period included health information privacy/security cases and civil rights cases. A major part of OCR's success in this area is the restructuring of OCR's Centralized Case Management Operations (CCMO) in FY 2016. The CCMO handles all incoming complaints to OCR by assessing which cases can be closed administratively or with technical assistance and which will be transferred to an OCR regional office for further review or investigation. These numbers represent significant achievements considering the continued rise in complaints in a flat budget environment. During FY 2016, the CCMO eliminated the complaint backlog, which was defined as complaints older than 30 days. At the close of FY2016, all cases within the CCMO were 30 days old or less.

Regarding investigations resulting in corrective action, OCR did not meet its target for this performance objective (Measure 1.1.1, Target: 5,900 cases closed with corrective action, FY 16 Actual: 2,386. This measure is no longer a realistic measure of OCR's work as OCR conducts fewer routine investigations per year so that it can focus on larger, more complex work which impacts a broader audience. Furthermore, in FY 2016, OCR automated the process health care providers use to receive a civil rights clearance to be certified as a Medicare Part A provider. Consequently, this is the last year we will include these types of cases in our performance metrics. However, OCR continues to effectuate corrective action in other ways. A large number of complaints are resolved by OCR through the provision of technical assistance to the named entity without a formal investigation. These cases involve issues that, if substantiated, could easily be addressed by the entity with voluntary corrective action. The use of technical assistance to resolve these types of complaints is an efficient way for OCR to use its resources by notifying its regulated community about potential compliance deficiencies and requesting the entity to take any necessary corrective action.

OCR met its target for resolving its most complex HIP cases requiring formal investigation within 365 days (1.1.9, Target: 68%, FY16 Actual: 68%). On the Civil Rights side, OCR exceeded its target of closing out its most complex civil rights enforcement work within a 365 day timeframe (Measure 1.1.7, Target 41%, FY16 Actual: 51%). A concerted effort was made throughout OCR to resolve older civil rights cases, resulting in a substantial improvement in closures for FY 2016.

In terms of management of administrative closures that do not result in an investigation, OCR achieved significant and sustained success in two of its primary measures on timeliness (Measure 1.1.8, Target: 80%, FY 2016 Actual: 93% and Measure 1.1.10, Target: 72%, FY16 Actual: 96%). This success was achieved through the reorganization of the CCMO and the elimination of the complaint backlog, which resulted in more administrative closures and technical assistance closures occurring within the CCMO, which improved operational efficiency and gave the regional offices greater capacity to apply their resources to investigations, technical assistance and outreach.

## All Purpose Table

(Dollars in Thousands)

| Office for Civil Rights                            | FY 2016<br>Final | FY 2017<br>Annualized<br>CR | FY 2018<br>President's<br>Budget | FY 2018<br>+/-<br>FY 2017 |
|--|------------------|-----------------------------|----------------------------------|---------------------------|
| Enforcement and Regional Operations                | 25,561           | 25,816                      | 20,482                           | -5,334                    |
| Programs and Policy                                | 7,303            | 7,439                       | 6,626                            | -813                      |
| Planning and Business Administration<br>Management | 5,934            | 5,469                       | 5,422                            | -47                       |
| <b>Budget Authority</b>                            | <b>38,798</b>    | <b>38,724</b>               | <b>32,530</b>                    | <b>-6,194</b>             |
| <b>FTE</b>   | <b>170</b>       | <b>179</b>                  | <b>162</b>                       | <b>-17</b>                |

## **Appropriations Language**

For expenses necessary for the Office for Civil Rights, [**\$38,798,000**] *\$32,530,000*.

**Amounts Available for Obligation**  
(Dollars in Thousands)

| Detail                                   | FY 2016<br>Final | FY 2017<br>Annualized CR | FY 2018<br>President's<br>Budget |
|--|------------------|--------------------------|----------------------------------|
| Appropriation                            | 38,798           | 38,798                   | 32,530                           |
| Across-the-board reductions              | -                | -74                      | -                                |
| Subtotal, Appropriation                  | 38,798           | 38,724                   | 32,530                           |
| <b>Total Discretionary Appropriation</b> | <b>38,798</b>    | <b>38,724</b>            | <b>32,530</b>                    |

## Summary of Changes

(Dollars in Thousands)

| Budget Year and Type of Authority  | Dollars       | FTE        |
|------------------------------------|---------------|------------|
| FY 2017 Annualized CR              | 38,724        | 179        |
| FY 2018 Estimated Budget Authority | 32,530        | 162        |
| <b>Net Changes</b>                 | <b>-6,194</b> | <b>-17</b> |

| Program Increases                    | FY 2018<br>PB FTE | FY 2018<br>PB BA | FY 2018 +/-<br>FY 2017<br>FTE | FY 2018 +/-<br>FY 2017<br>BA |
|--------------------------------------|-------------------|------------------|-------------------------------|------------------------------|
| Other than full-time permanent       | -                 | 725              | -                             | +14                          |
| Other personnel compensation         | -                 | 337              | -                             | +6                           |
| Travel and transportation of persons | -                 | 338              | -                             | +3                           |
| Other services                       | -                 | 279              | -                             | +3                           |
| Equipment                            | -                 | 30               | -                             | -                            |
| <b>Total Increases</b>               | <b>-</b>          | <b>1,709</b>     | <b>-</b>                      | <b>+26</b>                   |

| Program Decreases                                       | FY 2018<br>PB FTE | FY 2018<br>PB BA | FY 2018 +/-<br>FY 2017<br>FTE | FY 2018 +/-<br>FY 2017<br>BA |
|---|-------------------|------------------|-------------------------------|------------------------------|
| Full-time permanent                                     | 161               | 15,671           | -16                           | -1,270                       |
| Military personnel                                      | 1                 | 97               | -1                            | -64                          |
| Civilian benefits                                       | -                 | 5,387            | -                             | -368                         |
| Military benefits                                       | -                 | 33               | -                             | -47                          |
| Benefits to former personnel                            | -                 | 20               | -                             | -11                          |
| Transportation of things                                | -                 | 5                | -                             | -5                           |
| Rental payments to GSA                                  | -                 | 2,967            | -                             | -125                         |
| Communication, utilities, and miscellaneous charges     | -                 | 196              | -                             | -23                          |
| Printing and reproduction                               | -                 | 119              | -                             | -4                           |
| Purchase of goods and services from Government accounts | -                 | 5,564            | -                             | -4,029                       |
| Operation and maintenance of facilities                 | -                 | 268              | -                             | -172                         |
| Operation and maintenance of equipment                  | -                 | 375              | -                             | -30                          |
| Supplies and materials                                  | -                 | 119              | -                             | -72                          |
| <b>Total Decreases</b>                                  | <b>-</b>          | <b>30,821</b>    | <b>-17</b>                    | <b>-6,220</b>                |

| Total Changes           | FY 2018<br>PB FTE | FY 2018<br>PB BA | FY 2018 +/-<br>FY 2017<br>FTE | FY 2018 +/-<br>FY 2017<br>BA |
|-------------------------|-------------------|------------------|-------------------------------|------------------------------|
| Total Increases         | -                 | 1,709            | -                             | +26                          |
| Total Decreases         | -                 | 30,821           | -17                           | -6,220                       |
| <b>Total Net Change</b> | <b>162</b>        | <b>32,530</b>    | <b>-17</b>                    | <b>-6,194</b>                |

## Budget Authority by Activity

(Dollars in Thousands)

| Activity   | FY 2016<br>FTE | FY 2016<br>Final | FY 2017<br>FTE | FY 2017<br>Annualized<br>CR | FY 2018<br>FTE | FY 2018<br>President's<br>Budget |
|--|----------------|------------------|----------------|-----------------------------|----------------|----------------------------------|
| <b>Enforcement and Regional Operations</b>                 | 112            | 25,561           | 118            | 25,816                      | 102            | 20,482                           |
| <b>Programs and Policy</b>                                 | 32             | 7,303            | 34             | 7,439                       | 33             | 6,626                            |
| <b>Planning and Business Administration<br/>Management</b> | 26             | 5,934            | 27             | 5,469                       | 27             | 5,422                            |
| <b>Total, Budget Authority</b>                             | <b>170</b>     | <b>38,798</b>    | <b>179</b>     | <b>38,724</b>               | <b>162</b>     | <b>32,530</b>                    |

## Authorizing Legislation

(Dollars in Thousands)

| Authorizing Legislation | FY 2017<br>Amount<br>Authorized | FY 2017<br>Amount<br>Appropriated | FY 2018<br>Amount<br>Authorized | FY 2018<br>President's<br>Budget |
|-------------------------|---------------------------------|-----------------------------------|---------------------------------|----------------------------------|
| Office for Civil Rights | Indefinite                      | \$38,724                          | Indefinite                      | \$32,530                         |
| <b>Appropriation</b>    | -                               | <b>\$38,724</b>                   | -                               | <b>\$32,530</b>                  |

### OCR Legal Authorities

- Social Security Act of 1934, Section 508; 42 U.S.C. § 708
- The Communications Act of 1934; 47 U.S.C. § 151 *et seq.*
- Public Health Service Act of 1944; 42 U.S.C. Chapter 6A; Title VI, 42 U.S.C. §291 (known, in combination with Title XVI, as the Hill-Burton Act); Title XVI, 42 U.S.C. § 300 (known, in combination with Title VI, as the Hill Burton Act);. Section 533, 42 U.S.C. §290.; Section 542, 42 U.S.C. § 290dd-1; Section 794, 42 U.S.C. § 295m,. Section 855, 42 U.S.C. § 296g,. Section 1908, 42 U.S.C. §300w-7,. Section 1947, 42 U.S.C. § 300x-57
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d *et seq.*
- Treatment and Rehabilitation Act of 1970, Section 321, 91 P.L. 616 Part C, Section 321
- Comprehensive Health Manpower Training Act of 1971, 92 P.L. 157 Title I Subpart III, Part H Section 110
- Nurse Training Act of 1971, 92 P.L. 158
- Drug Abuse Prevention, Treatment and Rehabilitation Act of 1972, 21 U.S.C. 1101
- Title IX of the Education Amendments of 1972, 20 U.S.C. § 1681 *et seq.*
- Rehabilitation Act of 1973, 29 U.S.C. § 701 *et seq.*, Section 504 and Section 508–Amendments of 1973
- The Church Amendments, 42 U.S.C. § 300a-7
- Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1974, 93 P.L. 282
- National Research Service Award Act of 1974, 93 P.L. 348
- The Age Discrimination Act of 1975, 42 U.S.C. § 6101 *et seq.*
- Public Telecommunications Financing Act of 1978 Section 395, 95 P.L. 567 Section 201
- The Low-Income Home Energy Assistance Act of 1981, 42 U.S.C. § 8625
- Omnibus Reconciliation Act of 1981, 97 P.L. 35
- The Community Services Block Grant Act of 1981, 42 U.S.C. §9918
- Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131
- Improving America’s Schools Act of 1994 Part E, 103 P.L. 382
- Health Insurance Portability and Accountability Act of 1996
- Coats-Snowe Amendment of 1996, 42 U.S.C. § 238n
- Small Business Job Protection Act of 1996, Section 1808(c), 104 P.L. 188
- Patient Safety and Quality Improvement Act of 2005, 109 P.L. 41
- Genetic Information Nondiscrimination Act of 2008, 110 P.L. 233
- Health Information Technology for Economic and Clinical Health Act, American Recovery and Investment Act of 2009, 111 P.L. 5
- Patient Protection and Affordable Care Act of 2010, Section 1303(b)(2)(A)(iii), Section 1553, Section 1557, 42 U.S.C. § 18116–
- The Family Violence Prevention and Services Act of 2010, formerly part of the Child Abuse Amendments of 1984; 42 U.S.C. §10401 *et seq.*
- Consolidated Appropriations Act of 2016, Div. H, Section 507, 114 P.L. 113

## Appropriations History

| Details                 | Budget Estimate<br>to Congress | House<br>Allowance | Senate<br>Allowance | Appropriations |
|-------------------------|--------------------------------|--------------------|---------------------|----------------|
| <b>2008</b>             | -                              | -                  | -                   | -              |
| Appropriation           | -                              | -                  | -                   | -              |
| Base                    | 33,748,000                     | 33,748,000         | 33,748,000          | 31,628,000     |
| Rescission (PL 110-161) | -                              | -                  | -                   | (553,000)      |
| Subtotal                | 33,748,000                     | 33,748,000         | 33,748,000          | 31,075,000     |
| Trust Funds             | -                              | -                  | -                   | -              |
| Base                    | 3,314,000                      | 3,314,000          | 3,314,000           | 3,314,000      |
| Rescission (PL 110-161) | -                              | -                  | -                   | (57,000)       |
| Subtotal                | 3,314,000                      | 3,314,000          | 3,314,000           | 3,257,000      |
| <b>2009</b>             | -                              | -                  | -                   | -              |
| Appropriation           | -                              | -                  | -                   | -              |
| Base                    | 36,785,000                     | 36,785,000         | 36,785,000          | 36,785,000     |
| Subtotal                | 36,785,000                     | 36,785,000         | 36,785,000          | 36,785,000     |
| Trust Funds             | -                              | -                  | -                   | -              |
| Base                    | 3,314,000                      | 3,314,000          | 3,314,000           | 3,314,000      |
| Subtotal                | 3,314,000                      | 3,314,000          | 3,314,000           | 3,314,000      |
| <b>2010</b>             | -                              | -                  | -                   | -              |
| Appropriation           | -                              | -                  | -                   | -              |
| Base                    | 37,785,000                     | 37,785,000         | 37,785,000          | 37,785,000     |
| Rescission (PL 111-117) | -                              | -                  | -                   | (6,000)        |
| Subtotal                | 37,785,000                     | 37,785,000         | 37,785,000          | 37,779,000     |
| Trust Funds             | -                              | -                  | -                   | -              |
| Base                    | 3,314,000                      | 3,314,000          | 3,314,000           | 3,314,000      |
| Subtotal                | 3,314,000                      | 3,314,000          | 3,314,000           | 3,314,000      |
| <b>2011</b>             | -                              | -                  | -                   | -              |
| Appropriation           | -                              | -                  | -                   | -              |
| Base                    | 44,382,000                     | 44,382,000         | 44,382,000          | 37,785,000     |
| Rescission (PL 112-10)  | -                              | -                  | -                   | (76,000)       |
| Subtotal                | 44,382,000                     | 44,382,000         | 44,382,000          | 37,709,000     |
| Trust Funds             | -                              | -                  | -                   | -              |
| Base                    | 3,314,000                      | 3,314,000          | 3,314,000           | 3,314,000      |
| Rescission (PL 112-10)  | -                              | -                  | -                   | (7,000)        |
| Subtotal                | 3,314,000                      | 3,314,000          | 3,314,000           | 3,307,000      |
| <b>2012</b>             | -                              | -                  | -                   | -              |
| Appropriation           | -                              | -                  | -                   | -              |
| Base                    | 44,382,000                     | 41,016,000         | 41,016,000          | 41,016,000     |
| Rescission (PL 112-74)  | -                              | -                  | -                   | (78,000)       |
| Subtotal                | 44,382,000                     | 41,016,000         | 41,016,000          | 40,938,000     |

## Appropriations History (Continued)

| Details               | Budget Estimate<br>to Congress | House<br>Allowance | Senate<br>Allowance | Appropriations |
|-----------------------|--------------------------------|--------------------|---------------------|----------------|
| <b>2013</b>           | -                              | -                  | -                   | -              |
| Appropriation         |                                | -                  | -                   | -              |
| Base                  | 38,966,000                     | -                  | 38,966,000          | 40,938,000     |
| Sequestration         | -                              | -                  | -                   | (2,059,000)    |
| Rescission (PL 113-6) | -                              | -                  | -                   | (82,000)       |
| Transfers (PL 112-74) | -                              | -                  | -                   | (182,000)      |
| Subtotal              | 38,966,000                     |                    | 38,966,000          | 38,615,000     |
| <b>2014</b>           | -                              | -                  | -                   | -              |
| Appropriation         |                                | -                  | -                   | -              |
| Base                  | 42,205,000                     | -                  | 42,205,000          | 38,798,000     |
| Subtotal              | 42,205,000                     |                    | 42,205,000          | 38,798,000     |
| <b>2015</b>           | -                              | -                  | -                   | -              |
| Appropriation         |                                | -                  | -                   | -              |
| Base                  | 41,205,000                     | -                  | 38,798,000          | 38,798,000     |
| Subtotal              | 41,205,000                     |                    | 38,798,000          | 38,798,000     |
| <b>2016</b>           | -                              | -                  | -                   | -              |
| Appropriation         |                                | -                  | -                   | -              |
| Base                  | 42,705,000                     | -                  | 38,798,000          | 38,798,000     |
| Subtotal              | 42,705,000                     |                    | 38,798,000          | 38,798,000     |
| <b>2017</b>           | -                              | -                  | -                   | -              |
| Appropriation         |                                | -                  | -                   | -              |
| Base                  | 42,705,000                     | 38,798,000         | 38,798,000          | 38,798,000     |
| Rescission            |                                | 38,798,000         | 38,798,000          | -74,000        |
| Subtotal              | 42,705,000                     | 38,798,000         | 38,798,000          | 38,724,000     |

## Summary of the Request

The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) is the primary defender of the public's right to privacy and security of protected health information and non-discriminatory access to Federally funded health and human services. Through prevention and elimination of unlawful discrimination on the basis of race, color, national origin, disability, age, sex, and religion, and through protection of conscience and of the privacy and security of individually identifiable health information, OCR helps HHS carry out its overall mission of improving the health and well-being of all people affected by the Department's many programs. To most effectively accomplish this important undertaking, OCR actively partners with government and private sector entities at the local, state, and national levels.

For FY 2018, OCR requests \$32,530,000, a decrease of \$6.194 million from the FY17 Annualized CR Level to fund its nation-wide health care anti-discrimination, conscience, and health information privacy and security mission performed and supported by OCR's three activities.

- A. \$20,482,000 for Enforcement and Regional Operations – a decrease of \$5,334,000
- B. \$6,626,000 for Programs and Policy – a decrease of \$813,000
- C. \$5,422,000 for Planning and Business Administration Management – a decrease of \$47,000

## Enforcement and Regional Operations

(Dollars in Thousands)

| Program                 | FY 2016<br>Final | FY 2017<br>Annualized<br>CR | FY 2018<br>President's<br>Budget | FY 2018 +/-<br>FY 2017 |
|-------------------------|------------------|-----------------------------|----------------------------------|------------------------|
| <b>Budget Authority</b> | 25,561           | 25,816                      | 20,482                           | -5,334                 |
| <b>FTE</b>              | 112              | 118                         | 102                              | -16                    |

### Program Description

The Enforcement and Regional Operations (ERO) Division of OCR includes both central intake and triage of complaints as well as OCR's eight regional offices<sup>5</sup> across the nation that are primarily responsible for enforcement of OCR's legal authorities. These offices meet this responsibility through the receipt, investigation, and enforcement of complaints as well as breach reports, compliance reviews, technical assistance, and local outreach activities.

### Enforcement: Lifecycle of Complaints and Compliance Reviews

#### *Complaint Receipt*

The enforcement lifecycle begins at OCR headquarters with the Centralized Case Management Operations (CCMO) team, which receives complaints alleging the violation of one or more of OCR's legal authorities by a covered entity. OCR's efforts over the last few years to streamline its case management operations have culminated in a fully redesigned complaint receipt process. Members of the public can file complaints through OCR's online complaint portal, regular mail to OCR's offices, fax, and email. In the CCMO, complaints are assessed to determine which cases can be closed without formal investigation (e.g. as non-jurisdictional or with the provision of minor technical assistance) and which complaints should be transferred to an OCR regional office for further consideration or investigation. These redesign efforts have enabled OCR to increase efficiency in its operations, even as the volume of complaints has increased over 200 percent since OCR's on-line complaint portal went live in FY 2012. Due to enhanced management efficiencies, the CCMO currently makes decisions on administrative closures, technical assistance closures, and regional referrals within 15 days of receipt of the complaint.

#### *Investigation*

Complaint investigations, breach report investigations, and compliance reviews are conducted by OCR regional offices. Each regional office employs highly skilled investigators responsible for examining allegations of discrimination or health information privacy/security violations and determining covered entity or business associate<sup>6</sup> compliance with its legal responsibilities. Through the understanding and application of OCR's legal authorities and jurisdiction, staff conducts comprehensive fact-finding investigations to determine levels of compliance across all regulations for each covered entity involved in a case. Investigations can result in a finding of no violation, the provision of technical assistance to address specific problem areas, or, where there are indications of systemic noncompliance, the negotiation of formal settlement agreements or more formal enforcement action.

<sup>5</sup> Region I (Boston), Region II (New York), Region III (Philadelphia), Region IV (Atlanta), Region V (Chicago), Region VI (Dallas), Region VIII (Denver), and Region IX (San Francisco).

<sup>6</sup> Business associates are entities contracted, hired, or otherwise employed by a covered entity that have access to or otherwise maintain PHI.

### *Enforcement*

When OCR determines there has been a violation of one or more of its legal authorities, OCR takes enforcement action. In these instances, the regional office works closely with OCR Headquarters and the Office of General Counsel to review the facts of the investigation and produce a letter of findings after approval by the OCR Director. When OCR sends the letter of finding to an entity, OCR may offer to provide technical assistance to promote voluntary compliance or engage in a settlement negotiation with a corrective action plan. In instances where entities are uncooperative, OCR can, depending on the statute at issue, seek rescission of HHS funding to the entity, pursue civil money penalties, or refer the case to the Department of Justice for litigation.

In addition to complaints submitted by the public, OCR is authorized to open compliance reviews of specific entities when it has reason to believe that an entity may have violated one of the laws that OCR enforces. OCR learns of such potential violations from a variety of sources, including through media reports and situations in which significant numbers of individual complaints have been filed against an entity. Additionally, OCR initiates an investigation in all cases where the entity has reported a health information privacy breach affecting 500 or more individuals as required by HIPAA. These compliance reviews and breach report investigations can enable OCR to evaluate compliance issues even before violations result and focus on systemic reform. The investigation and enforcement process for compliance reviews and breach report investigations, along with their outcome, follow the same processes noted above for complaint resolution.

### *Technical Assistance*

In addition to OCR's work to ensure compliance through enforcement, OCR promotes voluntary compliance through technical assistance and outreach. OCR delivers impact through strong technical assistance to covered entities. This collaboration across OCR teams ensures that covered entities can receive the information, guidance, and support required to achieve voluntary compliance with their legal responsibilities under civil rights and privacy/security laws.

### *Outreach*

Another major component of OCR's voluntary compliance portfolio includes outreach. A robust outreach program enables OCR to:

- A. Inform individuals, consumer groups, advocacy groups, and other stakeholders of their rights under civil rights and health information privacy laws and receive input about challenges and potential violations on which OCR should focus.
- B. Educate covered entities about their responsibilities under civil rights and health information privacy laws and provide guidance on means to ensure compliance.

OCR staff engages with stakeholders through many different avenues including: scheduling and participating in conferences and briefings, as well as smaller meetings and listening sessions; hosting workshops, webinars, and trainings; disseminating materials in a variety of forums; training law and medical students and other stakeholders; and convening and participating in various working groups. In addition, OCR's regional staffs participate in inter-agency and intra-agency activities and work collaboratively with federal partners to provide such outreach and offer technical assistance where appropriate.

OCR's nationwide outreach efforts serve to educate and provide guidance to federal agencies, covered entities, consumers, and other stakeholders. In addition, these efforts allow OCR to build relationships, create opportunities for dialogue, identify opportunities for guidance/clarification of OCR's work, and ensure that OCR is able to anticipate challenges to address them proactively before they arise.

### **Accomplishments**

ERO's accomplishments demonstrate OCR's commitment to ensuring the protection of patients and consumers from discrimination and health information privacy and security violations. Whether the result is a long-lasting stakeholder relationship or a carefully negotiated settlement, each example of success represents ERO's staff, in collaboration with OCR headquarters and OGC, dedicating time—either through investigation, enforcement, technical assistance, or outreach—to ensure a successful change in the covered entity's behavior. Through settlements, OCR holds entities accountable for compliance with the law through a monitored corrective action plan and provides training/technical assistance to ensure meaningful and long-lasting change on the part of the covered entity. For example:

- In June 2016, for the first time in OCR's history and based on authority under the Health Information Technology for Economic and Clinical Health (HITECH) Act, OCR's enforcement actions resulted in a settlement with a business associate, Catholic Health Care Services of the Archdiocese of Philadelphia (CHCS). CHCS provides management and information technology services to six skilled nursing facilities. OCR investigated CHCS for alleged violations of the HIPAA Security Rule after the theft of a mobile device compromised the PHI of hundreds of nursing home residents. As a business associate, CHCS is responsible for ensuring the privacy and security of patient health information it handles on behalf of covered entities. Following investigation and settlement negotiations, CHCS agreed to a resolution amount of \$650,000 and corrective action plan that includes updating of risk analyses and policies and procedures, increased risk management, training of staff, and two years of monitoring by OCR.
- In August 2016, OCR announced a settlement agreement with Advocate Health and Hospitals Corporation of Illinois (Advocate) for multiple violations of the HIPAA Privacy and Security Rules which were discovered after OCR investigated three breaches involving the health information of over 4 million individuals. Advocate agreed to a settlement monetary payment of \$5.55 million and a corrective action plan that includes updating risk analyses, policies, and procedures, increasing risk management, implementing device and media controls, training staff, and undergoing three years of monitoring by OCR. This demonstrates the size, scale, and expansive impact of a single covered entity's negligence, and the importance of ensuring that entities that make no significant attempt to come into compliance are held accountable.
- In December 2016, OCR entered into a Voluntary Resolution Agreement with the Erie County Department of Social Services (ECDSS) of Buffalo, New York, to ensure that appropriate language assistance services are provided to individuals with limited English proficiency (LEP), who ECDSS serves. The Agreement resolves a complaint filed by Neighborhood Legal Services on behalf of five individuals alleging that ECDSS failed to provide language assistance and important documentation in their native languages. OCR investigated the complaint under Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in any program or activity receiving Federal financial assistance. As a result of OCR's investigation, ECDSS voluntarily entered this Agreement and agreed to take multiple actions to improve its language assistance services.

**Funding History**

| <b>Fiscal Year</b>    | <b>Amount</b> |
|-----------------------|---------------|
| FY 2013               | \$27,030,000  |
| FY 2014               | \$26,698,000  |
| FY 2015               | \$25,091,000  |
| FY 2016               | \$25,561,000  |
| FY 2017 Annualized CR | \$25,816,000  |

**Budget Request**

The FY 2018 request for Enforcement and Regional Operations is \$20,482,000, a decrease of \$5,334,000 from the FY 2017 Annualized CR level. This level of budget authority will continue to fund regional operations and enforcement and the corresponding oversight, less the reduction of 16 FTEs spread throughout OCR's nation-wide footprint, associated personnel overhead and operating costs, and related support activities. In addition, to offset a portion of these reductions, OCR will begin utilizing its monetary settlement funding to pay for some enforcement costs, such as additional attorney services and overhead costs.

## Programs and Policy

(Dollars in Thousands)

| Program                 | FY 2016<br>Final | FY 2017<br>Annualized<br>CR | FY 2018<br>President's<br>Budget | FY 2018 +/-<br>FY 2017 |
|-------------------------|------------------|-----------------------------|----------------------------------|------------------------|
| <b>Budget Authority</b> | 7,303            | 7,439                       | 6,626                            | -813                   |
| <b>FTE</b>              | 32               | 34                          | 33                               | -1                     |

### Program Description

Programs and Policy consists of two components in OCR's headquarters, the Civil Rights Division (CRD) and the Health Information Privacy (HIP) Division.

#### **Civil Rights Division (CRD)**

Access to quality, affordable health care for individuals and families is essential to realizing equity within the nation's health care and human services systems and to advancing the health and well-being of members of all communities. CRD works to safeguard individuals' access to health care, health coverage, and human services without discrimination, as well as protecting conscience rights.

To ensure the public is afforded adequate protection from discrimination in healthcare and human services, CRD enforces a range of essential civil rights authorities, which include: Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, Title II of the Americans with Disabilities Act of 1990, Sections 1553 and 1557 of the Affordable Care Act (ACA). OCR also enforces laws such as the Weldon, Church, and Coats-Snow Amendments, protecting the conscience rights of individuals, providers, and entities that object to abortion and sterilization procedures.

Because of the many cross-cutting areas in its nondiscrimination authorities and activities, CRD has developed key program areas within its legal authorities, including ensuring nondiscrimination in child welfare services (both foster care and adoption), community living for persons with disabilities, and effective communication in hospitals for individuals with LEP and individuals who are deaf or hard of hearing or have other disabilities.

In FY2016, OCR issued a final rule concerning the scope of prohibited sex and national origin discrimination under Section 1557 of the ACA (which also prohibits discrimination on the bases of race, color, age, and disability). After receiving approximately 24,000 comments from stakeholders through a public notice and comment rulemaking process OCR promulgated a final Section 1557 regulation that expanded and elaborated upon the activities OCR considered prohibited sex discrimination (specifically adding gender identity and termination of pregnancy)<sup>7</sup>

<sup>7</sup> On December 31, 2016, the U.S. District Court for the Northern District of Texas issued an opinion in *Franciscan Alliance, Inc. et al v. Burwell*, enjoining the Section 1557 regulation's prohibitions against discrimination on the basis of gender identity and termination of pregnancy on a nationwide basis. Accordingly, OCR has not enforced these two provisions of the regulation and may not enforce them while the injunction remains in place.

and national origin discrimination (adding new LEP provisions) in the health care context. In addition, the Section 1557 regulation extends federal healthcare nondiscrimination provisions to the Health Insurance Marketplaces, insurance companies that offer plans in the Marketplaces, and HHS's own health programs and activities.

CRD has developed model notices of nondiscrimination, model grievance procedures, and sample taglines in the 64 most common languages spoken by individuals with LEP across the U.S., in an effort to proactively increase compliance with the Section 1557 regulation. In addition, CRD is working across its regions to train investigators on the handling of civil rights complaints under Section 1557 of the ACA.

OCR chairs the HHS Language Access Steering Committee, which was established in 2012 to ensure that federal agencies comply with Executive Order 13166 by providing meaningful access to their services for individuals with LEP. Through OCR's leadership, the Committee oversees and coordinates ongoing Departmental efforts to improve access for individuals with LEP to programs administered by HHS. In FY 2016, the Steering Committee developed an online learning module to support all HHS agencies in training their employees on competently serving individuals with LEP. This module includes extensive language access reference materials, tools and effective practices to help HHS employees ensure language accessibility, including through effective utilization of telephonic interpretation and document translation services consistent with the HHS Language Access Plan. OCR will continue to work with colleagues across the Department to ensure that all individuals, including those with LEP, have access to HHS-conducted programs and activities, and can obtain the health care, health coverage, and human services they need to lead fulfilling lives.

### **Accomplishments**

- In May 2016 OCR issued new guidance to assist long term care facilities in complying with their civil rights responsibilities and obligations under regulations by CMS to ensure their residents receive services in the most integrated setting appropriate to their needs. A critical responsibility of long term care facilities is to make referrals to appropriate community assessment agencies. These referrals will help individuals successfully transition into the community.
- As described above, in May 2016, OCR issued a final regulation titled Nondiscrimination in Health Programs and Activities, which implements Section 1557 of the ACA.<sup>8</sup>
- In July 2016, OCR issued a report on its national compliance review initiative, "Protecting the Civil Rights and Health Information Privacy of People Living with HIV/AIDS." Focusing on HIV testing, counseling and treatment services, OCR conducted compliance reviews of twelve hospitals in the cities most affected by HIV/AIDS to examine the ways in which hospitals ensure equal access for HIV positive individuals to programs and services, meaningful access for LEP individuals, and the privacy and security of individuals' health information and their rights with regard to that information. OCR evaluated each hospital's policies and practices

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<sup>8</sup> As noted above, on December 31, 2016, the U.S. District Court for the Northern District of Texas issued an opinion in *Franciscan Alliance, Inc. et al v. Burwell*, enjoining the Section 1557 regulation's prohibitions against discrimination on the basis of gender identity and termination of pregnancy on a nationwide basis.

and found that, while the hospitals under review had implemented some policies and practices to promote equal access to services and evidence-based interventions to increase the number of newly diagnosed individuals entering care or remaining in treatment, some barriers remained. The report summarizes OCR's findings and provides best practices for hospitals serving individuals living with HIV/AIDS.

- In October 2016, in partnership with the HHS Administration on Children and Families (ACF), and the Department of Justice (DOJ), OCR issued a joint technical assistance letter to state and local child welfare agencies and state court systems on the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in programs receiving federal financial assistance. The Title VI/Child Welfare technical assistance was released as part of an ongoing partnership between HHS OCR, HHS ACF and DOJ to help child welfare agencies protect the welfare of children and ensure compliance with civil rights laws. This technical assistance continues OCR's inter-agency partnership efforts, following on similar joint technical assistance guidance that the three agencies issued in August 2015 to clarify the requirements of Section 504 of the Rehabilitation Act of 1973 and Title II of the Americans with Disabilities Act of 1990.

### **Health Information Privacy (HIP) Division**

The collection and sharing of health information is critical to improving the quality and safety of health care and advancing medical discoveries that can improve the health and wellbeing of individuals and populations. However, in the face of increasing cybersecurity threats targeting the health care sector and public concerns about the privacy and security of health data, active stewardship and enforcement of privacy and security regulations are critical to building and maintaining public trust in robust uses of health information.

HIP works to ensure the protection of health information privacy from unauthorized disclosure and to enforce the right of individual patients to access their health information. To ensure health information privacy and security, HIP enforces key legal authorities, which most notably include: the Health Insurance Portability and Accountability Act (HIPAA) of 1996, the Patient Safety and Quality Improvement Act (PSQIA) of 2005, and Section 13402 of the HITECH Act (American Recovery and Reinvestment Act) of 2009.

Through its innovative efforts to promote and enforce HIPAA privacy and security protections, HIP plays a leading role in supporting both public and private sector efforts to improve health care quality and reduce costs, including: advancing interoperability of digital health information; building public trust in health data sharing pursuant to the newest statute in this area -- the 21<sup>st</sup> Century Cures Act; helping to build the privacy and security framework for public and private sector research initiatives that yield medical discoveries; as well as supporting public health surveillance and emergency preparedness and response activities. In addition, HIP utilizes the authority it has to ensure its awareness of mass breaches and to proactively conduct audits.

HIP also oversees a nationwide breach notification reporting system to address the HITECH Act requirement that HIPAA covered entities and business associates file reports of all breaches of the privacy of unsecured protected health information. Breach reports affecting 500 or more individuals are automatically transferred to the regional offices for a compliance review; compliance reviews are also regularly undertaken in response to breach reports affecting

smaller numbers of individuals.

Breach reports have become a critical tool for bolstering the cybersecurity of the health care system; they help alert OCR and the industry about emerging threats (for example, ransomware and other hacking incidents), enable OCR to assist entities in remediating the particular vulnerabilities that caused the breach, and facilitate strategic prioritization of guidance and enforcement resources. OCR regularly shares information with stakeholders to inform them not only about problems it has uncovered but also methods through which they can maintain the security of their data

As part of its enforcement portfolio, OCR examines the HIPAA compliance of randomly selected entities through OCR's audit program, to help promote compliance with the HIPAA regulations. HIP's audit program, which is required under the HITECH Act, leverages a proactive and systemic look at industry compliance successes and struggles. While OCR's incident response efforts, triggered by a breach report or investigation of an individual complaint or other indication of noncompliance, typically address potential violations after they have occurred, the audit program enables OCR to address vulnerabilities before they result in breaches, unauthorized disclosures, or other HIPAA violations.

Following on the comprehensive evaluation conducted in Phase 1 of OCR's audit program, OCR designed and launched Phase 2 of the program to address the critical lessons learned. Phase 2 will evaluate the compliance of 209 covered entities and business associates with selected provisions of the HIPAA Privacy, Security and Breach Notification Rules. Phase 2 will be used as a tool to evaluate industry compliance and help reveal best practices as well as patterns of noncompliance that should be the focus of more targeted guidance and outreach. A robust audit protocol, covering every aspect of HIPAA's regulations, is available on the OCR website and can be used by covered entities and business associates to conduct their own self-evaluations.

Although only a portion of covered entities and business associates are audited, the audit program is already helping to foster a culture of compliance as entities self-evaluate their compliance activities in anticipation of a potential audit. As with the HIP audit pilot program, conducted in 2011-2012, HIP will prepare an overall evaluation of this second audit phase, in order to continue to build the more permanent audit program established under the HITECH Act.

### **Accomplishments**

- New and emerging technologies to track and monitor health raise significant questions in how they interact with HIPAA which was passed before these technologies existed and applies only to specific entities in the health care space. OCR guidance about how HIPAA applies to these new technologies and what standards should be adopted to ensure privacy and security is critical. For over a year and a half, HIP has maintained and regularly updated a website, <http://hipaaqportal.hhs.gov>, aimed at health technology developers to help them understand whether or not they are covered by HIPAA, and if so, how to comply with its regulations. The website has been instrumental for directly engaging with and answering questions from a sizeable and growing stakeholder population. For example, OCR issued guidance on HIPAA requirements with respect to uses of cloud technologies, an issue brought to our attention by users of our technology portal.

- In early 2016, HIP issued guidance on the right of individuals to access and receive a copy of their health information, including the ability to download that information into mobile health care tools or “apps” or to send their health information to a researcher. Most recently, HIP worked with the HHS Office of the National Coordinator for Health IT (ONC) to develop consumer-friendly videos in English and Spanish summarizing the HIPAA access right, as access is critical for delivery system reform.
- In early 2016, HIP released a crosswalk document between the HIPAA Security Rule and the National Institute of Standards and Technology (NIST) Cybersecurity Framework. Developed in partnership with NIST and ONC, the crosswalk document identifies mappings between the NIST Framework for Improving Critical Infrastructure Cybersecurity (the Cybersecurity Framework) and the HIPAA Security Rule. The crosswalk also includes mappings to other commonly used security frameworks; the overarching goal is to help organizations in any industry understand, communicate, and manage cybersecurity risks. HIP has also issued guidance on ransomware, a particularly pernicious cybersecurity threat. Since February 2016, HIP also has released monthly newsletters on timely cybersecurity topics; all newsletters are available on the website.
- In mid-2016, HIP published guidance regarding questions concerning the Patient Safety and Quality Improvement Act of 2005, and its implementing regulation, the Patient Safety and Quality Improvement Final Rule. The Guidance Regarding Patient Safety Work Product and Providers’ External Obligations is intended to provide clarity in response to recurring questions about what information that a provider creates or assembles can become patient safety work product. This Guidance also clarifies how providers can satisfy external obligations related to information collection activities consistent with the Patient Safety Act and Patient Safety Rule.

**Funding History**

| <b>Fiscal Year</b>    | <b>Amount</b> |
|-----------------------|---------------|
| FY 2013               | \$7,759,000   |
| FY 2014               | \$7,683,000   |
| FY 2015               | \$7,899,000   |
| FY 2016               | \$7,303,000   |
| FY 2017 Annualized CR | \$7,439,000   |

**Budget Request**

The FY 2018 request for Programs and Policy is \$6,626,000, a decrease of \$813,000 from the FY 2017 Annualized CR level. This level of budget authority will continue to fund policy, rulemaking, and other associated activities less a reduction in attorney support activities and other overhead items. In addition, to offset a portion of these reductions, OCR will begin utilizing its monetary settlement funding to pay for some enforcement costs, such as additional attorney services and overhead costs.

## Planning and Business Administration Management

(Dollars in Thousands)

| Program                 | FY 2016<br>Final | FY 2017<br>Annualized<br>CR | FY 2018<br>President's<br>Budget | FY 2018 +/-<br>FY 2017 |
|-------------------------|------------------|-----------------------------|----------------------------------|------------------------|
| <b>Budget Authority</b> | 5,934            | 5,469                       | 5,422                            | -47                    |
| <b>FTE</b>              | 26               | 27                          | 27                               | -                      |

### Program Description

The Director's Office is comprised of the Director of OCR, the Principal Deputy, the Chief of Staff, and support staff of program and administrative staff members. The Director's Office sets OCR's mission, vision, strategy, and implementation plans, and oversees all of OCR's operations, initiatives, and activities, and for budgeting purposes is listed in the Planning and Business Administration Management (PBAM).

Planning and Business Administration Management (PBAM) within OCR supports the agency's overall program operations, and strives to improve operational efficiency. PBAM includes headquarters' personnel within the Director's Office, Deputy Director's Office, Budget Team, Executive Secretariat, Human Resources Team, and Information Technology Team.

Budget is responsible for a wide variety of financial, procurement, and sustainability tasks. It is accountable for budget execution and formulation and includes such diverse responsibilities as travel management, purchase card oversight, reimbursable accounting, and other general support of program operations. The Executive Secretariat (Exec Sec) focuses on public, intra-, and inter-Departmental clearances and correspondence. Exec Sec administers the Freedom of Information Act (FOIA) program, responds to Congressional inquiries, controls constituent correspondence and HHS clearances and administers the Ethics program and Continuity of Operations (COOP). Human Resources leads OCR's overall personnel program, engaging with the HHS Human Resources office on hiring, benefits, time and attendance, and labor and employee; as well as, helping employees and managers understand and implement HHS' policies and processes. The Information Technology (IT) team ensures computer, network, and security needs are met and OCR's essential communications functions continue uninterrupted. IT manages software, equipment, and connectivity and ensures technology enhancements and efficiencies are implemented, staff is adequately trained on technology and the use of OCR's Program Information Management System (PIMS).

### Accomplishments

- OCR has undertaken many initiatives of varying scale to improve, strengthen, and streamline operations. Small scale initiatives that have had a positive improvement on PBAM's overall efficiency include: the conversion of clearance requests to an electronic system; a system-wide technology refresh; records management improvements; the development of a Shared Talents Network to enable staff from different offices to contribute their skills to high priority projects and enjoy new professional development opportunities; and initiation of internal workgroups for specific process improvements.

- PIMS is OCR’s custom documentation and record system developed for business processes, correspondence, and compliance information used to support enforcement activities. While improvements and efficiencies have been achieved by the use of PIMS, PBAM is in the midst of a multi-year process to improve PIMS. PIMS allows real time access to case status, tracking, results reporting, electronic transaction folders, and various other information management requirements. Implementing updates to PIMS is a high priority to allow for both program expansion and process efficiency, while still ensuring it meets both security standards and the daily demands of OCR’s staff.

**Funding History**

| <b>Fiscal Year</b>    | <b>Amount</b> |
|-----------------------|---------------|
| FY 2013               | \$4,843,000   |
| FY 2014               | \$4,417,000   |
| FY 2015               | \$5,808,000   |
| FY 2016               | \$5,934,000   |
| FY 2017 Annualized CR | \$5,469,000   |

**Budget Request**

The FY 2018 request for Planning and Business Administration Management is \$5,422,000, a decrease of \$47,000 from the FY 2017 Annualized CR level. This level of budget authority will continue to fund essential leadership and administrative support activities at approximately the current level. The reduction reflects a decrease in overhead costs that can be absorbed without impact.

**Budget Authority by Object Class**

(Dollars in Thousands)

| Object Class Code | Description                                   | FY 2017 Annualized CR | FY 2018 President's Budget | FY 2018 +/- FY 2017 |
|-------------------|---|-----------------------|----------------------------|---------------------|
| 11.1              | Full-time permanent                           | 16,941                | 15,671                     | -1,270              |
| 11.3              | Other than full-time permanent                | 711                   | 725                        | 14                  |
| 11.5              | Other personnel compensation                  | 331                   | 337                        | 6                   |
| 11.7              | Military personnel                            | 161                   | 97                         | -64                 |
| <b>Subtotal</b>   | <b>Personnel Compensation</b>                 | <b>18,144</b>         | <b>16,830</b>              | <b>-1,314</b>       |
| 12.1              | Civilian personnel benefits                   | 5,755                 | 5,387                      | -368                |
| 12.2              | Military benefits                             | 80                    | 33                         | -47                 |
| 13.0              | Benefits for former personnel                 | 31                    | 20                         | -11                 |
| <b>Total</b>      | <b>Pay Costs</b>                              | <b>24,010</b>         | <b>22,270</b>              | <b>-1,740</b>       |
| 21.0              | Travel and transportation of persons          | 335                   | 338                        | 3                   |
| 22.0              | Transportation of things                      | 10                    | 5                          | -5                  |
| 23.1              | Rental payments to GSA                        | 3,092                 | 2,967                      | -125                |
| 23.3              | Communications, utilities, and misc.          | 219                   | 196                        | -23                 |
| 24.0              | Printing and reproduction                     | 123                   | 119                        | -4                  |
| 25.1              | Advisory and assistance services              | -                     | -                          | -                   |
| 25.2              | Other services from non-Federal sources       | 276                   | 279                        | 3                   |
| 25.3              | Other goods and services from Federal         | 9,593                 | 5,564                      | -4,029              |
| 25.4              | Operation and maintenance of facilities       | 440                   | 268                        | -172                |
| 25.5              | Research and development contracts            | -                     | -                          | -                   |
| 25.6              | Medical care                                  | -                     | -                          | -                   |
| 25.7              | Operation and maintenance of equipment        | 405                   | 375                        | -30                 |
| 25.8              | Subsistence and support of persons            | -                     | -                          | -                   |
| <b>Subtotal</b>   | <b>Other Contractual Services (25.1-25.8)</b> | <b>10,714</b>         | <b>6,486</b>               | <b>-4,228</b>       |
| 26.0              | Supplies and materials                        | 191                   | 119                        | -72                 |
| 31.0              | Equipment                                     | 30                    | 30                         | -                   |
| 32.0              | Land and Structures                           | -                     | -                          | -                   |
| 41.0              | Grants, subsidies, and contributions          | -                     | -                          | -                   |
| 42.0              | Insurance claims and indemnities              | -                     | -                          | -                   |
| 44.0              | Refunds                                       | -                     | -                          | -                   |
| <b>Total</b>      | <b>Non-Pay Costs</b>                          | <b>14,714</b>         | <b>10,260</b>              | <b>-4,454</b>       |
| <b>Total</b>      | <b>Budget Authority by Object Class</b>       | <b>38,724</b>         | <b>32,530</b>              | <b>-6,194</b>       |

**Salaries and Expenses**

(Dollars in Thousands)

| Object Class Code | Description                             | FY 2017 Annualized CR | FY 2018 President's Budget | FY 2018 +/- FY 2017 |
|-------------------|---|-----------------------|----------------------------|---------------------|
| 11.1              | Full-time permanent                     | 16,941                | 15,671                     | -1,270              |
| 11.3              | Other than full-time permanent          | 711                   | 725                        | 14                  |
| 11.5              | Other personnel compensation            | 331                   | 337                        | 6                   |
| 11.7              | Military personnel                      | 161                   | 97                         | -64                 |
| <b>Subtotal</b>   | <b>Personnel Compensation</b>           | <b>18,144</b>         | <b>16,830</b>              | <b>-1,314</b>       |
| 12.1              | Civilian personnel benefits             | 5,755                 | 5,387                      | -368                |
| 12.2              | Military benefits                       | 80                    | 33                         | -47                 |
| 13.0              | Benefits for former personnel           | 31                    | 20                         | -11                 |
| <b>Total</b>      | <b>Pay Costs</b>                        | <b>24,010</b>         | <b>22,270</b>              | <b>-1,740</b>       |
| 21.0              | Travel and transportation of persons    | 335                   | 338                        | 3                   |
| 22.0              | Transportation of things                | 10                    | 5                          | -5                  |
| 23.3              | Communications, utilities, and misc.    | 219                   | 196                        | -23                 |
| 24.0              | Printing and reproduction               | 123                   | 119                        | -4                  |
| 25.1              | Advisory and assistance services        | -                     | -                          | -                   |
| 25.2              | Other services from non-Federal sources | 276                   | 279                        | 3                   |
| 25.3              | Other goods and services from Federal   | 9,593                 | 5,564                      | -4,029              |
| 25.4              | Operation and maintenance of facilities | 440                   | 268                        | -172                |
| 25.5              | Research and development contracts      | -                     | -                          | -                   |
| 25.6              | Medical care                            | -                     | -                          | -                   |
| 25.7              | Operation and maintenance of equipment  | 405                   | 375                        | -30                 |
| 25.8              | Subsistence and support of persons      | -                     | -                          | -                   |
| <b>Subtotal</b>   | <b>Other Contractual Services</b>       | <b>10,714</b>         | <b>6,486</b>               | <b>-4,228</b>       |
| 26.0              | Supplies and materials                  | 191                   | 119                        | -72                 |
| <b>Subtotal</b>   | <b>Non-Pay Costs</b>                    | <b>11,592</b>         | <b>7,263</b>               | <b>4,329</b>        |
| <b>Total</b>      | <b>Salary and Expenses</b>              | <b>35,602</b>         | <b>29,533</b>              | <b>-6,069</b>       |
| 23.1              | Rental payments to GSA                  | 3,092                 | 2,967                      | -125                |
| <b>Total</b>      | <b>Salaries, Expenses, and Rent</b>     | <b>38,694</b>         | <b>32,500</b>              | <b>-6,194</b>       |
| <b>Total</b>      | <b>Direct FTE</b>                       | <b>179</b>            | <b>162</b>                 | <b>-17</b>          |

**Detail of Full-Time Equivalent Employment**

| Detail              | FY 2016 Final Civilian | FY 2016 Final Military | FY 2016 Final Total | FY 2017 Estimate Civilian | FY 2017 Estimate Military | FY 2017 Estimate Total | FY 2018 Estimate Civilian | FY 2018 Estimate Military | FY 2018 Estimate Total |
|---------------------|------------------------|------------------------|---------------------|---------------------------|---------------------------|------------------------|---------------------------|---------------------------|------------------------|
| <b>Direct</b>       | 168                    | 2                      | 170                 | 177                       | 2                         | 179                    | 161                       | 1                         | 162                    |
| <b>Reimbursable</b> | 1                      | 0                      | 1                   | 1                         | 0                         | 1                      | 1                         | 0                         | 1                      |
| <b>Total FTE</b>    | <b>169</b>             | <b>2</b>               | <b>171</b>          | <b>178</b>                | <b>2</b>                  | <b>180</b>             | <b>162</b>                | <b>1</b>                  | <b>163</b>             |

**Average GS Grade**

FY 2014: GS 12

FY 2015: GS 12

FY 2016: GS 12

FY 2017: GS 12

FY 2018: GS 12

## Detail of Positions

| Detail                                  | FY 2016<br>Actual   | FY 2017<br>Annualized<br>CR | FY 2018<br>President's<br>Budget |
|---|---------------------|-----------------------------|----------------------------------|
| Executive level I                       | -                   | -                           | -                                |
| Executive level II                      | 2                   | 2                           | 3                                |
| Executive level III                     | 3                   | 3                           | 1                                |
| Executive level IV                      | -                   | -                           | -                                |
| Executive level V                       | 1                   | 1                           | 1                                |
| <b>Subtotal</b>                         | <b>6</b>            | <b>6</b>                    | <b>5</b>                         |
| <b>Total - Executive Level Salaries</b> | <b>\$1,029,839</b>  | <b>\$1,054,332</b>          | <b>\$913,032</b>                 |
| -                                       | -                   | -                           | -                                |
| GS-15                                   | 19                  | 22                          | 20                               |
| GS-14                                   | 22                  | 24                          | 26                               |
| GS-13                                   | 40                  | 33                          | 36                               |
| GS-12                                   | 62                  | 69                          | 55                               |
| GS-11                                   | 3                   | 4                           | 4                                |
| GS-10                                   | -                   | -                           | -                                |
| GS-9                                    | 7                   | 8                           | 9                                |
| GS-8                                    | 2                   | 2                           | 2                                |
| GS-7                                    | 3                   | 3                           | 3                                |
| GS-6                                    | 1                   | 2                           | 1                                |
| GS-5                                    | 1                   | 1                           | -                                |
| GS-4                                    | 2                   | 3                           | -                                |
| GS-3                                    | -                   | -                           | -                                |
| GS-2                                    | -                   | -                           | -                                |
| GS-1                                    | -                   | -                           | -                                |
| <b>Subtotal</b>                         | <b>162</b>          | <b>171</b>                  | <b>156</b>                       |
| <b>Total - GS Salary</b>                | <b>\$15,924,161</b> | <b>\$16,597,668</b>         | <b>\$15,482,968</b>              |
| -                                       | -                   | -                           | -                                |
| <b>Average ES level</b>                 | <b>III</b>          | <b>III</b>                  | <b>III</b>                       |
| <b>Average ES salary</b>                | <b>\$171,640</b>    | <b>\$175,722</b>            | <b>\$182,606</b>                 |
| <b>Average GS grade</b>                 | <b>12.9</b>         | <b>12.8</b>                 | <b>12.8</b>                      |
| <b>Average GS Salary</b>                | <b>\$98,297</b>     | <b>\$97,062</b>             | <b>\$99,250</b>                  |

## Section V – Significant Items

### SIGNIFICANT ITEMS IN HOUSE AND SENATE APPROPRIATIONS COMMITTEES REPORTS

#### House Report 114-699

##### Item

**Protected Health Information** - The Committee is concerned about the breadth and consequences of the February 25, 2016 HIPAA guidance regarding access to protected health information (PHI) issued by the Office for Civil Rights in the form of Frequently Asked Questions. In particular, OCR's issuance of the guidance without notice and formal, comment rulemaking newly regulates that covered entities and business associates must use one of three restrictive methods to calculate the reasonable, cost-based fee that they may charge an individual for providing PHI, one of which is an arbitrary "flat fee" option of \$6.50. The guidance also expressly mandates that covered entities and business associates must apply this restrictive calculation scheme not only to an individual's request to direct records to third parties for patient care and research, but also for commercial uses unrelated to patient care and research. This mandate could result in a significant shift of costs onto patient care for the production of such commercial requests. The Committee urges that OCR delay the enforcement of the guidance and eliminate, or at the very least modify, the three methods to calculate the reasonable, cost-based fee that may be charged the individual; and clarify that the reasonable, cost-based fee applies only to patient access and patient requests directing transmittal of PHI to third parties for patient care and research. [House Report, page 113]

##### Action Taken or To Be Taken

OCR is looking at ways to address concerns about commercial entities benefiting from fee limitations designed to benefit individuals, while remaining consistent with the text of the HITECH Act which provides individuals the right to request that copies of their health information be sent directly to third party designees. As explained in the Access Guidance, and consistent with the HITECH Act and the Privacy Rule, individuals may be charged only the limited fees permitted by the HIPAA Privacy Rule when individuals direct that copies of their PHI be sent to a person or entity of their choosing (such as another health care provider, a caregiver, a mobile health app, or a researcher). Neither the HITECH Act, nor therefore the HIPAA Privacy Rule, conditions the right of an individual to direct a copy of their PHI to a third party on the purpose of the individual's request or the identity of the recipient. However, the Access Guidance also explains that the fee limitations do not apply to requests for records initiated by a third party, such as a commercial entity, on its own behalf. OCR is open to working further with Congress and other stakeholders on ways to address this issue.

OCR issued the Access Guidance in part to address the many complaints it had received from individuals over the years about some covered entities and release of information (ROI) vendors charging fees in excess of what the HITECH Act allows when providing individuals with copies of their information. The Access Guidance did not change the allowable fees that covered entities may charge individuals for copies of PHI. Rather, the fee calculation options provided in the Access Guidance are offered to assist covered entities in developing policies and procedures for calculating fees under the HIPAA Privacy Rule regulations, 45 CFR 14.524. (We note that the flat fee not to exceed \$6.50 is not required but is an additional option available to those entities

that do not want to go through the process of calculating the actual or average costs for requests for electronic copies of PHI maintained electronically as permitted by the Privacy Rule Access Guidance.).

With respect to enforcement, to provide industry with some time to evaluate policies and procedures in response to the guidance, OCR stated that it would not, and did not, pursue civil money penalties for an entity's noncompliance with the aspects of the guidance clarifying the fee provisions of the HIPAA access regulation for 180 days from the issuance date of the guidance.

### **Senate Report 114-274**

#### Item

**Pending Complaints** - OCR is tasked with ensuring that individuals are not subject to unlawful discrimination in healthcare programs. Yet, for nearly 3 years, since September 2014, three Weldon Amendment cases have been filed with OCR without resolution. Therefore, the Committee directs OCR to properly investigate the pending cases and urges OCR to resolve the pending cases expeditiously. [Senate Report, page 159]

#### Action Taken or To Be Taken

On June 21, 2016, OCR closed its investigation of the three Weldon complaints identified in the Senate Report without further action. OCR is actively reevaluating the propriety, accuracy, and legal grounding of this disposition. OCR takes its responsibilities seriously under all civil rights laws, including enforcement of laws falling under the conscience protection umbrella (the Weldon Amendment, the Church Amendments, Section 245 of the Public Health Service Act, and Section 1303(b)(4) of the Affordable Care Act), which contain strong protections for individuals and entities opposed to performing abortions, sterilization, and other procedures. OCR also enforces Section 1553 of the Affordable Care Act, which protects the rights of individuals and entities opposed to providing assisted suicide services. OCR plans to take a series of actions to promote outreach, understanding, and to ensure prompt and vigorous enforcement of these important protections.

## FY 2018 Budget by HHS Strategic Objective

(Dollars in Millions)

| HHS Strategic Goals   | FY 2017<br>Annualized<br>CR |
|---|-----------------------------|
| <b>1. Strengthen Health Care</b>  | <b>20.00</b>                |
| 1.A Make coverage more secure for those who have insurance, and extend affordable coverage to the uninsured   | -                           |
| 1.B Improve health care quality and patient safety  | -                           |
| 1.C Emphasize primary & preventative care, linked with community prevention services  | -                           |
| 1.D Reduce the growth of health care costs while promoting high-value, effective care   | -                           |
| 1.E Ensure access to quality, culturally competent care, including long-term services and supports, for vulnerable populations  | 10.50                       |
| 1.F Improve health care and population health through meaningful use of health information technology   | 9.50                        |
| <b>2. Advance Scientific Knowledge and Innovation</b>   | -                           |
| 2.A Accelerate the process of scientific discovery to improve health  | -                           |
| 2.B Foster and apply innovation solutions to health, public health, and human services challenges   | -                           |
| 2.C Advance the regulatory sciences to enhance food safety, improve medical product development, and support tobacco regulation   | -                           |
| 2.D Increase our understanding of what works in public health and human services practice   | -                           |
| 2.E Improve laboratory, surveillance, and epidemiology capacity   | -                           |
| <b>3. Advance the Health, Safety and Well-Being of the American People</b>  | <b>18.40</b>                |
| 3.A Promote the safety, well-being, resilience, and healthy development of children and youth   | 2.00                        |
| 3.B Promote economic and social well-being for individuals, families, and communities   | 16.40                       |
| 3.C Improve the accessibility and quality of supportive services for people with disabilities and older adults  | -                           |
| 3.D Promote prevention and wellness across the life span  | -                           |
| 3.E Reduce the occurrence of infectious diseases  | -                           |
| 3.F Protect American' health and safety during emergencies, and foster resilience to withstand and respond to emergencies   | -                           |
| <b>4. Ensure Efficiency, Transparency, Accountability, and Effectiveness of HHS Programs</b>  | <b>.30</b>                  |
| 4.A Strengthen program integrity and responsible stewardship by reducing improper payments, fighting fraud, and integrating financial, performance, and risk management | .20                         |
| 4.B Enhance access to and use of data to improve HHS programs and to support improvements in the health and well-being of the American People                           | .10                         |
| 4.C Invest in the HHS workforce to help meet America's health and human services needs  | -                           |
| 4.D Improve HHS environmental, energy, and economic performance to promote sustainability   | -                           |
| <b>Total</b>  | <b>38.7</b>                 |